



Kathrin Sears, Chair  
County of Marin

Tom Butt, Vice Chair  
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Bob McCaskill  
City of Belvedere

Alan Schwartzman  
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Sloan C. Bailey  
Town of Corte Madera

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Barbara Coler  
Town of Fairfax

Don Tatzin  
City of Lafayette

Kevin Haroff  
City of Larkspur

Sashi McEntee  
City of Mill Valley

Brad Wagenknecht  
County and Cities of Napa

Denise Athas  
City of Novato

P. Rupert Russell  
Town of Ross

Ford Greene  
Town of San Anselmo

Arturo Cruz  
City of San Pablo

Andrew McCullough  
City of San Rafael

Ray Withy  
City of Sausalito

Emmett O'Donnell  
Town of Tiburon

Kevin Wilk  
City of Walnut Creek

1125 Tamalpais Avenue  
San Rafael, CA 94901

1 (888) 632-3674  
[mceCleanEnergy.org](http://mceCleanEnergy.org)

**Board of Directors Meeting**  
**Thursday, May 18, 2017**  
**7:00 P.M.**

**The Charles F. McGlashan Board Room**  
**1125 Tamalpais Avenue, San Rafael, CA 94901**

**3675 Mt. Diablo Boulevard, #265**  
**Lafayette, CA 94549**

**Agenda Page 1 of 2**

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Chief Executive Officer (Discussion)
4. Consent Calendar (Discussion/Action)
  - C.1 3.16.17 Meeting Minutes
  - C.2 Approved Contracts Update
  - C.3 First Agreement with Free Range Videographers
  - C.4 First Amendment to the First Agreement with The Energy Alliance Association
  - C.5 Proposed Amendment to Ratepayer Rule No. 005
5. FY 2017/18 Budget Amendment (Discussion/Action)
6. MCE Greenhouse Gas Emissions Analysis for CY 2015 (Discussion/Action)



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



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**Agenda Page 2 of 2**

7. Draft Resolution No. 2017-03 to Revise Net Energy Metering (NEM) Tariff and Proposed Amendments to Local Sol and NEM Electric Schedules (Discussion/Action)
8. Draft Resolution No. 2017-04 Authorizing Entry Into and Execution Of Certain Contracts Relating to the MCE Solar One Project (Discussion/Action)
9. Update on Community Power Coalition (Discussion)
10. Policy Update (Discussion)
11. Board Member & Staff Matters (Discussion)
12. Adjourn



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**DRAFT**

**MCE BOARD MEETING MINUTES**

**Thursday, March 16, 2017**

**7:00 P.M.**

**THE CHARLES F. MCGLASHAN BOARD ROOM**

**1125 TAMALPAIS AVENUE, SAN RAFAEL, CA 94901**

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**Roll Call:** Director Kate Sears called the regular Board meeting to order at 7:03 p.m. An established quorum was met.

**Present:** Sloan Bailey, Town of Corte Madera  
Barbara Coler, Town of Fairfax  
Ford Greene, Town of San Anselmo  
Kevin Haroff, City of Larkspur  
Greg Lyman, City of El Cerrito  
Bob McCaskill, City of Belvedere  
Gayle McLaughlin, Alternate, City of Richmond  
Sashi McEntee, City of Mill Valley  
Emmett O'Donnell, Town of Tiburon  
P. Rupert Russell, Town of Ross  
Kate Sears, Chair, County of Marin  
Don Tatzin, City of Lafayette  
Kevin Wilk, City of Walnut Creek  
Ray Withy, City of Sausalito

**Absent:** Denise Athas, City of Novato  
Arturo Cruz, City of San Pablo  
Andrew McCullough, City of San Rafael  
Alan Schwartzman, City of Benicia  
Brad Wagenknecht, County of Napa

**Staff:** John Dalessi, Operations and Development  
Kirby Dusel, Resource Planning & Renewable Energy Programs  
Darlene Jackson, Board Clerk  
David McNeil, Finance Manager  
Michelle Nochisaki, Green & Healthy Homes Initiative Outcome Broker  
Justine Parmelee, Operations Associate  
David Potovsky, Power Supply Contracts Manager  
Dawn Weisz, Chief Executive Officer

**1. Board Announcements (Discussion)**

There were none.

**DRAFT**

**2. Public Open Time (Discussion)**

There were none.

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

CEO Dawn Weisz thanked Directors McEntee, Greene and Wagenknecht for participating in the March 15<sup>th</sup> Field Trip to the Calpine Geysers.

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

C.1 2.16.17 Meeting Minutes

Chair Sears opened the public comment period and there were no speakers.

**ACTION:** It was M/S/C (Greene/Bailey) to **approve Consent Calendar items**. Motion carried by unanimous vote. (Abstain on C.1: McLaughlin) (Absent: Athas, Cruz, McCullough, Schwartzman and Wagenknecht).

**5. Proposed Fiscal Year 2017/18 Rates (Discussion/Action)**

John Dalessi, Operations and Development, presented this item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

**ACTION:** It was M/S/C (Bailey/Haroff) to **adopt the Rates for FY 2017/2018**. Motion carried by unanimous vote. (Absent: Athas, Cruz, McCullough, Schwartzman and Wagenknecht).

**6. Proposed Fiscal Year 2017/18 Budget (Discussion/Action)**

David McNeil, Finance Manager, presented this discussion item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

**ACTION:** It was M/S/C (Haroff/Withy) to **approve the FY 2017/2018 Operating Fund, Energy Efficiency Program Fund, Local Renewable Energy Development Fund, and Renewable Energy Reserve Fund Budgets**. Motion carried by unanimous vote. (Absent: Athas, Cruz, McCullough, Schwartzman and Wagenknecht).

**DRAFT**

**7. Power Purchase Agreement with MCE Solar One, LLC for Local Renewable Energy (Discussion/Action)**

David Potovsky, Power Supply Contracts Manager, introduced this item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

**ACTION: It was M/S/C (Greene/McLaughlin) to authorize finalization and execution of Power Purchase Agreement and Purchase and Sale Agreement with MCE Solar One, LLC for local renewable energy supply. Motion carried by unanimous vote. (Absent: Athas, Cruz, McCullough, Schwartzman and Wagenknecht).**

**8. New Board Member Additions to MCE Committees (Discussion/Action)**

Dawn Weisz, CEO, presented this item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

**ACTION: It was M/S/C (Bailey/Greene) to add Director Coler to the Executive Committee. It was M/S/C (Bailey/McCaskill) to add Director Tatzin to the Technical Committee. It was M/S/C (Haroff/Bailey) to add Director Lyman to the 2017 Ad Hoc Contracts Committee and Director Haroff will step down from the Ad Hoc Contracts Committee. It was M/S/C (McCaskill/Bailey) to add Director Tatzin to the 2017 Ad Hoc Audit Committee. It was M/S/C (Tatzin/Greene) to add Directors McCaskill and Wilk to the 2017 Ad Hoc Benefits Committee. Motions carried by unanimous vote. (Absent: Athas, Cruz, McCullough, Schwartzman and Wagenknecht).**

**9. Green and Healthy Homes Initiative Presentation (Discussion)**

Michelle Nochisaki, GHHI Outcome Broker for Marin County, introduced this item and addressed questions from Board members.

Chair Sears opened the public comment period and there were no speakers.

**ACTION: No action required.**

**10. Board Member & Staff Matters (Discussion)**

There were none.

**DRAFT**

**11. Adjournment**

The Board of Directors adjourned the meeting at 8:38 p.m. to the next Regular Board Meeting on April 20, 2017.

\_\_\_\_\_  
Kate Sears, Chair

Attest:

\_\_\_\_\_  
Dawn Weisz, Secretary



May 18, 2017

TO: MCE Board of Directors  
FROM: Catalina Murphy, Contracts Manager & Legal Assistant  
RE: Report on Approved Contracts (Agenda Item #04 – C.2)

Dear Board Members:

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**SUMMARY:** This report summarizes agreements entered into by the Chief Executive Officer since the last Board meeting in March. This summary is provided to your Board for information purposes only.

Review of Procurement Authorities

In February 2017, your Board adopted Resolution 2017-02 which included the following provisions:

*The CEO and Technical Committee Chair, jointly, shall have all necessary and proper authority, after consultation with a Committee of the Board, to approve and execute contracts for Energy Procurement for terms of less than or equal to five years. The CEO shall timely report to the Board all such executed contracts.*

*The CEO shall have all necessary and proper authority to approve and execute contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board.*

The Chief Executive Officer is required to report all such contracts and agreements to the MCE Board on a regular basis.

Summary of Agreements entered into by the CEO since the last Board Meeting

Month	Purpose	Contractor	Maximum Annual Contract Amount	Term of Contract
March	25 MW of low-GHG energy for April 1, 2017 - May 31, 2017	Western Area Power Administration	\$233,000	2 Months
March	25 MW GHG-free hydroelectric energy for March 27, 2017 - June 30 2017	San Francisco Public Utilities Commission	\$755,300	3 Months

**Fiscal Impact:** Expenses associated with these Agreements are included in the FY 2017/18 Operating Fund.

**Recommendation:** Information only. No action required.





May 18, 2017

TO: MCE Board of Directors

FROM: Nicole Busto, Manager of Marketing Communications

RE: Proposed First Agreement with Free Range (Agenda Item #04 – C.3)

ATTACHMENT: Proposed First Agreement with Free Range

Dear Board Members:

**SUMMARY:**

Free Range is a cause-driven, creative studio and registered B-Corporation that develops videos for marketing and educational purposes. They have produced content for partners like the Alliance for Climate Education, The Nature Conservancy, Bill and Melinda Gates Foundation, and Story of Stuff. The attached proposed First Agreement would allow Free Range to produce two television-quality videos for MCE, for a total amount not to exceed \$61,874.

Free Range was identified as the top vendor from a formal Request for Offer (RFO) process conducted by MCE Public Affairs staff. The RFO included reviewing nine submissions from video production companies across the Bay Area. Proposals were evaluated on the following criteria: quality of work samples, competitiveness of timeline and pricing, qualifications and references, and completeness of offer/proposal. The top two submitters were interviewed by phone.

The goals of the videos are to increase customer enrollments in Deep Green energy service and increase the brand recognition of MCE. They will be featured as advertisements on Comcast television, as well as MCE's website, e-newsletter, and social media. Staff will utilize the videos at public meetings and presentations. MCE may also use the productions for advertising use in movie theatres and film festivals.

Messaging for the first video will target eco-conscious and tech savvy 20-50 year old customers, showing them how renewable energy integrates with their values and lifestyle and how easy it is to enroll in 100% renewable energy service. The second video will target all residents and businesses within our service area, highlighting the environmental benefits that MCE provides and showing how their individual choices and contributions can have a regional and global impact.

**Fiscal Impact:** Costs related to the referenced agreement are included in the FY 2017/18

Operating Fund Budget.

**Recommendation:** Approve the proposed First Agreement with Free Range.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND FREE RANGE**

**THIS FIRST AGREEMENT** ("Agreement") is made and entered into this day **May 18, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and FREE RANGE, hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: develop two television videos for marketing and educational purposes;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE based on the schedule set forth in Exhibit B for any services rendered or expenses incurred hereunder. Invoice payment shall be due upon receipt. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$61,874**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **May 18, 2017**, and shall terminate on **September 30, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

**6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED  )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall be fully responsible for the work product of subcontractors and shall fully indemnify MCE for work assigned to subcontractors. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's

premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by MCE based on undisputed audit findings.

#### **11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

#### **12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 19 Invoices; Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).
- E. MCE may terminate this Agreement if funding for this Agreement is reduced or eliminated by a third-party funding source.

#### **13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

#### **14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

#### **15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

#### **16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

#### **17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE 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 the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

#### **18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

**19. INVOICES; NOTICES**

This Agreement shall be managed and administered on MCE’s behalf by the Contract Manager named below. All invoices shall be submitted by email to:

\_\_\_\_\_  
 Email Address:       invoices@mcecleanenergy.org  
 \_\_\_\_\_

All other notices shall be given to MCE at the following location:

\_\_\_\_\_  
 Contract Manager:   Catalina Murphy  
 \_\_\_\_\_  
 MCE Address:        1125 Tamalpais Avenue  
 \_\_\_\_\_  
                               San Rafael, CA 94901  
 \_\_\_\_\_  
 Email Address:       contracts@mcecleanenergy.org  
 \_\_\_\_\_  
 Telephone No.:      (415) 464-6014  
 \_\_\_\_\_

Notices shall be given to Contractor at the following address:

\_\_\_\_\_  
 Contractor:         Free Range, Attn: Naoto DeSilva  
 \_\_\_\_\_  
 Address:            995 Market Street, 2<sup>nd</sup> Floor  
 \_\_\_\_\_  
                               San Francisco, CA 94103  
 \_\_\_\_\_  
 Email Address:     naoto@freerange.com  
 \_\_\_\_\_  
 Telephone No.:     (510) 838-0309  
 \_\_\_\_\_

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u><b>Check applicable Exhibits</b></u>	<u><b>CONTRACTOR’S INITIALS</b></u>
<u><b>EXHIBIT A.</b></u>	<input checked="" type="checkbox"/>	<b>Scope of Services</b>	
<u><b>EXHIBIT B.</b></u>	<input checked="" type="checkbox"/>	<b>Fees and Payment</b>	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND** (REQUIRED IF CHECKED )

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender, supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the date first above written.

**APPROVED BY**

**Marin Clean Energy:**

**CONTRACTOR:**

By: \_\_\_\_\_  
CEO

By: \_\_\_\_\_

Date: \_\_\_\_\_

Name: \_\_\_\_\_

By: \_\_\_\_\_  
Chairperson

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**MODIFICATIONS TO STANDARD SHORT FORM**

**Standard Short Form Content Has Been Modified**

*List sections affected:* Sections 3, 6, 8

Approved by MCE Counsel: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A**  
**SCOPE OF SERVICES (required)**

Contractor will provide the following services regarding two television videos for marketing and educational purposes, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

1. Create two television quality videos with the goal in mind to increase customer enrollments in Deep Green energy service, increase the brand recognition of MCE, and to address MCE's evolving marketing needs. The videos will be featured as Comcast television spotlight ads for a fixed period of time.
  - a. One video furthering MCE's multi-channel Deep Green ad campaign, showing how renewable energy integrates with customers' values and lifestyles. Contractor shall complete this video by August 1, 2017.
  - b. One video welcoming new and potential MCE customers to the MCE family of 24 communities showing how their individual contributions can have a regional and global impact.
2. Video Production Services for the two videos include:
  - a. Provide approximately 30-45 second cut of each of the two videos listed above and approximately 5-15 second cut of each of the two videos listed above. The shorter versions will be for digital pre-roll ads and will not be of broadcast quality.
  - b. Project Kickoff – Includes customization and review of video questionnaire completed by MCE and provided by Free Range, 1 hour kickoff session with Free Range and MCE, delivery of 2 to 3 video concepts per video in live action production style. 1 round of revision for video concepts by MCE is included per video.
  - c. Provide creative direction that incorporates the MCE brand, utilizes approaches that engage the audience, and ensures storytelling goals between the two videos. MCE will provide brand guidelines upon execution of the Agreement.
  - d. Contractor will provide 1 production-ready script per video for a total of 2 scripts. 2 rounds of script revisions by MCE are included per video.
  - e. Work with MCE team to set the direction for filming, including: identifying shot lists based on content narratives, and developing talking points and/or scripts for film participants for interviews and voiceovers where applicable. Contractor shall provide pre-production planning for shotlist, location scouting, crew assembly and on set direction. Based on finalized script, Contractor will coordinate all aspects of live video production.
  - f. Identify and collaboratively design the necessary video, graphic, and sound elements for the videos.
  - g. Ensure fidelity to the established branding and design throughout the entire video production process.
  - h. Work with the MCE team to develop an approach to conducting field shoots and prepare on-site locations for filming. Preparations include: reviewing shot lists with the MCE team; scouting the location prior to filming; and altering the physical environment and/or adapting the filming approach to ensure minimal disruptions to film participants. Contractor will provide a 1 day (10 hour), live action docu-style film shoot that will cover both videos.
  - i. Work with MCE staff to conduct field filming in dynamic environments, including but not limited to: schools, homes, and work sites, to capture all footage required to make the videos, as well as necessary permits (if applicable).
  - j. Work with MCE team to review rough cuts, develop the sequence of video clips, and identify gaps in footage for additional filming. MCE is entitled to 2 rounds of revision during Post-production for video editing (rough cut, fine cut, final cut). *\*Note additional filming is not included in the budget.*
  - k. Edit to final production professional grade copy with absolute attention to detail on all video, graphic, and sound elements. Preparation for broadcast quality videos includes, color correction, sound design, sound mix, and music editing by Contractor.
  - l. Contractor will include music licensing for 4 months in broadcast media. MCE will be responsible for any additional costs for continued licensing beyond stipulated 4-month period for broadcast purposes.



- m. Provide MCE staff with unedited raw footage and rough cuts of all filming sessions for MCE to save, review and otherwise use without limitation at any point during and after fulfillment of the contract.
- n. Provide project management to ensure alignment with overall project timeline; work with MCE team to set and track project milestones in accordance with overall timeline; provide routine status updates; manage costs of time and materials to remain within budget; proactively identify and communicate challenges; coordinate quality control of all development work and deliverables.

**EXHIBIT B**  
**FEES AND PAYMENT SCHEDULE**

For services provided under this Agreement, MCE shall pay Contractor in accordance with the amount(s) and the payment schedule as specified below:

45% due upon execution of contract	\$27,843
20% due prior to shoot day	\$12,375
15% due upon start of post production	\$ 9,281
20% remaining due upon receipt of deliverables	\$12,375

Contractor shall bill MCE pursuant to the payment schedule listed above. In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$61,874** for the term of the Agreement.



May 18, 2017

TO: MCE Board of Directors

FROM: Beckie Menten, Director of Customer Programs

RE: Proposed First Amendment to the First Agreement with The Energy Alliance Association (Agenda Item #04 – C.4)

ATTACHMENTS: A. First Agreement with The Energy Alliance Association  
B. Proposed First Amendment to the First Agreement with The Energy Alliance Association

Dear Board Members:

**SUMMARY:**

The proposed First Amendment with The Energy Alliance Association (TEAA) would provide one-time compensation to TEAA for the cost of setting up a custom calculator to comply with quarterly reporting required by the California Public Utilities Commission (CPUC).

**Background**

MCE's small commercial efficiency program is one of four program elements approved by the CPUC, and is funded at a total of \$658,710. The program is designed to serve hard to reach small commercial properties by making energy efficiency opportunities easy to capture.

Under the First Agreement with TEAA, approved by the Executive Committee March 3, 2017, MCE expanded its small commercial energy efficiency offerings to its entire service territory by contracting with TEAA to provide implementation services in Napa and Solano Counties, which were two counties not previously served by the existing implementer that serves Marin and Contra Costa Counties (Community Energy Services Corporation, or "CESC"). CESC and TEAA both operate within pre-defined geographic boundaries.

TEAA provides energy evaluations at no cost to small businesses, prepares and delivers energy evaluation reports, identifies qualified contractors from a pool of pre-determined professionals who have agreed to specific terms, and oversees the installation of the efficiency measures for quality control.

TEAA's Agreement is based exclusively on a performance incentive. The performance incentive is available to TEAA when projects are successfully completed. Under this existing fee structure, TEAA is incentivized to meet or exceed energy savings goals while maintaining cost-effectiveness targets of the CPUC. However, this payment structure does not take into account

the one-time set-up costs of developing a calculator tool for reporting requirements set forth by the CPUC. The Agreement with MCE's other small commercial energy efficiency implementer, CESC, includes both a performance kicker and time and materials element for tasks like reporting. Approval of this Amendment would cover a one-time start-up cost associated with complying with CPUC reporting obligations.

MCE staff requests approval of the First Amendment to the First Agreement with TEAA, which requests an increase of \$5,000 to a new contract maximum of \$40,653 and a contract end date of December 31, 2017.

**Fiscal Impact:** The requested contract amount of \$40,653 would be funded completely from the energy efficiency program funds allocated by the CPUC.

**Recommendation:** Approve the First Amendment to the First Agreement with The Energy Alliance Association.

**MARIN CLEAN ENERGY  
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT  
BY AND BETWEEN  
MARIN CLEAN ENERGY AND THE ENERGY ALLIANCE ASSOCIATION (TEAA)**

**THIS FIRST AGREEMENT** ("Agreement") is made and entered into this day **March 3, 2017** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and THE ENERGY ALLIANCE ASSOCIATION (TEAA), hereinafter referred to as "Contractor."

**RECITALS:**

**WHEREAS**, MCE desires to retain a person or firm to provide the following services: technical services to support MCE's Small Commercial Energy Efficiency Program in Napa County and the City of Benicia;

**WHEREAS**, Contractor warrants that it is qualified and competent to render the aforesaid services;

**NOW, THEREFORE**, for and in consideration of the agreement made, and the payments to be made by MCE, the parties agree to the following:

**1. SCOPE OF SERVICES:**

Contractor agrees to provide all of the services described in **Exhibit A** attached hereto and by this reference made a part hereof.

**2. FURNISHED SERVICES:**

MCE agrees to make available all pertinent data and records for review, subject to MCE Policy 001 - Confidentiality.

**3. FEES AND PAYMENT SCHEDULE; INVOICING:**

The fees and payment schedule for furnishing services under this Agreement shall be based on the rate schedule which is attached hereto as **Exhibit B** and by this reference incorporated herein. Said fees shall remain in effect for the entire term of the Agreement. Contractor shall provide MCE with his/her/its Federal Tax I.D. number prior to submitting the first invoice. Contractor is responsible for billing MCE in a timely and accurate manner. Contractor shall email invoices to MCE at [invoices@mcecleanenergy.org](mailto:invoices@mcecleanenergy.org) on a monthly basis for any services rendered or expenses incurred hereunder. Fees and expenses invoiced beyond 90 days will not be reimbursable. The final invoice must be submitted within 30 days of completion of the stated scope of services or termination of this Agreement.

**4. MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$35,653**.

**5. TIME OF AGREEMENT:**

This Agreement shall commence on **March 3, 2017**, and shall terminate on **December 31, 2017**. Certificate(s) of Insurance must be current on the day the Agreement commences and if scheduled to lapse prior to termination date, must be automatically updated before final payment may be made to Contractor.

**6. INSURANCE AND SAFETY:**

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to MCE. The general liability policy shall be endorsed naming Marin Clean Energy and its employees, officers and agents as additional insureds. The certificate(s) of insurance and required endorsement shall be furnished to MCE prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to MCE of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph 6.4 which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor's obligations under paragraph 16 of this Agreement to indemnify, defend and hold MCE harmless from any and all liabilities arising from the Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement. MCE agrees to timely notify the Contractor of any negligence claim.

Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the agreement. In addition to any other available remedies, MCE may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

**6.1 GENERAL LIABILITY**

The Contractor shall maintain a commercial general liability insurance policy in an amount of no less than one million dollars (\$1,000,000) with a two million dollar (\$2,000,000) aggregate limit. MCE shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page. (see sample form: ISO - CG 20 10 11 85).

**6.2 AUTO LIABILITY**

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit (\$1,000,000.00).

**6.3 WORKERS' COMPENSATION**

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to MCE prior to commencement of work.

**6.4 PROFESSIONAL LIABILITY INSURANCE (REQUIRED IF CHECKED  )**

Coverages required by this paragraph may be provided on a claims-made basis with a "Retroactive Date" either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a "retroactive date" prior to the Agreement effective date, the contractor must purchase "extended reporting" coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than \$1,000,000 per incident. If the deductible or self-insured retention amount exceeds \$100,000, MCE may ask for evidence that contractor has segregated amounts in a special insurance reserve fund or contractor's general insurance reserves are adequate to provide the necessary coverage and MCE may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

**7. NONDISCRIMINATORY EMPLOYMENT:**

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.

**8. SUBCONTRACTING:**

The Contractor shall not subcontract nor assign any portion of the work required by this Agreement without prior written approval of MCE except for any subcontract work identified herein. If Contractor hires a subcontractor under this Agreement, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Agreement and shall require subcontractor to name Contractor as additional insured under this Agreement. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to MCE evidence of same. Nothing contained in this Agreement or otherwise stated between the parties shall create any legal or contractual relationship between MCE and any subcontractor, and no subcontract shall relieve Contractor of any of its duties or obligations under this Agreement. Contractor shall be solely responsible for ensuring its subcontractors' compliance with the terms and conditions of this Agreement. Contractor's obligation to pay its subcontractors is an independent obligation from MCE's obligation to make payments to Contractor. As a result, MCE shall have no obligation to pay or to enforce the payment of any moneys to any subcontractor.

**9. ASSIGNMENT:**

The rights, responsibilities and duties under this Agreement are personal to the Contractor and may not be transferred or assigned without the express prior written consent of MCE.

**10. RETENTION OF RECORDS AND AUDIT PROVISION:**

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees' time sheets, and correspondence pertaining to this Agreement. Such

records shall include, but not be limited to, documents supporting all income and all expenditures. MCE shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Contract period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor's premises or, at MCE's option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from MCE. Contractor shall refund any monies erroneously charged.

**11. WORK PRODUCT:**

All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of MCE upon payment to Contractor for such work. MCE shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at MCE's expense, provide such reports, plans, studies, documents and writings to MCE or any party MCE may designate, upon written request. Contractor may keep file reference copies of all documents prepared for MCE.

**12. TERMINATION:**

- A. If the Contractor fails to provide in any manner the services required under this Agreement or otherwise fails to comply with the terms of this Agreement or violates any ordinance, regulation or other law which applies to its performance herein, MCE may terminate this Agreement by giving five business days' written notice to the party involved.
- B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.
- C. Either party hereto may terminate this Agreement for any reason by giving 30 calendar days' written notice to the other party. Notice of termination shall be by written notice to the other parties and be sent by registered mail or by email to the email address listed in Section 20 Notices.
- D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Agreement so long as proof of required insurance is provided for the periods covered in the Agreement or Amendment(s).

**13. AMENDMENT:**

This Agreement may be amended or modified only by written agreement of all parties.

**14. ASSIGNMENT OF PERSONNEL:**

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to MCE, as is evidenced in writing.

**15. JURISDICTION AND VENUE:**

This Agreement shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

**16. INDEMNIFICATION:**

Contractor agrees to indemnify, defend, and hold MCE, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Agreement.

**17. NO RECOURSE AGAINST CONSTITUENT MEMBERS OF MCE:**

MCE 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 the Joint Powers Agreement and is a public entity separate from its constituent members. MCE shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of MCE's constituent members in connection with this Agreement.

**18. COMPLIANCE WITH APPLICABLE LAWS:**

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions (including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Resolution #2005-97 of the Marin County Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement.

**19. NOTICES**

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted by email, pursuant to paragraph 3. All other notices shall be given to MCE at the following location:

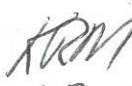

Contract Manager:	Catalina Murphy
MCE Address:	1125 Tamalpais Avenue
	San Rafael, CA 94901
Email Address:	contracts@mcecleanenergy.org
Telephone No.:	(415) 464-6014

Notices shall be given to Contractor at the following address:

Contractor:	Kenneth R. Moore
Address:	1400 N. Dutton Ave, Ste 17
	Santa Rosa, CA 95401
Email Address:	kmoore@teaa.net
Telephone No.:	(707) 542-3171

**20. ACKNOWLEDGEMENT OF EXHIBITS**

In the event of a conflict between the Terms of this Agreement and the terms in any of the following Exhibits, the terms in this Agreement will govern.

	<input checked="" type="checkbox"/>	<u>Check applicable Exhibits</u>	<u>CONTRACTOR'S INITIALS</u>
 <u>EXHIBIT A.</u>	<input checked="" type="checkbox"/>	Scope of Services	
 <u>EXHIBIT B.</u>	<input checked="" type="checkbox"/>	Fees and Payment	

**21. SEVERABILITY**

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provision, will continue in full force and effect and will in no way be impaired or invalidated.

**22. COMPLETE AGREEMENT**

This Agreement along with any attached Exhibits constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

**23. COUNTERPARTS**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**24. PERFORMANCE AND PAYMENT BOND (REQUIRED IF CHECKED )**

Contractor shall furnish, concurrently with signing the contract, a Performance & Payment Bond for a sum not less than 100 percent (100%) of the total amount of the contract. The bond shall be in the form of a bond and not a deposit in lieu of a bond. The bond shall be executed by an admitted surety insurer. The bond shall guarantee payment by Contractor of all materials, provisions, provender,



supplies, and equipment used in, upon, for, or about the performance of said construction, and protect MCE from any liability, losses, or damages arising therefrom.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED BY

Marin Clean Energy:

By: [Signature]  
CEO  
Date: 3-3-17

By: [Signature]  
Chairperson  
Date: 3-3-17

CONTRACTOR:

By: [Signature]

Name: KENNETH R. MOORE

Date: 3-9-2017

MCE COUNSEL REVIEW AND APPROVAL (Only required if any of the noted reason(s) applies)

REASON(S) REVIEW:

Standard Short Form Content Has Been Modified (List sections affected: \_\_\_\_\_)

Optional Review by MCE Counsel at Marin Clean Energy's Request

MCE Counsel: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT A  
SCOPE OF SERVICES (required)**

Contractor will provide the following technical services to support MCE's Small Commercial Energy Efficiency Program in Napa County and the City of Benicia, as requested and directed by MCE staff, up to the maximum time/fees allowed under this Agreement:

<b>1. Administrative</b>
Maintain data management, tracking and accounting protocols to comply with MCE and CPUC program reporting requirements
Update forms as needed, such as integrating customer-facing reports with financing options
Identify and implement process improvements
Assistance replying to data requests, CPUC financial audits and regulatory filings
<b>2. Marketing and Outreach</b>
Develop, modify, and distribute marketing materials (flyers, applications, website, customer report)
Create case studies
Design outreach campaigns
<b>3. Implementation</b>
Identify and target projects that will provide the most cost-effective savings by maintaining customer rebates within MCE's budgeted rate averaging \$0.185/kWh; total rebate cap not to exceed \$52,347 for the term of this Agreement.
Provide project management assistance from project inception to completion, including but not limited to scheduling site visits, conducting assessments, creating savings and rebate estimates and finals, responding to customer inquiries, coordinating contractors and equipment installation, and conducting final Measurement & Verification (M&V)
Recruit, educate, and train contractors and suppliers
Identify and implement any changes to program installation labor and material pricing
Provide technical assistance services, including setting and documenting customer eligibility criteria, audit criteria, incentive levels, and overall project documentation
Program planning, development and design – as needed
IT development for project management tasks
Savings split between PG&E and MCE will be 70% savings for PG&E and 30% savings for MCE
<b>4. Quality Assurance/Quality Control</b>
Conduct QA/QC to ensure tracking and reporting documents are in sync and accurate
Periodically review contractor requirements and M&V protocols (% pre and post inspection) are sufficient to ensure reasonable savings claims
<b>5. Coordinate with PG&amp;E on programs to avoid duplication/competition</b>
Hold meetings with complimentary and non-competitive Energy Efficiency & Demand Response Programs operating in MCE territories in Napa County and the City of Benicia

**EXHIBIT B  
FEES AND PAYMENT SCHEDULE**

For direct implementation services provided under this Agreement, MCE shall pay the Contractor, for performance of savings only, in accordance with the following payment fees/schedule:

<b>Budget</b>	
Program Performance Incentive <sup>1</sup> (Target of 282,958 gross kWh)	\$0.126/kWh
Technical Assistance Direct Implementation (Small Commercial)	\$35,653
Contract Total (NTE)	\$35,653

<sup>1</sup>The program performance incentive may be invoiced by TEAA on a kWh/project completed basis. This incentive is to be invoiced monthly, and the invoice must include sufficient background documentation to calculate the incentive amount based on kWh savings in completed projects. MCE reserves the right to reduce payment if more than 60% of kWh savings result from free LED measures. The performance incentive shall be evaluated on an annual, not monthly basis.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$35,653** for the term of the agreement.

**FIRST AMENDMENT TO FIRST AGREEMENT  
BY AND BETWEEN MARIN CLEAN ENERGY  
AND THE ENERGY ALLIANCE ASSOCIATION (TEAA)**

This FIRST AMENDMENT is made and entered into on May 18, 2017, by and between MARIN CLEAN ENERGY, (hereinafter referred to as “MCE”) and THE ENERGY ALLIANCE ASSOCIATION (TEAA) (hereinafter referred to as “Contractor”).

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide technical services to support MCE's Small Commercial Energy Efficiency Program in Napa County and the City of Benicia as directed by MCE staff dated March 3, 2017 (“Agreement”); and

WHEREAS, Section 4 and Exhibit B to the Agreement obligated Contractor to be compensated an amount not to exceed \$35,653 for the technical services to support MCE's Small Commercial Energy Efficiency Program in Napa County and the City of Benicia described within the scope therein; and

WHEREAS the parties desire to amend the Agreement to increase the contract amount by \$5,000 for a total not to exceed \$40,653 in consideration for the time and materials necessary to create a custom calculator as added scope in Exhibit A.

NOW, THEREFORE, the parties agree to modify Section 4, Exhibit A, and Exhibit B as set forth below.

AGREEMENT

- Section 4 is hereby amended to read as follows:

**MAXIMUM COST TO MCE:**

In no event will the cost to MCE for the services to be provided herein exceed the maximum sum of **\$40,653**.

- Exhibit A is hereby amended as follows to add the agreed upon additional scope:

**6. Custom MCE Calculator**

Time and materials for one-time set-up of a custom calculator to comply with quarterly claims requirements at the CPUC.

- Exhibit B is hereby amended and replaced in its entirety as follows:

For direct implementation services provided under this Agreement, MCE shall pay the Contractor, for performance of savings only, in accordance with the following payment fees/schedule:

<b>Budget</b>	
Program Performance Incentive <sup>1</sup> (Target of 282,958 gross kWh)	\$0.126/kWh
Technical Assistance Direct Implementation (Small Commercial)	\$35,653

<u>Custom Calculator Creation</u> Calculator Revisions: 60 hours @ \$50 per hour = \$3,000 Senior Staff Rate (Ross Colley): 20 hours @ \$100 per hour = \$2,000	NTE \$5,000
Contract Total (NTE)	\$40,653
<sup>1</sup> The program performance incentive may be invoiced by TEAA on a kWh/project completed basis. This incentive is to be invoiced monthly, and the invoice must include sufficient background documentation to calculate the incentive amount based on kWh savings in completed projects. MCE reserves the right to reduce payment if more than 60% of kWh savings result from free LED measures. The performance incentive shall be evaluated on an annual, not monthly basis.	

In no event shall the total cost to MCE for the services provided herein exceed the maximum sum of **\$40,653** for the term of the Agreement.

- Except as otherwise provided herein all terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment on the day first written above.

CONTRACTOR:

MARIN CLEAN ENERGY:

By: \_\_\_\_\_

By: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

MARIN CLEAN ENERGY:

By: \_\_\_\_\_

Date: \_\_\_\_\_



May 18, 2017

TO: MCE Board of Directors

FROM: David McNeil, Finance Manager

RE: Proposed Amendment to Rule No. 005 - Collections (Agenda Item #04 – C.5)

ATTACHMENT: Proposed Amendment to Rule No. 005 – Collections

Dear Board Members:

**SUMMARY:**

On January 11, 2011, your Board approved Rule No. 005 – Collections. Rule No. 005 authorizes Staff to undertake collection activities related to past due MCE charges in accordance with settlement guidelines described in the rule. These guidelines direct Staff to refer MCE past due amounts over \$20 to a collections agency and authorize that agency to perform collection activities that include providing discounts to customers to resolve an overdue payment.

Staff propose to amend Rule No. 005 – Collections to increase the maximum discount the collections agency is authorized to offer in order to resolve an overdue payment from 10% to the greater of \$20 or 20% of past due MCE charges. A maximum discount of up to \$20 or 20% is consistent with industry standards.

The proposed amendment is expected to improve collection performance and contribute to achieving MCE Strategic Plan Goal 1: Serve our customers and communities with care and excellence.

**RECOMMENDATION:** Approve the proposed amendment to Rule No. 005 - Collections.



## **Proposed Amendment to RULE NO. 005 – COLLECTIONS**

### 1. DEFINITIONS

- A. **MCE CHARGES:** The generation line item and other line items attributable to participation in the MCE program on the PG&E bill of MCE customers.
- B. **COLLECTIONS:** Recovery of amounts past due for MCE Charges owed by MCE customers to MCE.
- C. **COLLECTIONS AGENCY or 'AGENCY':** A business contracted by MCE to pursue Collections.

### 2. SETTLEMENT GUIDELINES

- A. Any overdue MCE charges totaling \$20.00 or more which have not been paid by the customer and are no longer being collected by PG&E will be provided to the Collections Agency for settlement.
- B. Any overdue MCE charges totaling \$19.99 or less which have not been paid by the customer and are no longer being collected by PG&E will be considered Bad Debt. See Rule 002 on Bad Debt for more information.
- C. Agency will have the authority to provide a discount of up to the greater of \$20 or 24% of MCE Charges for customers if needed and determined necessary by the Agency to resolve the overdue payment.
- D. Interest will not be charged on any customer account.
- E. If customer has not paid within 120 days following the initiation of the collections process Agency will file credit reporting information on the customer with all applicable agencies.
- F. Collections agency will be authorized to pursue legal action on any customer with an outstanding balance of \$750 or more.
- G. After a customer has paid overdue amounts Collections activity will be terminated for that customer.



May 18, 2017

TO: MCE Board of Directors  
FROM: David McNeil, Finance Manager  
RE: Proposed Budget Amendment for FY 2017/18 (Agenda Item #05)  
ATTACHMENT: Proposed Amendment to the FY 2017/18 Operating Fund Budget

Dear Board Members:

**SUMMARY:**

In March 2017 your Executive Committee authorized Staff to apply for the California Energy Commission's (CEC) Grant Funding Opportunity: GFO-16-404 "Local Government Challenge". In April 2017 the CEC approved MCE's grant application. MCE and the CEC are currently negotiating the terms of a contract ("the pending CEC contract") that would govern the use of the grant funds. Staff expect to present the pending CEC contract to your Executive Committee for approval at its June 2017 meeting. Staff propose an Amendment to the FY 2017/18 Budget that would authorize MCE to receive and expend funds pursuant to the pending CEC contract.

**Objectives of the pending CEC Contract**

MCE is seeking funding from CEC to develop a replicable model for deploying Distributed Energy Resources (DERs) that optimize building efficiency on a community scale. DERs are distribution-connected distributed generation resources such as energy efficiency, demand response, customer generation (e.g. rooftop solar), energy storage, alternative fuel vehicles (e.g., electric vehicles), and water-energy conservation. The objectives of the pending CEC contract are to:

1. Establish Climate Action Goal Baseline (CAGB): Identify Community Choice Aggregation (CCA) baseline forecast for reaching climate action goals utilizing wholesale renewable energy procurement alone (i.e. in the absence of programmatic DER procurement solution).
2. Establish DER Success Metrics: Create metrics to measure and rank various DER options and portfolio combinations in terms of their ability to accelerate achievement of climate action and GHG reduction goals of CCAs (and the constituent local governments within their service territories) while helping advance the state towards SB 350, AB 802, and the Existing Buildings Energy Efficiency Action Plan (EBEE). DER Success Metrics shall also factor cost effectiveness, economic viability/scalability as well as customer acquisition costs.
3. Create Functional Database: Gather and organize data (both grid level and customer/building load level) in a fashion that allows users to run high volumes of multi-variable/multi-objective simulations of DER portfolios.
4. Produce Optimal DER Portfolio: Analyze the impact of optimal DERs on the CABG and identify the highest value target customers/buildings/sites for DER deployment. Identify location and mix of DERs to maximize DER Success Metrics, thus producing the "Optimal DER Portfolio".



5. Execute Demonstration Projects: Deploy the three committed Demonstration Projects within the CCA's Optimal DER Portfolio that validate the proposed solution; measure and analyze the deployed demonstration projects in terms of achieving and validating the project objectives and impact on CAGB.
6. Design Replicable and Scalable Programs & Procurement Models: Define specific procurement, financing and price-signal solutions for CCAs, based on findings collected from Pilot Projects, to accelerate and broaden building owner adoption of optimal DER portfolios that maximize reductions in energy use with increased local energy generation.
7. Develop Measurement & Verification Protocols to Monitor Impact on CAGB: To establish CCA as centralized, independent performance monitoring agent, implement data-access gateways and Measurement & Verification (M&V) protocols to aggregate and analyze asset performance data in real time, at portfolio scale. Utilize DER asset performance data in feedback loop to refine future DER programs to maximize future outcomes and course-correct existing asset performance as required.
8. Organize Solution/Best Practices into "Program Manual" – Promote to Others: Develop straightforward, user-focused "Program Manual" which organizes the tools, program designs, findings and document templates in a package that can be transferred and repurposed by other CCAs and constituent local governments to accelerate their own climate action and building efficiency goals. Promote the Program Manual and schedule opportunities for knowledge sharing to maximize adoption of our solution and approach.

**FISCAL IMPACT:**

Pending CEC contract execution, revenues and expenses would be budgeted for in the Operating Fund. The total value of the pending CEC contract would be \$1.72 million of which \$573,000 would be received as Grant Revenue in FY 2017/18. The pending CEC contract would increase the FY 2017/18 contribution to the Net Position by \$84,000.

The CEC will reimburse MCE for authorized expenses detailed in the pending CEC contract budget. The term of the pending CEC contract would be three years and Staff expect to receive pending CEC contract revenues and make expenditures over this period as summarized in Table 1.

**Table 1 Pending CEC Contract: Summary of Proposed Fiscal Impact**

Budget Category	Proposed Budget Amendment		For illustration only	
	FY2017/18	FY2018/19	FY2019/20	Total
Grant Revenue	573,000	573,000	573,000	1,720,000
Other Services	296,000	296,000	296,000	889,000
Local Pilot Programs	193,000	193,000	193,000	578,000
Increase in Net Position	84,000	84,000	84,000	254,000

Figures may not sum due to rounding

The CEC contract would increase FY 2017/18 Other Services and Local Pilot Programs budget categories by \$296,000 and \$193,000 respectively. Expenditures under Other Services and Local Pilot Programs budget categories would be made to third party contractors. Staff plan to present contracts with third party contractors to your Executive Committee in the third quarter of 2017.

Under the pending CEC contract MCE proposes to receive reimbursement for \$254,000 of administrative services of which \$84,000 would be reimbursed in FY 2017/18. Administrative

services include staff time used to administer the pending CEC contract and work with third party contractors. Staff do not anticipate or require additional expenditures to perform administrative services.

**RECOMMENDATION:** Approve the proposed Amendment to the FY 2017/18 Operating Fund Budget.

<b>MARIN CLEAN ENERGY</b>				
<b>OPERATING FUND</b>				
<b>Proposed Fiscal Year 2017/18 Budget Amendment</b>				
	<b>FY 2017/18 Budget</b>	<b>Amendment</b>	<b>Proposed FY 2017/18 Budget</b>	<b>Variation (%)</b>
<b>ENERGY REVENUE</b>				
Revenue - Electricity (net of allowance)	198,711,000		198,711,000	
Other Revenue	10,000		10,000	
<b>TOTAL ENERGY REVENUE</b>	<b>198,721,000</b>		<b>198,721,000</b>	
<b>ENERGY EXPENSES</b>				
Cost of energy	174,042,000		174,042,000	
Service fees - PG&E	1,487,000		1,487,000	
<b>TOTAL ENERGY EXPENSES</b>	<b>175,529,000</b>		<b>175,529,000</b>	
<b>NET ENERGY REVENUE</b>	<b>23,192,000</b>		<b>23,192,000</b>	
			-	
<b>OPERATING EXPENSES</b>				
			-	
Personnel	6,241,000		6,241,000	
Data manager	3,794,000		3,794,000	
Technical and scheduling services	806,000		806,000	
Legal and regulatory services	744,000		744,000	
Communications and related services	1,133,000		1,133,000	
Other services	742,000	296,000	1,038,000	40%
General and administration	567,000		567,000	
Occupancy	525,000		525,000	
Local Pilot Programs	215,000	193,000	408,000	90%
Marin County green business program	10,000		10,000	
Low income solar programs	40,000		40,000	
<b>TOTAL OPERATING EXPENSES</b>	<b>14,817,000</b>	<b>489,000</b>	<b>15,306,000</b>	3%
<b>OPERATING INCOME</b>	<b>8,375,000</b>	<b>(489,000)</b>	<b>7,886,000</b>	-6%
<b>NONOPERATING REVENUES</b>				
			-	
Grant and other income	140,000	573,000	713,000	409%
Interest income	130,000		130,000	
<b>TOTAL NONOPERATING REVENUES</b>	<b>270,000</b>	<b>573,000</b>	<b>843,000</b>	212%
<b>NONOPERATING EXPENSES</b>				
			-	
Interest expense and financing costs	168,000		168,000	
Depreciation (supplemental)	121,000		121,000	
<b>TOTAL NONOPERATING EXPENSES</b>	<b>289,000</b>		289,000	
<b>CHANGE IN NET POSITION</b>	<b>8,356,000</b>	<b>84,000</b>	<b>8,440,000</b>	1.0%
Budgeted net position beginning of period	41,807,000		41,807,000	
Change in net position	8,356,000		8,440,000	
Budgeted net position end of period	50,163,000		50,247,000	
<b>CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>				
			-	
Capital Outlay	367,000		367,000	96%
Depreciation (supplemental)	(121,000)		(121,000)	121%
Repayment of Loan Principal	-		-	
Transfer to Renewable Energy Reserve	-		-	
Transfer to Local Renewable Energy Development Fund	186,000		186,000	108%
<b>TOTAL CAPITAL EXPENDITURES, INTERFUND TRANSFERS &amp; OTHER</b>	<b>432,000</b>		<b>432,000</b>	
Budgeted net increase (decrease) in Operating Fund balance	\$ 7,924,000		\$ 8,008,000	108%



May 18, 2017

TO: MCE Board of Directors

FROM: Kirby Dusel, Pacific Energy Advisors, Inc.

RE: MCE Greenhouse Gas Emissions Analysis for CY 2015 (Agenda Item #06)

ATTACHMENTS: A. Understanding MCE's GHG Emission Factors – Calendar Year 2015  
B. MCE Emission Factor Certification Template, as provided by The Climate Registry (CY 2015)

Dear Board Members:

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## **Background**

A key tenet of MCE's mission is to reduce energy-related greenhouse gas emissions (GHGs) through the development and use of various clean energy resources. MCE has committed to assembling a power supply portfolio that exceeds the renewable energy content offered by PG&E and provides customers with a "cleaner" energy alternative as measured by a comparison of the attributed portfolio GHG emission rate (or "emission factor") published by each organization.<sup>1</sup>

Each year your Board is asked to approve a document titled "Understanding MCE's GHG Emission Factors" (attached), which includes a detailed discussion focused on the compilation and calculation of MCE's annual emission factors, a comparison of MCE and PG&E emission factors, information regarding data sources, and pertinent regulatory/legislative developments focused on GHG emissions reporting. Your Board is also asked to approve the attached Emission Factor Certification Template, which can be used by certain MCE customers, which also report emissions statistics to The Climate Registry.<sup>2</sup>

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<sup>1</sup> To the extent that MCE undertakes inclusion activities (for new member communities) within a particular calendar year, achieving planned clean energy targets may be more challenging than usual due to inevitable uncertainties related to customer participation and actual energy use within new member communities – accurately predicting customer energy use during the first several months following account enrollment is particularly challenging, as participation rates tend to remain unstable while new customers gain familiarity with the CCA service model. MCE's growing commitment to renewable energy resources, many of which produce electric power on an intermittent basis, compound planning uncertainty and may contribute to variances relative to noted planning targets (for renewable and carbon-free energy delivery).

<sup>2</sup> MCE is a member of The Climate Registry ("TCR"), which is non-profit organization that designs and operates voluntary and compliance-based GHG reporting programs and assists organizations in measuring, verifying and reporting the carbon in their operations in order to manage and reduce it. Certain MCE customers also maintain TCR membership.

MCE's portfolio emissions for the 2015 calendar year totaled 248,009 metric tons or approximately 547 million pounds of carbon dioxide equivalent. These emission totals were divided by MCE's aggregate retail energy deliveries of 1,695,274 MWhs, resulting in an MCE portfolio emissions rate of 0.146 metric tons CO<sub>2</sub>e/MWh, or 323 pounds/MWh, for the 2015 calendar year. The following table provides additional detail regarding the emissions computations related to MCE's 2015 supply portfolio.

2015 Calendar Year	MWh Purchased	% Total	Emission Rate (metric tons CO <sub>2</sub> e/MWh)	Total Emissions (metric tons)	Emission Rate (lbs CO <sub>2</sub> e/MWh)	Total Emissions (lbs)
<b>Total Renewable Energy</b>	903,643	53.3%	0.001	865	<2	1,907,080
RPS – Eligible	903,643	53.3%	0.001	865	<2	1,907,080
Non-RPS Eligible Renewable	0	0.0%	0.000	0	0	0
Zero Carbon	192,413	11.3%	0.000	0	0	0
Natural Gas	194,185	11.5%	0.380	73,790	838	162,679,571
System Power	405,033	23.9%	0.428	173,354	944	382,179,810
<b>Totals</b>	1,695,274	100%	0.146	248,009	323	546,766,462

Based on these calculations, it has been determined that MCE's 2015 aggregate portfolio emission factor (of 323 pounds/MWh) was approximately 20% lower than PG&E's reported 2015 emission factor of 405 pounds/MWh.<sup>3</sup>

**Fiscal Impact:** None

**Recommendations:**

1. Approve the use, distribution and web posting of MCE's Emission Factor Certification Template, as provided by The Climate Registry (CY 2015); and
2. Approve the use, distribution and web posting of the "Understanding MCE's GHG Emission Factors – Calendar Year 2015" document.

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For such customers, the reporting of annual GHG emissions related to electric energy use is facilitated with information included in the attached template.

<sup>3</sup> PG&E's final 2015 emission factor, as reported at <http://www.pgecurrents.com/2017/02/09/pge-cuts-carbon-emissions-with-clean-energy-2/>.

## Understanding MCE's GHG Emission Factors – Calendar Year 2015

### Summary

A key environmental metric for the MCE program continues to be the attributed greenhouse gas (GHG) emissions profile associated with retail electric energy deliveries to its customers. This paper describes the methodology used to calculate such GHG emission rates for the MCE program. Based on this methodology, the calendar year (CY) 2015 GHG emissions rates attributed to MCE's retail electric energy deliveries are as follows:

<b>Light Green Service (Minimum 50% Renewable):</b>	<b>331 lbs CO<sub>2</sub>e/MWh (CY 2014 = 334 lbs CO<sub>2</sub>e/MWh)</b>
<b>Deep Green Service (100% Renewable):</b>	<b>0 lbs CO<sub>2</sub>e/MWh (CY 2014 = 0 lbs CO<sub>2</sub>e/MWh)</b>
<b>Total MCE CY 2015 Portfolio:</b>	<b>323 lbs CO<sub>2</sub>e/MWh (CY 2014 = 324 lbs CO<sub>2</sub>e/MWh)</b>

### Background

A key tenet of MCE's mission is to reduce energy-related greenhouse gas emissions (GHGs) through the development and use of various clean energy resources. MCE has committed to assembling a power supply portfolio that exceeds the renewable energy content offered by PG&E and provides customers with a "cleaner" energy alternative as measured by a comparison of the attributed portfolio GHG emission rate (or "emission factor") published by each organization. MCE compares its emission factor to that of PG&E on an annual basis.

The period addressed in this emission factor comparison is the calendar year 2015 (CY 2015). The time lag in reporting comparative emissions statistics is necessary to facilitate the compilation of final electric energy statistics (e.g., customer energy use and renewable energy deliveries) and to allow sufficient time for data computation, review and audit before releasing such information to the public. For example, PG&E's CY 2015 emission factor was published on February 9, 2017.<sup>1</sup> This is the most current available emission factor for PG&E. Going forward, the timeline associated with PG&E's emission factor availability is not expected to change significantly. MCE will complete an emissions rate comparison following PG&E's publication of its annual emissions statistic.

In each calendar year, MCE will endeavor to procure GHG-free energy supplies in sufficient quantities to ensure that MCE provides its customers with an electric energy supply that generates fewer attributed GHG emissions per megawatt hour than the incumbent utility.<sup>2</sup> MCE's future purchases of GHG-free energy supplies will be primarily based on its annual Integrated Resource Plan, reasonable projections of PG&E's emission rate, budgetary impacts and rate setting objectives. To the extent that MCE undertakes inclusion activities (for new member communities) within a particular calendar year, achieving planned clean energy targets may be more challenging than usual due to inevitable uncertainties related to customer participation and actual energy use within new member communities – accurately predicting customer energy use during the first several months following account enrollment is particularly challenging, as participation rates tend to remain unstable while new customers gain familiarity with the CCA service model. MCE's growing commitment to renewable energy resources, many of which produce electric power on an intermittent basis, compound planning uncertainty and may contribute to variances relative to noted planning targets (for renewable and carbon-free energy delivery).

<sup>1</sup> <http://www.pgecurrents.com/2017/02/09/pge-cuts-carbon-emissions-with-clean-energy-2/>

<sup>2</sup> MCE will complete such purchases to the extent that available GHG-free energy products will not necessitate out-of-cycle rate adjustments or impose material budgetary impacts. If such consequences would result from the incremental procurement of GHG-free energy products, MCE will seek Board approval prior to engaging in related transactions.

With regard to PG&E's projected emissions rate, MCE will take into consideration a variety of factors, including: 1) planned increases in Renewables Portfolio Standard procurement obligations; 2) retail sales reductions due to ongoing CCA formation activities; 3) regulatory and legislative changes; and 4) other publicly available information regarding PG&E's anticipated procurement activities. *Certain extenuating circumstances, such as higher than anticipated hydroelectric production or advanced completion of renewable generating facilities (which result in higher than expected renewable energy deliveries during a particular calendar year), cannot be reasonably foreseen and may contribute to unfavorable emissions comparisons between MCE and PG&E during limited periods of time.* To the greatest extent practical, however, MCE will pursue increasing clean energy targets that promote the achievement of MCE's internal planning targets, which were recently set at 100% GHG-free by 2025, consistent with MCE's adopted 2017 Integrated Resource Plan (February 2017).

### **About Emission Rates**

Portfolio emission rates are based on the attributed emission impacts associated with the use of specific fuel sources, which are consumed/combusted when generating electric power. An attributed emission rate reflects the proportionate use of various fuel sources and resource types within a utility's supply portfolio. To the extent that procured/delivered energy supplies are produced by generating resources that are known to emit GHGs during production of electric energy, such resources will increase the utility's attributed portfolio emission factor. Conversely, the inclusion of resources that do not emit GHGs (or emit relatively small GHG quantities during power production, as is the case with geothermal resources included within MCE's resource portfolio) will reduce the utility's portfolio emission factor. In general, renewable energy resources, which use fuel sources like wind and sunlight (solar), have been identified as non-polluting or GHG-free.<sup>3</sup> Similarly, hydroelectric and nuclear generators, which do not involve GHG-emitting combustion processes, are also considered to be non-polluting or carbon-neutral (i.e., the net emissions impact associated with electric power production is less than or equal to the status quo).

Because of widely varying opinions and computations focused on the environmental impacts associated with specific generating technologies, it is important to identify an industry-accepted or prescribed standard when determining the emission impacts attributable to generating facilities included within a utility's supply portfolio. Currently, there is no prescribed standard for retail-level GHG emissions reporting, but California has committed to developing such a standard through the implementation of Assembly Bill 1110 (AB 1110, Ting), which will impose a uniform retail-level GHG emissions reporting methodology, the results of which will be reflected in each retail seller's annual Power Content Label. Beginning with the 2019 operating year (with reporting to occur in 2020, following the conclusion of 2019 operations), California consumers will receive a modified Power Content Label, which will include an emissions factor associated with each available retail electricity option that was offered by the customer's service provider during the noted operating year. Specific details related to the AB 1110 emissions calculation methodology are currently under development via a broad stakeholder process being administered by the California Energy Commission. MCE is actively participating in this process and will provide related updates to MCE's Governing Board.

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<sup>3</sup> Certain fuel sources, including landfill gas, are reflected as having zero GHG emissions due to the positive environmental impacts achieved through the conversion of methane to carbon dioxide (during energy production). California's Emissions Performance Standard treats such generating resources in a similar manner. In fact, CPUC Decision 07-01-039 notes, "the record shows that electric generation using biomass (e.g., agricultural and wood waste, landfill gas) that would otherwise be disposed of under a variety of conventional methods (such as open burning, forest accumulation, landfills, composting) results in a substantial net reduction in GHG emissions". This Decision further indicates that, "trading off methane for CO2 emissions from energy recovery operations leads to a net reduction of the greenhouse effect".

In the meantime and in the interest of consistency and accuracy during MCE's annual emissions calculations, it incorporates statistics prepared by the California Air Resources Board (CARB) and certain of its suppliers when determining emissions associated with its energy supply portfolio. In particular, CARB's published emission rate for unspecified sources, or "system power", provides an unbiased, publicly available reference that can be incorporated in instances where specific generating sources cannot be identified. Application of standards such as this will facilitate an "apples to apples" comparison of emission factors associated with unknown energy sources, including those procured by MCE, PG&E and other electric utilities.

MCE also maintains membership with The Climate Registry (TCR), which provides access to the policies, procedures and GHG accounting guidelines endorsed by this organization. The TRC describes itself as:

*A non-profit organization governed by U.S. states and Canadian provinces and territories. TCR designs and operates voluntary and compliance GHG reporting programs globally, and assists organizations in measuring, verifying and reporting the carbon in their operations in order to manage and reduce it.*

Through its membership in TCR, MCE has access to information and documentation, which has contributed to the development of the emissions calculation methodology described herein. MCE has also incorporated guidance provided by the U.S. Environmental Protection Agency (U.S. EPA) and the Center for Resource Solutions (CRS, which administers the Green-e Energy program) when determining its attributed portfolio emission rates; other organizations have independently developed alternative methodologies, which borrow from multiple protocols, some of which may not be aligned with The Climate Registry, U.S. EPA and/or CRS. As one could reasonably suspect, certain differences between such methodologies have contributed to confusion and consternation during emission rate comparisons. Implementation of AB 1110 should serve to resolve such issues. Note that PG&E was a founding member of TCR, joining in 2008, and uses TCR's methodology when compiling its annual emission statistics.

For certain MCE customers that are also members of TCR, MCE has prepared the attached Emission Factor Certification template, which can be used by such customers when completing voluntary reports for TCR. Looking ahead, MCE will continue to update (and post on its website) this certification template so that it can be readily accessed and used by MCE customers.

### **Calculating GHG Emissions Associated with Unspecified Sources**

Not all electric energy purchases are associated with specific generating facilities. Many industry contracts identify the use of "system power", a term of art that is regularly used in the utility industry to define electric energy that is produced and delivered to the grid by various generating resources not under contract with particular buyers. Such delivery arrangements provide increased flexibility for energy sellers which often results in reduced energy prices for buyers. While there are certain economic and operational efficiencies that may relate to the use of system power, there are also complications that can surface when attempting to quantify GHG emissions attributable to energy volumes associated with unspecified generating sources. Many load-serving entities (LSEs) within California rely heavily on the use of system power to fulfill their respective service obligations. PG&E's 2015 Power Content Label indicated the delivery of 17% of total supply from unspecified, or market, sources; MCE sourced 24% of its retail deliveries from unspecified power. It is therefore important to identify an emission factor for such deliveries that can be referenced by LSEs when compiling emission statistics.

As previously noted, CARB has established an emission factor for unspecified generating sources to facilitate GHG calculations and reporting associated with the use of system power and power purchases from generation "portfolios", which do not create direct relationships between specific electric generators and energy buyers. The



CARB emission rate for unspecified power purchases is currently set at 0.428 metric tons CO<sub>2</sub>e/MWh, or 943.58 pounds of CO<sub>2</sub>e/MWh. This emission rate is publicly available and can be referenced in section 95111(b)(1) of CARB's February 2015 update to the Regulation for the Mandatory Reporting of Greenhouse Gas Emissions: <http://www.arb.ca.gov/cc/reporting/ghg-rep/regulation/mrr-2014-unofficial-02042015.pdf>. MCE staff previously engaged CARB in discussions and email exchanges to confirm the appropriate use of this emission rate for all unspecified/system power purchases; CARB advised MCE to use this published emission factor when determining GHG emissions associated with such purchases. Based on MCE's review, CARB has not recently updated the aforementioned emission factor, but staff will continue to monitor this item and will update its future emission factor calculations in consideration of any adjustments that may be made by CARB to this statistic.

Identification of a credible, publicly available system power emission factor is particularly relevant for MCE, which relies on the use of system power to meet some of its customers' non-renewable energy requirements. CARB's emission factor for unspecified sources has been applied by MCE when determining total emissions associated with system power purchases. It is also noteworthy that PG&E appears to have applied a similar factor when calculating emissions associated with unspecified generating sources.

#### Determination of MCE's Total Portfolio Emission Factor

For CY 2015, MCE's supply portfolio was heavily weighted towards non-carbon emitting/carbon-neutral resources. Sixty-five percent of MCE's energy supply was attributable to various RPS-eligible renewable energy and hydroelectric purchases, which are considered to be very low- or non-GHG producing resources for purposes of MCE's emissions calculations. The following table summarizes MCE's aggregate energy purchases, which includes both Light Green and Deep Green sales volumes, for CY 2015. It is important to note that all "zero carbon" energy volumes are attributable to hydroelectric generating sources located within the Western U.S.

2015	MWh Purchased	% Total
<b>Total Renewable Energy<sup>1</sup></b>	903,643	53.3%
<b>RPS – Eligible Renewable</b>	903,643	53.3%
<b>Non-RPS Eligible Renewable</b>	0	0.0%
<b>Zero Carbon</b>	192,413	11.3%
<b>Natural Gas</b>	194,185	11.5%
<b>System Power</b>	405,033	23.9%
<b>Total</b>	1,695,274	100%

<sup>1</sup>Includes both bundled and unbundled renewable energy sources. Note that MCE's reported RPS percentage (as communicated to the CPUC in applicable reporting templates) may differ from this statistic due to Green-e Energy rules related to MCE's Deep Green product. However, all of MCE's renewable energy purchases during the 2015 calendar year were produced by RPS-eligible generators (meaning, generators that received RPS certification by the California Energy Commission, including associated RPS identification numbers for each facility).

When determining MCE's aggregate attributed portfolio emission factor, the aforementioned CARB emission rate for unspecified sources, which equals 0.428 metric tons CO<sub>2</sub>e/MWh, was applied to MCE's system power purchases – 405,033 MWh during the 2015 calendar year. MCE also procured 194,185 MWh from Calpine's Delta Energy Center, which emits approximately 0.380 metric tons of CO<sub>2</sub>/MWh. Due to the emission characteristics attributable to MCE's other power sources, all other energy volumes were attributed an average emission factor just above zero (less than 2 pounds of CO<sub>2</sub>e/MWh; this is based on the proportionate inclusion of geothermal electricity within MCE's resource mix, which has a small emissions impact approximating 70 pounds of CO<sub>2</sub>e/MWh). As such, MCE's portfolio emissions for the 2015 calendar year totaled 248,009 metric tons or approximately 547 million pounds of carbon dioxide equivalent. These emission totals were divided by MCE's

aggregate retail energy deliveries of 1,695,274 MWhs, resulting in an MCE portfolio emissions rate of 0.146 metric tons CO<sub>2</sub>e/MWh, or 323 pounds/MWh, for CY 2015. The following table provides additional detail regarding these emissions computations for MCE's CY 2015 supply portfolio.

2015 Calendar Year	MWh Purchased	% Total	Emission Rate (metric tons CO <sub>2</sub> e/MWh)	Total Emissions (metric tons)	Emission Rate (lbs CO <sub>2</sub> e/MWh)	Total Emissions (lbs)
<b>Total Renewable Energy</b>	903,643	53.3%	0.001	865	<2	1,907,080
<b>RPS – Eligible</b>	903,643	53.3%	0.001	865	<2	1,907,080
<b>Non-RPS Eligible Renewable</b>	0	0.0%	0.000	0	0	0
<b>Zero Carbon</b>	192,413	11.3%	0.000	0	0	0
<b>Natural Gas</b>	194,185	11.5%	0.380	73,790	838	162,679,571
<b>System Power</b>	405,033	23.9%	0.428	173,354	944	382,179,810
<b>Totals</b>	1,695,274	100%	0.146	248,009	323	546,766,462

Based on these calculations, it has been determined that MCE's CY 2015 aggregate portfolio emission factor (of 323 pounds/MWh) was approximately 20% lower than PG&E's reported 2015 emission factor of 405 pounds/MWh.<sup>4</sup> Note that MCE has elected to use CO<sub>2</sub>e, or carbon dioxide equivalent, when expressing the emissions intensity of its power supply portfolio to retail customers. The determination was made based on available statistics reflected in CARB's Mandatory Reporting Regulation, which express the emissions intensity of system power using the CO<sub>2</sub>e metric instead of CO<sub>2</sub>, which is more commonly used when expressing the emissions intensity associated with Natural Gas and Geothermal power sources. Because system power purchases represented 24% of MCE's total power mix in 2015, or 65% of MCE's carbon-emitting power mix, MCE has opted to report its emission factor as CO<sub>2</sub>e, which reflects the impacts of multiple greenhouse gases, such as carbon dioxide, nitrous oxide and methane, in a single unit of measurement.

#### Determination of MCE's Light Green and Deep Green Emission Factors

While certain stakeholders may be interested in MCE's previously discussed aggregate emission factor, there is also an interest in clearly understanding the specific emission factors attributable to MCE's retail supply options, which were available during CY 2015: Light Green (minimum 50% renewable energy content) and Deep Green (100% renewable energy content). As such, MCE has calculated product-specific emission factors, which may be useful to certain customers who want to better understand the direct environmental impacts attributable to energy consumption within their respective households and/or businesses. It is important to note that any MCE customer may choose to "zero out" attributed energy-related emissions by voluntarily selecting the Green-e certified Deep Green 100% renewable energy option. For more information regarding Deep Green enrollment, customers are encouraged to visit: <http://www.mcecleanenergy.org/100-renewable/>.

**Light Green:** MCE diligently plans for and procures electricity to provide clean power supply for Light Green customers. During CY 2015, MCE delivered a total of 1,650,343 MWh to Light Green customers of which 858,712 MWh (52.03% of total) were supplied from California Renewables Portfolio Standard (RPS) eligible sources, including biomass, landfill gas, geothermal, small hydroelectric, solar and wind – these RPS-eligible renewable energy volumes were used to demonstrate compliance with California's RPS and were retired through the Western Renewable Energy Generation Information System (WREGIS) consistent with applicable regulatory guidelines. MCE also delivered 192,413 MWh (11.66% of total) from non-polluting hydroelectric generators. The aforementioned resources, which comprised 63.69% of MCE's Light Green supply portfolio, were all determined to be carbon-free, low-carbon or carbon-neutral based on specified fuel sources. The balance of Light Green resource requirements were supplied from specific natural gas generators and unspecified sources, or "system power". In the case of

<sup>4</sup> PG&E's final CY 2015 emission factor, as reported at <http://www.pgecurrents.com/2017/02/09/pge-cuts-carbon-emissions-with-clean-energy-2/>.

electricity produced via the combustion of natural gas, MCE procured a total of 194,185 MWh, or 11.77% of total supply, from Calpine's Delta Energy Center; such volumes were assigned a GHG emissions factor of 837.76 lbs. CO<sub>2</sub>/MWh, consistent with guidance provided by the generator owner/operator. For system power purchases, which totaled 405,033 MWh, or 24.54% of total Light Green purchases, the California Air Resources Board (CARB) has assigned an emission rate of 943.58 lbs. CO<sub>2</sub>e/MWh – MCE applied this emission factor to all system power volumes when compiling its Light Green emissions statistic for 2015. This emission rate is publicly available via CARB's website. CARB previously advised MCE to use this published emission factor when determining GHG emissions associated with system power purchases. For purposes of determining MCE's Light Green emission factor for the 2015 calendar year, total portfolio emissions were determined to be approximately 547 million pounds. The total of 547 million pounds of CO<sub>2</sub> equivalent was divided by the total delivered Light Green electricity volume of 1,650,343 MWh, resulting in a 2015 Light Green emission factor of 331 lbs. CO<sub>2</sub>e/MWh.

**Deep Green:** Deep Green is a voluntary, 100% renewable energy supply option that is available to all customers within the MCE service territory. During the 2015 calendar year, MCE supplied a total of 44,931 MWh to Deep Green customers, all of which was supplied by RPS-eligible generators. However, due to Green-e Energy certification requirements, only 23.3% (the requisite RPS renewable energy procurement mandate during the 2015 calendar year) of the aforementioned Deep Green supply was retired and included within MCE's RPS compliance report (substantiating the delivery of an RPS-compliant resource mix to Deep Green customers); the balance of Deep Green supply was produced by RPS-eligible generators and was retired on behalf of participating customers consistent with Green-e Energy requirements – "Green-e is the nation's leading independent certification and verification program for renewable energy and greenhouse gas emission reductions in the retail market", which is administered/monitored by the San Francisco-based Center for Resource Solutions; all renewable energy volumes were retired through the WREGIS system.<sup>5</sup> As a result of the 100% renewable energy supply that was delivered to Deep Green customers, the emission factor was determined to be zero pounds of CO<sub>2</sub>e/MWh.

Consistent with its adopted Integrated Resource Plan, MCE does not engage in procurement transactions with nuclear generating facilities and, at this point in time, will rely exclusively on renewable energy resources and hydroelectricity to ensure delivery of a comparatively cleaner energy supply.<sup>6</sup>

As previously noted, MCE will continue to update subsequent annual emissions factors based on currently available data, including actual energy purchases and CARB's then-effective emission rate for unspecified sources. Any questions regarding this information should be forwarded to [info@mcecleanenergy.org](mailto:info@mcecleanenergy.org). Additional information regarding MCE's emission factors can be located at [www.mcecleanenergy.org](http://www.mcecleanenergy.org).

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<sup>5</sup> Information as posted on the Green-e website: <http://www.green-e.org/about.shtml>.

<sup>6</sup> By comparison, PG&E's 2015 Power Content Label reflected the proportionate use of 23% nuclear-generated electricity.



### **MCE Emission Factor Certification Template, as provided by The Climate Registry:**

[Member] may use Marin Clean Energy's (MCE) 2015 emission factor in their voluntary greenhouse gas report submitted to The Climate Registry. Please note that during the 2015 calendar year MCE, the first operating Community Choice Aggregation program in California, offered two distinct retail supply options: 1) Light Green, which is the default retail supply option (MCE has committed to delivering Light Green customers a minimum 50% renewable energy supply); and 2) Deep Green, a voluntary retail supply option that procures 100% renewable energy for participating MCE customers.

With respect to the Light Green retail supply option, the 2015 emission factor attributed to this service option was determined to be 331 pounds of carbon dioxide equivalent per megawatt hour (lbs. CO<sub>2</sub>e/MWh<sup>1</sup>). For the Deep Green retail supply option, the 2015 emission factor attributed to this service option was determined to be zero lbs. CO<sub>2</sub>e/MWh, as a result of MCE delivering 100% renewable energy to participating customers. When considered in aggregate, the emission factor attributed to MCE's total portfolio, which reflects the procurement of resources sufficient to supply all MCE customers (both Light Green and Deep Green), was determined to be 323 lbs. CO<sub>2</sub>e/MWh for the 2015 calendar year – this statistic has been calculated for informational purposes only. In reporting to The Climate Registry, [Member] has selected the appropriate emissions factor corresponding with the retail supply option(s) under which [Member] received electric service during the 2015 calendar year.

MCE has calculated its 2015 emission factor of 331 lbs. CO<sub>2</sub>e/MWh for the Light Green product and zero lbs. CO<sub>2</sub>e/MWh for the Deep Green product based on the following independently developed methodology:

1. Light Green retail electricity product: MCE diligently plans for and procures electricity to provide clean power supply for Light Green customers. During the 2015 calendar year, MCE delivered a total of 1,650,343 MWh to Light Green customers of which 858,712 MWh (52.03% of total) were supplied from California Renewables Portfolio Standard (RPS) eligible sources, including biomass, landfill gas, geothermal, small hydroelectric, solar and wind – these RPS-eligible renewable energy volumes were used to demonstrate compliance with California's RPS and were retired through the Western Renewable Energy Generation Information System (WREGIS) consistent with applicable regulatory guidelines. MCE also delivered 192,413 MWh (11.66% of total) from non-polluting hydroelectric generators. The aforementioned resources, which comprised 63.69% of MCE's Light Green supply portfolio, were all determined to be carbon-free, low-carbon<sup>2</sup> or carbon-neutral based on specified fuel

<sup>1</sup> Based on available emission factors for the carbon-emitting power sources included in MCE's 2015 supply portfolio, MCE has elected to use CO<sub>2</sub>e, or carbon dioxide equivalent, when expressing the emissions intensity of its power supply portfolio to retail customers. CARB's Mandatory Reporting Regulation expresses the emissions intensity of system power using the CO<sub>2</sub>e metric instead of CO<sub>2</sub>, which is more commonly used when expressing the emissions intensity associated with Natural Gas and Geothermal power sources. Because system power purchases represented 24% of MCE's total power mix in 2015, or 65% of MCE's carbon-emitting power mix, MCE has opted to report its emission factor as CO<sub>2</sub>e, which reflects the impacts of multiple greenhouse gasses, such as carbon dioxide, nitrous oxide and methane, in a single unit of measurement.

<sup>2</sup> In particular, MCE's 2015 Light Green resource mix included 27,244 MWh produced by geothermal generating resources located within Northern California. Such volumes were attributed a nominal emissions factor of 70 lbs. CO<sub>2</sub>e/MWh, consistent with guidance provided by the generator operator.

sources. The balance of Light Green resource requirements were supplied from specific natural gas generators and unspecified sources, or “system power”. In the case of electricity produced via the combustion of natural gas, MCE procured a total of 194,185 MWh, or 11.77% of total supply, from Calpine’s Delta Energy Center; such volumes were assigned a GHG emissions factor of 837.76 lbs. CO<sub>2</sub>/MWh, consistent with guidance provided by the generator owner/operator. For system power purchases, which totaled 405,033 MWh, or 24.54% of total Light Green purchases, the California Air Resources Board (CARB) has assigned an emission rate of 943.58 lbs. CO<sub>2</sub>e/MWh – MCE applied this emission factor to all system power volumes when compiling its Light Green emissions statistic for 2015. This emission rate is publicly available via CARB’s website. CARB previously advised MCE to use this published emission factor when determining GHG emissions associated with system power purchases. For purposes of determining MCE’s Light Green emission factor for the 2015 calendar year, total portfolio emissions were determined to be approximately 547 million pounds. The total of 547 million pounds of CO<sub>2</sub> equivalent was divided by the total delivered Light Green electricity volume of 1,650,343 MWh, resulting in a 2015 Light Green emission factor of 331 lbs. CO<sub>2</sub>e/MWh.

2. Deep Green retail electricity product: MCE offers the Deep Green, 100% renewable energy retail supply option on a voluntary basis. During the 2015 calendar year, MCE supplied a total of 44,931 MWh to Deep Green customers, all of which was supplied by RPS-eligible generators; associated renewable energy certificates were retired through the WREGIS consistent with applicable regulatory guidelines and Green-e Energy certification guidelines (as MCE’s Deep Green product continues to remain Green-e Energy certified). As a result of the 100% renewable energy supply that was delivered to Deep Green customers, the attributed emission factor was determined to be zero lbs. CO<sub>2</sub>e/MWh.

MCE’s Total Attributed Portfolio Emission Factor (2015): to determine MCE’s total attributed portfolio emission factor for the 2015 calendar year, which reflects the procurement of resources sufficient to supply both Light Green and Deep Green customers, MCE’s total portfolio emissions of 547 million pounds of CO<sub>2</sub> was divided by total retail sales to all MCE customers (both Light Green and Deep Green), which equaled 1,695,274 MWhs.<sup>3</sup> The resultant attributed emission factor for MCE’s total supply portfolio was determined to be 323 lbs. CO<sub>2</sub>e/MWh.

With respect to the noted renewable energy and hydroelectric purchases included within MCE’s Light Green and Deep Green energy supply portfolios, MCE has retained all pertinent transaction records, including evidence of applicable renewable energy certificate retirements (within WREGIS), to substantiate its procurement activities and emission factor calculations. When determining the aforementioned attributed emission factors, MCE has only reflected the impacts of renewable and carbon-neutral/carbon-free resources for which it owns and possesses applicable renewable energy certificates and/or transaction records. All applicable renewable energy certificates are held in MCE’s WREGIS account until such time that certain certificates must be “retired” to demonstrate mandatory and/or voluntary compliance.

Any questions regarding the previously noted emission factors and/or related calculations should be directed to the following point of contact:

Kirby Dusel  
kirby@pacificea.com  
MCE  
1125 Tamalpais Avenue  
San Rafael, California 94901  
1 (888) 632-3674

<sup>3</sup> The sum of MCE’s Light Green and Deep Green energy sales may not equal total reported MCE retail sales due to numeric rounding.



May 18, 2017

TO: MCE Board of Directors

FROM: Justin Kudo, Manager of Account Services

RE: Draft Resolution No. 2017-03 to Revise Net Energy Metering (NEM) Tariff and Proposed Amendments to Local Sol and NEM Electric Schedules (Agenda Item #07)

ATTACHMENT: A. Draft Resolution No. 2017-03 Approving Revised NEM Tariff  
B. Draft Amended Electric Schedule NEM – Net Energy Metering Service  
C. Draft Amended Electric Schedule Local Sol – 100% Local Solar Electricity

Dear Board Members:

**Overview:**

Local Sol allows MCE customers to voluntarily purchase 100%, locally generated solar energy from a Feed-In Tariff project. Participating customers are charged a premium rate for Local Sol, intended to reflect the actual cost of service through MCE's Feed-In Tariff.

In the interest of further expanding retail choice and offering a formal tariff to support its Local Sol program, staff have amended the Electric Schedule Local Sol – 100% Local Solar Electricity Supply (attached), which outlines pertinent terms and conditions associated with this program. Due to the higher resource premiums associated with the initial "host" site at the Cooley Quarry in Novato, the energy price of Local Sol is a significant premium relative to MCE's Light Green and Deep Green service options. Local Sol has a per kilowatt-hour rate of \$0.142, while the current E1 rate for Light Green is \$0.068 and for Deep Green is \$0.078.

Separately, MCE's Net Energy Metering (NEM) tariff provides the billing mechanism that enables customers to accumulate credits for surplus on-site renewable energy production, like rooftop solar. First established by your Board in June 2010, the NEM tariff serves approximately 10,000 MCE accounts.

The Amendments described below aim to limit any unintended results to MCE and its customers from utilizing MCE's NEM program and Local Sol service in conjunction, while ensuring customers have the maximum available service options. Currently, MCE has approximately 160 customers transitioning to Local Sol service in May, of its estimated 300 customer capacity; sixteen of these accounts are currently served by the NEM tariff.

**Crediting Surplus Generation:**

Under the existing NEM tariff, surplus monthly generation is credited at the otherwise applicable MCE rate schedule, plus the NEM Generation Bonus of \$0.01/kWh, acknowledging that customers are generating 100% renewable energy. For instance, a customer with a \$0.068/kWh Light Green rate, would be credited at an additional \$0.01/kWh rate (\$0.078/kWh) for surplus generation at the end of a billing cycle.

MCE's Local Sol service already assesses a premium rate reflecting a 100% renewable product, set at \$0.142/kWh. This rate is higher than the Deep Green rate under nearly all rate schedules. Therefore, staff recommends that all surplus NEM credits for Local Sol customers be credited at the applicable Local Sol rate.

**NEM Annual Cash-Out Policy:**

During each year's April billing cycle, MCE offers NEM customers with a credit balance in excess of \$100 to receive a direct payment by check for the balance. Customers electing to receive a payment have the balance removed from their NEM account balance when the check is issued. Customers with less than \$100 in credits, or those who do not request a cash-out, have their credits roll over into the next annual period for future use.

Staff is concerned that the annual cash-out policy offers Local Sol customers with excessive surplus generation by receiving the Feed-In Tariff rate, without transferring any environmental attributes to MCE for inclusion in its energy portfolio. While it is rare for customers on a non-time-of-use rate option such as Local Sol to have surplus credits, staff recommends that this concern be addressed by making Local Sol customers ineligible for the Annual Cash-Out. Such customers would still be entitled to have any excess credits roll over in-perpetuity to offset future usage charges.

**Resolution Not Required:**

Prior modifications to the NEM tariff were approved by Resolution. Consistent with the Board of Directors' guidance on February 16, 2017 regarding Delegation of Authorities and Contracting, no further modifications to the NEM tariff will be required to be made by Resolution of the Board of Directors.

**Summary:**

Staff recommends that the following language be added to the Billing section of the NEM tariff:

f) Customers with Local Sol Service

If the eligible customer-generator is served by MCE's Local Sol program, all usage and generation shall be billed at the customer's applicable Local Sol rate. The billing and rate descriptions in sections (a) and (b) shall not apply.

Local Sol customers are not eligible for MCE's Annual Cash-Out provisions described in section (d). Excess credit balances during each Annual Cash-Out will automatically be carried over into the next annual period and will not be available for direct payment. Local Sol customers who close their electric account or who move outside of the PG&E service area are not eligible for the MCE Cash-Out process.

In the event that a Local Sol customer returns to Light Green or Deep Green service, any credit balance accrued under the Local Sol tariff will remain ineligible for the MCE Cash-Out process.

Additionally, staff recommends that the following language be added to the Local Sol tariff:

**NET ENERGY METERING CUSTOMERS:** Eligible Net Energy Metering (NEM) customers will be credited for all usage and generation at the Local Sol Rate, as defined above. Local Sol customers are not eligible for MCE's Annual Cash-Out. Excess credit balances during each Annual Cash-Out will automatically be carried over into the next annual period and will not be available for direct payment. Local Sol customers who close their electric account or who move outside of the PG&E service area are not eligible for the MCE Cash-Out process. In the event that a Local Sol customer returns to Light Green or Deep Green service, any credit balance accrued under the Local Sol tariff will remain ineligible for the MCE Cash-Out process.

**Recommendation:** Approve draft Resolution No. 2017-03 and authorize staff to make the proposed amendments to the Local Sol and Net Energy Metering Electric Schedules.



**RESOLUTION NO. 2017-03**

**A RESOLUTION OF THE BOARD OF DIRECTORS OF  
MARIN CLEAN ENERGY APPROVING THE REVISED NET ENERGY METERING  
TARIFF**

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

**WHEREAS**, MCE members include the following communities: the County of Marin, the County of Napa, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Mill Valley, the City of Napa, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and

**WHEREAS**, the MCE Board of Directors approved the Marin Clean Energy Net Energy Metering Tariff on June 3, 2010; and

**WHEREAS**, the MCE Board of Directors approved the first revision to the Marin Clean Energy Net Energy Metering Tariff on October 7, 2010; and

**WHEREAS**, the MCE Board of Directors approved the second revision to the Main Clean Energy Net Energy Metering Tariff on January 5, 2012; and

**WHEREAS**, the MCE Board of Directors approved the third revision to the Marin Clean Energy Net Energy Metering Tariff on December 5, 2013; and

**WHEREAS**, MCE has proposed revisions to the Net Energy Metering Tariff to address changes to the billing mechanism related to the accumulation of surplus energy production credits for customers utilizing MCE's NEM program and Local Sol service in conjunction.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of MCE that the fourth revision to the Net Energy Metering Tariff is approved.

**NOW, THEREFORE, BE IT FURTHER RESOLVED**, by the Board of Directors of MCE that consistent with the February 16, 2017 Delegation of Authorities and Contracting adopted by the Board of Directors, no further modifications will be required to be made by Resolution of the Board of Directors.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 18<sup>th</sup> day of May 2017, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
Town of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Napa				
County of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

\_\_\_\_\_  
CHAIR, MCE BOARD

**Attest:**

\_\_\_\_\_  
SECRETARY, MCE BOARD



## ELECTRIC SCHEDULE NEM - NET ENERGY METERING SERVICE

**APPLICABILITY:** This net energy metering (NEM) schedule is applicable to a customer who uses an eligible Renewable Electrical Generation Facility, as defined in PG&E’s Electric Schedule NEM (<http://www.pge.com/tariffs/ERS.SHTML#ERS>), within the capacity limits described in PG&E’s Electric Schedule NEM that is located on the customer’s owned, leased, or rented premises, is interconnected and operates in parallel with PG&E’s transmission and distribution systems, and is intended primarily to offset part or all of the customer’s own electrical requirements (hereinafter “eligible customer-generator” or “customer”).

This rate schedule is available on a first-come, first-served basis to customers that provide PG&E with a completed PG&E NEM Application and comply with all PG&E NEM requirements as described in PG&E Electric Schedule NEM. This includes customers served by NEMV (Virtual Net Energy Metering), NEMVMASH (Virtual Net Energy Metering for Multifamily Affordable Housing), NEMA (NEM Aggregation) and Multiple Tariff facilities as described by PG&E Electric Schedule NEM.

**TERRITORY:** The entire MCE service area.

**RATES:** All rates charged under this schedule will be in accordance with the eligible customer-generator’s otherwise-applicable MCE rate schedule (OAS). An eligible customer-generator served under this schedule is responsible for all charges from its OAS including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to MCE or PG&E. Charges for energy (kWh) supplied by MCE, will be based on the net metered usage in accordance with this tariff.

**BILLING:** Customers with NEM service will be billed as follows:

a) For a customer with Non-Time of Use (TOU) Rates:

Any net consumption or production shall be valued monthly as follows:

If the eligible customer-generator is a “Net Consumer,” having overall positive usage over a billing cycle, the eligible customer-generator will be billed in accordance with the eligible customer-generator’s OAS.

If the eligible customer-generator is a “Net Generator,” having overall negative usage over a billing cycle, any net energy production shall be valued at the OAS plus the currently applicable Deep Green Option Energy Charge. The calculated value of any net energy production shall be credited to MCE customers as described in Section (c).

b) For a customer with TOU Rates:

If the eligible customer-generator is a Net Consumer (as defined above) during any discrete TOU period, the net kWh consumed during such period shall be billed in accordance with applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS.

If the eligible customer-generator is a Net Generator (as defined above) during any discrete TOU period, the net kWh produced during such period shall be valued in consideration of the applicable TOU period-specific rates/charges, as described in the eligible customer-generator's OAS, plus the Deep Green Option Energy Charge. The calculated value of any net energy production during a specific TOU period shall be credited to MCE customers as described in Section (c).

c) Monthly Settlement of MCE Charges/Credits:

NEM customers will receive a statement in their monthly PG&E bills indicating any accrued charges for their usage during the current billing cycle. Customers who have accrued credits during previous billing cycles will see these credits applied against current charges. Any remaining balance is due and must be paid during each monthly billing cycle.

When a customer's net energy production results in a net bill credit over a billing cycle, the value of any net energy production during the billing cycle shall be noted on the customer's bill and carried over as a bill credit for use in subsequent billing period(s).

d) MCE Annual Cash-Out:

During the April billing cycle of each year, all current MCE NEM customers with a credit balance of more than \$100 will be offered a direct payment by check for this balance; any credit balance will be determined as of the final date of the customer's March billing cycle. Customers who participate in the MCE Cash-Out process will have an equivalent credit removed from their NEM account balance at the time of check issuance. In the event that customers do not elect to receive a check for accrued NEM credits, such credits will continue to be tracked by MCE and will remain on the customer's account for future use (i.e., reduction of future MCE charges).

Customers who close their electric account through PG&E or move outside of the MCE service area prior to the April billing cycle of each year are also eligible for the annual MCE Cash-Out process.

e) Return to PG&E Bundled Service:

MCE customers with NEM service may opt out and return to PG&E bundled service at any time. Customers should be advised that PG&E will perform a true-up of their account at the time of return to PG&E bundled service, and that PG&E's standard terms for transitional rates apply to customer returns with less than a six-month advance notice if they have been an MCE customer for 60 days or more.

If a MCE NEM customer opts-out of the MCE program and returns to bundled service, that customer may request to cash-out any remaining generation credits on the account, provided that the request is received within 90 calendar days of the return to PG&E service.

f) Customers with Local Sol Service:

If the eligible customer-generator is served by MCE's Local Sol program, all usage and generation shall be billed at the customer's applicable Local Sol rate. The billing and rate descriptions in sections (a) and (b) shall not apply.

Local Sol customers are not eligible for MCE's Annual Cash-Out provisions described in section (d). Excess credit balances during each Annual Cash-Out will automatically be carried over into the next annual period and will not be available for direct payment. Local Sol customers who close their electric account or who move outside of the PG&E service area are not eligible for the MCE Cash-Out process.

In the event that a Local Sol customer returns to Light Green or Deep Green service, any credit balance accrued under the Local Sol tariff will remain ineligible for the MCE Cash-Out process.

f)g) PG&E NEM Services:

MCE NEM customers are subject to the conditions and billing procedures of PG&E for their non-generation services, as described in PG&E's Electric Schedule NEM and related PG&E tariff options addressing NEM service. Customers should be advised that while MCE settles out balances for generation on a monthly basis, PG&E will continue to assess charges for delivery, transmission and other services. Most NEM customers will receive an annual true-up from PG&E for these non-generation services.

Customers are encouraged to review PG&E's most up-to-date NEM tariffs, which are available from PG&E.



## ELECTRIC SCHEDULE LOCAL SOL – 100% LOCAL SOLAR ELECTRICITY SUPPLY

**APPLICABILITY:** This Schedule Local Sol is available on a voluntary, first-come, first-served basis to any MCE customer who appropriately enrolls in the Local Sol service option, subject to the availability of specified local solar electricity production. Customers participating in the Local Sol service option will be supplied with a quantity of locally produced, photovoltaic solar electricity matching their respective net electricity usage, as measured by MCE. Charges associated with Schedule Local Sol are further described below. The commencement of Local Sol service is expected to occur in mid-~~2016~~,2017 subject to the availability of necessary power supply. Prior to the commencement of Local Sol service, enrolled customers will continue to be served under their current MCE tariff election.

**BACKGROUND:** In an effort to expand the retail electricity service options available to customers within MCE’s service territory, MCE offers Schedule Local Sol, a retail electricity option providing 100% photovoltaic solar electricity produced by a generating facility located within the MCE service territory. The quantity of solar electricity generated for participating Local Sol customers will be equivalent to each customer’s respective net annual electricity usage, excepting situations in which certain customers may be enrolled in the Local Sol service option for a partial calendar year – in such instances, 100% photovoltaic solar electricity will be generated for the participating customer in a quantity equivalent to such customer’s net electricity usage during the partial period of Local Sol enrollment.

Currently, MCE has identified an approximately one megawatt photovoltaic solar generating facility located within the City of Novato to serve as the primary source of electricity supply for the Local Sol service option (the “Local Sol Generator”). Development of the Local Sol Generator is being supported by a long-term, 20-year, power purchase agreement between MCE and the project owner under the terms of MCE’s Feed-In Tariff (“FIT”) program, which is designed to support the development of small-scale, locally situated renewable generating facilities. Generation rates charged to Local Sol customers are based on the wholesale power supply costs described in MCE’s FIT and are intended to pass through such costs as well as costs associated with general administration of the Local Sol program.

Based on assumed electricity production at the Local Sol Generator, approximately 1.5 million kilowatt hours per year will be available under the Local Sol service option. In consideration of such production estimates, MCE anticipates that initial Local Sol participation will be limited to approximately ~~100-~~200300 MCE customers, depending on electric usage characteristics of the participating Local Sol customer base. MCE will, at its sole discretion, determine the quantity of local solar electricity production that will be made available through the Local Sol tariff option and may periodically increase or reduce the quantity of such production without notice. MCE may also change or add local solar generating facilities in an effort to provide sufficient power supply to participating customers.

At the time that expected annual electricity sales to participating Local Sol customers generally approximates the anticipated annual electricity production at the Local Sol Generator, enrollments will

be suspended and a customer waiting list will be formed. To the extent that a Local Sol customer elects to change service options, MCE will notify customers on the Local Sol waiting list until the service option is fully subscribed.

**TERRITORY:** The entire MCE service area.

**RATES:** The generation rate charged to participating Local Sol customers shall not exceed 14.2 cents per kilowatt hour (\$0.142/kWh, "the Local Sol Rate") and shall apply to all net electricity usage during each billing period. The Local Sol Rate shall replace the participating customer's otherwise applicable MCE generation rate(s) and shall remain in effect during any continuous period of enrollment in Schedule Local Sol, extending up to twenty (20) years from the customer's initial date of service in the Local Sol program. All other charges described in the participating customer's otherwise applicable MCE rate schedule, including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to MCE or PG&E, shall continue to apply. Charges for net electric generation, as measured in kWh, supplied by MCE will be based on the aforementioned Local Sol Rate.

**PARTICIPATORY LIMITATIONS:** Participation in this Schedule is limited to MCE customers on either residential or small commercial (e.g., COM-1, or COM-1 TOU) service elections. Additionally, MCE customers taking service under this Schedule are subject to an annual electric energy usage cap, which may impact eligibility in this Schedule to the extent that a participating customer exceeds such cap. Currently, the electric energy usage cap for individual customers participating in this Schedule is set at 3,000 kWh/month, measured in consideration of average net electricity consumption over a rolling three-month period. Customers with average electricity usage in excess of the prescribed cap may be subject to removal from this Schedule, depending on the availability of electric power supplied by the Local Sol Generator. In such a scenario, customers will be returned to their otherwise applicable MCE service election without penalty.

**NET ENERGY METERING CUSTOMERS:** Eligible Net Energy Metering (NEM) customers will be credited for all usage and generation at the Local Sol Rate, as defined above. Local Sol customers are not eligible for MCE's Annual Cash-Out. Excess credit balances during each Annual Cash-Out will automatically be carried over into the next annual period and will not be available for direct payment. Local Sol customers who close their electric account or who move outside of the PG&E service area are not eligible for the MCE Cash-Out process. In the event that a Local Sol customer returns to Light Green or Deep Green service, any credit balance accrued under the Local Sol tariff will remain ineligible for the MCE Cash-Out process.

**MCE's STANDARD TERMS AND CONDITIONS OF SERVICE:** MCE customers electing to take service under this Schedule will be subject to MCE's standard terms and conditions of service, which can viewed online by visiting: [http://www.mcecleanenergy.org/terms\\_and\\_conditions/](http://www.mcecleanenergy.org/terms_and_conditions/).

**ADDITIONAL INFORMATION & ENROLLMENT:** Eligible MCE customers may enroll in Schedule Local Sol by contacting an MCE customer service representative at 1 (888) 632-3674, Monday through Friday, 7:00 A.M. to 7:00 P.M. Pacific Prevailing Time or by emailing [info@mceCleanEnergy.org](mailto:info@mceCleanEnergy.org). Additional information regarding Schedule Local Sol can be viewed online by visiting: <https://mcecleanenergy.org/100-local-solar/>.



May 18, 2017

TO: MCE Board of Directors

FROM: David Potovsky, Power Supply Contracts Manager

RE: Proposed Resolution 2017-04 Authorizing Entry into and Execution of Certain Contracts Relating to the MCE Solar One Project (Agenda Item #08)

ATTACHMENTS: A. Proposed Resolution 2017-04 Authorizing Entry into and Execution of Certain Contracts Relating to the MCE Solar One Project  
B. Power Purchase and Sale Agreement (PPA)  
C. Purchase and Sale Agreement (PSA)  
D. Sublease Agreement  
E. Consent to Sublease  
F. First Amendment to Solar Energy Facility Site Lease  
G. Assignment and Second Amendment to Escrow Agreement (2MW)  
H. Assignment and Second Amendment to Escrow Agreement (8.5 MW)  
I. PG&E Consent to Assignment and Agreement (2MW)  
J. PG&E Consent to Assignment and Agreement (8.5MW)

Dear Board Members:

**Summary:**

On March 16, 2017, your Board voted unanimously to authorize the finalization and execution of documents relating to the MCE Solar One project located on the Chevron refinery site in Richmond, CA. Subsequently, the financing entity requested an express authorization in the form of a Board resolution for the related agreements, particularly the Sublease and First Amendment to the Solar Energy Facility Site Lease. This express authorization is necessary for title insurance and recording purposes. As drafted, Resolution 2017-04 confirms your Board's earlier approval of the Power Purchase and Sale Agreement (PPA) and Purchase and Sale Agreement (PSA), approves the execution of the related agreements attached here, and further authorizes the execution of future certificates, notices, amendments, and other documents that may be required in connection with this project.

**Recommendation:**

Approve Resolution 2017-04 Authorizing Entry into and Execution of Certain Contracts Relating to the MCE Solar One Project.



## RESOLUTION NO. 2017-04

### A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY AUTHORIZING ENTRY INTO AND EXECUTION OF CERTAIN CONTRACTS RELATING TO THE MCE SOLAR ONE PROJECT

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

**WHEREAS**, MCE members include the following communities: the County of Marin, the County of Napa, the City of American Canyon, the City of Belvedere, the City of Benicia, the City of Calistoga, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Lafayette, the City of Larkspur, the City of Mill Valley, the City of Napa, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of St. Helena, the Town of Tiburon, the City of Walnut Creek, and the Town of Yountville; and

**WHEREAS**, the Board previously authorized finalization and execution of a Power Purchase Agreement (PPA) and Purchase and Sale Agreement (PSA) with MCE Solar One, LLC, a Delaware limited liability company (Solar One) for local renewable energy supply on March 16, 2017;

**WHEREAS**, the implementation of the terms of the PSA and the PPA require the execution of certain related agreements;

**WHEREAS**, the related agreements include (i) a Bill of Sale, Assignment and Assumption Agreement under the PSA, (ii) a Sublease Agreement with Solar One and related Memorandum of Sublease and Consent to Sublease, (iii) a First Amendment to Site Lease with Chevron Products Company, and (iv) certain consents to assignment and certain assignments with Solar One, Pacific Gas & Electric Company and Wells Fargo Bank, a National Association, as escrow agent, and (v) such other agreements, instruments, documents, certificates and notices and amendments, modifications or restatements thereof as may be required from time to time; and

**WHEREAS**, MCE Solar One, LLC has requested that the Board pass a resolution expressly authorizing the execution of the PPA, PSA, and the aforementioned related agreements.

**NOW, THEREFORE, BE IT RESOLVED**, by the Board of Directors of MCE that that the execution and delivery of (i) the PSA and related Bill of Sale, Assignment and Assumption Agreement, (ii) a Power Purchase and Sale Agreement with Solar One, (iii) a Sublease Agreement with Solar One and related Memorandum of Sublease and Consent to Sublease, (iv) a First Amendment to Site Lease with Chevron Products Company, (v) certain consents to assignment and certain assignments with Solar One,

Pacific Gas & Electric Company and Wells Fargo Bank, a National Association, as escrow agent and (vi) such other agreements, instruments, documents, certificates and notices and amendments, modifications or restatements thereof as may be required from time to time (collectively, the Transaction Documents) by MCE and the performance of its obligations thereunder be, and hereby are, approved in all respects and for all purposes;

**RESOLVED**, that the Chief Executive Officer and the Technical Committee Chair (collectively, the Authorized Persons) be, and each of them (any one of them acting alone) hereby is, authorized, empowered and directed, in the name and on behalf of MCE, to execute and deliver the Transaction Documents in such form, and with such changes, additions and modifications, as the Authorized Person executing the same shall approve, and the execution and delivery of such Transaction Documents by such Authorized Person shall be conclusive evidence of the authorization, approval, ratification, confirmation and acceptance of such Transaction Documents, and the execution and delivery of such Transaction Documents, by MCE; and

**RESOLVED**, that any and all acts performed by MCE or an Authorized Person in connection with these resolutions prior to the date hereof be, and hereby are, authorized, approved, ratified and confirmed as duly authorized acts of MCE in all respects and for all purposes.

**PASSED AND ADOPTED** at a regular meeting of the MCE Board of Directors on this 18th day of May 2017, by the following vote:

	<b>AYES</b>	<b>NOES</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
Town of Corte Madera				
City of El Cerrito				
Town of Fairfax				
City of Lafayette				
City of Larkspur				
County of Marin				
City of Mill Valley				
City of Napa				
County of Napa				
City of Novato				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Walnut Creek				
Town of Yountville				

\_\_\_\_\_  
 CHAIR, MCE BOARD

**Attest:**

\_\_\_\_\_  
 SECRETARY, MCE BOARD

*Execution Version*

**POWER PURCHASE AND SALE AGREEMENT  
COVER SHEET**

**Seller:** MCE Solar One, LLC, a Delaware limited liability company

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

**Description of Facility:** 10.5 MW AC photovoltaic electric generating facilities located in the City of Richmond, Contra Costa County, California

**Guaranteed Commercial Operation Date:** 3/31/2018

**Milestones:**

Identify Milestone	Date for Completion
<b>Evidence of Site Control</b>	Complete
<b>Documentation of Conditional Use Permit if required: CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input checked="" type="checkbox"/> EIR</b>	Complete
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Phase I: Complete Phase II: Complete
<b>Executed Interconnection Agreements</b>	Phase I: Complete Phase II: Complete
<b>Financial Close</b>	Complete
<b>Construction Start</b>	Complete
<b>Initial Synchronization</b>	3/1/18
<b>Distribution Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)</b>	3/1/18
<b>Commercial Operation Date</b>	3/31/18

**Delivery Term:** Fifteen (15) Contract Years

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	22,082
2	21,972
3	21,862
4	21,752
5	21,644
6	21,535
7	21,428
8	21,321
9	21,214
10	21,108
11	21,002
12	20,897
13	20,793
14	20,689
15	20,585
<b>If the Delivery Term is extended</b>	
16	20,483
17	20,380

Contract Year	Expected Energy (MWh)
18	20,278
19	20,177
20	20,076

**Contract Price:**

Contract Year	Contract Price (\$/MWh)
1 – 15	\$ [REDACTED]
If applicable, 16-20	\$ [REDACTED]

**Product:**

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Capacity Attributes, if any

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

**Development Security:** \$630,000 (\$60 per kW AC)

**Performance Security:** \$630,000 (\$60 per kW AC)

**Damage Payment:** *(As described under Damage Payment definition in Article 1)* \$1,496,453

**Notice Addresses:****Seller:**

MCE Solar One, LLC c/o sPower  
 Address: 2180 S 1300 E, Suite 600, Salt Lake City, UT 84106-2749  
 Attention: Control Room  
 Phone No.: (801) 679-3500  
 Fax No.: (801) 679-3501  
 Email: [operations@spower.com](mailto:operations@spower.com)

With a copy to:

MCE Solar One, LLC, LLC c/o sPower  
Address: 2180 S 1300 E, Suite 600, Salt Lake City, UT 84106-2749  
Attention: General Counsel  
Phone No.: (801) 679-3500  
Fax No.: (801) 679-3501  
Email: [legal@spower.com](mailto:legal@spower.com)

Scheduling:

Email: [realtime@spower.com](mailto:realtime@spower.com), [outages@spower.com](mailto:outages@spower.com)  
Phone No.: (855) 679-3553  
Fax No.: N/A

Buyer:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Attention: Greg Brehm, Director of Power Resources  
Fax No.: (415) 459-8095  
Phone No.: (415) 464-6037  
Email: [gbrehm@mceCleanEnergy.org](mailto:gbrehm@mceCleanEnergy.org)

With a copy to (which shall not be required for Notice purposes):

Troutman Sanders LLP  
100 SW Main St., Suite 1000  
Portland, Oregon 97204  
Attention: Stephen Hall  
Phone No.: (503) 290-2336  
Email: [stephen.hall@troutmansanders.com](mailto:stephen.hall@troutmansanders.com)

*[Signatures on following page.]*

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

**SELLER**

MCE Solar One, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER**

Marin Clean Energy, a California joint powers authority

By: \_\_\_\_\_

MCE Chairperson

By: \_\_\_\_\_

MCE CEO



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**Exhibits:**

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## POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of May \_\_, 2017 (the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

### RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the photovoltaic electric generating facilities to be located in California in the location identified in Exhibit A, having a Guaranteed Capacity to Buyer of 10.5 MW AC (the “**Facility**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Facility, all Green Attributes related to the generation of such Energy, and any Capacity Attributes;

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 3.13.

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

“**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, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the power or authority, through ownership of voting securities, by contract or otherwise to direct the management of such Person.

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

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

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

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

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

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

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

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

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

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

(b) for the same time period as referenced in (a), Buyer or Buyer’s SC:

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

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

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

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

“**Buyer Curtailment Order**” means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure Event and/or Curtailment Order.

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

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.8(a).

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

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility less Electrical Losses and Station Use.

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

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

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

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

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

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

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

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the Facility has commenced commercial operation (as such term is defined by and according to the CEC), that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio

Standard and that all Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Facility.

“**CEQA**” means the California Environmental Quality Act, Public Resources Code 21000 *et. seq.*, and the related Guidelines, California Code of Regulations, Title 14, Division 6, chapter 3, Sections 15000-15387.

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

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

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

Furthermore, it shall not be a “Change of Control” as a result of (i) transfers of any economic and voting interests to a YieldCo or a subsidiary of a YieldCo that is owned by the YieldCo and Affiliates of sPower and other Persons that have transferred projects to such subsidiary of the YieldCo or (ii) the financing of the Facility through a tax equity transaction under which the tax equity investors hold equity interests in Seller or such intermediate entities.

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

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

“**Commercial Operation Delay Damages**” means (a) for the first sixty (60) days of delay: Two Thousand Dollars (\$2,000) per day, and (b) thereafter, an amount equal to (i) the Development Security amount required hereunder less One Hundred Twenty Thousand Dollars (\$120,000), divided by (ii) sixty (60).

“**Compliance Actions**” has the meaning set forth in Section 3.13.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.13.

“**Confidential Information**” has the meaning set forth in Section 19.1.

“**Construction Start**” shall have the meaning set forth in Exhibit B.

“**Construction Start Date**” shall have the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth in Exhibit C.



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

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

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

**“Cover Sheet”** means the cover sheet to this Agreement, agreed to by Seller and Buyer and incorporated into this Agreement.

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

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

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

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

(a) CAISO orders, directs, alerts, or provides notice to a Party, including through the ADS, to curtail Energy deliveries for: (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: (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

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

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

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

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

**"Daily Delay Damages"** means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

**"Damage Payment"** means the dollar amount that equals twelve (12) months minimum expected revenue of the Facility based on Guaranteed Energy Production, which will be calculated prior to the Effective Date.

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

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

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

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

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

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

**"Delivery Point"** means the PNode designated by the CAISO for the Facility.

**"Delivery Term"** shall mean the period of fifteen (15) Contract Years beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement or extended in accordance with Section 2.1(b).

**“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 specified on the Cover Sheet.

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

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

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

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

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

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

**“Energy”** means metered electrical energy, measured in MWh, which is produced by the Facility.

**“Energy Deviation”** means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Facility; and (b) Metered Energy plus Deemed Delivered Energy.

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

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

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

**“Facility”** has the meaning set forth in the Preamble and as further described in Exhibit A attached hereto.

**“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).

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

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

**“Forced Outage”** means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

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

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

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

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

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to

Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

**"Guaranteed Capacity"** means 10.5 MW AC capacity measured at the Delivery Point.

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

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

**"Guaranteed Energy Production"** has the meaning set forth in Section 4.7.

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

**"Indemnified Party"** has the meaning set forth in Section 17.1.

**"Indemnifying Party"** has the meaning set forth in Section 17.1.

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

“**Installed Capacity**” means the actual generating capacity of the Facility in MW AC, measured at the Delivery Point, adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto provided by Seller to Buyer.

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

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

“**Interconnection Agreement**” means the interconnection agreements pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

“**Joint Powers Act**” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated December 19, 2008 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.

“**Lease**” means that certain Solar Energy Facility Site Lease, dated November 4, 2015, by and between Chevron Products Company (“Lessor”) and Buyer (“Lessee” under the Lease), whereby Lessor leased to Buyer certain real property located in the County of Contra Costa, State of California, totaling approximately sixty (60) gross acres.

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

lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

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

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

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

**“Lost Output”** has the meaning set forth in Exhibit F.

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

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

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

**“Multiplier”** has the meaning set forth in Section 3.9(b).

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

**“MWh”** means megawatt-hour measured in AC.

**“Negative LMP”** means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars (\$0).

**“Negative LMP Costs”** has the meaning set forth in Section 3.3.

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

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

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

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

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

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

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

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

“**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 Pacific Gas and Electric Company.

“**Parties**” and “**Party**” have the meaning set forth in the Preamble.

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

“**Performance Security**” means (i) cash or (ii) a Letter of Credit, in the amount specified on the Cover Sheet.

“**Permitted Transferee**” means any entity that has, or is controlled by another Person that has, all of the following:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

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

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



“**Planned Outage**” means the removal of the Facility from service to perform work on specific components that will result in an interruption in delivery of Energy to Buyer (e.g., for annual overhaul, inspections or testing).

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

“**Portfolio Content Category**” means PCC1, PCC2 or PCC3, as applicable.

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

“**Portfolio Content Category 2**” or “**PCC2**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“**Portfolio Content Category 3**” or “**PCC3**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

“**Product**” means (i) Energy, (ii) Green Attributes (PCC1) and (iii) Capacity Attributes, if any.

“**Progress Report**” means a progress report including the items set forth in Exhibit G and delivered pursuant to Section 2.3.

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

“**Qualified Assignee**” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s credit support or direct or indirect parent) under this Agreement.

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

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

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

**“Remedial Action Plan”** has the meaning in Section 2.4.

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

**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

**“Replacement Capacity Attributes”** has the meaning set forth in Exhibit F.

**“Replacement Energy”** has the meaning set forth in Exhibit F.

**“Replacement Green Attributes”** has the meaning set forth in Exhibit F.

**“Replacement Green Attributes Value”** has the meaning set forth in Exhibit F.

**“Replacement Product”** has the meaning set forth in Exhibit F.

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

**“Resource Adequacy Requirements”** or **“RAR”** means the resource adequacy requirements applicable to Buyer pursuant to the Resource Adequacy Rulings, CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

**“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 laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, 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 The McGraw-Hill Companies, Inc.) or its successor.

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

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

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

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

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

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

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

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

“**Settlement Period**” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

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

**“sPower”** means Sustainable Power Group, LLC, a Delaware Limited Liability Company.

**“Station Use”** means:

(a) The electric 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 electric energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

**“Sublease”** means that certain Sublease Agreement, by and between Buyer (“Sublessor”) and Seller (“Sublessee”), for real property located in the County of Contra Costa, State of California, totaling approximately sixty (60) gross acres.

**“System Emergency”** means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

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

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

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

“**Ultimate Parent**” means FTP Power LLC.

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

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

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

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.8(e).

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

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of July 15, 2013, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

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

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

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

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

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

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

(k) the expression "and/or" shall connote "any or all of";

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

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

**1.3 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to

assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

**ARTICLE 2**  
**TERM; CONDITIONS PRECEDENT**

**2.1 Contract Term; Buyer Option.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**").

(b) Seller may extend the Delivery Term for one (1) additional five (5) year period by delivering written notice of such extension to Buyer not less than six (6) months prior to the expiration of the fifteenth (15th) Contract Year, unless terminated earlier as set forth herein.

(c) [Reserved]

(d) 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 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(e) Seller hereby grants to Buyer an option to purchase the Facility subject to the terms and at the time set forth in Exhibit M.

**2.2 Conditions Precedent to Delivery Term.**

The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have delivered to Buyer certificates from a licensed professional engineer substantially in the form of Exhibits I-1 and I-2;

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

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

(d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all applicable conditions thereof have been satisfied and shall be in full force and effect;

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

(f) Seller (with the reasonable participation of Buyer) shall have completed (or, for items normally occurring after COD, expects to timely complete) 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 delivered the Performance Security to Buyer; and

(h) Seller has paid Buyer, or Buyer has drawn on the Development Security, for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

2.3 **Progress Reports.** The Parties agree time is of the essence in regards to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit G. At Buyer's request, Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer's failure to perform its obligations hereunder, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the ninetieth (90<sup>th</sup>) day after the missed Milestone completion date, as applicable), a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. If the missed Milestone(s) is



not the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

2.5 **Buyer's CEQA Obligations.** From and after the Effective Date, Buyer shall promptly initiate and diligently conduct all required review under CEQA, including coordinating with the "lead agency," and making such findings as are required or permitted to be made by a responsible agency under Section 15096 of the CEQA Guidelines with respect to the Facility. Upon completion of such review, Buyer shall provide and post such notices as are specified in Section 21152(a) of CEQA, as applicable.

### **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 and receive from Seller at the Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility for resale in the market, and retain and receive any and all related revenues. Except for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement Product.

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

3.3 **Compensation.** Buyer shall compensate Seller for the Product in accordance with this Section 3.3.

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

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

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

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

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

3.4 **Imbalance Energy.** Buyer and Seller recognize that from time to time the amount of Metered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. To the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

3.5 **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.

3.6 **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 3.6(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and

conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Seller shall make available to Buyer and Buyer shall take all Test Energy made available. As compensation such Test Energy, Buyer shall pay Seller an amount equal to seventy-five percent (75%) of the Contract Price for each MWh of Test Energy delivered to Buyer as Metered Energy for the first twenty-eight (28) days that the Facility delivers Test Energy, and after such time the price for any additional Test Energy shall be Zero Dollars (\$0.00) per MWh.

3.8 **Capacity Attributes.** Seller, as assignee of the Interconnection Customer's (as defined in the Interconnection Agreement) rights and obligations under the Interconnection Agreement, shall be responsible for any additional unpaid cost and installation of any upgrades payable by the Interconnection Customer under the Interconnection Agreement.

(a) Throughout the Delivery Term and subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer any Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.13, Seller shall use commercially reasonable efforts to obtain and maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term and subject to Section 3.13, Seller hereby covenants and agrees to transfer any Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term and subject to Section 3.13, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) Seller shall use commercially reasonable efforts to cause the Facility to be listed as in construction in the NQC list upon issuing a notice to proceed for the construction of the Facility.

3.9 [Reserved]

3.10 **CEC Certification and Verification.** Subject to Section 3.13, 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 *RPS Eligibility Guidebook, Eighth Edition* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.11 **Eligibility.** Subject to Section 3.13, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law, with Seller's costs not to exceed the Compliance Expenditure Cap.

3.12 **California Renewables Portfolio Standard.** Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.13 **Compliance Expenditure Cap.** If 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 this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.13(a), (b) and (c), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at twenty thousand dollars (\$20,000.00) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**"):

- (a) CEC Certification and Verification;
- (b) Green Attributes; and
- (c) Capacity Attributes.

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

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

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not

obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

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

## **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

### **4.1 Delivery.**

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

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Metered Energy as part of the Product being delivered in accordance with this Agreement. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

### **4.2 Title and Risk of Loss.**

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

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

#### 4.3 Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon initial synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point, provided that Buyer shall be responsible for all acts and omissions of any Buyer-designated third party Scheduling Coordinator and for all costs, charges and liabilities incurred by any such third party Scheduling Coordinator to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly. Buyer and any Buyer-designated third party Scheduling Coordinator shall comply with all obligations as Scheduling Coordinator for the Facility under the CAISO Tariff and shall conduct all scheduling in full compliance with the terms of this Agreement, all applicable Laws, and all CAISO requirements (including the CAISO Tariff). At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer or any Buyer-designated third party as Seller's Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid. On and after initial synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's or Buyer's designated third party's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer or in connection with a Buyer Default. Buyer and Seller shall equally share the actual costs (including the costs of Buyer employees or agents if Buyer acts directly as the Facility's Scheduling Coordinator) reasonably incurred by Buyer as a result of Buyer or Buyer's designated third party acting as the Facility's Scheduling Coordinator, including the costs associated with the registration of the Facility with the CAISO and the installation, configuration, and testing of all equipment and software necessary for Buyer or Buyer's designated third party to act as the Facility's Scheduling Coordinator or to Schedule the Facility ("SC Set Up Fee"); provided that the SC Set Up Fee shall not exceed Five Thousand Dollars (\$5,000.00). Buyer (as Seller's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer or Buyer's designated third party (in either case, as Seller's SC) shall promptly make available to Seller all such information as is in its possession and necessary to comply with any requirements of Law applicable to Seller or the Facility, including information necessary for filing of "Electric Quarterly Reports" with FERC and information necessary to enable Seller to comply with NERC Generator Owner/Generator Operator requirements.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, forecast data, all outage requests, Forced 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, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, which such actions or inactions are not consistent with the CAISO requirements, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. The CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from the CAISO that identifies any CAISO charges. The CAISO Charges Invoice shall include all information and supporting documentation from the CAISO reasonably necessary for Seller to validate any such charges or penalties, including information regarding Scheduling by Buyer (as Seller's SC). Notwithstanding the foregoing, Seller acknowledges that CAISO may issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within thirty (30) days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

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

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

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

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

(a) Annual Forecast of Average Expected Energy. No less than ninety (90) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in the form set forth in Schedule F-1, or as otherwise reasonably acceptable to 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 Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

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



estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) Hourly and Sub-Hourly Forecasts. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced 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 Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

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

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

#### 4.5 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K; and further provided that Buyer must avoid Buyer Curtailment Periods in order to satisfy the Lease requirement that the Facility generate electricity at least (i) one (1) day during any calendar month and (ii) two hundred (200) days during any calendar year and Buyer's failure to do so will be a Buyer default of this Agreement.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders (such as Negative LMPs pursuant only to a Buyer Curtailment Order or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or a Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K and in Section 4.5(a), and further, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the applicable Contract Price.

(c) Reserved.

(d) Failure to Comply. Except if Buyer fails to comply with its obligations in the second proviso to Section 4.5(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(e) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

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

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

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

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

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

4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet (“**Expected Energy**”). During the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to the total Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period multiplied by 0.8. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, Buyer’s failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of: (a) Adjusted Energy Production during such Performance Measurement Period; plus (b) the amount of Energy during such Performance Measurement Period with respect to which Seller has already paid liquidated damages in accordance with Exhibit F. 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 F; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit F) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Performance Measurement Period and within the same calendar year in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer; provided further that Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the Contract Price.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(h), provided that Seller fulfills its obligations under Sections 4.8(a) through (h) below. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Metered Energy for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit is caused by Seller, or the result of any action or inaction, by Seller, then the amount of Metered Energy (MWh) in the Deficient Month shall be reduced by three times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller either (i) provides Replacement Product (as defined in Exhibit F) that is (A) delivered to Buyer at NP 15 EZ Gen Hub, (B) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Deficient Month, (C) delivered upon a schedule reasonably acceptable to Buyer, and (D) delivered to Buyer without imposing additional costs upon Buyer; or (ii) provides replacement WREGIS Certificates from the Facility within ninety (90) days after the conclusion of the applicable Deficient Month and such WREGIS Certificates qualify for the same RPS compliance periods during which the WREGIS Certificate Deficit occurred.

(f) Without limiting Seller's obligations under this Section 4.8, 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.

(g) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Metered Energy in the same calendar month.

(h) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the contract.

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

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

## **ARTICLE 6 MAINTENANCE OF THE FACILITY**

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

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

## ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Energy produced by the Facility using CAISO Approved Meters. Such meters shall be maintained at Seller's cost. Meter data will be adjusted to reflect losses to the Point of Delivery. The meters shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the 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. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

### 8.1 **Invoicing.**

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

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

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

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

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

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

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

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

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product and Deemed Delivered Energy during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and E, interest, and payments or credits, including pursuant to Section 4.3(d), shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer upon the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security by an amount equal to the amount of such Daily Delay Damages within fifteen (15) 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. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have fifteen (15) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer (i) on the Commercial Operation Date if Seller elects to maintain its Development Security with Buyer as Performance Security or (ii) within ten (10) days following the Commercial Operation Date if Seller elects to provide a form of Performance Security which differs from the form of Development Security. Seller shall maintain the Performance Security in full force and effect until the Delivery Term has expired or terminated early, provided that Seller shall maintain an amount of Performance Security after the expiration or termination of the Delivery Term equal to the amount of all invoiced but unpaid amounts due from Seller to Buyer, provided further that such Performance Security shall not be



required to be in excess of the amount of the Performance Security required under this Agreement immediately prior to such expiration or termination. Buyer shall promptly return to Seller the portion of the Performance Security not allocated to invoiced but unpaid amounts pursuant to the prior sentence. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have fifteen (15) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

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

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

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

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

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

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

## ARTICLE 9 NOTICES

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

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

## ARTICLE 10 FORCE MAJEURE

### 10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; any Force Majeure as defined under the Lease or Sublease; any impediment to Seller’s ability to operate the Facility as a result of activities at the Site related to remediation of contamination, including repair, maintenance, alteration, or expansion of any monitoring or control system; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of

public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (v) 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; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (vii) a Buyer Curtailment Period, or (viii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except if such failure is caused by a Force Majeure Event; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive three hundred sixty-five (365) day-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 those obligations specified in Section 2.1(d).

## ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.3, and except for Seller’s failure to comply with a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order, the exclusive remedy for which is provided in Section 4.5(d)) and such failure is not remedied within thirty (30) days after Notice thereof or such longer period necessary to effect such remedy not to exceed ninety (90) days after Notice (A) if such remedy is feasible through the use of commercially reasonable efforts during such period and (B) so long as the Defaulting Party is diligently and continuously pursuing such remedy;

(iv) such Party becomes Bankrupt;

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

(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 to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility;

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

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

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment, if such failure is not remedied within fifteen (15) Business Days after Notice thereof;

(v) [Reserved]

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within fifteen (15) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

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

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

(c) With respect to Buyer as the Defaulting Party, the occurrence of any of the following:

(i) An event of default of Buyer has occurred under the Lease, applicable notice of such default has been provided to Buyer pursuant to the Lease, the applicable cure period, if any, in the Lease has expired and Lessor has provided notice of its exercise of its right to terminate the Lease; or, if for any other reason, the Lease terminates due to Buyer's failure to take any action required or not take any action prohibited of Buyer as Lessee under the Lease, including any Early Termination pursuant to Section 4.1 of the Lease, other than any termination arising from an act or omission of Seller as Sublessee under the Sublease; or

(ii) Any termination of the Sublease as a result of Buyer default thereof.

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

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

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

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

(d) to suspend performance; and

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

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

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party. For the avoidance of doubt, if Buyer is the Defaulting Party, the Parties acknowledge that Seller will be unable to sell Product to any third party due to the exercise of termination provisions of the Lease. Accordingly, for purposes of calculating the Termination Payment and Gains, Losses and Costs, it shall be reasonable for Seller to assume it receives no revenue associated with sales of Product in calculating such amounts and the value of any tax benefits, determined on an after-tax basis, lost due to Buyer's default (which Seller has not been able to mitigate after use of reasonable efforts) and amounts due in connection with the recapture of any Renewable Energy Incentives, if any, shall be deemed to be direct damages.

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

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's

calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

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

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

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

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN AND EXCEPT AS SET FORTH IN SECTION 19.3, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION



WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.2, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

EXCEPT AS SET FORTH IN SECTION 19.3, THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

The Facility is located in the State of California.

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

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

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

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

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

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

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

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

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

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

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

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

13.4 **Buyer Covenants.** Buyer covenants that it will remain throughout the Contract Term, a governmental entity, 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 will remain throughout the Contract Term, qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. Continuing throughout the Contract Term, all persons making up the governing body of Buyer will remain the elected or appointed incumbents in their positions and will continue to hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

## ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 15.1, a Lender as collateral, *provided however*, that in the case of (a) or (b), the assignee shall be a Qualified Assignee; *provided, further*, that in each such case of (a) and (b), Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then such transfer or assignment shall be void unless either Seller agrees in writing to remain financially responsible under this Agreement, or Seller's assignee provides payment security in an amount and form reasonably acceptable to Buyer; *provided, however*, that Seller may initiate the dispute resolution mechanism under Section 16.2 in order to determine whether Seller's assignee meets such definition. Any Change of Control of Seller (whether voluntary or by operation of Law) will require the prior written consent of Buyer, which consent shall not be unreasonably withheld; *provided*, that a Change of Control shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment by Seller, its successors or assigns under clause (a) or (b) of the first sentence of this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been delivered by Buyer.

## ARTICLE 15 LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2, Seller may, without the consent of Buyer, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial Notice, Seller shall promptly give Buyer Notice of any change in the information provided in the initial Notice or any revised Notice. Without limiting the foregoing, Buyer acknowledges that, subject to Seller's other obligations under this Agreement, Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities (1) utilizing tax equity investment, or (2) on a portfolio or other aggregated basis, which may include cross-collateralization or similar arrangements.

15.2 **Rights of Lender.** If Seller grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in

accordance with Article 11 and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

(b) Buyer shall cooperate with Seller or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the rights of Lender upon foreclosure of Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; *provided*, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of Seller hereunder; *provided* that, as except as provided in any direct agreements between the Buyer and any Lender as contemplated pursuant to Section 15.2(b), Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.

15.3 **Cure Rights of Lender.** Buyer shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and Buyer shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. Buyer shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the Buyer and any Lender. Notwithstanding any such action by any Lender, Seller shall not be released and discharged from and shall remain liable for any and all obligations to the Buyer arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by Seller or Lender pursuant to Section 15.2(b).

## ARTICLE 16 DISPUTE RESOLUTION

16.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute

quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

16.3 **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 17 INDEMNIFICATION

### 17.1 **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 17.1 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.

17.2 **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 17 may apply, the Party seeking indemnification (the "**Indemnified Party**") shall notify the other Party (the "**Indemnifying Party**") in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and

hold the other Party and its successors and assigns harmless under this Article 17, 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 18 INSURANCE**

### 18.1 **Insurance.**

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

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

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

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

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

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

insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 1.1(f).

(g) 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 any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, 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 18 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 19 CONFIDENTIAL INFORMATION

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

19.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient 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, or (d) to the recipient's Affiliates or to any of the recipient's or its Affiliates' employees, officers, directors, members, agents, representatives, counsel, accountants or auditors, in each case with a need to know such Confidential Information and which are subject to confidentiality agreements or other enforceable obligations no less protective than this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion provided such information does not include Confidential Information of the other Party. The Parties acknowledge and agree that this Agreement is subject to the California Public Records Act (Government Code Section 6250 et seq.). Nothing herein shall be deemed or construed to affect the rights or obligations of either Party to withhold or disclose any such Confidential Information in accordance with the California Public Records Act. The Parties will notify each other in writing promptly upon receipt of any request for information regarding this Agreement pursuant to the California Public Records Act.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

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

## ARTICLE 20 MISCELLANEOUS

20.1 **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.

20.2 **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 except pursuant to the process set forth in Section 20.8.

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

20.4 **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 buyer, 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).

20.5 **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.

20.6 **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, a non-Party or the FERC acting *sua sponte* 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).

20.7 **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.

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

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

20.10 **No Recourse to Members of Buyer.** Buyer is organized as a joint powers authority in accordance with the Joint Powers Act pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

20.11 **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 16. Notwithstanding the foregoing, 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.

## EXHIBIT A

### DESCRIPTION OF THE FACILITY

The Facility is composed of multiple projects on separate sites with multiple interconnection points and revenue meters as more specifically depicted in (i) Attachment 3 to the Small Generator Interconnection Agreement (SGIA) between Pacific Gas and Electric Company and Stion MCE Solar One, LLC (Chevron 2 MW 1122-WD) and (ii) Attachment 3 to the Small Generator Interconnection Agreement (SGIA) between Pacific Gas and Electric Company and Stion MCE Solar One, LLC (Chevron 8.5 MW 1157-WD).

**Site Name:** Chevron Solar Energy Facility Site

**APNs:** 561-100-034, 561-100-037, 561-100-038 and 561-120-015

**County:** Contra Costa

**Guaranteed Capacity:** MW AC: 10.5

**P-node/Delivery Point:** The Pnode/Delivery Point will be the Pnode assigned by the CAISO. There will be two interconnection points with capacities of 8.5MW to PG&E's 12.47 kV Richmond R 1120 distribution line and 2 MW to PG&E's 12.47 kV Richmond R 1129 distribution circuit.

**Additional Information:**

Provided that the PNode remains the same, Seller shall have an ability to add or remove APNs from the Site, provided that such APNs be in receipt of a final CUP, with Notice to Buyer.

**EXHIBIT B****FACILITY CONSTRUCTION AND COMMERCIAL OPERATION****1. Construction of the Facility.**

- a. Seller shall cause construction to begin on the Facility within thirty (30) days after the date for completion of the Construction Start Milestone (as such date may be extended by the Development Cure Period, the "**Guaranteed Construction Start Date**"). Seller shall demonstrate the start of construction through mobilization to the Site by Seller and/or its designees, including the physical movement of soil at the Site, grading, grubbing, site access preparation or vegetation removal at a sufficient level to reasonably demonstrate that Seller is preparing the location for the construction of the Facility ("**Construction Start**"). On the date of the beginning of construction (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.
- b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable by Seller to Buyer for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until Seller reaches Construction Start of the Facility subject to Section 6 of this Exhibit B. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.

**2. Commercial Operation of the Facility.** "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the day that Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by 3/31/2018 (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

Exhibit B-1

- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
  - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date until the Commercial Operation Date subject to Section 6 of this Exhibit B. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
3. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of the following delays:
- a. Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product by the date for completion of the Construction Start Milestone, despite the exercise of diligent and commercially reasonable efforts by Seller;
  - b. a Force Majeure Event occurs;
  - c. the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point by the date for completion of the Initial Synchronization Milestone, despite the exercise of diligent and commercially reasonable efforts by Seller; or
  - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 3(d) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction

Exhibit B-2

that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

4. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Thirty Thousand Dollars (\$30,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
5. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall replenish the Development Security to its full amount within three (3) Business Days after such draw.
6. **Damage Payment.** Notwithstanding anything to the contrary in this Agreement, except for Buyer's termination right in connection with Section 11.1(b)(2) with respect to the Guaranteed Commercial Operation Date, Buyer's sole remedy and Seller's sole liability for the failure of Seller to meet the Guaranteed Construction Start Date and/or the Guaranteed Commercial Operation Date, or for Seller's failure to reach the Guaranteed Capacity shall be the payment by Seller of Daily Delay Damages, Commercial Operation Delay Damages, or Capacity Damages, as applicable, up to a total aggregate payment no more than the Damage Payment. For the avoidance of doubt, Seller's total liability to Buyer for Daily Delay Damages, Commercial Operation Delay Damages, Capacity Damages and any other damages under this Agreement prior to the start of the Delivery Term shall not exceed the Damage Payment. If Seller has paid damages to Buyer equal to the Damage Payment, either Party will have a right to terminate this Agreement and neither Party will have any liability to the other Party in connection with such termination except for the obligation specified in Section 2.1(d).

**EXHIBIT C**

**CONTRACT PRICE**

The Contract Price of the Product shall be:

<b>Contract Year</b>	<b>Contract Price</b>
1 – 15	\$ [REDACTED]
If the Delivery Term is extended, 16-20	\$ [REDACTED]



**EXHIBIT D**

**EMERGENCY CONTACT INFORMATION**

**BUYER:**

Greg Brehm, Director of Power Resources  
Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Fax No: (415) 459-8095  
Phone No: (415) 464-6037  
Email: [gbrehm@mceCleanEnergy.org](mailto:gbrehm@mceCleanEnergy.org)

**SELLER:**

Sean McBride, General Counsel  
sPower  
2180 South 1300 East, Suite 600  
Salt Lake City, UT 84106  
Fax No: (801) 679-3501  
Phone No: (801) 679-3506  
Email: [smcbride@spower.com](mailto:smcbride@spower.com)

**EXHIBIT E**  
**RESERVED**

Exhibit E - 1

**EXHIBIT F****GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION**

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

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

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

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

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

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

**Additional Definitions:**

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

“**Lost Output**” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using the equation provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, solar insolation, panel temperature, and wind speed and using relevant Facility availability, weather, historical and

Exhibit F - 1

other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.

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

“**Replacement Energy**” means energy and associated Green Attributes produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

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

“**Replacement Product**” means (a) Replacement Energy and (b) Replacement Capacity Attributes.

**SCHEDULE F-1**

**AVERAGE EXPECTED ENERGY (Year 1, subsequent years to be degraded)**

Average Expected Energy, MWh Per Hour

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
<b>JAN</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.4	3.6	4.4	4.6	4.8	4.8	4.2	3.2	0.8	(0)	(0)	(0)	(0)	(0)	(0)	(0)
<b>FEB</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.5	2.5	4.7	5.4	6.0	5.9	5.8	4.9	4.0	2.0	0.2	(0)	(0)	(0)	(0)	(0)	(0)
<b>MAR</b>	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.8	4.6	6.6	7.3	7.6	7.9	7.5	7.3	6.1	3.6	0.9	(0)	(0)	(0)	(0)	(0)	(0)
<b>APR</b>	(0)	(0)	(0)	(0)	(0)	0	1.1	3.8	6.2	7.7	8.5	9.0	9.1	9.0	8.4	7.0	5.1	2.1	0.2	(0)	(0)	(0)	(0)	(0)
<b>MAY</b>	(0)	(0)	(0)	(0)	(0)	0.2	1.9	4.6	6.7	8.0	8.6	9.2	9.2	9.1	8.7	7.5	5.8	3.0	0.6	(0)	(0)	(0)	(0)	(0)
<b>JUN</b>	(0)	(0)	(0)	(0)	(0)	0.4	2.2	4.8	6.7	8.2	9.1	9.4	9.4	9.2	8.8	7.9	6.3	3.7	1.1	(0)	(0)	(0)	(0)	(0)
<b>JUL</b>	(0)	(0)	(0)	(0)	(0)	0.2	1.6	3.9	6.1	8.1	9.0	9.5	9.6	9.7	9.1	8.1	6.4	3.8	1.1	0	(0)	(0)	(0)	(0)
<b>AUG</b>	(0)	(0)	(0)	(0)	(0)	0	0.9	3.0	4.9	6.6	8.4	9.2	9.3	9.2	8.6	7.6	5.9	2.9	0.4	(0)	(0)	(0)	(0)	(0)
<b>SEP</b>	(0)	(0)	(0)	(0)	(0)	(0)	0.7	3.1	5.6	7.2	8.2	8.4	8.4	8.2	7.3	6.2	3.8	1.0	0	(0)	(0)	(0)	(0)	(0)
<b>OCT</b>	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.9	4.2	5.8	6.7	7.4	7.5	7.1	6.3	4.6	1.8	0.1	(0)	(0)	(0)	(0)	(0)	(0)
<b>NOV</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.7	3.0	4.7	5.4	5.8	5.4	4.9	4.2	2.6	0.5	(0)	(0)	(0)	(0)	(0)	(0)	(0)
<b>DEC</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.5	3.3	4.2	4.6	4.6	4.2	3.6	1.8	0.3	(0)	(0)	(0)	(0)	(0)	(0)	(0)

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**

### **PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

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

**EXHIBIT H**  
**RESERVED**

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**EXHIBIT I-1**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification ("**Certification**") of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] ("**Engineer**") to Marin Clean Energy ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

- (1) Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity.
- (2) The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].
- (3) Authorization to parallel the Facility was obtained by the Transmission System, [Name of Transmission System] on \_\_\_\_\_ [DATE]\_\_\_\_\_.
- (4) The Transmission System has provided documentation supporting full unrestricted release for Commercial Operation by [Transmission System as appropriate] on \_\_\_\_\_ [DATE]\_\_\_\_\_.
- (5) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on \_\_\_\_\_ [DATE]\_\_\_\_\_.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT I-2**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to MARIN CLEAN ENERGY ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The initial Facility performance test under Seller's EPC contract for the Facility demonstrated peak Facility electrical output of \_\_MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification ("**Certification**") of the Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to MARIN CLEAN ENERGY ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the EPC Contract related to the Facility was executed on \_\_\_\_\_;
2. the Limited Notice to Proceed with the construction of the Facility was issued on \_\_\_\_\_ (attached);
3. the Construction Start Date has occurred;
4. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

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

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

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K****BUYER BID CURTAILMENT AND BUYER CURTAILMENT ORDERS**

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

- Nameplate capacity of the Facility: 10.5 MW AC as defined in the Cover Sheet
- Minimum operating capacity: 0 MW
- Maximum number of hours annually for Buyer Curtailment Periods: 8760 hours
- The Facility will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 4.5.
- Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: 10 minutes
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): 10
- Maximum number of Buyer Bid Curtailment and Buyer Curtailment Orders per calendar day (if any such operational limitations exist): 10
- Minimum hold time between successive Buyer Bid Curtailment or Buyer Curtailment Orders: 2 minutes
- Ramp Rate: 2 MW/minute
- Increments of Contract Capacity that can be curtailed: 0.1 MW

Illustrative Example:

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

Exhibit K - 1

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

**EXHIBIT L**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

Beneficiary:

Marin Clean Energy, a California joint powers authority

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. [XXXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), 1125 Tamalpais Avenue, San Rafael, CA 94901, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Power Purchase and Sale Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry of \_\_\_\_\_, 201\_, subject to automatic extensions provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the

Exhibit L - 1

terms of this Letter of Credit will be duly honored upon presentation in person or by courier to the Issuer at [insert bank address] or by fax at facsimile no. (xxx) xxx-xxxx. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least sixty (60) days prior to any such expiry 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 expiry date will be honored.

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

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

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

[Bank Name]

---

[Insert officer name]

[Insert officer title]

Exhibit L - 2

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 2016 (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

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

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

You are hereby directed to make payment of the requested amount to Marin Clean Energy, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy, a California joint powers authority

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Exhibit L - 3

Name and Title of Authorized Representative

Date \_\_\_\_\_



**EXHIBIT M****BUYOUT OPTION**

(1) Buyout Option. So long as no Event of Default with respect to Buyer has occurred and is continuing, no later than ninety (90) days prior to the last day of each of (i) the seventh (7th) Contract Year of the Contract Term, (ii) the tenth (10<sup>th</sup>) Contract Year of the Contract Term, and (iii) the twentieth (20th) Contract Year of the Contract Term, if any, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility (the “**Buyout Option**”). If Buyer elects to make a purchase, Buyer shall pay to Seller a “**Buyout Payment**” within thirty (30) days prior to the last day of such Contract Year equal to the higher of the Minimum Purchase Price (as set forth in clause (3) below) or the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below. If Buyer does not deliver such Notice by the deadline set forth above for any purchase date, Buyer will be deemed to have elected not to exercise the Buyout Option with respect to, and only with respect to, the related purchase date. If the Buyout Option occurs under clauses (i) or (ii) above, subject to Section 2.1(d) of this Agreement, this Agreement shall terminate on the date of the closing of the sale of the Facility to Buyer as provided in clause (4) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit M, the Parties shall mutually agree upon an Independent Appraiser on or before the date that is sixty (60) days prior to the last day of (i) the seventh (7th) Contract Year of the Contract Term, (ii) the tenth (10<sup>th</sup>) Contract Year of the Contract Term, or (iii) the twentieth (20th) Contract Year of the Contract Term, if any, as the case may be. The Independent Appraiser shall determine, at equally shared expense of Buyer and Seller, the Fair Market Value of the Facility as of the date on which the Buyout Payment is to be paid. On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the Independent Appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single Independent Appraiser, each Party shall contract for an Independent Appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two Independent Appraisers.

(3) Minimum Purchase Price. The Minimum Purchase Price shall be:

Purchase Option Date:	Minimum Purchase Price:
Contract Year 7	\$ [REDACTED]
Contract Year 10	\$ [REDACTED]
Contract Year 20	\$ [REDACTED]

(4) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute

all documents necessary to cause title to the Facility to pass to Buyer on an as-is, where-is, with-all-faults basis; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Facility.

(5) Assignment and Assumption of Assumed Contracts and Transferred Permits. At the closing, Seller shall assign and be released from, and Buyer shall assume, and agree to pay, perform, fulfill and discharge all obligations of Seller under the Assumed Contracts and Transferred Permits, but only to the extent such obligations (i) arise after the closing, (ii) do not arise from or relate to any breach by Seller of any provision of any of such Assumed Contracts or Transferred Permits, (iii) do not arise from or relate to any event, circumstance or condition occurring or existing prior to the closing that, with notice or lapse of time, would constitute or result in a breach of any of such Assumed Contracts or Transferred Permits, and (iv) are ascertainable, in nature and amount, solely by reference to the express written terms of such Assumed Contracts or Transferred Permits. No later than thirty (30) days prior to the scheduled closing date, Seller shall provide Buyer with a list of Assumed Contracts and Transferred Permits.

(6) Consents. Seller and Buyer will make, and thereafter diligently pursue, all registrations, qualifications or filings and take all other actions necessary or appropriate to obtain any approval, consent, ratification, waiver, license, permit, certification, registration or other authorization (“**Consent**”) required to consummate the sale, assignments and transfers contemplated upon the exercise of the Buyout Option.

(7) Costs. Except as otherwise expressly provided in this Exhibit M, each of Buyer and Seller will bear its respective expenses incurred in connection with performance of its obligations under this Exhibit M and the transactions contemplated by the Buyout Option, including all fees and expenses of agents, representatives, counsel, and accountants. Buyer shall be responsible for (i) all filing and registration fees and other expenses incurred in connection with obtaining any Consent and (ii) all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed against Buyer or Seller by reason of the transfer of the Facility, the Assumed Contracts and Transferred Permits to Buyer under the Buyout Option and any deficiency, interest or penalty asserted with respect thereto.

(8) Definitions. For purposes of this Exhibit M, the following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**Assumed Contracts**” means all contracts entered into by Seller or by which Seller is bound relating to the Facility.

“**Fair Market Value**” means the amount a willing buyer would pay for the Facility and all rights and interests associated therewith, in an arm’s-length transaction, to a willing seller under no compulsion to sell on the applicable closing date, taking into account all relevant facts and circumstances relating to the Facility, including operation, maintenance and insurance costs, the cost of removing the Facility and restoring the Site to the condition required by the Sublease at the end of the Sublease term, rent payments under the Sublease and the cost of equipment replacement and repair, and assuming (i) delivery

of the expected generation for the then-remaining term of this Agreement (assuming exercise of Seller's right to extend the Delivery Term under Section 2.1(b)) at the Contract Price, as may be adjusted due to any material casualty or other loss event, real or threatened condemnation proceeding (other than any such proceeding instituted by Buyer or on its behalf), or other material adverse event affecting all or any portion of the Facility prior to and as of the closing date for the purchase under the Buyout Option and (ii) that the buyer of the Facility will receive an assignment of Seller's rights, and will assume Seller's obligations, as Sublessee under the Sublease.

**"Independent Appraiser"** shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Facility, and who specifically has prior experience valuing solar energy generating facilities. Except as may be otherwise agreed by the Seller and Buyer, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or advisor to, either Buyer or Seller or their respective Affiliates.

**"Transferred Permits"** means any approval, consent, waiver, exemption, variance, franchise, order, permit, authorization, notification, certification, registration, ruling, filing with, or right or license of or from a Governmental Authority relating to the Facility.

## PURCHASE AND SALE AGREEMENT

This Purchase and Sale Agreement (this “**Agreement**”), effective as of May \_\_\_\_, 2017 (the “**Effective Date**”), is by and between Marin Clean Energy, a California joint powers authority (“**Assignor**”), and MCE Solar One, LLC, a Delaware limited liability company (“**Assignee**”).

### RECITALS

WHEREAS, Assignor is engaged in the development of the 10.5 MW AC photovoltaic electric generating facility located in the City of Richmond, Contra Costa County, California known as the MCE Solar One project (the “**Project**”);

WHEREAS, Assignor and Assignee intend that, from and after the Closing Date (as defined below), Assignee continue all development of the Project to permit the Project to be constructed, owned, leased, financed, operated and maintained by Assignee, and Assignor and Assignee are entering into this Agreement to effectuate the sale and assignment to Assignee of all Project assets of Assignor required for such purpose; and

WHEREAS, Assignor desires to transfer all of its rights, title and interest in and to the property described on Part A of Schedule 1 (as supplemented as set forth in Section 8(a)(i), the “**Assigned Property**”) and the contracts listed on Part B of Schedule 1 (as supplemented as set forth in Section 8(a)(i), the “**Assigned Agreements**” and, together with the Assigned Property, the “**Assigned Assets**”), and to be released from all of its duties, obligations and liability under the Assigned Agreements from and after the Closing Date, upon payment of the Purchase Price (as defined below).

### AGREEMENT

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Interpretation. Except where otherwise expressly provided or unless the context otherwise necessarily requires, in this Agreement (including in the recitals hereto):

(a) Reference to a given Section, Subsection, clause or Schedule is a reference to a Section, Subsection, clause or Schedule of this Agreement.

(b) The terms “hereof”, “herein”, “hereto”, “hereunder” and “herewith” refer to this Agreement as a whole.

(c) Reference to a given agreement (including the Assigned Agreements), instrument, document or law is a reference to that agreement, instrument, document or law as modified, amended, supplemented and restated through the date as of which such

reference is made, and, as to any law, any successor law and including rules and regulations promulgated thereunder.

(d) Reference to a Person includes its successors and permitted assigns. For purposes hereof, “**Person**” means an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association or other entity.

(e) “Includes” or “including” means “including, for example and without limitation”.

2. Purchase and Sale. Upon the terms and conditions set forth in this Agreement, including satisfaction of the conditions precedent set forth in Section 9, at the Closing, Assignor shall sell, assign, grant, bargain, deliver, convey and transfer to Assignee all of Assignor’s right, title and interest in and to the Assigned Assets, and Assignee shall accept such purchase and assignment and assume all of Assignor’s duties, obligations and liability under the Assigned Agreements accruing from and after the Closing Date. Except as provided in the foregoing sentence, Assignee shall not assume any liabilities or obligations of Assignor of any kind, whether known or unknown, contingent, matured or otherwise, whether currently existing or hereinafter created. Without limiting the foregoing, the parties acknowledge that (i) the Assignment Agreement (the “**Stion Assignment Agreement**”), entered into as of May 5, 2016, among Stion Corporation, Stion MCE Solar One, LLC (“**Stion LLC**”) and Assignor, (ii) the Power Purchase and Sale Agreement (the “**Stion PPA**”), dated as of March 5, 2015, between Stion LLC and Assignor and (iii) the First Agreement (the “**First Agreement**”, and collectively with the Stion Assignment Agreement and the Stion PPA, the “**Excluded Agreements**”), entered into on June 16, 2016, between BAP Power Corporation (d/b/a Cenergy Power) and Assignor are not Assigned Agreements and that Assignee is not assuming any Excluded Agreement and has no rights or liability thereunder.

3. Compensation. As consideration for the Assigned Assets, Assignee agrees to compensate Assignor for the Assigned Assets on the Closing Date by payment to the account or accounts specified by Assignor in an amount of eight hundred thousand dollars (\$800,000.00) (the “**Purchase Price**”). The parties agree that the deposit (the “**Letter Agreement Deposit**”) made by Assignee to Assignor in the amount of one hundred five thousand dollars (\$105,000) under the letter agreement dated December 7, 2016 between Assignor and Assignee (the “**Letter Agreement**”) shall, notwithstanding any provision in the Letter Agreement to the contrary, be credited against the payment of the Purchase Price by Assignee at the Closing or, if applicable, refunded to Assignee in accordance with Section 25 or Section 27 of this Agreement. For the avoidance of doubt, the parties further agree and acknowledge that if the Closing occurs, the “Contingencies” under the Letter Agreement are deemed to be satisfied and that, if credited to the Purchase Price, the Letter Agreement Deposit will not also be credited to the Development Security (as defined in the PPA) as originally contemplated under the Letter Agreement.

4. Transfer Taxes; Tax Treatment of Compensation.

(a) All transfer, documentary, sales, use, stamp, registration, value added and other such taxes and fees (including any penalties and interest) incurred in connection with this Agreement shall be borne and paid by Assignee when due. Assignee shall, at its own expense, timely file any tax return or other document with respect to such taxes or fees (and Assignor shall cooperate with respect thereto as reasonably necessary).

(b) The parties agree that none of the Assigned Assets constitute goodwill and that no Internal Revenue Service Form 8594 will be filed in connection with the assignment of the Assigned Assets pursuant to this Agreement. The parties will report, act and file tax returns in all respects and for all purposes consistent with such agreement. The parties will not take any position (whether in audits, tax returns or otherwise) that is inconsistent with such agreement, except to the extent otherwise required by applicable law.

5. Representations and Warranties of Assignor. Except as set forth in Schedule 5, Assignor represents and warrants to Assignee that the statements contained in this Section 5 are true and correct as of the Effective Date and as of the Closing Date. For purposes of this Section 5, “Assignor’s knowledge,” “knowledge of Assignor” and any similar phrases shall mean the actual or constructive knowledge of any director or officer of Assignor, after due inquiry.

(a) Organization and Authority of Assignor; Enforceability. Assignor is a joint powers authority and a community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California. Assignor has full power and authority to enter into this Agreement, to carry out its obligations hereunder and to consummate the transactions contemplated hereby. The execution, delivery and performance by Assignor of this Agreement and the consummation of the transactions contemplated hereby have been duly authorized by all requisite action on the part of Assignor. This Agreement has been duly executed and delivered by Assignor and constitutes the legal, valid and binding obligation of Assignor, enforceable against Assignor 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.

(b) No Conflicts; Consents. The execution, delivery and performance by Assignor of this Agreement and the consummation of the transactions contemplated hereby do not and will not: (i) violate or conflict with the organizational documents of Assignor; (ii) violate or conflict with any judgment, order, decree, statute, law, ordinance, rule or regulation applicable to Assignor, the Assigned Assets or the Project; (iii) conflict with, or result in (with or without notice or lapse of time or both) any violation of, or default under, or give rise to a right of termination, acceleration or modification of any obligation or loss of any benefit under any contract or other instrument to which Assignor

is a party or to which any of the Assigned Assets are subject or which relates to the Project; or (iv) result in the creation or imposition of any encumbrance on the Assigned Assets or the Project. No consent, approval, waiver or authorization is required to be obtained by Assignor from any Person (including any governmental authority) in connection with the execution, delivery and performance by Assignor of this Agreement and the consummation of the transactions contemplated hereby, other than the consents set forth on Schedule 2, each of which has been obtained and is in full force and effect.

(c) Assigned Property. Assignor owns and has good title to the applicable Assigned Property, free and clear of encumbrances. There have not been any materials supplied or services rendered that could be the subject of a mechanics' lien on the Property (as defined in the Site Lease, and as used herein, the "**Property**") under California Civil Code Section 8400 *et. seq.*, for which amounts remain unpaid by Assignor or any of its affiliates. The Assigned Property is in good condition and is adequate for the uses to which it is being put, and none of the Assigned Property is in need of maintenance or repairs except for ordinary, routine maintenance and repairs that are not material in nature or cost.

(d) Project Documents. There are no agreements with respect to or relating to the Project other than the Excluded Agreements and the following documents: (w) the Assigned Agreements, (x) the PPA (as defined below), (y) the Sublease (as defined below), relating to that certain Solar Energy Facility Site Lease (the "**Site Lease**"), dated November 4, 2015, by and between Chevron Products Company, as lessor, and Assignor, as lessee, as amended by the First Amendment to Master Lease (as defined below) and (z) the Consent to Sublease (as defined below, and together with the Assigned Agreements, the PPA, the Sublease and the Site Lease, collectively, in each case, the "**Project Documents**"). The execution, delivery and performance by Assignor of the Project Documents and the consummation of the transactions contemplated thereby have been duly authorized by all requisite action on the part of Assignor. The Project Documents have been or on the Closing Date will be duly executed and delivered by Assignor, are or on the Closing Date will be in full force and effect and constitute or on the Closing Date will constitute the legal, valid and binding obligation of Assignor, enforceable against Assignor 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. Assignor has a valid leasehold interest in the Property. None of Assignor or, to Assignor's knowledge, any other party thereto is in breach of or default under (or is alleged to be in breach of or default under), or has provided or received any notice of any intention to terminate, any Assigned Agreement. No event or circumstance has occurred that, with or without notice or lapse of time or both, would constitute an event of default under any Project Document or result in a termination thereof or would cause or permit the acceleration or other changes of any right or obligation or the loss of benefit thereunder. No consent, approval, waiver or authorization is required to be obtained by Assignor from any Person

(including any governmental authority) in connection with the execution, delivery and performance by Assignor (or Assignee as its assignee) of the Project Documents, other than the consents set forth on Schedule 2, each of which has been obtained and is in full force and effect or will be obtained and in full force and effect at or prior to the Closing. True, complete and correct copies of each Assigned Agreement and of the Site Lease, and all amendments and supplements thereto, have been delivered by Assignor to Assignee.

(e) Permits.

(i) Part A of Schedule 3 sets forth a true, correct and complete list of all licenses, permits, certificates of authority, authorizations, approvals, registrations, franchises and similar consents and orders issued or granted by a governmental authority (collectively, “**Permits**”) with respect to the Project (the “**Project Permits**”). Part B of Schedule 3 sets forth a true, correct and complete list of all applications for Project Permits (“**Permit Applications**”).

(ii) To Assignor’s knowledge, each Project Permit is validly issued, final and in full force and effect and, if an appeal period is specified by a governmental rule, the appeal period has expired. All fees and charges with respect to the Project Permits and Permit Applications have been paid in full. Assignor is in compliance in all material respects with all applicable Project Permits. Assignor has not received any written notification from any governmental authority alleging default or violation of any Project Permits. To the knowledge of Assignor, there are no pending proceedings or proceedings threatened in writing, that seek the revocation, cancellation, suspension, lapse or adverse modification of any Project Permit. Assignor has delivered to Assignee true, correct and complete copies of each Project Permit and Permit Application.

(f) Rights Relating to the Project. Other than the Excluded Agreements, Project Permits, the PPA, the Sublease, the Consent to Sublease and the Site Lease, the Assigned Assets constitute all of the rights relating to the development, construction, ownership, operation and maintenance of the Project held by Assignor.

(g) Compliance With Laws. Assignor has complied, and is now complying, with all applicable federal, state and local laws and regulations applicable to the Project and the Property.

(h) Environmental Matters. To Assignor’s knowledge, no Release of Hazardous Material has occurred, and to Assignor’s knowledge, there is no investigation or inquiry by any governmental authority or any other Person with respect to the presence or Release of any Hazardous Material at, onto, from or under the Property. To Assignor’s knowledge, there are no pending or threatened Environmental Claims that have been asserted against Assignor or its affiliates or relating to the Project, or to Assignor’s knowledge, the Property. Assignor is not in material violation of, and has not



received any notice in writing that it is in violation of, any Environmental Law with respect to the Project or the Property. For purposes of this Section 5(h), the following capitalized terms shall have the following meanings:

**“Environmental Claim”** means any and all administrative or judicial actions, liens, written notices, written complaints or docketed legal proceedings, whether criminal or civil, relating to the Project or the Property based upon, alleging, asserting or claiming any actual or potential (a) violation of any Environmental Law or (b) liability under any Environmental Law for any investigation, cleanup, removal, remediation or response, including the costs thereof, natural resource damages, property damage, personal injury, fines or penalties arising out of, based on, resulting from or related to the presence, release or threatened Release into the environment, of any Hazardous Material.

**“Environmental Law”** means any law relating to (a) the protection of the air, water, land, natural resources or the environment or (b) the generation, use, handling, treatment, storage, disposal, cleanup, Release or transportation of any Hazardous Materials.

**“Hazardous Materials”** means any substance, waste, contaminant or material that is listed, defined, designated, classified or regulated as hazardous, radioactive or toxic, or as a pollutant or contaminant, under or pursuant to any Environmental Law.

**“Release”** means any disposal, discharge, injection, spill, leaking, leaching, dumping, pumping, pouring, emission, emptying, seeping or migration of any Hazardous Material into or upon any land or water or air or otherwise entering into the environment.

(i) Legal Proceedings. There is no claim, action, suit, proceeding or governmental investigation (**“Action”**) of any nature pending or, to Assignor’s knowledge, threatened against or by Assignor (A) relating to or affecting the Project; or (B) that challenges or seeks to prevent, enjoin or otherwise delay the transactions contemplated by this Agreement. No event has occurred or circumstances exist that may give rise to, or serve as a basis for, any such Action.

(j) Brokers. No broker, finder or investment banker is entitled to any brokerage, finder’s or other fee or commission in connection with the transactions contemplated by this Agreement based upon arrangements made by or on behalf of Assignor.

(k) Full Disclosure. No representation or warranty by Assignor in this Agreement, and no statement contained in any certificate or other document furnished or to be furnished to Assignee pursuant to this Agreement, contains any untrue statement of

a material fact, or omits to state a material fact necessary to make the statements contained therein, in light of the circumstances in which they are made, not misleading. Assignor has delivered or made available to Assignee true, correct and complete copies of all documents in its possession that it reasonably believes are material to Assignee's investment in the Project, and true copies of all amendments to such documents, and all other material information relevant to the Project. All such information provided to Assignee is, taken as a whole, accurate in all material respects and none of such information provided by or on behalf of Assignor contains an untrue statement of material fact or omits to state any material fact which is necessary in order to make the statements therein not misleading in any material respect.

(l) Project Expenses. Except as set forth on Schedule 4, there are no amounts which are due and unpaid under the Assigned Agreements or with respect to the Assigned Agreements.

6. Covenants.

(a) Conduct of Business Prior to the Closing. From the date hereof until the Closing, except as otherwise provided in this Agreement or consented to in writing by Assignee, Assignor shall (x) conduct the development of the Project in the ordinary course of business consistent with past practice; and (y) use reasonable best efforts to maintain and preserve intact the Project and the Assigned Assets. Without limiting the foregoing, from the date hereof until the Closing Date, Assignor shall:

- (i) preserve and maintain all Project Permits;
- (ii) pay the obligations in respect of the Project when due;
- (iii) maintain the properties and assets included in the Assigned Property in the same condition as they were on the Effective Date, subject to reasonable wear and tear;
- (iv) perform all of its obligations under all Assigned Agreements; and
- (v) comply in all material respects with all laws applicable to the Project or the ownership and use of the Assigned Assets.

(b) Access to Information. From the date hereof until the Closing, Assignor shall (i) afford Assignee and its Representatives (as defined below), during regular business hours, full and free access to and the right to inspect all of the real property, properties, assets, premises, books and records, contracts and other documents and data related to the Project, including the Assigned Assets; (ii) furnish Assignee and its Representatives with such information related to the Project as Assignee or any of its Representatives may reasonably request; and (iii) instruct the Representatives of Assignor to cooperate with Assignee in its investigation of the Project. Any investigation pursuant

to this subsection shall be conducted in such manner as not to interfere unreasonably with the development of the Project. No investigation by Assignee or other information received by Assignee shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Assignor in this Agreement. As used herein, “**Representative**” means, with respect to any Person, any and all directors, officers, employees, actual and prospective financing parties, consultants, financial advisors, counsel, accountants and other agents of such Person.

(c) No Solicitation of Other Bids. Assignor shall not, and shall not authorize or permit any of its affiliates or any of its or their Representatives to, directly or indirectly, (i) encourage, solicit, initiate, facilitate or continue inquiries regarding an inquiry, proposal or offer from any Person (other than Assignee or any of its Affiliates) relating to the direct or indirect disposition, whether by sale, merger or otherwise, of all or any portion of the Project or the Assigned Assets (a “**Proposal**”); (ii) enter into discussions or negotiations with, or provide any information to, any Person concerning a possible Proposal; or (iii) enter into any agreements or other instruments (whether or not binding) regarding an Proposal. Assignor shall immediately cease and cause to be terminated, and shall cause its Affiliates and all of its and their Representatives to immediately cease and cause to be terminated, all existing discussions or negotiations with any Persons conducted heretofore with respect to, or that could lead to, an Proposal.

(d) Notice of Certain Events. From the date hereof until the Closing, Assignor shall promptly notify Assignee in writing of:

(i) any event, occurrence, fact, condition or change that is, or could reasonably be expected to become, individually or in the aggregate, materially adverse to (x) the business, operations, condition (financial or otherwise) or assets of the Project or the Assigned Assets, (y) the value of the Project or the Assigned Assets, or (z) the ability of Assignor to consummate the transactions contemplated hereby on a timely basis (a “**Material Adverse Effect**”);

(ii) any notice or other communication from any Person alleging that the consent of such Person is or may be required in connection with the transactions contemplated by this Agreement;

(iii) any notice or other communication from any governmental authority in connection with the transactions contemplated by this Agreement; and

(iv) any actions commenced or, to Assignor’s knowledge, threatened against, relating to or involving or otherwise affecting the Project or the Assigned Assets that, if pending on the Effective Date, would have been required to have been disclosed by Assignor or that relates to the consummation of the transactions contemplated by this Agreement.

Assignee's receipt of information pursuant to this subsection (d) shall not operate as a waiver of, be deemed to amend or supplement or otherwise affect any representation, warranty or agreement given or made by Assignor in this Agreement.

(e) Closing Conditions. From the date hereof until the Closing, Assignor and Assignee shall use reasonable best efforts to take such actions as are necessary to expeditiously satisfy the closing conditions set forth herein.

7. Closing. Subject to the terms and conditions of this Agreement, the closing of the transactions contemplated by this Agreement (the "**Closing**") shall take place on the third (3<sup>rd</sup>) business day following satisfaction, or waiver by the parties, of the conditions precedent set forth in Section 9, or on such other date as the parties agree in writing (the "**Closing Date**"). Assignor shall provide Assignee with no less than fifteen (15) business days' (or such shorter period acceptable to Assignee) prior written notice of the proposed Closing Date.

8. Closing Deliverables.

(a) Assignor Deliverables. At the Closing, Assignor shall deliver to Assignee the following:

(i) a written update, supplement or amendment to Schedule 1 (Assigned Assets), Schedule 2 (Consents), Schedule 3 (Permits), Schedule 4 (Project Expenses) and Schedule 5 (Exceptions to Representations and Warranties), as may be required to make the representations and warranties set forth in Section 5 true and correct; provided, that no such update, supplement or amendment shall be made without the consent of Assignee and each shall be subject to the approval of Assignee and provided, further, that no such update, supplement or amendment shall cure any breach of any such representation or warranty made as of an earlier date;

(ii) a Bill of Sale, Assignment and Assumption Agreement in the form of Exhibit A (the "**Assignment**"), duly executed by Assignor;

(iii) a certificate, dated the Closing Date and signed by a duly authorized officer of Assignor, certifying: (y) as to true and complete copies of the formational, organizational and governing documents of Assignor, and all resolutions adopted by the board of directors or other governing body of Assignor authorizing the execution, delivery and performance of this Agreement, the Assignment, the PPA, the Sublease, the Consent to Sublease, and the First Amendment to Master Lease (as defined below); and (z) as to the incumbency of any Person executing this Agreement and any other document delivered hereunder;

(iv) the Power Purchase and Sale Agreement in the form of Exhibit B (the "**PPA**"), duly executed by Assignor;

(v) the Sublease Agreement providing for the sublease by Assignor to Assignee of the Property (as defined in the Site Lease) (the “**Sublease**”), duly executed by Assignor, and the Consent to Sublease providing for the consent by Chevron Products Company to the Sublease (the “**Consent to Sublease**”), duly executed by Assignor and Chevron Products Company, in each case in form and substance reasonably satisfactory to Assignee;

(vi) the First Amendment to Solar Energy Facility Site Lease (the “**First Amendment to Master Lease**”), duly executed by Chevron Products Company and Assignor, in form and substance reasonably satisfactory to Assignee;

(vii) the consents set forth in Schedule 2, each in form and substance reasonably satisfactory to Assignee and duly executed by the parties thereto;

(viii) recent bank statements from Wells Fargo Bank, National Association (the “**Escrow Agent**”) showing the amount then held in escrow under the Escrow Agreements listed in Part B of Schedule 1 (the “**Escrow Agreements**”);

(ix) an unconditional final lien waiver for the amount paid with respect to any item of Assigned Property constructed by a third party contractor for Assignor or its affiliate, each in form and substance reasonably satisfactory to Assignee;

(x) an estoppel certificate from Chevron Products Company as required by Section 12.2.1 of the Site Lease in form and substance reasonably satisfactory to Assignee; and

(xi) such other customary instruments of transfer, assumption, filings or documents, in form and substance reasonably satisfactory to Assignee, as may be required to give effect to this Agreement.

(b) Assignee Deliverables. At the Closing, Assignee shall deliver to Assignor (i) the Purchase Price, (ii) the Assignment, duly executed by Assignee, and (iii) the PPA, the Sublease and the Consent to Sublease, each duly executed by Assignee.

9. Conditions to Obligations of Assignee. The obligations of Assignee to consummate the transactions contemplated by this Agreement shall be subject to the fulfillment or Assignee’s waiver, at or prior to the Closing, of each of the following conditions:

(a) the representations and warranties of Assignor contained in this Agreement and any certificate or other writing delivered pursuant hereto shall be true and correct in all material respects on and as of the date hereof and on and as of the Closing Date with the same effect as though made at and as of such date (except those representations and warranties that address matters only as of a specified date, the accuracy of which shall be determined as of that specified date in all respects);

(b) Assignor shall have duly (i) performed and complied in all material respects with all agreements, covenants and conditions required by this Agreement to be performed or complied with by it prior to or on the Closing Date and (ii) delivered all deliverables specified in Section 8(a);

(c) Assignee shall have received evidence reasonably satisfactory to Assignee that the Assigned Assets are free and clear of all liens and encumbrances, including without limitation, receipt of UCC, judgment, litigation and tax lien searches on Assignor and any prior owners of the Assigned Assets;

(d) Assignee shall have received a title report for the Property of a recent date in form and substance reasonably satisfactory to Assignee;

(e) Assignee shall have received an ALTA survey of the Property of a recent date in form and substance reasonably satisfactory to Assignee, showing, among other things, the location of the exceptions to title noted in the title report delivered pursuant to Section 9(d); and

(f) from the Effective Date, there shall not have occurred any event or events that, individually or in the aggregate, with or without the lapse of time, could reasonably be expected to result in a Material Adverse Effect.

10. Purchased Assigned Assets “AS IS”; Assignee’s Acknowledgment Regarding Same. Assignee agrees, warrants, and represents that (a) Assignee is acquiring the Assigned Assets on an “AS IS” and “WITH ALL FAULTS” basis based solely on Assignee’s own investigation of the Assigned Assets and the representations and warranties of Assignor set forth above and (b) neither Assignor nor any representative of Assignor has made any warranties, representations or guarantees, express, implied or statutory, written or oral, in respect of the Assigned Assets, other than the representations and warranties of Assignor set forth above. Assignee agrees, warrants and represents that, except as set forth in this Agreement (including the representations and warranties of Assignor set forth above), Assignee has relied, and shall rely, solely upon Assignee’s own investigation of all such matters, and that Assignee assumes all risks with respect thereto.

11. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of this Agreement by facsimile transmission or other electronic means shall be deemed to be effective as manual delivery thereof.

12. Specific Performance. The parties agree that irreparable damage would occur if any provision of this Agreement were not performed in accordance with the terms hereof

and that the parties shall be entitled to specific performance of the terms hereof, in addition to any other remedy to which they are entitled at law or in equity.

13. Governing Law. This Agreement shall be governed by and construed and enforced in accordance with the laws of the state of California without regard to the conflicts of law provisions thereof. 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.

14. Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written notice from a 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, a 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. Expenses; Attorneys' Fees. In any proceeding brought to enforce this Agreement or because of the breach by a 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. Except as set forth in the prior sentence, all costs and expenses incurred in connection with this Agreement and the transactions contemplated hereby shall be paid by the party incurring such costs and expenses.

16. Amendments and Modifications. This Agreement may not be amended, supplemented or otherwise modified, nor may any obligations hereunder be deemed waived, except by a written instrument signed by each of the parties hereto.

17. Successors and Assigns. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.

18. Headings. The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

19. Severability. If any provision of this Agreement is invalid or unenforceable, the balance of this Agreement shall remain in effect, and this Agreement shall be interpreted so as to give full effect to its terms and still be valid and enforceable.

20. Entire Agreement. This Agreement constitutes the sole and entire agreement of the parties to this Agreement with respect to the subject matter contained herein and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to such subject matter.

21. Further Assurances. The parties agree to take all such further actions and execute, acknowledge and deliver all such further documents that are necessary or useful in carrying out the purposes of this Agreement and the transfer of the Assigned Assets to Assignee. Without limitation of the foregoing, Assignor agrees to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered to Assignee all such other acts, deeds, assignments, transfers, conveyances, powers of attorney, assurances, additional instruments, notices, and other documents all to more fully and effectively grant, convey and assign to Assignee the Assigned Assets conveyed hereby and intended so to be.

22. Indemnification.

(a) From and after the Closing Date, Assignor shall defend, indemnify and hold harmless Assignee and its affiliates and their respective officers, directors, employees, partners, managers, members, stockholders, counsel, accountants, financial advisers, agents, engineers and consultants from and against all claims, judgments, damages, liabilities, settlements, losses, costs and expenses, including reasonable attorneys' fees and disbursements ("Losses"), to the extent arising from or relating to (a) any inaccuracy in or breach of any of the representations or warranties of Assignor contained in this Agreement, or (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Assignor pursuant to this Agreement.

(b) From and after the Closing Date, Assignee shall defend, indemnify and hold harmless Assignor and its affiliates and their respective officers, directors, employees, partners, managers, members, stockholders, counsel, accountants, financial advisers, agents, engineers and consultants from and against all Losses, to the extent arising from or relating to (a) any inaccuracy in or breach of any of the representations or warranties of Assignee contained in this Agreement, or (b) any breach or non-fulfillment of any covenant, agreement or obligation to be performed by Assignee pursuant to this Agreement.

(c) Each party's aggregate obligation to indemnify for all matters under this Section 22 shall not exceed eight hundred thousand dollars (\$800,000), plus the reasonable costs and expenses incurred by such party for the defense of any claims. No claims for indemnification shall be recoverable hereunder until the aggregate amount of all losses exceeds fifty thousand dollars (\$50,000) (the "**Deductible**"), at which time the indemnifying party shall be required to indemnify for all Losses in excess of the Deductible subject to the limit set forth in this Section 22(c). Neither party shall be liable to the other party for any Losses based upon or arising out of any inaccuracy in or breach of any of the representations or warranties contained in this Agreement if the claiming party had actual knowledge of such inaccuracy or breach prior to the Closing.

(d) The rights and remedies provided in this Section are cumulative and are in addition to and not in substitution for any other rights and remedies available at law or in equity or otherwise.



(e) Each indemnified party will act in good faith to take commercially reasonable steps to mitigate all Losses, which steps shall include availing itself of any reasonably and commercially practicable defenses, limitations, rights of contribution, and claims against third Persons and other rights at law or equity, provided that once the indemnifying party assumes the defense of a claim, the indemnified party's obligations under this Section 22(e) in respect of the Losses relating to such claim shall be limited to providing reasonable cooperation with the indemnifying party in the defense of such claim and, prior to such time, the indemnified party's obligations under this Section 22(e) to pursue defenses, limitations, rights of contribution and claims against third parties shall be subject to the indemnifying party's payment of the costs thereof (including reasonable attorneys' fees).

(f) The indemnifying party shall assume and thereafter conduct (at its sole expense) the defense of any third party claim; provided, that the indemnifying party shall not consent to the entry of any judgment or enter into any settlement with any third party without the prior written consent of the indemnified party (not to be unreasonably withheld, delayed or conditioned).

(g) Unless and until the indemnifying party assumes the defense of the third party claim as provided above, the indemnified party may defend against the third party claim in any manner it may reasonably deem appropriate (at the indemnifying party's sole expense); provided, that to the extent that the indemnifying party is not provided with the opportunity to assume the defense of such third party claim, the indemnifying party shall not be responsible for the payment of any fees of counsel of the indemnified party in respect of such matter. In no event will the indemnified party consent to the entry of any judgment or enter into any settlement with respect to the third party claim without the prior written consent of the indemnifying party (not to be unreasonably withheld, delayed or conditioned) unless the indemnifying party disclaims liability for the indemnification of such third party claim.

23. Survival. Subject to the limitations and other provisions of this Agreement, the representations and warranties contained herein shall survive the Closing and shall remain in full force and effect until the date that is eighteen (18) months from the Closing Date. All covenants and agreements of the parties contained herein shall survive the Closing indefinitely or for the period explicitly specified therein. Notwithstanding the foregoing, any claims asserted in good faith with reasonable specificity (to the extent known at such time) and in writing by notice from the non-breaching party to the breaching party prior to the expiration date of the applicable survival period shall not thereafter be barred by the expiration of the relevant representation or warranty and such claims shall survive until finally resolved.

24. Consequential Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL,

EXEMPLARY, SPECIAL, INDIRECT, INCIDENTAL OR PUNITIVE DAMAGES (INCLUDING ANY DAMAGES ON ACCOUNT OF LOST PROFITS OR OPPORTUNITIES OR BUSINESS INTERRUPTION AND THE LIKE), WHETHER BY STATUTE, IN TORT OR UNDER CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, OTHER THAN DAMAGES THAT HAVE BEEN AWARDED TO A THIRD PARTY WHOSE CLAIM IS SUBJECT TO INDEMNIFICATION HEREUNDER.

25. Termination.

(a) This Agreement may be terminated at any time prior to the Closing:

(i) by the mutual written consent of Assignor and Assignee;

(ii) by Assignee by written notice to Assignor if: (x) Assignee is not then in material breach of any provision of this Agreement and there has been a breach, inaccuracy in or failure to perform any representation, warranty, covenant or agreement made by Assignor pursuant to this Agreement that would give rise to the failure of any of the conditions specified in Section 9 and such breach, inaccuracy or failure has not been cured by Assignor within ten (10) days of Assignor's receipt of written notice of such breach from Assignee; or (y) any of the conditions set forth in Section 9 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by May 1, 2017; or

(iii) by Assignor by written notice to Assignee if Assignor is not then in material breach of any provision of this Agreement and any of the conditions set forth in Section 9 shall not have been, or if it becomes apparent that any of such conditions will not be, fulfilled by May 1, 2017.

(b) In the event of the termination of this Agreement in accordance with this Article, this Agreement shall forthwith become void and there shall be no liability on the part of any party hereto except as set forth in Sections 22 and 23 and except that upon such termination Assignor shall return the Letter Agreement Deposit to Assignee.

26. Interconnection Agreements. From and after the Closing Date, Assignee agrees to pay when due all amounts payable under (x) Sections 4, 5 and 6 of that certain Small Generator Interconnection Agreement (SGIA), dated August 5, 2015, between Pacific Gas and Electric Company ("PG&E") and Stion LLC for Project Chevron 2MW 1122-WD (as assigned to Assignor and as otherwise amended and modified, "SGIA 1122") and (y) Sections 4, 5 and 6 of that certain Small Generator Interconnection Agreement (SGIA), dated February 16, 2016, between PG&E and Stion LLC for Project Chevron 8.5 1157-WD (as assigned to Assignor and as otherwise amended and modified, "SGIA 1157" and, together with SGIA 1122, the "SGIAs") (such amounts, collectively, the "IA Payments"). If the Closing occurs, within sixty (60) days following

receipt of the final accounting under Section 6 of each SGIA (each, a “**Final Accounting**”), Assignee shall calculate the sum of (a) the aggregate amounts held by the Escrow Agent under the Escrow Agreements on the Closing Date *less* (b) any IA Payments paid by Assignee after the Closing Date *plus* (c) any reimbursements to Assignee under Section 6 of each SGIA (such sum, the “**True-Up Amount**”). Assignee shall provide supporting documentation for the calculation of the True-Up Amount to Assignor. If the True-Up Amount is a positive number, and provided that all amounts held by the Escrow Agent under the Escrow Agreements have been released to Assignee, Assignee agrees to pay to Assignor, no later than sixty (60) days after each Final Accounting, such True-Up Amount, in immediately available funds. If the True-Up Amount is a negative number, Assignor agrees to pay to Assignee, no later than sixty (60) days after each Final Accounting, the absolute value of such True-Up Amount, in immediately available funds.

27. Assignee Termination Right. Notwithstanding anything to the contrary contained in this Agreement or any contract or agreement referred to herein, Assignee shall have the right to terminate the PPA and the Sublease (“**Termination Right**”) at any time prior to the Commercial Operation Date (as defined in the PPA) if, after request by Assignee, Chevron Products Company does not (a) consent to the grant of a mortgage or deed of trust on, and/or security interest in, Assignee’s rights under the Sublease and Assignee’s rights in the Project and the PPA to secure a loan or other financing of the Project (“**Project Loan**”), (b) enter into a customary lender’s consent with the Person(s) making the Project Loan which, among other things, requires that Chevron Products Company provide such Person(s) with notices of default under the Site Lease and a right to cure such defaults for a period of time in excess of the cure periods and grace periods in the Site Lease and permits such Person(s) to foreclose on the Sublease, the Project and the PPA and to transfer the Sublease, the Project and the PPA to a qualified successor (as agreed by Chevron Products Company and such Person(s)) in connection with the exercise of remedies under the Project Loan or (c) consent to the tax equity financing of the Project (including through a sale-leaseback financing of the Project) by Assignee if Assignee or the tax equity investor(s) reasonably determines that such consent is necessary under the Site Lease or the Consent to Sublease. If Assignee exercises the Termination Right by giving Assignor no less than fifteen (15) days’ notice of the termination date, the PPA and Sublease shall automatically terminate on the date specified as the termination date in such notice without further liability to either Assignee or Assignor under either agreement, other than the obligations expressly set forth below. In such event, Assignee and Assignor shall take all such actions and execute, acknowledge and deliver all such further documents that are reasonably necessary to (i) transfer all of Assignee’s rights, title and interest in and to the Assigned Assets back to Assignor (subject to receipt of required consents and approvals) and (ii) evidence the termination of the PPA and the Sublease (including filing of a memorandum of termination of the Sublease in the public records). After completion of the obligations in clause (ii) of the immediately preceding sentence and at the time of the transfer in clause

(i) of the immediately preceding sentence, Assignor shall refund the Purchase Price paid by Assignee and deliver the Development Security (as defined in the PPA) and the Deposit (as defined in the Sublease) to Assignee, and Assignor and Assignee shall have no further obligations under the PPA, Sublease or this Agreement after such termination date (other than obligations which expressly survive the termination of the PPA, Sublease or this Agreement under the terms of such agreements).

28. Notices. Any notice required, permitted or contemplated hereunder shall be in writing and addressed to the applicable party at the following address:

If to Assignor:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Attention: Greg Brehm, Director of Power Resources  
Fax No.: (415) 459-8095  
Phone No.: (415) 464-6037  
Email: gbrehm@mceCleanEnergy.org

*with a copy to (which shall not constitute notice):*

Troutman Sanders LLP  
100 SW Main St., Suite 1000  
Portland, Oregon 97204  
Attention: Stephen Hall  
Phone No.: (503) 290-2336  
Email: stephen.hall@troutmansanders.com

If to Assignee:

MCE Solar One, LLC c/o sPower  
Address: 2180 S 1300 E, Suite 600, Salt Lake City, UT 84106-2749  
Attention: General Counsel  
Phone No.: (801) 679-3500  
Fax No.: (801) 679-3501  
Email: legal@spower.com

Each notice required, permitted or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) business days following the date of the postmark on the envelope in which such notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next business day after the same is delivered by the sending party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the

sending party provides a copy of such electronic notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the Effective Date.

**ASSIGNOR:**

**MARIN CLEAN ENERGY,**  
a California joint powers authority

By: \_\_\_\_\_  
MCE Chairperson

By: \_\_\_\_\_  
MCE CEO

**ASSIGNEE:**

**MCE SOLAR ONE, LLC,**  
a Delaware limited liability company

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

**Schedule 1**  
**to Purchase and Sale Agreement**

**Assigned Assets**

Part A - Assigned Property

1. Bio Mitigation Fencing
2. Security Fencing
3. Surveys, designs, solar resource studies, geotechnical reports, soils reports, and other reports and studies relating to the Project
4. All building permit design sets submitted in connection with applications for a building permit
5. All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Stion Corporation, its officers, employees and agents in the course of implementing that certain First Agreement between MCE and Stion Corporation, dated October 27, 2014, as assigned and delivered to, or otherwise in the possession of, MCE pursuant to the Stion Assignment Agreement

Part B - Assigned Agreements

1. Small Generator Interconnection Agreement (SGIA), dated August 5, 2015, between Pacific Gas and Electric Company (“**PG&E**”) and Stion MCE Solar One, LLC (“**Stion LLC**”) for Project Chevron 2MW 1122-WD (“**SGIA 1122**”), as assigned to Marin Clean Energy (“**MCE**”) pursuant to the Assignment Agreement, dated May 5, 2016, among Stion Corporation, Stion LLC and MCE (the “**SGIA Assignment**”) (which assignment was consented to pursuant to the Consent to Assignment and Agreement, dated July 24, 2016, among Stion LLC, MCE and PG&E), as amended by the First Amendment to the Small Generator Interconnection Agreement, dated October 26, 2016, between MCE and PG&E
2. Small Generator Interconnection Request (Application Form), dated January 21, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1122-WD)
3. Fast Track Process Initial Review, dated February 5, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1122-WD)
4. Fast Track Process Supplemental Review, dated March 22, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1122-WD)
5. Small Generator Interconnection Agreement (SGIA), dated February 16, 2016, between PG&E and Stion LLC for Project Chevron 8.5 1157-WD (“**SGIA 1157**”), as assigned to MCE pursuant to the SGIA Assignment (which assignment was consented to pursuant to the Consent to Assignment and Agreement, dated August 4, 2016,

among Stion LLC, MCE and PG&E, as amended by the First Amendment to the Small Generator Interconnection Agreement, dated August 24, 2016, between MCE and PG&E

6. Small Generator Interconnection Request (Application Form), dated January 23, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
7. Electrical Independence Test Report, dated March, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
8. System Impact Study report, dated July 8, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
9. Facilities Study report, dated November 6, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
10. Escrow Agreement among Stion LLC, PG&E and Wells Fargo Bank, National Association (the "**Escrow Agent**"), dated August 24, 2015, relating to SGIA 1122, as assigned to MCE and amended pursuant to the Assignment and First Amendment to Escrow Agreement dated September 2, 2016, among Stion LLC, MCE, PG&E and the Escrow Agent
11. Escrow Agreement among Stion LLC, PG&E and the Escrow Agent, dated August 24, 2015, relating to SGIA 1157, as assigned to MCE and amended pursuant to the Assignment and First Amendment to Escrow Agreement dated September 2, 2016, among Stion LLC, MCE, PG&E and the Escrow Agent



**Schedule 2**  
**to Purchase and Sale Agreement**

**Consents**

1. Consent of PG&E to the Assignment of the SGIA 1122, the SGIA 1157 and the other related Assigned Agreements listed as items 2-4 and 6-9, inclusive, in Part B of Schedule 1
  
2. Consent of the Escrow Agent and of PG&E, to the assignment of the Escrow Agreements listed in Part B of Schedule 1

**Schedule 3**  
**to Purchase and Sale Agreement**

**Permits**

Part A - Project Permits

1. Resolution No. 2015-06 of the Board of Directors of Marin Clean Energy, certifying the final Environmental Impact Report for the MCE Richmond Solar PV Project, making environmental findings pursuant to the California Environmental Quality Act, and adopting a mitigation monitoring and reporting program, approved November 29, 2015.
2. City of Richmond Planning and Building Services Department Design Review Permit approval for Project No. PLN15-374, dated December 23, 2015.
3. City of Richmond Water Resource Recovery Department & Planning Department inspection approval, dated February 16, 2017.
4. San Francisco Bay Regional Water Quality Control Board, Water Board Staff Concurrence, Marin Clean Energy Solar Project, Chevron Richmond Refinery, Richmond, Contra Costa, dated December 7, 2015, File No. 2119.1007(ADF), CIWQS Place ID 252649.
5. Notice of Intent General Permit to Discharge Storm Water Associated with Construction Activity (WQ Order No. 2009-0009-DWQ), WDID 5S07C378496, approved December 22, 2016 by State Water Resources Control Board.

Part B - Permit Applications

1. City of Richmond Building Division Permit Application for Project #PLN15-374.

**Schedule 4**  
**to Purchase and Sale Agreement**

**Project Expenses**

	<b>Name</b>	<b>Memo</b>	<b>Unpaid Expense</b>
PG&E Electric Generation Interconnection	PG&E Electric Generation Interconnection	Approximate remaining interconnection expenses	258,533.00
		Estimated Remaining Expenses under Assigned Agreements	258,533.00

**Schedule 5**  
**to Purchase and Sale Agreement**

**Exceptions to Representations and Warranties**

None.

**Exhibit A**  
**to Purchase and Sale Agreement**

**Form of Bill of Sale, Assignment and Assumption Agreement**

**BILL OF SALE, ASSIGNMENT AND ASSUMPTION AGREEMENT**

This Bill of Sale, Assignment and Assumption Agreement (this “**Assignment**”), effective as of \_\_\_\_\_, 2017 (the “**Closing Date**”), is by and between Marin Clean Energy, a California joint powers authority (“**Assignor**”) and MCE Solar One, LLC, a Delaware limited liability company (“**Assignee**”).

WHEREAS, this Assignment is being delivered pursuant to the terms of that certain Purchase and Sale Agreement, dated as of May \_\_\_\_, 2017, between Assignor and Assignee (the “**PSA**”); and

WHEREAS, Assignor desires to transfer all of its rights, title and interest in and to the property described on Part A of Schedule 1 (the “**Assigned Property**”) and the contracts listed on Part B of Schedule 1 (the “**Assigned Agreements**”) and, together with the Assigned Property, the “**Assigned Assets**”), and to be released from all of its duties, obligations and liability under the Assigned Agreements from and after the Closing Date, upon payment of the Purchase Price.

NOW, THEREFORE, in consideration of the mutual covenants, terms and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. Capitalized terms used but not defined herein shall have the meanings set forth in the PSA.

2. Bill of Sale, Assignment and Assumption.

(a) Assignor hereby irrevocably sells, assigns, grants, bargains, delivers, conveys and transfers to Assignee all of Assignor’s right, title and interest in and to the Assigned Assets.

(b) Assignee hereby accepts such purchase and assignment and assumes all of Assignor’s duties, obligations and liability under the Assigned Agreements accruing from and after the Closing Date.

(c) The terms of the PSA, including, but not limited to, the representations, warranties, covenants, agreements and indemnities relating to the Assigned Assets are incorporated herein by this reference. Assignor and Assignee acknowledge and agree that the representations, warranties, covenants, agreements and indemnities contained in the PSA shall not be superseded hereby but shall remain in full force and effect to the full extent provided therein. In the event of any conflict or inconsistency between the terms of the PSA and the terms hereof, the terms of the PSA shall govern.

3. Lien Waivers. To the extent any item of Assigned Property was constructed by a third party contractor for Assignor or its affiliate, Assignor has delivered to Assignee on or prior to the Closing Date an unconditional final lien waiver for the amount paid with respect to such item of Assigned Property, and each such lien waiver is listed on Schedule 2 hereto.
4. Counterparts. This Assignment may be executed in any number of counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The delivery of an executed counterpart of this Assignment by facsimile transmission or other electronic means shall be deemed to be effective as manual delivery thereof.
5. Governing Law. This Assignment shall be governed by and construed and enforced in accordance with the laws of the state of California without regard to the conflicts of law provisions thereof. 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 ASSIGNMENT.
6. Amendments and Modifications. This Assignment may not be amended, supplemented or otherwise modified, nor may any obligations hereunder be deemed waived, except by a written instrument signed by each of the parties hereto.
7. Successors and Assigns. This Assignment shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and permitted assigns.
8. Severability. If any provision of this Assignment is invalid or unenforceable, the balance of this Assignment shall remain in effect, and this Assignment shall be interpreted so as to give full effect to its terms and still be valid and enforceable.
9. Further Assurances. The parties agree to take all such further actions and execute, acknowledge and deliver all such further documents that are necessary or useful in carrying out the purposes of this Assignment and the transfer of the Assigned Assets to Assignee. Without limitation of the foregoing, Assignor agrees to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered to Assignee all such other acts, deeds, assignments, transfers, conveyances, powers of attorney, assurances, additional instruments, notices, and other documents all to more fully and effectively grant, convey and assign to Assignee the Assigned Assets conveyed hereby and intended so to be.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the parties have executed this Assignment to be effective as of the Closing Date.

**ASSIGNOR:**

**MARIN CLEAN ENERGY,**  
a California joint powers authority

By: \_\_\_\_\_  
MCE Chairperson

By: \_\_\_\_\_  
MCE CEO

**ASSIGNEE:**

**MCE SOLAR ONE, LLC,**  
a Delaware limited liability company

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

**Schedule 1**  
**to Bill of Sale, Assignment and Assumption Agreement**

**Assigned Assets**

**Part A - Assigned Property**

1. Bio Mitigation Fencing
2. Security Fencing
3. Surveys, designs, solar resource studies, geotechnical reports, soils reports, and other reports and studies relating to the Project
4. All building permit design sets submitted in connection with applications for a building permit
5. All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Stion Corporation, its officers, employees and agents in the course of implementing that certain First Agreement between MCE and Stion Corporation, dated October 27, 2014, as assigned and delivered to, or otherwise in the possession of, MCE pursuant to the Stion Assignment Agreement

**Part B - Assigned Agreements**

1. Small Generator Interconnection Agreement (SGIA), dated August 5, 2015, between Pacific Gas and Electric Company (“**PG&E**”) and Stion MCE Solar One, LLC (“**Stion LLC**”) for Project Chevron 2MW 1122-WD (“**SGIA 1122**”), as assigned to Marin Clean Energy (“**MCE**”) pursuant to the Assignment Agreement, dated May 5, 2016, among Stion Corporation, Stion LLC and MCE (the “**SGIA Assignment**”) (which assignment was consented to pursuant to the Consent to Assignment and Agreement, dated July 24, 2016, among Stion LLC, MCE and PG&E), as amended by the First Amendment to the Small Generator Interconnection Agreement, dated October 26, 2016, between MCE and PG&E
2. Small Generator Interconnection Request (Application Form), dated January 21, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1122-WD)
3. Fast Track Process Initial Review, dated February 5, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1122-WD)
4. Fast Track Process Supplemental Review, dated March 22, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1122-WD)
5. Small Generator Interconnection Agreement (SGIA), dated February 16, 2016, between PG&E and Stion LLC for Project Chevron 8.5 1157-WD (“**SGIA 1157**”), as assigned to MCE pursuant to the SGIA Assignment (which assignment was consented to pursuant to the Consent to Assignment and Agreement, dated August 4, 2016,



among Stion LLC, MCE and PG&E, as amended by the First Amendment to the Small Generator Interconnection Agreement, dated August 24, 2016, between MCE and PG&E

6. Small Generator Interconnection Request (Application Form), dated January 23, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
7. Electrical Independence Test Report, dated March, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
8. System Impact Study report, dated July 8, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)
9. Facilities Study report, dated November 6, 2015, between PG&E and Stion LLC (PG&E WDT Queue #1157-WD)

**Schedule 2**  
**to Bill of Sale, Assignment and Assumption Agreement**

**Lien Waivers**

1. Unconditional Waiver and Release on Final Payment by Jensen Precast, dated May 3, 2017.
2. Unconditional Waiver and Release on Final Payment by Able Fence Co., Inc., dated February 2, 2017.
3. Unconditional Waiver and Release on Final Payment by Rincon Consultants, Inc., dated March 14, 2017.
4. Unconditional Waiver and Release upon Final Payment (Solar Array Site Grading) by Goebel Construction, Inc., dated May 1, 2017.
5. Unconditional Waiver and Release on Final Payment (Landfill 15 Erosion Control Installation) by Goebel Construction, Inc., dated February 1, 2017.
6. Unconditional Waiver and Release (Landfill 15 Liner Repair) by Goebel Construction, Inc., dated February 6, 2017.
7. Unconditional Waiver and Release upon Final Payment (Line Coating) by BAP Power Corporation, dba Cenergy Power, dated May \_\_\_\_, 2017.
8. Unconditional Waiver and Release on Final Payment by Net Electric, Inc., dated February 2, 2017.
9. Unconditional Waiver and Release upon Final Payment (Marin Clean Energy) by Wood Rodgers, Inc., dated February 6, 2017.
10. Unconditional Waiver and Release Upon Final Payment (Cenergy Power) by Wood Rodgers, Inc., dated February 6, 2017.

**Exhibit B**  
**to Purchase and Sale Agreement**

**Form of Power Purchase and Sale Agreement**

*[to be attached]*

*Execution Version***POWER PURCHASE AND SALE AGREEMENT****COVER SHEET**

**Seller:** MCE Solar One, LLC, a Delaware limited liability company

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

**Description of Facility:** 10.5 MW AC photovoltaic electric generating facilities located in the City of Richmond, Contra Costa County, California

**Guaranteed Commercial Operation Date:** 3/31/2018

**Milestones:**

<b>Identify Milestone</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	Complete
<b>Documentation of Conditional Use Permit if required:</b> CEQA <input type="checkbox"/> Cat Ex, <input type="checkbox"/> Neg Dec, <input type="checkbox"/> Mitigated Neg Dec, <input checked="" type="checkbox"/> EIR	Complete
<b>Seller's receipt of Phase I and Phase II Interconnection study results for Seller's Interconnection Facilities</b>	Phase I: Complete Phase II: Complete
<b>Executed Interconnection Agreements</b>	Phase I: Complete Phase II: Complete
<b>Financial Close</b>	Complete
<b>Construction Start</b>	Complete
<b>Initial Synchronization</b>	3/1/18
<b>Distribution Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)</b>	3/1/18
<b>Commercial Operation Date</b>	3/31/18

**Delivery Term:** Fifteen (15) Contract Years

**Delivery Term Expected Energy:**

<b>Contract Year</b>	<b>Expected Energy (MWh)</b>
1	22,082
2	21,972
3	21,862
4	21,752
5	21,644
6	21,535
7	21,428
8	21,321
9	21,214
10	21,108
11	21,002
12	20,897
13	20,793
14	20,689
15	20,585
If the Delivery Term is extended	
16	20,483
17	20,380

Contract Year	Expected Energy (MWh)
18	20,278
19	20,177
20	20,076

**Contract Price:**

Contract Year	Contract Price (\$/MWh)
1 – 15	\$ [REDACTED]
If applicable, 16-20	\$ [REDACTED]

**Product:**

- Energy
- Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - Portfolio Content Category 1
  - Portfolio Content Category 2
  - Portfolio Content Category 3
- Capacity Attributes, if any

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

**Development Security:** \$630,000 (\$60 per kW AC)

**Performance Security:** \$630,000 (\$60 per kW AC)

**Damage Payment:** *(As described under Damage Payment definition in Article 1)* \$1,496,453

**Notice Addresses:**

**Seller:**

MCE Solar One, LLC c/o sPower  
 Address: 2180 S 1300 E, Suite 600, Salt Lake City, UT 84106-2749  
 Attention: Control Room  
 Phone No.: (801) 679-3500  
 Fax No.: (801) 679-3501  
 Email: [operations@spower.com](mailto:operations@spower.com)

With a copy to:

MCE Solar One, LLC, LLC c/o sPower  
Address: 2180 S 1300 E, Suite 600, Salt Lake City, UT 84106-2749  
Attention: General Counsel  
Phone No.: (801) 679-3500  
Fax No.: (801) 679-3501  
Email: [legal@spower.com](mailto:legal@spower.com)

Scheduling:

Email: [realtime@spower.com](mailto:realtime@spower.com), [outages@spower.com](mailto:outages@spower.com)  
Phone No.: (855) 679-3553  
Fax No.: N/A

Buyer:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Attention: Greg Brehm, Director of Power Resources  
Fax No.: (415) 459-8095  
Phone No.: (415) 464-6037  
Email: [gbrehm@mceCleanEnergy.org](mailto:gbrehm@mceCleanEnergy.org)

With a copy to (which shall not be required for Notice purposes):

Troutman Sanders LLP  
100 SW Main St., Suite 1000  
Portland, Oregon 97204  
Attention: Stephen Hall  
Phone No.: (503) 290-2336  
Email: [stephen.hall@troutmansanders.com](mailto:stephen.hall@troutmansanders.com)

*[Signatures on following page.]*

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

**SELLER**

MCE Solar One, LLC, a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER**

Marin Clean Energy, a California joint powers authority

By: \_\_\_\_\_

MCE Chairperson

By: \_\_\_\_\_

MCE CEO



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**Exhibits:**

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## POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of May \_\_, 2017 (the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”).

### RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the photovoltaic electric generating facilities to be located in California in the location identified in Exhibit A, having a Guaranteed Capacity to Buyer of 10.5 MW AC (the “**Facility**”); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, all Energy generated by the Facility, all Green Attributes related to the generation of such Energy, and any Capacity Attributes;

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 3.13.

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

“**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, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean the power or authority, through ownership of voting securities, by contract or otherwise to direct the management of such Person.

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

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

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

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

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

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

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

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

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

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

(b) for the same time period as referenced in (a), Buyer or Buyer’s SC:

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

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

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

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

“**Buyer Curtailment Order**” means the instruction from Buyer to Seller to reduce generation from the Facility by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure Event and/or Curtailment Order.

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

**“Buyer’s WREGIS Account”** has the meaning set forth in Section 4.8(a).

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

**“CAISO Approved Meter”** means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility less Electrical Losses and Station Use.

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

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

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

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

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

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

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

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the Facility has commenced commercial operation (as such term is defined by and according to the CEC), that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio

Standard and that all Energy qualifies as generation from an Eligible Renewable Energy Resource for purposes of the Facility.

“**CEQA**” means the California Environmental Quality Act, Public Resources Code 21000 *et. seq.*, and the related Guidelines, California Code of Regulations, Title 14, Division 6, chapter 3, Sections 15000-15387.

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

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

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

Furthermore, it shall not be a “Change of Control” as a result of (i) transfers of any economic and voting interests to a YieldCo or a subsidiary of a YieldCo that is owned by the YieldCo and Affiliates of sPower and other Persons that have transferred projects to such subsidiary of the YieldCo or (ii) the financing of the Facility through a tax equity transaction under which the tax equity investors hold equity interests in Seller or such intermediate entities.

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

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

“**Commercial Operation Delay Damages**” means (a) for the first sixty (60) days of delay: Two Thousand Dollars (\$2,000) per day, and (b) thereafter, an amount equal to (i) the Development Security amount required hereunder less One Hundred Twenty Thousand Dollars (\$120,000), divided by (ii) sixty (60).

“**Compliance Actions**” has the meaning set forth in Section 3.13.

“**Compliance Expenditure Cap**” has the meaning set forth in Section 3.13.

“**Confidential Information**” has the meaning set forth in Section 19.1.

“**Construction Start**” shall have the meaning set forth in Exhibit B.

“**Construction Start Date**” shall have the meaning set forth in Exhibit B.

“**Contract Price**” has the meaning set forth in Exhibit C.



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

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

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

**“Cover Sheet”** means the cover sheet to this Agreement, agreed to by Seller and Buyer and incorporated into this Agreement.

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

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

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

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

(a) CAISO orders, directs, alerts, or provides notice to a Party, including through the ADS, to curtail Energy deliveries for: (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: (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

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

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

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

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

**"Daily Delay Damages"** means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

**"Damage Payment"** means the dollar amount that equals twelve (12) months minimum expected revenue of the Facility based on Guaranteed Energy Production, which will be calculated prior to the Effective Date.

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

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

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

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

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

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

**"Delivery Point"** means the PNode designated by the CAISO for the Facility.

**"Delivery Term"** shall mean the period of fifteen (15) Contract Years beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement or extended in accordance with Section 2.1(b).

“**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 specified on the Cover Sheet.

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

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

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

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

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

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

“**Energy**” means metered electrical energy, measured in MWh, which is produced by the Facility.

“**Energy Deviation**” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Facility; and (b) Metered Energy plus Deemed Delivered Energy.

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

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

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

“**Facility**” has the meaning set forth in the Preamble and as further described in Exhibit A attached hereto.

“**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).

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

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

**“Forced Outage”** means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from making power available at the Delivery Point and that is not the result of a Force Majeure Event.

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

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

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

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

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility, and its displacement of conventional Energy generation. Green Attributes include but are not limited to

Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production or investment tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

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

**"Guaranteed Capacity"** means 10.5 MW AC capacity measured at the Delivery Point.

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

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

**"Guaranteed Energy Production"** has the meaning set forth in Section 4.7.

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

**"Indemnified Party"** has the meaning set forth in Section 17.1.

**"Indemnifying Party"** has the meaning set forth in Section 17.1.

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

“**Installed Capacity**” means the actual generating capacity of the Facility in MW AC, measured at the Delivery Point, adjusted for ambient conditions on the date of the performance test, not to exceed the Guaranteed Capacity, as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto provided by Seller to Buyer.

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

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

“**Interconnection Agreement**” means the interconnection agreements pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

“**Joint Powers Act**” means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

“**Joint Powers Agreement**” means that certain Joint Powers Agreement dated December 19, 2008 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.

“**Lease**” means that certain Solar Energy Facility Site Lease, dated November 4, 2015, by and between Chevron Products Company (“Lessor”) and Buyer (“Lessee” under the Lease), whereby Lessor leased to Buyer certain real property located in the County of Contra Costa, State of California, totaling approximately sixty (60) gross acres.

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

lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

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

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

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

**“Lost Output”** has the meaning set forth in Exhibit F.

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

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

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

**“Multiplier”** has the meaning set forth in Section 3.9(b).

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

**“MWh”** means megawatt-hour measured in AC.

**“Negative LMP”** means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP at the Delivery Point is less than zero dollars (\$0).

**“Negative LMP Costs”** has the meaning set forth in Section 3.3.

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

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

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

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

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

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

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

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

“**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 Pacific Gas and Electric Company.

“**Parties**” and “**Party**” have the meaning set forth in the Preamble.

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

“**Performance Security**” means (i) cash or (ii) a Letter of Credit, in the amount specified on the Cover Sheet.

“**Permitted Transferee**” means any entity that has, or is controlled by another Person that has, all of the following:

(a) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

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

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



**“Planned Outage”** means the removal of the Facility from service to perform work on specific components that will result in an interruption in delivery of Energy to Buyer (e.g., for annual overhaul, inspections or testing).

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

**“Portfolio Content Category”** means PCC1, PCC2 or PCC3, as applicable.

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

**“Portfolio Content Category 2”** or **“PCC2”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

**“Portfolio Content Category 3”** or **“PCC3”** means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

**“Product”** means (i) Energy, (ii) Green Attributes (PCC1) and (iii) Capacity Attributes, if any.

**“Progress Report”** means a progress report including the items set forth in Exhibit G and delivered pursuant to Section 2.3.

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

**“Qualified Assignee”** means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s credit support or direct or indirect parent) under this Agreement.

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

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

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

**“Remedial Action Plan”** has the meaning in Section 2.4.

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

**“Renewable Energy Incentives”** means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

**“Replacement Capacity Attributes”** has the meaning set forth in Exhibit F.

**“Replacement Energy”** has the meaning set forth in Exhibit F.

**“Replacement Green Attributes”** has the meaning set forth in Exhibit F.

**“Replacement Green Attributes Value”** has the meaning set forth in Exhibit F.

**“Replacement Product”** has the meaning set forth in Exhibit F.

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

**“Resource Adequacy Requirements”** or **“RAR”** means the resource adequacy requirements applicable to Buyer pursuant to the Resource Adequacy Rulings, CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

**“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 laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, 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 The McGraw-Hill Companies, Inc.) or its successor.

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

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

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

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

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

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

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

“**Seller’s WREGIS Account**” has the meaning set forth in Section 4.8(a).

“**Settlement Amount**” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

“**Settlement Period**” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

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

**“sPower”** means Sustainable Power Group, LLC, a Delaware Limited Liability Company.

**“Station Use”** means:

(a) The electric 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 electric energy produced by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

**“Sublease”** means that certain Sublease Agreement, by and between Buyer (“Sublessor”) and Seller (“Sublessee”), for real property located in the County of Contra Costa, State of California, totaling approximately sixty (60) gross acres.

**“System Emergency”** means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

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

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

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

“**Ultimate Parent**” means FTP Power LLC.

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

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

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

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.8(e).

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

“**WREGIS Operating Rules**” means those operating rules and requirements adopted by WREGIS as of July 15, 2013, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

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

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

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

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

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

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

(k) the expression "and/or" shall connote "any or all of";

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

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

1.3 **Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to

assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

## **ARTICLE 2 TERM; CONDITIONS PRECEDENT**

### **2.1 Contract Term; Buyer Option.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("**Contract Term**").

(b) Seller may extend the Delivery Term for one (1) additional five (5) year period by delivering written notice of such extension to Buyer not less than six (6) months prior to the expiration of the fifteenth (15th) Contract Year, unless terminated earlier as set forth herein.

(c) [Reserved]

(d) 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 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

(e) Seller hereby grants to Buyer an option to purchase the Facility subject to the terms and at the time set forth in Exhibit M.

### **2.2 Conditions Precedent to Delivery Term.**

The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) Seller shall have delivered to Buyer certificates from a licensed professional engineer substantially in the form of Exhibits I-1 and I-2;

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

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

(d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all applicable conditions thereof have been satisfied and shall be in full force and effect;

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

(f) Seller (with the reasonable participation of Buyer) shall have completed (or, for items normally occurring after COD, expects to timely complete) 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 delivered the Performance Security to Buyer; and

(h) Seller has paid Buyer, or Buyer has drawn on the Development Security, for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

2.3 **Progress Reports.** The Parties agree time is of the essence in regards to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit G. At Buyer's request, Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller.

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer's failure to perform its obligations hereunder, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date (or the ninetieth (90<sup>th</sup>) day after the missed Milestone completion date, as applicable), a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to meet any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. If the missed Milestone(s) is



not the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

2.5 **Buyer's CEQA Obligations.** From and after the Effective Date, Buyer shall promptly initiate and diligently conduct all required review under CEQA, including coordinating with the "lead agency," and making such findings as are required or permitted to be made by a responsible agency under Section 15096 of the CEQA Guidelines with respect to the Facility. Upon completion of such review, Buyer shall provide and post such notices as are specified in Section 21152(a) of CEQA, as applicable.

### **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 and receive from Seller at the Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility for resale in the market, and retain and receive any and all related revenues. Except for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, or a Curtailment Order. In no event shall Seller have the right to procure any element of the Product from sources other than the Facility for sale or delivery to Buyer under this Agreement, except with respect to Replacement Product.

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

3.3 **Compensation.** Buyer shall compensate Seller for the Product in accordance with this Section 3.3.

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

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

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

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

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

3.4 **Imbalance Energy.** Buyer and Seller recognize that from time to time the amount of Metered Energy will deviate from the amount of Scheduled Energy. Buyer and Seller shall cooperate to minimize charges and imbalances associated with Imbalance Energy to the extent possible. To the extent there are such deviations, any CAISO costs or revenues assessed as a result of such Imbalance Energy shall be solely for the account of Buyer.

3.5 **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.

### 3.6 **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 3.6(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and

conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy**. If and to the extent the Facility generates Test Energy, Seller shall make available to Buyer and Buyer shall take all Test Energy made available. As compensation such Test Energy, Buyer shall pay Seller an amount equal to seventy-five percent (75%) of the Contract Price for each MWh of Test Energy delivered to Buyer as Metered Energy for the first twenty-eight (28) days that the Facility delivers Test Energy, and after such time the price for any additional Test Energy shall be Zero Dollars (\$0.00) per MWh.

3.8 **Capacity Attributes**. Seller, as assignee of the Interconnection Customer's (as defined in the Interconnection Agreement) rights and obligations under the Interconnection Agreement, shall be responsible for any additional unpaid cost and installation of any upgrades payable by the Interconnection Customer under the Interconnection Agreement.

(a) Throughout the Delivery Term and subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer any Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.13, Seller shall use commercially reasonable efforts to obtain and maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term and subject to Section 3.13, Seller hereby covenants and agrees to transfer any Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term and subject to Section 3.13, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) Seller shall use commercially reasonable efforts to cause the Facility to be listed as in construction in the NQC list upon issuing a notice to proceed for the construction of the Facility.

3.9 [Reserved]

3.10 **CEC Certification and Verification.** Subject to Section 3.13, 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 *RPS Eligibility Guidebook, Eighth Edition* (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.11 **Eligibility.** Subject to Section 3.13, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law, with Seller's costs not to exceed the Compliance Expenditure Cap.

3.12 **California Renewables Portfolio Standard.** Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.13 **Compliance Expenditure Cap.** If 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 this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable), the items listed in Sections 3.13(a), (b) and (c), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped at twenty thousand dollars (\$20,000.00) per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**"):

- (a) CEC Certification and Verification;
- (b) Green Attributes; and
- (c) Capacity Attributes.

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

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

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not

obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

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

## **ARTICLE 4 OBLIGATIONS AND DELIVERIES**

### **4.1 Delivery.**

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

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Metered Energy as part of the Product being delivered in accordance with this Agreement. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

### **4.2 Title and Risk of Loss.**

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

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

#### 4.3 Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon initial synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Product at the Delivery Point, provided that Buyer shall be responsible for all acts and omissions of any Buyer-designated third party Scheduling Coordinator and for all costs, charges and liabilities incurred by any such third party Scheduling Coordinator to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly. Buyer and any Buyer-designated third party Scheduling Coordinator shall comply with all obligations as Scheduling Coordinator for the Facility under the CAISO Tariff and shall conduct all scheduling in full compliance with the terms of this Agreement, all applicable Laws, and all CAISO requirements (including the CAISO Tariff). At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer or any Buyer-designated third party as Seller's Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the initial synchronization of the Facility to the CAISO Grid. On and after initial synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as Seller's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's or Buyer's designated third party's authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer or in connection with a Buyer Default. Buyer and Seller shall equally share the actual costs (including the costs of Buyer employees or agents if Buyer acts directly as the Facility's Scheduling Coordinator) reasonably incurred by Buyer as a result of Buyer or Buyer's designated third party acting as the Facility's Scheduling Coordinator, including the costs associated with the registration of the Facility with the CAISO and the installation, configuration, and testing of all equipment and software necessary for Buyer or Buyer's designated third party to act as the Facility's Scheduling Coordinator or to Schedule the Facility ("SC Set Up Fee"); provided that the SC Set Up Fee shall not exceed Five Thousand Dollars (\$5,000.00). Buyer (as Seller's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer or Buyer's designated third party (in either case, as Seller's SC) shall promptly make available to Seller all such information as is in its possession and necessary to comply with any requirements of Law applicable to Seller or the Facility, including information necessary for filing of "Electric Quarterly Reports" with FERC and information necessary to enable Seller to comply with NERC Generator Owner/Generator Operator requirements.

(b) Notices. Buyer (as Seller's SC) shall provide Seller with access to a web based system through which Seller shall submit to Buyer and CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, forecast data, all outage requests, Forced 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, or facsimile transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to the actions or inactions of Seller, which such actions or inactions are not consistent with the CAISO requirements, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as Seller's SC) shall be responsible for all settlement functions with CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO charges or penalties ("CAISO Charges Invoice") for which Seller is responsible under this Agreement. The CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from the CAISO that identifies any CAISO charges. The CAISO Charges Invoice shall include all information and supporting documentation from the CAISO reasonably necessary for Seller to validate any such charges or penalties, including information regarding Scheduling by Buyer (as Seller's SC). Notwithstanding the foregoing, Seller acknowledges that CAISO may issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within thirty (30) days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

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

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

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

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

(a) Annual Forecast of Average Expected Energy. No less than ninety (90) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Metered Energy, by hour, for the following calendar year in the form set forth in Schedule F-1, or as otherwise reasonably acceptable to 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 Buyer's designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

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



estimate based on information reasonably available to Buyer and Seller shall be liable for Scheduling and delivery based on such Monthly Delivery Forecast or Buyer's best estimate.

(d) Hourly and Sub-Hourly Forecasts. Notwithstanding anything to the contrary herein, in the event Seller makes a change to its Schedule on the actual date of delivery for any reason including Forced 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 Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

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

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

#### 4.5 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the Facility's generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K; and further provided that Buyer must avoid Buyer Curtailment Periods in order to satisfy the Lease requirement that the Facility generate electricity at least (i) one (1) day during any calendar month and (ii) two hundred (200) days during any calendar year and Buyer's failure to do so will be a Buyer default of this Agreement.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders (such as Negative LMPs pursuant only to a Buyer Curtailment Order or Buyer Bid Curtailment; provided that reductions in generation in accordance with either a Buyer Curtailment Order or a Buyer Bid Curtailment will be subject to the limitations set forth in Exhibit K and in Section 4.5(a), and further, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the applicable Contract Price.

(c) Reserved.

(d) Failure to Comply. Except if Buyer fails to comply with its obligations in the second proviso to Section 4.5(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Metered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh and, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(e) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.5(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

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

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

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

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

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

4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Product that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet (“**Expected Energy**”). During the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term (“**Performance Measurement Period**”). “**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to the total Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period multiplied by 0.8. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, Buyer’s failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of: (a) Adjusted Energy Production during such Performance Measurement Period; plus (b) the amount of Energy during such Performance Measurement Period with respect to which Seller has already paid liquidated damages in accordance with Exhibit F. 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 F; *provided* that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit F) that is (i) delivered to Buyer at NP 15 EZ Gen Hub, (ii) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Performance Measurement Period and within the same calendar year in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period, (iii) delivered upon a schedule reasonably acceptable to Buyer, and (iv) delivered to Buyer without imposing additional costs upon Buyer; *provided* further that Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 at the Contract Price.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Metered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.8(h), *provided* that Seller fulfills its obligations under Sections 4.8(a) through (h) below. In addition:

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

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Metered Energy for the same calendar month ("**Deficient Month**"). If any WREGIS Certificate Deficit is caused by Seller, or the result of any action or inaction, by Seller, then the amount of Metered Energy (MWh) in the Deficient Month shall be reduced by three times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller either (i) provides Replacement Product (as defined in Exhibit F) that is (A) delivered to Buyer at NP 15 EZ Gen Hub, (B) scheduled via day-ahead Inter-SC Trades within ninety (90) days after the conclusion of the applicable Deficient Month, (C) delivered upon a schedule reasonably acceptable to Buyer, and (D) delivered to Buyer without imposing additional costs upon Buyer; or (ii) provides replacement WREGIS Certificates from the Facility within ninety (90) days after the conclusion of the applicable Deficient Month and such WREGIS Certificates qualify for the same RPS compliance periods during which the WREGIS Certificate Deficit occurred.

(f) Without limiting Seller's obligations under this Section 4.8, 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.

(g) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Metered Energy in the same calendar month.

(h) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the contract.

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

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

## **ARTICLE 6 MAINTENANCE OF THE FACILITY**

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

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

## ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Energy produced by the Facility using CAISO Approved Meters. Such meters shall be maintained at Seller's cost. Meter data will be adjusted to reflect losses to the Point of Delivery. The meters shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the 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. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

### 8.1 **Invoicing.**

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

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

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

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

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

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof. Except for adjustments required due to a correction of data by the CAISO, any adjustment described in this Section 8.4 is waived if Notice of the adjustment is not provided within twelve (12) months after the invoice is rendered or subsequently adjusted.

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

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

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product and Deemed Delivered Energy during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, including pursuant to Section 4.3(d), shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer upon the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security by an amount equal to the amount of such Daily Delay Damages within fifteen (15) 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. Following the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall promptly return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have fifteen (15) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer (i) on the Commercial Operation Date if Seller elects to maintain its Development Security with Buyer as Performance Security or (ii) within ten (10) days following the Commercial Operation Date if Seller elects to provide a form of Performance Security which differs from the form of Development Security. Seller shall maintain the Performance Security in full force and effect until the Delivery Term has expired or terminated early, provided that Seller shall maintain an amount of Performance Security after the expiration or termination of the Delivery Term equal to the amount of all invoiced but unpaid amounts due from Seller to Buyer, provided further that such Performance Security shall not be



required to be in excess of the amount of the Performance Security required under this Agreement immediately prior to such expiration or termination. Buyer shall promptly return to Seller the portion of the Performance Security not allocated to invoiced but unpaid amounts pursuant to the prior sentence. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have fifteen (15) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

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

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

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

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

## ARTICLE 9 NOTICES

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

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

## ARTICLE 10 FORCE MAJEURE

### 10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; any Force Majeure as defined under the Lease or Sublease; any impediment to Seller’s ability to operate the Facility as a result of activities at the Site related to remediation of contamination, including repair, maintenance, alteration, or expansion of any monitoring or control system; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of

public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (v) 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; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; (vii) a Buyer Curtailment Period, or (viii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except if such failure is caused by a Force Majeure Event; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided, however*, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive three hundred sixty-five (365) day-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 those obligations specified in Section 2.1(d).

## ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default.** An “**Event of Default**” shall mean,

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within five (5) Business Days after Notice thereof;

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 3.3, and except for Seller’s failure to comply with a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order, the exclusive remedy for which is provided in Section 4.5(d)) and such failure is not remedied within thirty (30) days after Notice thereof or such longer period necessary to effect such remedy not to exceed ninety (90) days after Notice (A) if such remedy is feasible through the use of commercially reasonable efforts during such period and (B) so long as the Defaulting Party is diligently and continuously pursuing such remedy;

(iv) such Party becomes Bankrupt;

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

(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 to the Delivery Point for sale under this Agreement Energy that was not generated by the Facility;

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

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

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment, if such failure is not remedied within fifteen (15) Business Days after Notice thereof;

(v) [Reserved]

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within fifteen (15) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

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

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than thirty (30) days prior to the expiration of the outstanding Letter of Credit.

(c) With respect to Buyer as the Defaulting Party, the occurrence of any of the following:

(i) An event of default of Buyer has occurred under the Lease, applicable notice of such default has been provided to Buyer pursuant to the Lease, the applicable cure period, if any, in the Lease has expired and Lessor has provided notice of its exercise of its right to terminate the Lease; or, if for any other reason, the Lease terminates due to Buyer's failure to take any action required or not take any action prohibited of Buyer as Lessee under the Lease, including any Early Termination pursuant to Section 4.1 of the Lease, other than any termination arising from an act or omission of Seller as Sublessee under the Sublease; or

(ii) Any termination of the Sublease as a result of Buyer default thereof.

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

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

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

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

(d) to suspend performance; and

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

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

11.3 **Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party. For the avoidance of doubt, if Buyer is the Defaulting Party, the Parties acknowledge that Seller will be unable to sell Product to any third party due to the exercise of termination provisions of the Lease. Accordingly, for purposes of calculating the Termination Payment and Gains, Losses and Costs, it shall be reasonable for Seller to assume it receives no revenue associated with sales of Product in calculating such amounts and the value of any tax benefits, determined on an after-tax basis, lost due to Buyer's default (which Seller has not been able to mitigate after use of reasonable efforts) and amounts due in connection with the recapture of any Renewable Energy Incentives, if any, shall be deemed to be direct damages.

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

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's

calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 16.

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

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

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

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN AND EXCEPT AS SET FORTH IN SECTION 19.3, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION



WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING THE DAMAGE PAYMENT UNDER SECTION 11.2 AND THE TERMINATION PAYMENT UNDER SECTION 11.2, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

EXCEPT AS SET FORTH IN SECTION 19.3, THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

### **ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

The Facility is located in the State of California.

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

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

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

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

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

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

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

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

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

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

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

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

13.4 **Buyer Covenants.** Buyer covenants that it will remain throughout the Contract Term, a governmental entity, 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 will remain throughout the Contract Term, qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. Continuing throughout the Contract Term, all persons making up the governing body of Buyer will remain the elected or appointed incumbents in their positions and will continue to hold their positions in good standing in accordance with the Joint Powers Agreement and other Law.

## ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment; Change of Control of Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 15.1, a Lender as collateral, *provided however*, that in the case of (a) or (b), the assignee shall be a Qualified Assignee; *provided, further*, that in each such case of (a) and (b), Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then such transfer or assignment shall be void unless either Seller agrees in writing to remain financially responsible under this Agreement, or Seller's assignee provides payment security in an amount and form reasonably acceptable to Buyer; *provided, however*, that Seller may initiate the dispute resolution mechanism under Section 16.2 in order to determine whether Seller's assignee meets such definition. Any Change of Control of Seller (whether voluntary or by operation of Law) will require the prior written consent of Buyer, which consent shall not be unreasonably withheld; *provided*, that a Change of Control shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment by Seller, its successors or assigns under clause (a) or (b) of the first sentence of this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been delivered by Buyer.

## ARTICLE 15 LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2, Seller may, without the consent of Buyer, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Seller's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, Seller shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which Seller's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving Buyer such initial Notice, Seller shall promptly give Buyer Notice of any change in the information provided in the initial Notice or any revised Notice. Without limiting the foregoing, Buyer acknowledges that, subject to Seller's other obligations under this Agreement, Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities (1) utilizing tax equity investment, or (2) on a portfolio or other aggregated basis, which may include cross-collateralization or similar arrangements.

15.2 **Rights of Lender.** If Seller grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by Seller under this Agreement to prevent or cure a default by Seller in

accordance with Article 11 and such act performed by Lender shall be as effective to prevent or cure a default as if done by Seller.

(b) Buyer shall cooperate with Seller or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by Seller or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the rights of Lender upon foreclosure of Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; *provided*, however, that all costs and expenses (including reasonable attorney's fees) incurred by the non-granting Party in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of Seller or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of Seller hereunder; *provided* that, as except as provided in any direct agreements between the Buyer and any Lender as contemplated pursuant to Section 15.2(b), Buyer shall nevertheless be entitled to exercise all of its rights hereunder in the event that Seller or Lender fails to perform Seller's obligations under this Agreement.

15.3 **Cure Rights of Lender.** Buyer shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and Buyer shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. Buyer shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the Buyer and any Lender. Notwithstanding any such action by any Lender, Seller shall not be released and discharged from and shall remain liable for any and all obligations to the Buyer arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by Seller or Lender pursuant to Section 15.2(b).

## ARTICLE 16 DISPUTE RESOLUTION

16.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. TO THE EXTENT ENFORCEABLE AT SUCH TIME, EACH PARTY WAIVES ITS RESPECTIVE RIGHT TO ANY JURY TRIAL WITH RESPECT TO ANY LITIGATION ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

16.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute

quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

16.3 **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 17 INDEMNIFICATION

### 17.1 **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 17.1 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.

17.2 **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 17 may apply, the Party seeking indemnification (the "**Indemnified Party**") shall notify the other Party (the "**Indemnifying Party**") in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and

hold the other Party and its successors and assigns harmless under this Article 17, 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 18 INSURANCE

### 18.1 Insurance.

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

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

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

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

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

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

insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 1.1(f).

(g) 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 any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 18, 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 18 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 19 CONFIDENTIAL INFORMATION

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

19.2 Duty to Maintain Confidentiality. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient 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, or (d) to the recipient's Affiliates or to any of the recipient's or its Affiliates' employees, officers, directors, members, agents, representatives, counsel, accountants or auditors, in each case with a need to know such Confidential Information and which are subject to confidentiality agreements or other enforceable obligations no less protective than this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion provided such information does not include Confidential Information of the other Party. The Parties acknowledge and agree that this Agreement is subject to the California Public Records Act (Government Code Section 6250 et seq.). Nothing herein shall be deemed or construed to affect the rights or obligations of either Party to withhold or disclose any such Confidential Information in accordance with the California Public Records Act. The Parties will notify each other in writing promptly upon receipt of any request for information regarding this Agreement pursuant to the California Public Records Act.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

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

## ARTICLE 20 MISCELLANEOUS

20.1 **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.

20.2 **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 except pursuant to the process set forth in Section 20.8.

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

20.4 **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 buyer, 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).

20.5 **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.

20.6 **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, a non-Party or the FERC acting *sua sponte* 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).

20.7 **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.

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

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

20.10 **No Recourse to Members of Buyer.** Buyer is organized as a joint powers authority in accordance with the Joint Powers Act pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

20.11 **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 16. Notwithstanding the foregoing, 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.

## EXHIBIT A

### DESCRIPTION OF THE FACILITY

The Facility is composed of multiple projects on separate sites with multiple interconnection points and revenue meters as more specifically depicted in (i) Attachment 3 to the Small Generator Interconnection Agreement (SGIA) between Pacific Gas and Electric Company and Stion MCE Solar One, LLC (Chevron 2 MW 1122-WD) and (ii) Attachment 3 to the Small Generator Interconnection Agreement (SGIA) between Pacific Gas and Electric Company and Stion MCE Solar One, LLC (Chevron 8.5 MW 1157-WD).

**Site Name:** Chevron Solar Energy Facility Site

**APNs:** 561-100-034, 561-100-037, 561-100-038 and 561-120-015

**County:** Contra Costa

**Guaranteed Capacity:** MW AC: 10.5

**P-node/Delivery Point:** The Pnode/Delivery Point will be the Pnode assigned by the CAISO. There will be two interconnection points with capacities of 8.5MW to PG&E's 12.47 kV Richmond R 1120 distribution line and 2 MW to PG&E's 12.47 kV Richmond R 1129 distribution circuit.

**Additional Information:**

Provided that the PNode remains the same, Seller shall have an ability to add or remove APNs from the Site, provided that such APNs be in receipt of a final CUP, with Notice to Buyer.

## EXHIBIT B

### FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility.**
  - a. Seller shall cause construction to begin on the Facility within thirty (30) days after the date for completion of the Construction Start Milestone (as such date may be extended by the Development Cure Period, the "**Guaranteed Construction Start Date**"). Seller shall demonstrate the start of construction through mobilization to the Site by Seller and/or its designees, including the physical movement of soil at the Site, grading, grubbing, site access preparation or vegetation removal at a sufficient level to reasonably demonstrate that Seller is preparing the location for the construction of the Facility ("**Construction Start**"). On the date of the beginning of construction (the "**Construction Start Date**"), Seller shall deliver to Buyer a certificate substantially in the form attached as Exhibit J hereto.
  - b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable by Seller to Buyer for each day for which Construction Start has not begun by the Guaranteed Construction Start Date until Seller reaches Construction Start of the Facility subject to Section 6 of this Exhibit B. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
2. **Commercial Operation of the Facility.** "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the day that Commercial Operation is achieved.
  - a. Seller shall cause Commercial Operation for the Facility to occur by 3/31/2018 (as such date may be extended by the Development Cure Period (defined below), the "**Guaranteed Commercial Operation Date**"). Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

Exhibit B-1

- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
  - c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date until the Commercial Operation Date subject to Section 6 of this Exhibit B. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
3. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended on a day-for-day basis (the "**Development Cure Period**") for the duration of the following delays:
- a. Seller has not acquired all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit the Seller and Facility to make available and sell Product by the date for completion of the Construction Start Milestone, despite the exercise of diligent and commercially reasonable efforts by Seller;
  - b. a Force Majeure Event occurs;
  - c. the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point by the date for completion of the Initial Synchronization Milestone, despite the exercise of diligent and commercially reasonable efforts by Seller; or
  - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 3(d) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction

Exhibit B-2

that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

4. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to Thirty Thousand Dollars (\$30,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
5. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof, and Seller shall replenish the Development Security to its full amount within three (3) Business Days after such draw.
6. **Damage Payment.** Notwithstanding anything to the contrary in this Agreement, except for Buyer's termination right in connection with Section 11.1(b)(2) with respect to the Guaranteed Commercial Operation Date, Buyer's sole remedy and Seller's sole liability for the failure of Seller to meet the Guaranteed Construction Start Date and/or the Guaranteed Commercial Operation Date, or for Seller's failure to reach the Guaranteed Capacity shall be the payment by Seller of Daily Delay Damages, Commercial Operation Delay Damages, or Capacity Damages, as applicable, up to a total aggregate payment no more than the Damage Payment. For the avoidance of doubt, Seller's total liability to Buyer for Daily Delay Damages, Commercial Operation Delay Damages, Capacity Damages and any other damages under this Agreement prior to the start of the Delivery Term shall not exceed the Damage Payment. If Seller has paid damages to Buyer equal to the Damage Payment, either Party will have a right to terminate this Agreement and neither Party will have any liability to the other Party in connection with such termination except for the obligation specified in Section 2.1(d).

**EXHIBIT C**

**CONTRACT PRICE**

The Contract Price of the Product shall be:

<b>Contract Year</b>	<b>Contract Price</b>
1 – 15	\$ [REDACTED]
If the Delivery Term is extended, 16-20	\$ [REDACTED]



**EXHIBIT D**

**EMERGENCY CONTACT INFORMATION**

**BUYER:**

Greg Brehm, Director of Power Resources  
Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
Fax No: (415) 459-8095  
Phone No: (415) 464-6037  
Email: [gbrehm@mceCleanEnergy.org](mailto:gbrehm@mceCleanEnergy.org)

**SELLER:**

Sean McBride, General Counsel  
sPower  
2180 South 1300 East, Suite 600  
Salt Lake City, UT 84106  
Fax No: (801) 679-3501  
Phone No: (801) 679-3506  
Email: [smcbride@spower.com](mailto:smcbride@spower.com)

**EXHIBIT E**

**RESERVED**

Exhibit E - 1

**EXHIBIT F****GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION**

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

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

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

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

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

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

**Additional Definitions:**

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

**“Lost Output”** means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, or Curtailment Order. The additional MWh shall be calculated using the equation provided by Seller to reflect the potential generation of the Facility as a function of Available Capacity, solar insolation, panel temperature, and wind speed and using relevant Facility availability, weather, historical and

Exhibit F - 1

other pertinent data for the period of time during the period in which the Force Majeure Event, Buyer Default, or Curtailment Order occurred.

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

**“Replacement Energy”** means energy and associated Green Attributes produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

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

**“Replacement Product”** means (a) Replacement Energy and (b) Replacement Capacity Attributes.

**SCHEDULE F-1**

**AVERAGE EXPECTED ENERGY (Year 1, subsequent years to be degraded)**

Average Expected Energy, MWh Per Hour

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00	
<b>JAN</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.4	3.6	4.4	4.6	4.8	4.8	4.2	3.2	0.8	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
<b>FEB</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.5	2.5	4.7	5.4	6.0	5.9	5.8	4.9	4.0	2.0	0.2	(0)	(0)	(0)	(0)	(0)	(0)	(0)
<b>MAR</b>	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.8	4.6	6.6	7.3	7.6	7.9	7.5	7.3	6.1	3.6	0.9	(0)	(0)	(0)	(0)	(0)	(0)	(0)
<b>APR</b>	(0)	(0)	(0)	(0)	(0)	0	1.1	3.8	6.2	7.7	8.5	9.0	9.1	9.0	8.4	7.0	5.1	2.1	0.2	(0)	(0)	(0)	(0)	(0)	(0)
<b>MAY</b>	(0)	(0)	(0)	(0)	(0)	0.2	1.9	4.6	6.7	8.0	8.6	9.2	9.2	9.1	8.7	7.5	5.8	3.0	0.6	(0)	(0)	(0)	(0)	(0)	(0)
<b>JUN</b>	(0)	(0)	(0)	(0)	(0)	0.4	2.2	4.8	6.7	8.2	9.1	9.4	9.4	9.2	8.8	7.9	6.3	3.7	1.1	(0)	(0)	(0)	(0)	(0)	(0)
<b>JUL</b>	(0)	(0)	(0)	(0)	(0)	0.2	1.6	3.9	6.1	8.1	9.0	9.5	9.6	9.7	9.1	8.1	6.4	3.8	1.1	0	(0)	(0)	(0)	(0)	(0)
<b>AUG</b>	(0)	(0)	(0)	(0)	(0)	0	0.9	3.0	4.9	6.6	8.4	9.2	9.3	9.2	8.6	7.6	5.9	2.9	0.4	(0)	(0)	(0)	(0)	(0)	(0)
<b>SEP</b>	(0)	(0)	(0)	(0)	(0)	(0)	0.7	3.1	5.6	7.2	8.2	8.4	8.4	8.2	7.3	6.2	3.8	1.0	0	(0)	(0)	(0)	(0)	(0)	(0)
<b>OCT</b>	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.9	4.2	5.8	6.7	7.4	7.5	7.1	6.3	4.6	1.8	0.1	(0)	(0)	(0)	(0)	(0)	(0)	(0)
<b>NOV</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.7	3.0	4.7	5.4	5.8	5.4	4.9	4.2	2.6	0.5	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)
<b>DEC</b>	(0)	(0)	(0)	(0)	(0)	(0)	(0)	0.1	1.5	3.3	4.2	4.6	4.6	4.2	3.6	1.8	0.3	(0)	(0)	(0)	(0)	(0)	(0)	(0)	(0)

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**

### **PROGRESS REPORTING FORM**

Each Progress Report must include the following items:

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

**EXHIBIT H**  
**RESERVED**

Exhibit H - 1

**EXHIBIT I-1**

**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification ("**Certification**") of Commercial Operation is delivered by \_\_\_\_\_ [*licensed professional engineer*] ("**Engineer**") to Marin Clean Energy ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

- (1) Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity.
- (2) The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].
- (3) Authorization to parallel the Facility was obtained by the Transmission System, [Name of Transmission System] on \_\_\_\_\_ [DATE]\_\_\_\_\_.
- (4) The Transmission System has provided documentation supporting full unrestricted release for Commercial Operation by [Transmission System as appropriate] on \_\_\_\_\_ [DATE]\_\_\_\_\_.
- (5) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO tariff on \_\_\_\_\_ [DATE]\_\_\_\_\_.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_



**EXHIBIT I-2**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [licensed professional engineer] ("**Engineer**") to MARIN CLEAN ENERGY ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("**Agreement**") by and between [*SELLER ENTITY*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The initial Facility performance test under Seller's EPC contract for the Facility demonstrated peak Facility electrical output of \_\_MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT J**

**FORM OF CONSTRUCTION START DATE CERTIFICATE**

This certification ("**Certification**") of the Construction Start Date is delivered by [SELLER ENTITY] ("**Seller**") to MARIN CLEAN ENERGY ("**Buyer**") in accordance with the terms of that certain Power Purchase and Sale Agreement dated \_\_\_\_\_ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. the EPC Contract related to the Facility was executed on \_\_\_\_\_;
2. the Limited Notice to Proceed with the construction of the Facility was issued on \_\_\_\_\_ (attached);
3. the Construction Start Date has occurred;
4. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

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

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

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

**EXHIBIT K**

**BUYER BID CURTAILMENT AND BUYER CURTAILMENT ORDERS**

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

- Nameplate capacity of the Facility: 10.5 MW AC as defined in the Cover Sheet
- Minimum operating capacity: 0 MW
- Maximum number of hours annually for Buyer Curtailment Periods: 8760 hours
- The Facility will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 4.5.
- Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: 10 minutes
- Maximum number of Start-ups per calendar day (if any such operational limitations exist): 10
- Maximum number of Buyer Bid Curtailment and Buyer Curtailment Orders per calendar day (if any such operational limitations exist): 10
- Minimum hold time between successive Buyer Bid Curtailment or Buyer Curtailment Orders: 2 minutes
- Ramp Rate: 2 MW/minute
- Increments of Contract Capacity that can be curtailed: 0.1 MW

Illustrative Example:

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

Exhibit K - 1

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

**EXHIBIT L**  
**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXXXX]

Expiry Date:

Beneficiary:

Marin Clean Energy, a California joint powers authority

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. [XXXXXXXX] (the “Letter of Credit”) in favor of Marin Clean Energy, a California joint powers authority (“Beneficiary”), 1125 Tamalpais Avenue, San Rafael, CA 94901, for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Power Purchase and Sale Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall have an initial expiry of \_\_\_\_\_, 201\_, subject to automatic extensions provisions herein.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the

Exhibit L - 1

terms of this Letter of Credit will be duly honored upon presentation in person or by courier to the Issuer at [insert bank address] or by fax at facsimile no. (xxx) xxx-xxxx. Payment shall be made by Issuer in U.S. dollars with Issuer's own immediately available funds.

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least sixty (60) days prior to any such expiry 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 expiry date will be honored.

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

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

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

[Bank Name]

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[Insert officer name]

[Insert officer title]

Exhibit L - 2

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Power Purchase and Sale Agreement dated as of \_\_\_\_\_, 2016 (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

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

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

You are hereby directed to make payment of the requested amount to Marin Clean Energy, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy, a California joint powers authority

---

Exhibit L - 3

Name and Title of Authorized Representative

Date \_\_\_\_\_



**EXHIBIT M**

**BUYOUT OPTION**

(1) Buyout Option. So long as no Event of Default with respect to Buyer has occurred and is continuing, no later than ninety (90) days prior to the last day of each of (i) the seventh (7th) Contract Year of the Contract Term, (ii) the tenth (10<sup>th</sup>) Contract Year of the Contract Term, and (iii) the twentieth (20th) Contract Year of the Contract Term, if any, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility (the “**Buyout Option**”). If Buyer elects to make a purchase, Buyer shall pay to Seller a “**Buyout Payment**” within thirty (30) days prior to the last day of such Contract Year equal to the higher of the Minimum Purchase Price (as set forth in clause (3) below) or the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below. If Buyer does not deliver such Notice by the deadline set forth above for any purchase date, Buyer will be deemed to have elected not to exercise the Buyout Option with respect to, and only with respect to, the related purchase date. If the Buyout Option occurs under clauses (i) or (ii) above, subject to Section 2.1(d) of this Agreement, this Agreement shall terminate on the date of the closing of the sale of the Facility to Buyer as provided in clause (4) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit M, the Parties shall mutually agree upon an Independent Appraiser on or before the date that is sixty (60) days prior to the last day of (i) the seventh (7th) Contract Year of the Contract Term, (ii) the tenth (10<sup>th</sup>) Contract Year of the Contract Term, or (iii) the twentieth (20th) Contract Year of the Contract Term, if any, as the case may be. The Independent Appraiser shall determine, at equally shared expense of Buyer and Seller, the Fair Market Value of the Facility as of the date on which the Buyout Payment is to be paid. On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the Independent Appraiser shall deliver its determination of Fair Market Value to each of Buyer and Seller. In the event that Buyer and Seller cannot agree upon a single Independent Appraiser, each Party shall contract for an Independent Appraiser at its own expense, and the Fair Market Value shall be the simple average of the determinations of the two Independent Appraisers.

(3) Minimum Purchase Price. The Minimum Purchase Price shall be:

Purchase Option Date:	Minimum Purchase Price:
Contract Year 7	\$ [REDACTED]
Contract Year 10	\$ [REDACTED]
Contract Year 20	\$ [REDACTED]

(4) Passage of Title. Upon receipt of the Buyout Payment, the Parties shall execute

all documents necessary to cause title to the Facility to pass to Buyer on an as-is, where-is, with-all-faults basis; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Facility.

(5) Assignment and Assumption of Assumed Contracts and Transferred Permits. At the closing, Seller shall assign and be released from, and Buyer shall assume, and agree to pay, perform, fulfill and discharge all obligations of Seller under the Assumed Contracts and Transferred Permits, but only to the extent such obligations (i) arise after the closing, (ii) do not arise from or relate to any breach by Seller of any provision of any of such Assumed Contracts or Transferred Permits, (iii) do not arise from or relate to any event, circumstance or condition occurring or existing prior to the closing that, with notice or lapse of time, would constitute or result in a breach of any of such Assumed Contracts or Transferred Permits, and (iv) are ascertainable, in nature and amount, solely by reference to the express written terms of such Assumed Contracts or Transferred Permits. No later than thirty (30) days prior to the scheduled closing date, Seller shall provide Buyer with a list of Assumed Contracts and Transferred Permits.

(6) Consents. Seller and Buyer will make, and thereafter diligently pursue, all registrations, qualifications or filings and take all other actions necessary or appropriate to obtain any approval, consent, ratification, waiver, license, permit, certification, registration or other authorization (“**Consent**”) required to consummate the sale, assignments and transfers contemplated upon the exercise of the Buyout Option.

(7) Costs. Except as otherwise expressly provided in this Exhibit M, each of Buyer and Seller will bear its respective expenses incurred in connection with performance of its obligations under this Exhibit M and the transactions contemplated by the Buyout Option, including all fees and expenses of agents, representatives, counsel, and accountants. Buyer shall be responsible for (i) all filing and registration fees and other expenses incurred in connection with obtaining any Consent and (ii) all recording, documentary and transfer Taxes and any sales, use or other Taxes imposed against Buyer or Seller by reason of the transfer of the Facility, the Assumed Contracts and Transferred Permits to Buyer under the Buyout Option and any deficiency, interest or penalty asserted with respect thereto.

(8) Definitions. For purposes of this Exhibit M, the following terms, when used herein with initial capitalization, shall have the meanings set forth below:

“**Assumed Contracts**” means all contracts entered into by Seller or by which Seller is bound relating to the Facility.

“**Fair Market Value**” means the amount a willing buyer would pay for the Facility and all rights and interests associated therewith, in an arm’s-length transaction, to a willing seller under no compulsion to sell on the applicable closing date, taking into account all relevant facts and circumstances relating to the Facility, including operation, maintenance and insurance costs, the cost of removing the Facility and restoring the Site to the condition required by the Sublease at the end of the Sublease term, rent payments under the Sublease and the cost of equipment replacement and repair, and assuming (i) delivery

of the expected generation for the then-remaining term of this Agreement (assuming exercise of Seller's right to extend the Delivery Term under Section 2.1(b)) at the Contract Price, as may be adjusted due to any material casualty or other loss event, real or threatened condemnation proceeding (other than any such proceeding instituted by Buyer or on its behalf), or other material adverse event affecting all or any portion of the Facility prior to and as of the closing date for the purchase under the Buyout Option and (ii) that the buyer of the Facility will receive an assignment of Seller's rights, and will assume Seller's obligations, as Sublessee under the Sublease.

**"Independent Appraiser"** shall be an individual who is a member of a national accounting, engineering or energy consulting firm qualified by education, experience, and training to determine the value of solar generating facilities of the size and age and with the operational characteristics of the Facility, and who specifically has prior experience valuing solar energy generating facilities. Except as may be otherwise agreed by the Seller and Buyer, the Independent Appraiser shall not be (or within three (3) years before his or her appointment have been) a director, officer, or an employee of, or directly or indirectly retained as consultant or advisor to, either Buyer or Seller or their respective Affiliates.

**"Transferred Permits"** means any approval, consent, waiver, exemption, variance, franchise, order, permit, authorization, notification, certification, registration, ruling, filing with, or right or license of or from a Governmental Authority relating to the Facility.

## SUBLEASE AGREEMENT

This **SUBLEASE AGREEMENT** (this “**Sublease**”) is made and entered into as of May 1, 2017, by and between **Marin Clean Energy**, a California Joint Powers Authority (“**Sublessor**”), and **MCE Solar One, LLC**, a Delaware limited liability company (“**Sublessee**”).

WHEREAS, Chevron Products Company (“**Lessor**”) and Sublessor are parties to that certain Solar Energy Facility Site Lease dated as of November 4, 2015, as amended by that certain First Amendment to Solar Energy Facility Site Lease of even date herewith (as so amended, the “**Master Lease**”), whereby Lessor leased to Sublessor certain real property located in the County of Contra Costa, State of California, totaling approximately fifty (50) gross acres, as more particularly described in the Master Lease, upon the terms and conditions contained therein (the “**Property**”). All initially capitalized terms used herein shall have the same meanings ascribed to them in the Master Lease unless otherwise defined herein. A copy of the Master Lease is attached hereto as Exhibit “A”.

WHEREAS, Sublessor and Sublessee desire to enter into a sublease with respect to the Property on the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. Sublease. Sublessor hereby subleases and demises to Sublessee and Sublessee hereby hires and subleases from Sublessor the entirety of the Property and Sublessor hereby grants to Sublessee a non-exclusive right to use the Permitted Roadways, upon and subject to the terms, covenants and conditions hereinafter set forth.

2. Sublease Term.

(a) The term of this Sublease (“**Term**”) shall commence on the date hereof (the “**Sublease Commencement Date**”), and end, unless sooner terminated as provided herein, on the date that is one hundred twenty (120) days after the twenty (20) year anniversary of the Commercial Operation Date (as defined in the PPA) (the “**Sublease Expiration Date**”).

(b) If for any reason the PPA is terminated, Sublessee may terminate the Sublease by giving Sublessor written notice of termination. Upon the purchase of the Solar Project by Sublessor pursuant to the PPA, this Sublease shall automatically be terminated.

3. Use. The Property and the Permitted Roadways shall be used and occupied by Sublessee solely and exclusively for the permitted purposes set forth in Sections 3.1, 3.2, 3.3 and 3.4(b) of the Master Lease, in compliance with the Master Lease and for no other purpose, subject to Lessor’s reserved rights.

4. Security Deposit. Concurrently with the execution of this Sublease, Sublessee shall deposit with Sublessor the sum of One Hundred Thousand and 00/100 Dollars

(\$100,000.00) (the “**Deposit**”), which shall be held by Sublessor as security for the full and faithful performance by Sublessee of its covenants and obligations under this Sublease. The Deposit is not an advance Rent deposit, an advance payment of any other kind, or a measure of Sublessor’s damages in case of Sublessee’s default. If Sublessee defaults in the full and timely performance of any or all of Sublessee’s covenants and obligations set forth in this Sublease, then, after the expiration of any applicable notice and cure period, Sublessor may, from time to time, without waiving any other remedy available to Sublessor, use the Deposit, or any portion of it, to the extent necessary to cure or remedy the default or to compensate Sublessor for all or a part of the damages sustained by Sublessor resulting from Sublessee’s default. Sublessee shall, within ten (10) business days after written demand therefor, pay to Sublessor the amount so applied in order to restore the Deposit to its original amount. Sublessee waives any restrictions on use of the Deposit set forth in California Civil Code Section 1950.7 to the extent inconsistent with the permissible uses of the Deposit agreed to above. Sublessor shall not be required to maintain the Deposit separate and apart from Sublessor’s general or other funds and Sublessor may commingle the Deposit with any of Sublessor’s general or other funds. Sublessee shall not at any time be entitled to interest on the Deposit. The Deposit, less any portion thereof which Sublessor is entitled to retain, shall be returned to Sublessee within thirty (30) days following the expiration of the Term or the date on which the Sublessee vacates the Property. Sublessor’s obligations to return the Deposit as set forth above shall survive the termination of this Sublease.

5. Incorporation of Terms of Master Lease.

(a) This Sublease is subject and subordinate to the Master Lease. Subject to the modifications set forth in this Sublease, the terms of the Master Lease are incorporated herein by reference, *mutatis mutandis*, and shall, as between Sublessor and Sublessee (as if they were “Lessor” and “Lessee,” respectively, under the Master Lease) constitute the terms of this Sublease except to the extent that they are modified by, the terms of this Sublease. In the event of any inconsistencies between the terms and provisions of the Master Lease and the terms and provisions of this Sublease, solely as between Sublessor and Sublessee, the terms and provisions of this Sublease shall govern. Sublessee acknowledges that it has reviewed the Master Lease and is familiar with the terms and conditions thereof.

(b) For the purposes of incorporation herein, the terms of the Master Lease are subject to the following additional modifications:

(i) In all provisions of the Master Lease (under the terms thereof and without regard to modifications thereof for purposes of incorporation into this Sublease) requiring the approval or consent of Lessor, Sublessee shall be required to obtain the approval or consent of both Sublessor and Lessor.

(ii) In all provisions of the Master Lease requiring Lessee to submit, exhibit to, supply or provide Lessor with evidence, certificates, or any other matter or thing, Sublessee shall be required to submit, exhibit to, supply or provide, as the case may be, the same to both Lessor and Sublessor.

(iii) The following provisions of the Master Lease shall not apply to this Sublease: (A) the right to renew the Term (as defined in the Master Lease) for the Extension Period under Section 4 of the Master Lease; (B) the initial sentence of Section 11.1 (Assignment and Subletting Prohibited); and (C) Sections 5.4 (Security Deposit), 6.11 (Viewing Platform), 11.2 (Permitted Assignment to Government Entity), 11.3 (Permitted Sublet for Development), 11.4 (Lessor's Right of First Offer), 12.1 (Lessor's Security), 16.14 (Memorandum of Lease) and 16.15 (No Recourse to Members of Lessee) and Exhibit D (Memorandum of Lease) of the Master Lease.

(iv) Sublessor may exercise early or partial termination rights with respect to this Sublease following an Early Termination Event Date or a Partial Termination Event Date, solely if and to the extent that Lessor exercises its early termination or partial termination rights pursuant to Sections 4.1 and 4.2 of the Master Lease.

(v) Notwithstanding the availability of insurance, in the event that the Solar Project or the Property is destroyed or materially damaged not as a result of Sublessee's gross negligence or intentional acts and the Solar Project or the Property is rendered permanently unusable for Solar Operations, Sublessee shall have the right to terminate this Sublease.

(vi) Annual Rent under this Sublease shall be \$1.00 for the Term and shall not be increased to Fair Market Rent, including in the event of an increase to Fair Market Rent under the Master Lease, provided that Annual Rent under this Sublease shall be increased to Fair Market Rent if (x) Annual Rent is increased under the Master Lease to Fair Market Rent at the fifteenth (15th) or twentieth (20th) anniversaries of the Effective Date and (y) the PPA has been terminated by Sublessor as a result of a default by Sublessee thereunder.

(vii) The deadline for Sublessee to perform its obligations to remove alterations and improvements installed on the Property, repair damage, and restore the Property, as set forth in the first sentence of Section 6.9 of the Master Lease (as incorporated herein by reference pursuant to Section 5(a)), shall be the Sublease Expiration Date (instead of sixty (60) days prior to the Sublease Expiration Date).

(viii) Subject to Lessor's approval right with respect to certain changes in the manager of Sublessee or direct or indirect transfers of more than 50% of the interests in Sublessee, as set forth in Section 4.5 of the Consent (as defined below), the last three sentences of Section 11.1 of the Master Lease shall not apply to this Sublease so long as the Sublessee is MCE Solar One, LLC.

(c) During the Term, Sublessee shall maintain the insurance required under Section 8.2 of the Master Lease, on all of the terms and conditions of the Master Lease, including the subrogation waiver pursuant to Section 8.2. All such policies shall name Sublessor, Lessor and any other party required to be so named under the Master Lease as additional insureds thereunder and shall be with carriers reasonably acceptable to Sublessor

and, in all events, in accordance with the requirements of the Master Lease except as otherwise provided hereinabove.

(d) Sublessor shall remain a governmental entity or joint powers authority, and Sublessor or an Approved Off-Taker shall remain the power off-taker pursuant to the PPA at all times during the Term as required under the Master Lease, except Sublessee may sell electricity, capacity and other products from the Solar Project to the power markets if the PPA terminates and no replacement PPA has been entered into.

(e) In the event that an action is taken against Sublessor or Sublessee regarding a Claim Against Lessee or a Lessor Claim for which Sublessee is or may be liable under the Sublease, Sublessee shall have the right, at its own cost, to assume and conduct the defense in its own name. Sublessor shall make available all information and assistance reasonably available and necessary for the defense of such third-party claim as Sublessee may reasonably request (including exercise by Sublessor of its rights under the Master Lease in connection therewith as directed by Sublessee) and cooperate with Sublessee in such defense.

6. Sublessee's Obligations. Sublessee covenants and agrees that all obligations of Sublessor under the Master Lease shall be done or performed by Sublessee with respect to the Property, except as otherwise provided by this Sublease, and Sublessee's obligations under this Sublease shall run to Sublessor and, to the extent such obligations are also obligations of Sublessor under the Master Lease, to Lessor. Sublessee agrees to indemnify Sublessor, and hold it harmless, from and against any and all claims, damages, losses, expenses and liabilities (including reasonable attorneys' fees) incurred as a result of Sublessee's negligence, intentional acts, or the non-performance, non-observance or non-payment of any of Sublessor's obligations under the Master Lease which, as a result of this Sublease, became an obligation of Sublessee from and after the Sublease Commencement Date. If Sublessee makes any payment to Sublessor pursuant to this indemnity, Sublessee shall be subrogated to the rights of Sublessor concerning said payment. In case any action or proceeding is brought against Sublessor and such claim is a claim for which Sublessee is obligated to indemnify Sublessor under this Section 6, Sublessee shall, upon request by Sublessor, resist and defend such action or proceeding using counsel reasonably acceptable to Sublessor. Sublessee shall not do, nor permit to be done, any act or thing which is, or with notice or the passage of time would be, a default under this Sublease. Such obligations shall survive the termination of this Sublease.

7. Sublessor's Obligations. Sublessor covenants and agrees that all obligations of Sublessor under the Master Lease, other than those which are to be done or performed by Sublessee, shall be done or performed by Sublessor. Sublessor agrees that Sublessee shall be entitled to receive all services and repairs to be provided by Lessor to Sublessor under the Master Lease. Sublessee shall look solely to Lessor for all such services and repairs and shall not, under any circumstances, seek nor require Sublessor to perform any of such services or repairs, nor shall Sublessee make any claim upon Sublessor for any damages which may arise by reason of Lessor's default under the Master Lease; provided, however, Sublessor shall provide all necessary assistance and cooperation to Sublessee to enforce Sublessor's rights under the Master Lease to compel performance by Lessor with respect to such services or repairs to which Sublessee is entitled. Any condition resulting from a default by Lessor shall not constitute as between Sublessor and Sublessee an eviction, actual or constructive, of

Sublessee and no such default shall excuse Sublessee from the performance or observance of any of its obligations to be performed or observed under this Sublease, or entitle Sublessee to receive any reduction in or abatement of the Rent provided for in this Sublease unless and to the extent Sublessor is excused from performance, or entitled to a reduction or abatement of its rental obligations to Lessor under the Master Lease also. In furtherance of the foregoing, Sublessee does hereby waive any cause of action and any right to bring any action against Sublessor by reason of any act or omission of Lessor under the Master Lease, subject to the right of assistance and cooperation from Sublessor described above. Sublessor shall extend all reasonable cooperation to Sublessee (at no material cost or liability to Sublessor) to enable Sublessee to receive the benefits under this Sublease, as the same are dependent upon performance under the Master Lease. Sublessor shall provide all necessary assistance and cooperation to Sublessee to enforce Sublessor's rights under the Master Lease and to compel performance by Lessor under the Master Lease to which Sublessee (or Sublessor, as appropriate) is entitled. Sublessor may not assign the Master Lease, sublet the Property or Solar Project or any part thereof, or any right or privilege appurtenant thereto, encumber its interest under the Master Lease or any rights of Sublessor under the Master Lease, enter into any license or concession agreement respecting all or any portion of the Property, or suffer any other person to occupy or use the Property or any portion thereof without the prior written consent of Sublessee, which consent may be given or withheld in Sublessee's sole discretion. Sublessor agrees to indemnify Sublessee, and hold it harmless, from and against any and all claims, damages, losses, expenses and liabilities (including reasonable attorneys' fees) incurred as a result of the non-performance, non-observance or non-payment of any of Sublessor's obligations under this Sublease and the Master Lease except obligations under the Master Lease which Sublessee is obligated to perform under this Sublease. If Sublessor makes any payment to Sublessee pursuant to this indemnity, Sublessor shall be subrogated to the rights of Sublessee concerning said payment. In case any action or proceeding is brought against Sublessee and such claim is a claim for which Sublessor is obligated to indemnify Sublessee under this Section 7, Sublessor shall, upon notice from Sublessee, resist and defend such action or proceeding (by counsel reasonably acceptable to Sublessee). Such obligations survive the termination of this Sublease.

8. Default by Sublessee. In the event Sublessee shall be in default of any covenant of, or shall fail to honor any obligation under, this Sublease, then, after the expiration of any applicable notice and cure period, Sublessor shall have available to it against Sublessee all of the remedies available to Lessor under the Master Lease in the event of a similar default on the part of Sublessor thereunder or at law.

9. Quiet Enjoyment. So long as Sublessee performs all of Sublessee's obligations hereunder, Sublessor shall not take any action, or fail to take any action, which would adversely affect Sublessee's right to peaceably and quietly have, hold and enjoy all of the rights granted by this Sublease for the entire Term.

10. Liens. Sublessor shall not file, or cause to be filed (through its action or inaction), any mortgage, deed of trust, lien or other encumbrance ("Lien") against the Property other than the recordation of the memorandum of the Master Lease and the memorandum of this Sublease. In the event any such Lien shall be filed, Sublessor shall promptly take such action as will remove or satisfy such Lien; provided, however, that Sublessor may contest any



such Lien (or any aspect thereof) and, pending the determination of such contest, postpone the removal or satisfaction thereof, except that Sublessor shall not postpone such removal or satisfaction so long as to permit or cause any adverse effect on, or loss or impairment of title to, the Property or any of Sublessee's real or personal property. If Sublessor fails to timely remove or satisfy any such Lien, Sublessee may, after thirty (30) days' prior written notice to Sublessor stating with reasonable specificity the actions that will be taken by Sublessee to remove or satisfy such Lien, perform such actions for the account of Sublessor and Sublessor shall pay the cost thereof. To the extent allowed by law, Sublessor may bond to secure the Lien so long as by law the bond will become the sole security for the Lien and Sublessee's use of or interest in the Property is not compromised.

11. Notices. Anything contained in any provision of this Sublease to the contrary notwithstanding, Sublessee agrees, with respect to the Property, to comply with and remedy any default in this Sublease which is Sublessee's obligation to cure, within the period allowed to Sublessor under the Master Lease, even if the notice of default from Sublessor to Sublessee is given after the corresponding notice of default from Lessor to Sublessor. Sublessor agrees to forward to Sublessee, within two (2) business days of receipt thereof by Sublessor, a copy of each notice (including each notice of default and notice from a governmental authority) received by Sublessor in its capacity as Lessee under the Master Lease. Sublessee agrees to forward to Sublessor, within two (2) business days of receipt thereof, copies of any notices received by Sublessee from Lessor or from any governmental authorities, to the extent notice from any such governmental authority is required to be delivered to Lessor under the Master Lease. All notices, demands and requests shall be in writing and shall be sent either by hand delivery or by a nationally recognized overnight courier service (e.g., Federal Express), in either case return receipt requested, to the address of the appropriate party. Notices may also be sent by electronic mail, if also sent by another permitted method. Notices, demands and requests so sent shall be deemed given when the same are received.

Notices to Sublessor shall be sent to:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
E-mail: [dweisz@mcecleanenergy.com](mailto:dweisz@mcecleanenergy.com)  
Attn: Executive Officer

Notices to Sublessee shall be sent to:

MCE Solar One, LLC  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, UT 84106  
E-mail: [legal@spower.com](mailto:legal@spower.com)  
Attn: General Counsel

12. Broker. Sublessor and Sublessee represent and warrant to each other that no brokers were involved in connection with the negotiation or consummation of this Sublease.

Each party agrees to indemnify the other, and hold it harmless, from and against any and all claims, damages, losses, expenses and liabilities (including reasonable attorneys' fees) incurred by said party as a result of a breach of this representation and warranty by the other party.

13. Consent of Lessor. Section 11.3 of the Master Lease requires Sublessor to obtain the prior written consent of Lessor to sublease the Property. Lessor, Sublessor and Sublessee have entered into that certain Consent to Sublease dated of even date herewith (the "**Consent**"), pursuant to which Lessor has consented to this Sublease.

14. Termination of the Lease. If for any reason the term of the Master Lease shall terminate prior to the Sublease Expiration Date, this Sublease shall automatically be terminated. Sublessor shall not exercise any right to terminate the Master Lease without the prior written consent of Sublessee, which shall not be unreasonably withheld.

15. Assignment and Subletting. Independent of and in addition to any provisions of the Master Lease, it is understood and agreed that, except as expressly provided herein, Sublessee shall have no right to assign or sublet the Property or any portion thereof or any right or privilege appurtenant thereto and any such assignment or subletting shall be void. Sublessee shall not have any right to assign this Sublease or any interest therein, sublet the Property or Solar Project or any part thereof, enter into any license or concession agreement respecting all or any portion of the Property, or suffer or permit any other person (other than agents, servants or associates of the Sublessee) to occupy or use the Property or any portion thereof, without the prior written consent of Sublessor and Lessor, which consent may be given or withheld at Lessor's sole discretion. Any assignment or subletting by Sublessee without Sublessor's prior written consent shall be void and shall, at the option of Sublessor, terminate this Sublease. Notwithstanding anything to the contrary herein, as between Sublessor and Sublessee, any assignment in connection with a loan or in connection with another financing (including a tax equity financing) of the Property or any portion thereof or of the Solar Project or any sale and leaseback of the Solar Project (a "**Financing**"), any documents or instruments executed and/or recorded in connection with a Financing, the performance of obligations under such documents or instruments, and the exercise of remedies under such documents or instruments (including the assignment or transfer of the Sublease or the Solar Project to a lender or lenders or tax equity investor or its or their agent (a "**Financing Party**") or to an Eligible Foreclosure Successor in connection with a Financing or the exercise of remedies thereunder) shall not be considered an assignment of the Property or any portion thereof, this Sublease or the Solar Project or otherwise violate this Section 15 or Section 11.1 of the Master Lease (as incorporated herein by reference pursuant to Section 5(a)) (including an Assignment (or deemed Assignment pursuant to the last 3 sentences of Section 11.1 of the Master Lease as incorporated herein by reference pursuant to Section 5(a)) and shall not require the consent of Sublessor (but, for the avoidance of doubt, shall require the consent of Lessor). In connection with any Financing, the Financing Party shall be entitled to the rights and remedies of a "Leasehold Mortgagee" as provided in Section 12.3 of the Master Lease (as incorporated herein by reference pursuant to Section 5(a)) with respect to the Sublessee's rights to the Property and the Solar Project, the Sublease and other collateral relating thereto. In connection with any Financing, Sublessor shall in good faith negotiate and agree upon a consent and estoppel that is commercially reasonable and customary in the industry. In the event that the negotiation of such consent and estoppel exceeds one round of comments and revisions by each party, then

Sublessee agrees to pay the Sublessor's reasonable legal fees related to such negotiation. In addition, in connection with any Financing, if requested by Sublessee, Sublessor shall request an estoppel certificate from Lessor pursuant to Section 12.2.1 of the Master Lease.

16. Limitation of Estate. Sublessee's estate shall in all respects be limited to, and be construed in a fashion consistent with, the estate granted to Sublessor by Lessor. In the event Sublessor is prevented from performing any of its obligations under this Sublease by a breach by Lessor of a term of the Master Lease, then Sublessor's sole obligation in regard to its obligation under this Sublease shall be to use reasonable efforts in diligently pursuing the correction or cure by Lessor of Lessor's breach.

17. Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Sublease and this Sublease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Sublessor to Sublessee with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Sublease. This Sublease and the Consent, including the exhibits attached hereto and thereto, contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Property and shall be considered to be the only agreements between the parties hereto and their representatives and agents with respect to the rental, use and occupancy of the Property. None of the terms, covenants, conditions or provisions of this Sublease can be modified, deleted or added to except in writing signed by the parties hereto. There are no other representations or warranties between the parties with respect to the rental, use and occupancy of the Property, and all reliance with respect to such representations and warranties is based totally upon the representations and warranties contained in this Sublease.

18. Conflicting Provisions. In the event of any conflict between the terms of this Sublease and the Consent, the terms of the Consent shall prevail.

19. Acceptance. The submission of this Sublease to Sublessee does not constitute an offer to lease. This Sublease shall become effective only upon the execution and delivery hereof by both Sublessor and Sublessee and the execution and delivery of the Consent by Sublessor, Sublessee and Lessor. Sublessor shall have no liability or obligation to Sublessee by reason of Sublessor's rejection of this Sublease or a failure to execute, acknowledge and deliver same to Sublessee.

20. Representations and Warranties. Each of Sublessor and Sublessee represents and warrants to the other that (a) it has the authority to enter into and perform its respective obligations under this Sublease, subject to the terms of the Master Lease, and that the individual executing this Sublease on behalf of Sublessor and Sublessee, respectively, has the authority to enter into this Sublease and to execute all other documents and perform all other acts as contemplated herein; (b) this Sublease constitutes the legal, valid and binding obligation of such party enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law; and (c) the

execution, delivery and performance by such party of its obligations under this Sublease have been duly authorized by all necessary organizational action, and do not require any consent (including from the Port) or approval other than the Consent and those which have already been obtained. Sublessor represents and warrants that (i) the Master Lease constitutes the legal, valid and binding obligation of Sublessor enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law; (ii) the execution, delivery and performance of its obligations under the Master Lease have been duly authorized by all necessary organizational action, and do not require any consent or approval (including from the Port) other than those which have already been obtained; (iii) the Master Lease has not been supplemented or amended; (iv) neither Sublessor or, to the knowledge of Sublessor, Lessor has assigned its interest in the Master Lease; (v) neither Sublessor or, to the knowledge of Sublessor, Lessor, is in default under the Master Lease; (vi) to Sublessor's knowledge, no event or circumstance has occurred and is continuing which, with the giving of notice, the passage of time or both, would constitute a default under the Master Lease or would give Lessor or Sublessor the right to terminate the Master Lease and (vii) the Solar Facility Permitting Date has not occurred under the Master Lease.

21. Miscellaneous. This Sublease shall be governed by and interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. In any action brought or arising out of this Sublease, the parties hereto hereby consent to the jurisdiction of any federal or state court having proper venue within the State of California and also consent to the service of process by any means authorized by California or federal law. The headings used in this Sublease are for convenience only and shall be disregarded in interpreting the substantive provisions of this Sublease. Time is of the essence of each term of this Sublease. If any provision of this Sublease shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed therefrom and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been a part thereof. This Sublease may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same Sublease.

22. Memorandum of Sublease. Sublessor and Sublessee shall execute and acknowledge a memorandum of Sublease in a form reasonably acceptable to Sublessor and Sublessee, and shall be subject to Lessor's prior written approval, at the same time as the execution of this Sublease. Sublessee shall cause such memorandum to be recorded in the Official Records of the County of Contra Costa. Within five (5) business days following the termination of this Sublease, Sublessee and Sublessor shall execute, acknowledge and deliver a quitclaim deed, termination agreement, affidavit or similar document as may be required by Lessor or Lessor's title company, to remove any cloud on title to the Property created by this Sublease or resulting from the recordation of the memorandum of Sublease.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have entered into this Sublease Agreement as of the date first written above.

**SUBLESSOR:**

MARIN CLEAN ENERGY,  
a California Joint Powers Authority

By: \_\_\_\_\_

Name: Dawn Weisz

Title: Executive Officer

**APPROVED AS TO FORM:**

Troutman Sanders LLP

\_\_\_\_\_  
Ben Fisher

Counsel for Marin Clean Energy

**SUBLESSEE:**

MCE SOLAR ONE, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT "A"

COPY OF MASTER LEASE

[Attached]

SOLAR ENERGY FACILITY SITE LEASE

between

CHEVRON PRODUCTS COMPANY, as Lessor

and

MARIN CLEAN ENERGY, as Lessee

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- Exhibit A – Legal Description
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- Exhibit C – Groundwater Protection System
- Exhibit D – Memorandum of Lease

**SOLAR ENERGY FACILITY SITE LEASE**  
(Richmond Refinery)

This **SOLAR ENERGY FACILITY SITE LEASE** (this “**Lease**”) is made and entered into as of NOVEMBER 4, 2015 (the “**Effective Date**”), by and between **Chevron Products Company**, a division of Chevron U.S.A. Inc., a Pennsylvania corporation (“**Lessor**”), and **Marin Clean Energy**, a California Joint Powers Authority (“**Lessee**”). Each of Lessor and Lessee are sometimes referred to as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

A. Lessee is the developer, owner, and operator of photovoltaic solar energy generation equipment and facilities suitable for delivery of electrical energy to an electrical transmission grid owned and operated by a utility.

B. Lessor is the owner of certain real property located in Contra Costa County, California, identified as Assessor Parcel Numbers 561-100-034, 561-100-037, and 561-100-038 as depicted on the attached Exhibit A and incorporated herein by this reference (the “**Property**”), totaling approximately sixty (60) gross acres. The Property is part of a larger refinery owned and operated by Lessor (the “**Chevron Refinery**”).

C. Lessee desires to obtain from Lessor an exclusive lease for purposes of constructing, installing, operating, maintaining, repairing, replacing, and removing the Solar Project (defined below) to be located on the Property, together with a right of access on, over, and across those portions of the Chevron Refinery as reasonably necessary for the purpose of constructing, installing, operating maintaining, repairing, replacing, and removing from time to time the Solar Project installed on the Property.

D. Lessor desires to lease the Property to Lessee for the purposes set forth in Recital C and to grant Lessee such access rights as necessary for such purposes on the terms and conditions herein contained.

E. This Lease and Lessee’s development of the Solar Project will benefit the public by: allowing Lessee to provide electricity from renewable resources to members of the public and fulfill its role as a California Joint Powers Authority; teaching and educating the public about producing electricity from renewable resources; facilitating public oversight and involvement of the Solar Project; and securing energy supply, price stability, energy efficiencies, and local and economic workforce benefits (collectively, the “**Project Public Benefits**”). Lessee’s status as a California Joint Powers Authority and the Project Public Benefits that will result from the Solar Project being operated by Lessee are key factors in Lessor’s decision to lease the Property to Lessee on the terms of this Lease and Lessor would not lease the Property on the terms of this Lease to an entity other than a California Joint Powers Authority or other governmental entity that could provide the Project Public Benefits.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

## AGREEMENT

1. **DEFINITIONS.** Capitalized terms not otherwise defined herein shall have the meaning set forth below:

1.1 **“Applicable Law”** means any Federal, State, or local laws, ordinances, or statutes, and the orders, rules, and regulations of any Federal, State, or local governmental agency, and the San Francisco Port Commission (the **“Port”**) applicable to the Property and improvements thereon, and the use and operation thereof.

1.2 **“Effective Date”** shall be the date on which both Parties have signed this Lease.

1.3 **“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Solar Energy Facilities or the electric energy, capacity or other generator-based products produced therefrom, including but not limited to (i) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto, (ii) any avoided emissions of methane, carbon dioxide and other “greenhouse gases” that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasi-governmental or non-governmental agency or body to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, and any rights related thereto, and (iii) any reporting rights relating to the reduction of “greenhouse gases” under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates.”

1.4 **“Environmental Incentives”** include, but are not limited to (i) federal, state or local production tax credits and investment tax credits associated with the construction or operation of the Solar Energy Facilities; (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Solar Energy Facilities that are applicable to a local, state or federal income taxation obligation, (iii) grants or subsidies in support of renewable energy, (iv) emission reduction credits encumbered or used by the Solar Energy Facilities for compliance with local, state, or federal operating or air quality permits, and (v) all rebates, benefits, reductions, tax deductions, offsets, and allowances and entitlements of any kind, howsoever entitled, resulting from the Environmental Attributes or the installation and operation of the Solar Energy Facilities.

1.5 **“Initial Energy Delivery Date”** means the initial date upon which electrical energy produced by the Solar Energy System is sold to the purchasing utility pursuant to the PPA.

1.6 **“Interconnection Facilities”** means all improvements, the purpose of which is to deliver electrical power from the Solar Energy Facilities to the electrical transmission grid of a utility, including, without limitation, transformers and electrical transmission lines.

1.7 “**PPA**” means a power purchase agreement entered into between Lessee and Pacific Gas and Electric Company with respect to the Solar Project.

1.8 “**Solar Energy Facilities**” means (a) the Solar Energy System; (b) electrical wires and cables required for the gathering and transmission of electrical energy and for communication purposes, which wires and cables may be placed overhead on appurtenant support structures; (c) one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy; (d) energy storage facilities; (e) solar energy measurement equipment; (f) maintenance yards, control buildings, control boxes and computer monitoring hardware; and (g) any other improvements, including roads, fixtures, facilities, fences, machinery and equipment useful or appropriate to accomplish any of the foregoing that are constructed or installed on the Property by Lessee; provided, however, the Solar Energy Facilities shall not be constructed in any location that would require an easement or right-of-way to be granted across other portions of Lessor’s property or interfere with Lessor’s ability to close the Integrated Waste Pond System north of the fertilizer plant evaporation ponds.

1.9 “**Solar Energy System**” means individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities necessary to harness sunlight for photovoltaic electric energy generation, including without limitation, heating, power generation systems, and fossil fuel-based boilers installed in connection with the Solar Energy Facilities, existing and future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, braces, wiring, plumbing, remote monitoring, including without limitation the establishment at Lessee’s sole discretion of a land based or satellite based high speed internet connection, and related equipment constructed on the Property.

1.10 “**Solar Operations**” means solar energy resource evaluation; solar energy development; converting solar energy into **electrical** energy through the Solar Energy System; collecting and transmitting the electrical energy converted from solar energy; storing, collecting, and transmitting the electrical energy converted from solar energy; and any and all activities related to the foregoing conducted on the Property.

1.11 “**Solar Project**” means any and all Solar Energy Facilities, Interconnection Facilities, and the Viewing Platform, that are developed, constructed, and operated on the Property as an integrated system to generate and deliver electrical power to a utility or other power purchaser.

1.12 “**Viewing Platform**” means the viewing platform to be developed, constructed, and maintained by Lessee on the Property for the purpose of allowing the general public to observe the Solar Project during normal business hours.

2. **LEASE OF PROPERTY.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Lessor, Lessor hereby leases the Property to Lessee and Lessee hereby leases the Property from Lessor. The lease of the Property is subject to: (i) all matters of record; (ii) all Applicable Laws; (iii) all items listed in Exhibit B; and (iv) authorization from the Port. Lessee acknowledges that Lessee has inspected the Property, is

aware of the general activities on neighboring properties and the Chevron Refinery, is aware that the Property has been or is currently the site of fertilizer plant evaporation ponds, one or more waste management units (a.k.a. landfills), various groundwater control systems (including hydraulic control trench, aspermix wall, clay liner, slurry barrier wall), Castro Creek and potential wetlands, and that the Property is suitable for the Solar Operations and Lessee accepts the Property in its present, AS-IS, WITH ALL FAULTS condition. Lessee acknowledges that activities on neighboring properties or the Chevron Refinery may generate dust or particulate matter that comes on to the Property and that Lessor will have no obligations or liabilities arising from or relating to such dust or particulate matter. Lessee also acknowledges that portions of the property have been filled and may continue to settle and that Lessor will have no obligations or liabilities arising from or relating to such settling. Lessee acknowledges that Lessor has made no representations or warranties regarding the Property or its physical condition or legal status.

3. **PURPOSES OF LEASE; PERMITTED USES.**

3.1 **Purpose of Lease for Solar Operations.** The lease created by this Lease is solely and exclusively for the Solar Project and throughout the term of this Lease, Lessee shall have exclusive possession of the Property and shall have the sole and exclusive right to use the Property for Solar Operations and to convert all of the solar resources of the Property for solar energy generation, subject to Lessor's reserved rights as otherwise set forth in this Lease. Except as expressly provided herein, Lessee shall have no right to use the Property for any other purpose.

3.2 **Permitted Uses of Property by Lessee for Solar Operations.** The rights granted to Lessee in this Lease with respect to Solar Operations permit Lessee to do the following without notice to or approval by Lessor, subject to the terms and conditions of this Lease:

3.2.1 construct, install, and operate the Solar Energy Facilities and the Interconnection Facilities on the Property;

3.2.2 maintain, clean, repair, replace, dispose of, and provide security for part or all of the Solar Energy Facilities and the Interconnection Facilities;

3.2.3 add or remove equipment as needed to increase or decrease the capacity of the Solar Energy System;

3.2.4 remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation; on or that intrudes (or upon maturity could intrude) into the Property, including, without limitation, anything that could obstruct, interfere with or impair Solar Operations;

3.2.5 construct, access, and make available to the general public during normal business hours the Viewing Platform and remove the Viewing Platform at the end of the Term;

3.2.6 install and maintain on the Property communication lines and facilities, including wireless facilities, that carry communications to and from lands other than the Property;

3.2.7 place signage on the Property as reasonably approved by Lessor, subject to Applicable Law and the issuance of any required governmental permits;

3.2.8 remove the Solar Energy Facilities, the Interconnection Facilities, the Viewing Platform, and all other equipment or facilities as permitted under this Lease;

3.2.9 conduct in-person physical inspections of the Solar Energy Facilities and the Property; and

3.2.10 conduct press conferences and other media events on the Property with Lessor's prior written approval, which may not be unreasonably withheld.

3.3 **Use Restrictions**. In addition to the other terms and conditions contained in this Lease:

3.3.1 Lessee may not use the groundwater for any purpose whatsoever, nor may Lessee engage in any subsurface intrusions other than as required in the physical construction, maintenance, repair, alteration, replacement or removal of the Solar Project and in accordance with the requirements of Sections 6.3 and 6.5 below;

3.3.2 Lessee may conduct a Phase 1 environmental report or assessment of the Property. Lessee may not conduct any studies or tests that penetrate the ground or the landfill cap and drainage system located therein without Chevron's prior written consent, which may be granted or withheld in Lessor's sole discretion;

3.3.3 Lessee shall at all times use the Property so as not to damage or interfere with any facilities of Lessor or holders of easements on the Property or at the Chevron Refinery, or interfere with Lessor's operation of the Chevron Refinery (and, without limiting the generality of the foregoing, Lessee shall not damage or interfere with the groundwater protection system shown in Exhibit C);

3.3.4 Lessee may not commit or knowingly allow to be committed any violation of Applicable Law, public nuisance, act of waste or other act or thing in or about the Property that will in any manner obstruct or interfere with the rights of Lessor or other occupants of the Chevron Refinery or landowners adjacent to the Chevron Refinery or injure, solicit or canvass them, nor may Lessee allow the Property to be used for any unlawful purpose; and

3.3.5 Intentionally deleted.

3.3.6 Lessee acknowledges that the Property is located within a U.S. Foreign Trade Subzone 3B (the "**Zone**"). Lessor shall use commercially reasonable efforts to cause the Property to be deactivated from the Zone, provided that Lessee shall comply with all requirements imposed by the Foreign Trade Zone Board of the U.S. Dept. of Commerce ("**FTZ Board**"), U.S. Customs and Border Protection ("**CBP**"), the Port, and Lessor for construction

and operations within the Zone so long as the Property remains within the Zone. Lessee further acknowledges that Lessor retains the right to modify the terms and conditions of this Lease if required to comply with requirements imposed by the FTZ Board, CBP, or the Port. In the event that the Property is subsequently reactivated within the Zone following any deactivation, Lessee shall comply with all requirements imposed by the FTZ Board, CBP the Port and Lessor for construction and operations within the Zone.

3.4 **Roadway License.** As of the Effective Date, the Property is accessible from Richmond Parkway, a public road. If Lessee reasonably determines that the public roads, as they may exist from time to time, are not sufficient for purposes of access to the Property, Lessor shall grant to Lessee, at Lessee's request and at no additional cost or expense to Lessee except as provided below, for use by Lessee and its employees, agents, and contractors, a non-exclusive license on and along certain interior roads and private driveways within the Chevron Refinery, for ingress and egress by vehicular traffic between the public roads entering the Chevron Refinery and the Property, for the purposes of developing and operating the Solar Project (the "**Roadway License**"), subject to the terms of this Lease. The locations of the Roadway License areas and the terms of the Roadway License shall be mutually agreed upon by the Parties. Subject to Section 3.7, the Roadway License shall not be restricted as to hours of use nor shall advance notice of its use be required. Lessee shall pay its reasonable share of costs and expenses related to the improvement, maintenance, or repair of the roads covered by the Roadway License resulting from Lessee's use of the roads. Lessor shall be responsible for its reasonable share of the costs and expenses related to the improvement, maintenance, or repair of the roads shared with Lessee resulting from Lessor's use. Lessor reserves the right to designate different roads and private driveways and to relocate the roads and private driveways to be used by Lessee in accordance with the Roadway License; provided, however, Lessee will at all times be ensured reasonable access to the Property. The Roadway License will terminate upon the termination of this Lease.

3.5 **Lessor Access.** During the Term, Lessor shall have the right upon reasonable notice and at reasonable and safe times (except in an emergency, in which event no notice shall be required) to visit the Property and access the Solar Project for other purposes, including the following: (i) to comply with Applicable Law and policies of Lessor's insurance carrier(s); (ii) to prevent waste or deterioration of the Property, or to post notices of non-responsibility for alterations, additions, or repairs; or to show the Property to prospective purchasers or lenders; (iii) to access, repair, replace, and use existing groundwater protection systems on the Property, as shown in Exhibit C; and (iv) to operate, maintain, repair and replace any existing surface, subsurface and overhead pipelines and utility facilities servicing the Chevron Refinery. The Parties will cooperate to minimize any interference with the Solar Operations during the Term of this Lease. Lessor's rights of entry as set forth in this Section 3.5 shall be subject to the reasonable security regulations of Lessee, and to the requirement that Lessor shall use reasonable efforts to minimize interference with Lessee's business activities on the Property. Lessor shall be entitled to exercise the foregoing rights without any abatement of rent and without liability to Lessee for any injury or inconvenience to or interference with Lessee's business, quiet enjoyment of the Property, or any other loss occasioned thereby. Under no circumstances shall Lessor's access to the Property interfere with the Solar Energy System's exposure to sunlight. During the Term, Lessee shall allow all governmental entities and their



respective officials, agents and representatives to access to the Property at all times, and Lessee shall cooperate with such governmental entities in connection with any such access.

3.6 **Access Restrictions.** Notwithstanding anything in this Lease to the contrary, Lessor may, at any time and without prior notice, restrict access to the Property for health and safety reasons at its reasonable discretion. If it is not possible to provide such notice in advance of the restriction of access, Lessor shall provide the notice as soon as reasonably practicable after the restriction of access. Lessor shall remove the restriction as soon as reasonably practicable after imposing the restriction and notify Lessee of the removal of the restriction.

4. **TERM.** The term of this Lease will commence on the Effective Date and continue for a period of twenty-five (25) years (the “**Initial Term**”). Provided no Event of Default by Lessee under this Lease remains outstanding and uncured at the time Lessee gives notice to Lessor of the exercise of Lessee’s right to extend the term of this Lease, Lessee has the right and option to extend the term of this Lease for a period of five (5) years (the “**Extension Period**”), by delivering written notice of such extension to Lessor not less than one hundred eighty (180) days prior to the end of the Initial Term. For purposes of this Lease, “**Term**” means the Initial Term, as extended by the Extension Period, if exercised by Lessee, and “**Expiration Date**” means the last day of the Term.

4.1 **Early Termination.** Notwithstanding anything to the contrary in this Lease, Lessor has the right, exercisable at any time within one hundred eighty (180) days after the Early Termination Event Date (defined below), to terminate this Lease upon written notice to Lessee (the “**Early Termination Event Notice**”), which termination shall be effective one hundred twenty (120) days after the date of delivery of the Early Termination Event Notice to Lessee, in the event that: (i) the Operating Approvals (as defined in Section 6.4) have not been obtained by the date that is four (4) years after the Effective Date; (ii) Lessee has not commenced construction, as set forth in Section 6.5 below, by the date that is six (6) months after the Solar Facility Permitting Date; (iii) Lessee has not completed construction of the Solar Project with at least two (2) megawatts of inverter nameplate generating capacity and the Initial Energy Delivery Date has not occurred within one (1) year after the Solar Facility Permitting Date; (iv) Lessee fails to Continuously Operate the Solar Project (as defined in Section 6.8); or (v) Marin Clean Energy ceases to be a California Joint Powers Authority and does not transfer title to the Solar Facility to another government agency with a similar purpose (each such date that would trigger Lessor’s right to terminate, an “**Early Termination Event Date**”).

4.2 **Partial Termination.** Notwithstanding anything to the contrary in this Lease, Lessor has the right, exercisable at any time within one hundred eighty (180) days after the Partial Termination Event Date (defined below), to terminate this Lease with respect to any portion of the Property that has not been developed with Solar Energy Facilities by giving written notice to Lessee (the “**Partial Termination Event Notice**”), which termination shall be effective thirty (30) days after the date of delivery of the Partial Termination Event Notice to Lessee, in the event that: (i) on the fifth (5<sup>th</sup>) anniversary of the Initial Energy Delivery Date, Lessee has not developed Solar Energy Facilities on at least twenty-five (25) acres of the Property with at least two tenths (.2) of a megawatt of inverter nameplate generating capacity per Developed Acre; or (ii) on the tenth (10<sup>th</sup>) anniversary of the Initial Energy Delivery Date,

Lessee has not developed Solar Energy Facilities on the entire Property (less any portion of the Property on which it is infeasible to develop Solar Energy Facilities or on which other features of the Solar Project have been constructed) with at least two tenths (.2) of a megawatt of inverter nameplate generating capacity per Developed Acre (each such date that would trigger Lessor's right of partial termination, a "**Partial Termination Event Date**"). If Lessee's failure to meet the generating capacity requirements at either Partial Termination Event Date is reasonably caused by limitations imposed within an interconnection agreement with Pacific Gas & Electric, however, Lessor shall have no right to partial termination under this Section 4.2. For purposes of this Section, "**Developed Acre**" means each acre, or portion thereof, on which Solar Energy Facilities have been developed, net of all access roads, required setbacks and easements.

## 5. PAYMENTS TO LESSOR.

5.1 **Annual Rent.** Commencing on the Effective Date and throughout the Term of this Lease, Lessee shall pay rent to Lessor in the annual amount of One Dollar (\$1.00) (the "**Annual Rent**"); provided, however, that if Lessee ceases to be a governmental entity or if Lessee assigns this Lease or subleases all or any portion of the Property to an entity other than a governmental entity or the Developer (as defined in Section 11.3), then the Annual Rent will automatically increase to the Fair Market Rent, as defined below; provided, further, that on the fifteenth (15<sup>th</sup>) and twentieth (20<sup>th</sup>) anniversaries of the Effective Date and at the commencement of the Extension Period, the Annual Rent will automatically increase to the Fair Market Rent unless the Solar Project continues to provide Project Public Benefits. For purposes of this Section 5.1, the Solar Project shall be deemed to continue to provide Project Public Benefits if the sole energy off taker is a governmental entity. So long as the Annual Rent remains One Dollar (\$1.00), Lessee shall pay rent annually on the Effective Date and each anniversary thereof. If the Annual Rent increases to the Fair Market Rent, then rent will be payable in advance in quarterly instalments on the first day of each calendar quarter, prorated for any partial period. Lessee shall pay to Lessor the Annual Rent set forth above without deduction, offset, or abatement, and without prior notice or demand. Rent shall be payable in lawful money of the United States to Lessor at the address stated in the Section 17.4 to this Lease or to such other places as Lessor may from time to time designate in writing. Lessee's obligation to pay rent for any partial year shall be prorated. If any installment of rent or any other sum due from Lessee is not received by Lessor within five (5) days after Lessee's receipt of Lessor's written notice of such non-payment, Lessee shall pay to Lessor an additional sum equal to six percent (6%) of the amount overdue as a late charge. Notwithstanding the preceding sentence to the contrary, Lessor shall not be obligated to deliver any notice of non-payment as a condition to imposing a late charge more than once in any calendar year. Such late charge shall be added to the installment of rent due but unpaid and such sum shall bear interest from the date the installment of rent was due until paid at the Default Rate (as defined in Section 14.1.4). The amount of the late charge shall represent liquidated damages for, and a reasonable estimate of, Lessor's administrative costs of collection, the exact amount of which would be extremely difficult or impractical to fix. Lessor's acceptance of such late charge shall not excuse any default by Lessee hereunder, and shall not preclude Lessor from pursuing any other rights and remedies it may have relating to such default.

5.2 **Fair Market Rent.** For purposes of this Lease, "**Fair Market Rent**" means the rent (including annual increases) that a tenant would pay a willing landlord for a ground lease for property that is comparable to the Property in a comparable area in Contra

Costa, Marin, or Alameda Counties, California, taking into consideration such factors as the square footage of the Property; the length of the lease in question; appropriate inducements and concessions then being included in such comparable leases for comparable space, including but not limited to so-called free or abated rents; and the credit standing of Lessee. For purposes of the determination of Fair Market Rent in this Section 5.2, the Parties agree that the highest and best use of the Property shall be for a ground lease for a solar or other renewable energy system.

5.2.1 Lessor and Lessee shall negotiate Fair Market Rent within thirty (30) days following assignment of or transfer of the Lease to an entity other than a governmental entity or sublease of all or any portion of the Property to an entity other than a governmental entity or the Developer. In the event Lessor and Lessee cannot agree upon Fair Market Rent within the thirty (30) day period set forth above, then each Party shall within five (5) days, select an appraiser holding the MAI designation, or, if the MAI designation is eliminated, the closest available equivalent, holding all required California licenses and certifications, each with not less than ten (10) years of experience in commercial and industrial rentals in Marin, Contra Costa, or Alameda Counties, California. The two brokers so appointed shall appraise the Fair Market Rent taking into account the considerations set forth above and meet within thirty (30) days after their appointment to attempt to agree on the Fair Market Rent. The agreement of the appraisers as the Fair Market Rent shall be binding on the Parties.

5.2.2 If the two appraisers so appointed cannot reach agreement within five (5) days after their initial meeting, then within twenty-one (21) days after the failure of the appraisers to reach agreement ("**Notice Date**"), the two shall appoint a third appraiser with the same qualifications ("**Third Appraiser**"). Within five (5) days after the Parties' appraisers select the Third Appraiser, the proposed Third Appraiser shall make all disclosures required by CCP Section 1281.9 or equivalent provision of California Law if Section 1281.9 is repealed. Within fifteen (15) days after service of the proposed Third Appraiser's disclosure statement, each Party may disqualify the first proposed Third Appraiser with or without cause by written notice to the other Party, the Parties' appraisers and the proposed Third Appraiser. If a Party disqualifies the first proposed Third Appraiser, then the Parties' appraisers shall select a second proposed Third Appraiser within fifteen (15) days after the disqualification. The second proposed Third Appraiser shall make all required disclosures within five (5) days after his or her tentative selection by the Parties' appraisers. Each Party shall have fifteen (15) days after service of the disclosures to disqualify the second proposed Third Appraiser by written notice to the other Party, the Parties' appraisers, and the second proposed Third Appraiser, which disqualification shall only be for cause, as documented in the notice. If the second proposed Third Appraiser is disqualified, the Parties and their appraisers may repeat the process used for the second proposed Third Appraiser until they select a Third Appraiser who is not disqualified. However, except as the Parties may otherwise agree, after the first to occur of disqualification of the first proposed Third Appraiser or 110 days after the Notice Date, either Party may petition the Superior Court for Contra Costa County pursuant to CCP Section 1281.6 (or equivalent provision) to appoint a Third Appraiser who satisfies the requirements of Section 5.2.1 to act as arbitrator and Third Appraiser pursuant to Section 5.2.3 of this Lease. In the event of such a petition, a Party may petition the Court to disqualify a Court-appointed arbitrator only upon a showing of cause. Except as otherwise provided in this Section 5.2.2, CCP Sections 1281.9 and 1281.91 (or equivalent provisions) shall apply to the selection of the Third Appraiser. The Third Appraiser will be acting in an arbitration role, and thus the Third Appraiser will have the

immunity of a judicial officer from civil liability arising pursuant to CCP Section 1297.119 (or equivalent provision), which states: "An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract."

5.2.3 The Third Appraiser shall appraise the Fair Market Rent for the Property taking into account the considerations set forth above and within twenty-one (21) days after the Third Appraiser's appointment, the three appraisers shall meet to attempt to agree on the Fair Market Rent. If agreement cannot be reached, then the two closest appraisals will be averaged, and such figure will become the Annual Rent and be binding on both Parties. Each Party shall pay the fee of its respective appraiser, and both Parties shall share the cost of the Third Appraiser, if necessary.

5.3 **Additional Rent; Net Lease.** All other costs and charges payable by Lessee in accordance with the terms of this Lease (including insurance premiums and maintenance costs) shall be deemed to be additional rent; provided, however, Lessor shall pay all real property taxes assessed upon the Property, excluding the Solar Project. All Base Monthly Rent and additional rent shall constitute "rent" for all purposes. Other than real property taxes, this rent payable by Lessee hereunder is intended to be absolutely net, and Lessor shall have no obligations to pay maintenance or other costs associated with the Property.

5.4 **Security Deposit.** Prior to commencement of construction or installation of any portion of the Solar Project, Lessee shall deposit with Lessor the sum of one hundred thousand dollars (\$100,000) (the "**Initial Deposit**") as security for the faithful performance by Lessee of all of its obligations hereunder. If the Annual Rent increases to Fair Market Rent pursuant to Section 5.1, then Lessee shall deposit with Lessor an additional sum equal to three months Annual Rent (together with the Initial Deposit, the "**Deposit**") as security for the faithful performance by Lessee of all of its obligations hereunder. If Lessee fails to pay rent or any other sums due hereunder, or otherwise defaults with respect to any provision of this Lease, after the expiration of any applicable notice and cure period, Lessor may use, apply, or retain all or any portion of the Deposit for the payment of any rent or other sum in default, or to compensate Lessor for the payment of any other sum which Lessor may become obligated to spend by reason of Lessee's default, or to compensate Lessor for any expenditures, loss or damage which Lessor may suffer thereby. Lessee waives any restrictions on use of the Deposit set forth in Section 1950.7 of the California Civil Code, to the extent inconsistent with the permissible uses of the Deposit agreed to above. If Lessor so uses or applies all or any portion of the Deposit, Lessee shall, within ten (10) business days after written demand therefor, deposit with Lessor an amount in cash sufficient to restore the Deposit to the full amount hereinabove stated. Lessor shall not be required to keep the Deposit separate from its general funds. The Deposit, less any portion thereof which Lessor is entitled to retain, shall be returned, without payment of interest, to Lessee (or at Lessor's option to the last assignee, if any, of Lessee's interest hereunder) within thirty (30) days after the later of the expiration of the term hereof, or the date on which Lessee vacates the Property.

## 6. **SOLAR PROJECT.**

6.1 **Ownership.** During the term of the Lease, Lessor shall have no ownership or other interest in any Solar Project installed on the Property, any Environmental Attributes

produced therefrom, or any Environmental Incentives attributable thereto. Lessee's furnishings, machinery and equipment, including solar panels and related electrical generating equipment, shall remain the property of Lessee and may be removed by Lessee, provided Lessee at Lessee's expense immediately after removal repairs any damage to the Property caused thereby. The manner of operation of the Solar Project, including, but not limited to, decisions on when to conduct maintenance, is within the sole discretion of Lessee.

6.2 **Maintenance.** Except for Lessor's Maintenance Obligation (as defined below), Lessee, at its sole cost and expense, shall keep in good and safe condition, order and repair the Property, and every part thereof, including without limitation: (a) performance of all weed abatement, rodent and pest control, disking and any similar activities, (b) all equipment and alterations installed by Lessee, and (c) any items of maintenance and repair to the Solar Energy Facilities which may be required by any governmental entity with jurisdiction. Lessee shall, at Lessee's expense, maintain in good condition and repair all improvements installed on the Property by Lessee, including, without limitation, all solar panels and related equipment comprising the Solar Energy Facilities. Lessor shall, at its sole cost and expense, keep in good and safe condition, order and repair Lessor's facilities, in, on or under the Property, including without limitation, a landfill cap and drainage system and various groundwater control systems and other remedial systems installed to address Prior Covered Contamination or Lessor Covered Contamination (as defined in Section 10.2) ("**Lessor's Maintenance Obligation**"); provided, however, Lessor shall have no obligation to repair any damage caused by Lessee, which repairs shall be performed by Lessee at its sole cost and expense. Except as to Lessor's Maintenance Obligation, Lessee hereby waives all rights it may have under Sections 1932(1), 1941, and 1942 of the California Civil Code, and any similar or successor statute or law which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good condition, order and repair. Except as to Lessor's Maintenance Obligation, Lessor shall have no obligation under this Lease to perform any alteration, maintenance, repair or replacement of any portion of the Property or any improvements installed thereon, nor to pay for any such alteration, maintenance, repair or replacement.

6.3 **Design.** Lessee, at its sole cost and expense, shall prepare detailed plans for the Solar Project for Lessor's review and approval, which approval may not be unreasonably withheld, conditioned, or delayed (the "**Plans**"). The Plans must show: (i) the location of all Solar Energy Facilities and Interconnection Facilities; (ii) the extent to which any of the Solar Energy Facilities or the Interconnection Facilities penetrate the ground; and (iii) any other matters reasonably requested by Lessor. Lessee shall obtain Lessor's written approval of the Plans prior to submitting the Plans to any third party, including the Port or any other government agency responsible for permitting or approving the Solar Project. If the Plans need to be revised for any reason after Lessor has approved the Plans, then Lessee shall submit the revised Plans to Lessor for Lessor's review and approval, which approval may not be unreasonably withheld, conditioned, or delayed. In no event will approval of the Plans by Lessor be deemed to constitute a representation by Lessor that the work called for in the Plans complies with applicable legal requirements. Without limiting the bases on which Lessor may withhold approval of the Plans, the parties acknowledge that it will be reasonable for Lessor to withhold approval of the Plans if: (i) construction of the Solar Energy Facilities or the Interconnection Facilities in accordance with the Plans would penetrate, harm, or otherwise interfere with any of

Lessor's facilities in, on, or under the Property, including, without limitation, a landfill cap and drainage system and various groundwater control systems; or (ii) the Plans would damage or impede Lessor's ability to access and use the existing groundwater protection system on the Property, as shown in Exhibit C. Lessee may not make any changes to the Plans without Lessor's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

6.4 **Permitting.** Prior to commencing construction or installation of any part of the Solar Project, Lessee, at its sole cost and expense, shall (i) obtain all required approvals and permits to construct and operate the Solar Project, including compliance with the California Environmental Quality Act, and (ii) enter into the PPA (collectively, the "**Operating Approvals**"). If Lessee has not obtained the Operating Approvals by the date that is four (4) years after the Effective Date, then Lessor may terminate this Lease pursuant to Section 4.1 above. The term "**Solar Facility Permitting Date**" will mean the date that Lessee has obtained all Operating Approvals.

6.5 **Construction.** Lessee, at its sole cost and expense, shall construct the Solar Project in accordance with the Plans approved by Lessor, the Operating Approvals, and all Applicable Laws. Lessee shall mobilize on the Property and commence construction on or before the date that is six (6) months after the Solar Facility Permitting Date. Lessee shall complete construction of the Solar Project with at least two (2) megawatts of inverter nameplate generating capacity and the Initial Energy Delivery Date shall occur within one year after the Solar Facility Permitting Date. If Lessee fails to meet any of the deadlines set forth in this Section 6.5, then Lessor may terminate the Lease pursuant to Section 4.1 above. During construction of the Solar Project, Lessee may not penetrate, harm, or otherwise interfere with any of Lessor's facilities in, on, or under the Property, including, without limitation, a landfill cap and drainage system and various groundwater control systems, and Lessee acknowledges the presence of the same. During construction of the Solar Project, Lessee shall, to the extent required by Applicable Law, employ hazardous operations contractors with experience working in a refinery environment. Upon completion of the Solar Project, Lessee, at its sole cost and expense, shall immediately deliver to Lessor "as-built" plans and specifications therefor. All construction work permitted to be done by Lessee shall be performed by a licensed contractor in a prompt, diligent, and good and workmanlike manner and in compliance with all applicable statutes, ordinances, regulations, codes and orders of governmental authorities and insurers of the Property and the requirements of this Lease.

6.6 **Alterations.** Except as otherwise expressly set forth in this Lease, Lessee shall not, without Lessor's prior written approval, which approval may not be unreasonably withheld, conditioned, or delayed, make any alterations or improvements in, on or about the Property. Should Lessee make any alterations or additions without obtaining Lessor's approval, Lessee shall immediately remove the same at Lessee's expense upon demand by Lessor. Any alteration or addition that Lessee shall desire to make in or about the Property shall be presented to Lessor in written form, with proposed detailed plans and specifications therefor prepared at Lessee's sole expense. Any consent by Lessor thereto shall be deemed conditioned upon Lessee's acquisition of all permits required to make such alteration from all appropriate governmental agencies, including the Port, the furnishing of copies thereof to Lessor prior to commencement of the work, and the compliance by Lessee with all conditions of said permits in

a prompt and expeditious manner, all at Lessee's sole expense. Upon completion of any such alteration or addition, Lessee, at its sole cost and expense, shall immediately deliver to Lessor "as-built" plans and specifications therefor. All construction work permitted to be done by Lessee shall be performed by a licensed contractor in a prompt, diligent, and good and workmanlike manner and in compliance with all applicable statutes, ordinances, regulations, codes and orders of governmental authorities and insurers of the Property and the requirements of this Lease. Lessee or its agents shall obtain and pay for all licenses and permits necessary therefor.

6.7 **Independent Interconnection.** Lessee, at its sole cost and expense, shall cause the Solar Energy Facilities to have independent Interconnection Facilities with Pacific Gas & Electric Company. Lessee acknowledges that Lessee may not use any existing electrical connection to the Chevron Refinery's electrical grid, substations, or any other electrical component of Lessor and that the Interconnection Facilities must be independent of the same.

6.8 **Continuous Operation.** Lessee, at its sole cost and expense, shall continuously operate the Solar Project. For purposes of this Agreement, Lessee will be deemed to "**Continuously Operate the Solar Project**" as long as the Solar Energy System generates photovoltaic electric energy and transmits such energy to the Interconnection Facilities at least (i) one (1) day during any calendar month and (ii) two hundred (200) days during any calendar year.

6.9 **Removal.** Lessee, at its sole cost and expense, no later than sixty (60) days prior to the Expiration Date, shall remove all alterations and improvements installed on the Property by Lessee and repair any damage occasioned thereby, and restore the Property to substantially the condition existing as of the Effective Date. The obligations of Lessee set forth in this Section will survive the termination of this Lease. Without limiting the generality of the above provisions, Lessee shall be required to remove all footings, foundations, underground utilities and similar improvements and equipment installed on the Property by Lessee. Lessee shall be liable to Lessor for Lessor's costs of removal of any abandoned alterations, improvements, or equipment of Lessee that Lessee fails to remove, together with the cost of returning the Property to its condition as of the date Lessee originally took possession and the transportation and storage or disposal costs of such items. If Lessee is performing its removal obligations under this Section 6.9 following the termination of the Lease, during such period of removal Lessee shall maintain the insurance required of Lessee under Section 8.2 and pay an occupancy fee to Lessor at the same rate as the effective rental rate under this Lease immediately prior to such termination.

6.10 **Security.** Lessee shall, at its sole expense, provide security services for the Property and the Solar Project as necessary to ensure the safety of the Property and its occupants (the "**Security Services**"). The Security Services must be provided in a manner consistent with Lessor's security procedures for the Chevron Refinery, a copy of which Lessor shall provide to Lessee upon request. As part of the Security Services, Lessee shall, at Lessee's cost, install additional fences around the Solar Project in a location and of a quality approved by Lessor, which approval may not be unreasonably withheld, conditioned, and delayed. Lessor will not be responsible for providing security guards or other security protection for all or any portion of the Property. Lessee shall not be responsible for providing security for roads on the Chevron

Refinery property used to access the Property. Within one month after the start of construction of the Solar Project, the Parties shall meet to coordinate and cooperate regarding (i) security for the Property and the portions of the Chevron Refinery in close proximity to the Property; and (ii) response to emergencies due to vandalism, terrorism, or natural disasters and the other emergencies described in Section 16 below. The Parties shall exchange contact information for security personnel who shall be available to respond to emergencies all day on every day of the year.

6.11 **Viewing Platform**. As part of the Solar Project, Lessee may construct the Viewing Platform in accordance with the Plans. Lessee shall operate the Viewing Platform in accordance with rules and regulations to be developed and agreed to by Lessee and Lessor, which rules and regulations will comply with Lessor's security procedures for the Chevron Refinery.

6.12 **Local Labor Requirements**. During any construction on the Property, Lessee shall comply with the following local labor requirements:

6.12.1 Lessee shall and shall cause its general contractor and any subcontractors to pay prevailing wages in the construction of the Generating Facilities as those wages are determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations, and all other applicable federal, state and local laws, regulations and ordinances pertaining to labor standards insofar as those laws, regulations and ordinances apply to the performance of this Agreement, including any applicable City of Richmond employment requirements, including but not limited to the City's Living Wage Ordinance (Richmond Municipal Code Chapter 2.60), the City's Business Opportunity Ordinance (Richmond Municipal Code Chapter 2.50), and the City's Local Employment Program Ordinance (Richmond Municipal Code Chapter 2.56). Lessee shall and shall cause its general contractor and any subcontractors to keep and retain such records as are necessary to determine compliance with any such applicable laws, regulations and ordinances. During the construction of the Solar Project, Lessee shall post at the construction sites the applicable prevailing rates of per diem wages under the City's Living Wage Ordinance. Lessee shall indemnify, hold harmless and defend (with counsel reasonably acceptable to Landlord) Landlord against any claims for damages, compensation, fines, penalties or other amounts arising out of failure or alleged failure of any person or entity (including Lessee and its general contractor and any subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 et seq., and implementing regulations of the Department of Industrial Relations in connection with construction of the Solar Project. In addition, Lessee shall and shall cause its general contractor and any subcontractors to promptly deliver to Landlord, upon request, documents verifying its compliance with the Living Wage Ordinance, which include documents which evidence that each affected employee has been notified regarding the wages required to be paid pursuant to the Living Wage Ordinance. This Section 6.12 shall survive the termination of this Agreement. Lessee and all sub-contractors must use Employment and Training labor tracking software Elations for certified payroll reporting.

6.12.2 In addition to the hiring and subcontracting goals set forth in the City's Business Opportunity Ordinance and Local Employment Program Ordinance, Lessee shall make good faith efforts to employ the highest possible number of Richmond residents as follows:



6.12.2.1 At least 50% of the work force shall be residents of Richmond, North Richmond or San Pablo;

6.12.2.2 If a general contractor or any subcontractor makes good faith efforts to comply with the above work force composition but is unable to do so and documents such good faith efforts to Landlord's satisfaction, the above work force composition may be reduced prorata to the extent that the City Manager (or designee) and Lessee determine that there are insufficient qualified workers available from Richmond;

6.12.2.3 For purposes of calculating the work force composition, a general contractor may exclude one supervisor.

6.12.3 For the construction of the Solar Project, Lessee shall require its general contractor to solicit qualified subcontractors headquartered in Richmond prior to releasing solicitations for bids to subcontractors headquartered outside of Richmond. Lessee agrees to require its general contractor to use an open, competitive bidding process that allows equal opportunity for all potential bidders to submit bids for the work. If the general contractor makes good faith efforts to comply with the above subcontractor percentages but is unable to do so and documents such good faith efforts to Lessee's satisfaction, the above percentages may be reduced prorata to the extent that the Richmond City Manager (or designee) and Lessee determine that there are insufficient qualified firms headquartered in Richmond. Before entering into a contract with any subcontractor, Lessee or its general contractor shall first obtain Lessor's written approval of the subcontractor.

6.12.4 All subcontractors used for the electrical installation work shall hold a valid C-10 license issued by the California Contractors State License Board.

## 7. TAXES; UTILITIES.

7.1 Taxes on the Property and the Solar Project. Lessee's leasehold improvements shall be Lessee's personal property and shall not be considered real property. Commencing on the Effective Date and throughout the Term, Lessee shall pay directly to any charging authority prior to delinquency all taxes assessed against and levied upon Lessee's leasehold improvements, including without limitation the installation of the Solar Project on the Property, equipment and all other personal property of Lessee situated in or about the Property, and any reclassification of the Property as a result of the Solar Project or this Lease. Lessor shall pay all real property taxes assessed upon the Property (excluding the Solar Project), and shall be responsible for the payment of all real and personal property taxes and assessments levied on the Property value with respect to periods prior to the term of this Lease. Lessee's obligation to pay taxes shall be prorated as of the Effective Date and the Expiration Date (or the date of any sooner termination of the Term). Lessor shall cooperate with Lessee to ensure any and all property tax bills are delivered to the appropriate Party. If Lessor pays any taxes or assessments for which Lessee is responsible under this Section 7.1, Lessee shall, promptly on demand from Lessor, reimburse Lessor for such amounts as additional rent. If Lessee pays any taxes or assessments for which Lessor is responsible under this Section 7.1, Lessor shall, promptly on demand from Lessee, reimburse Lessee for such amounts.

7.2 **Tax Contests.** Each Party reserves the right to contest with taxing authorities any taxes or assessments imposed which it believes in good faith are excessive or from which it believes in good faith it should be exempt, provided that the contesting Party shall not allow any such taxes or assessments to remain unpaid for such length of time as would allow any part or all of the Property or the Solar Project to be sold or foreclosed upon or any property of the other Party to be subject to a lien for the nonpayment of same and the contesting Party shall pay any penalties or interest resulting from such contest.

7.3 **Utilities.** Commencing as of the Effective Date and throughout the Term, Lessee shall pay when due directly to the charging authority all charges for water, gas, electricity, telephone, refuse pickup and all other utilities and services supplied or furnished to the Property during the term of this Lease, together with any taxes thereon. Lessor will have no obligation to provide utilities or interconnection facilities to Lessee pursuant to this Lease. In no event shall Lessor be liable to Lessee for failure or interruption of any such utilities or services, and no such failure or interruption shall entitle Lessee to terminate this Lease or to withhold rent or other sums due hereunder.

8. **LESSEE'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**  
Lessee hereby represents, warrants and covenants to Lessor as follows:

8.1 **Location of Solar Project; Site Plans.** Subject to the procedures and requirements in Section 6.3 above, Lessee shall make all siting decisions with regard to the location and siting of the Solar Project subject to all Applicable Law. Lessee shall post the access roads it constructs within the Property going to and from the Solar Project as being private roads only for use by authorized personnel (including Lessor during Lessor's times of permitted entry hereunder) in connection with the Solar Project. Any road constructed by Lessee on the Property shall be subject to all easements and dedications of records as of the Effective Date.

8.2 **Insurance.** Commencing on the Effective Date, Lessee shall, at its sole cost and expense, obtain and maintain and keep in full force and effect during the Term a commercial general liability insurance policy applying to the condition, use, occupancy and maintenance of the Property and the business operated by Lessee, or any other occupant on the Property insuring Lessee and Lessor against loss or liability caused by Lessee's occupation and use of the Property under this Lease, in an amount not less than Three Million Dollars (\$3,000,000) of combined single limit liability coverage per occurrence, accident or incident, subject to a commercially reasonable deductible. All such policies shall include Broad Form Contractual liability insurance coverage insuring coverage for all of Lessee's indemnity obligations under this Lease. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned. All such policies shall be endorsed to add Lessor and any lender or other party with an insurable interest in the Lease or the Property named by Lessor as an additional insured and to provide that any insurance maintained by Lessor shall be excess insurance only. Such coverage shall also contain endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including employees as additional insureds; and (iii) providing for coverage of employer's automobile non-ownership liability. All such insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insureds shall not reduce or avoid coverage to the other named insureds; and shall afford coverage for all claims based on acts, omissions, injury

and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Lessee shall also maintain Workers' Compensation insurance in accordance with California law. The limits of all insurance described in this Section 8.2 shall not, however, limit the liability of Lessee hereunder. If, in the reasonable opinion of Lessor, the amount of insurance required hereunder is less than the amount typically carried in the market by tenants of comparable industrial facilities in the vicinity of the Property, Lessee shall increase said insurance coverage to such market amount. Lessee shall also maintain any insurance coverage required by any utility company purchasing electrical power from Lessee's project. As of the completion of construction of the Solar Project, Lessee shall, at Lessee's sole expense, obtain and keep in force during the term of this Lease, a policy of fire and extended coverage insurance including a standard "all risk" endorsement, insuring the fixtures, equipment, personal property, leasehold improvements and alterations of Lessee within the Property for the full replacement value thereof, as the same may increase from time to time due to inflation or otherwise. The proceeds from any of such policies shall be used for the repair or replacement of such items so insured and, provided such insurance proceeds are used for such repair and replacement, Lessor shall have no interest in such insurance proceeds. During construction of the Solar Project, (a) Lessee shall maintain course of construction insurance applicable to the work in progress, and (b) Lessee's contractors shall maintain commercial general liability insurance and workers' compensation insurance comparable to that required of Lessee herein. The insurance required to be obtained by Lessee pursuant to this Section 8.2 shall be primary insurance and (a) shall provide that the insurer shall be liable for the full amount of the loss up to and including the total amount of liability set forth in the declarations without the right of contribution from any other insurance coverage of Lessor, (b) shall be carried with companies reasonably acceptable to Lessor, and (c) shall specifically provide that such policies shall not be subject to cancellation, reduction of coverage or other change except after at least thirty (30) days prior written notice to Lessor. Duly executed certificates evidencing the issuance of such policies, together with satisfactory evidence of payment of the premium thereon, shall be deposited with Lessor on or prior to the earlier of the Effective Date or the date on which Lessee or any of Lessee's agents or contractors enter the Property, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage. Lessee shall not do or permit to be done anything which shall invalidate any of the insurance policies referred to in this Section 8.2. Lessee and Lessor each hereby waives any and all rights of recovery against the other, or against the officers, employees, agents, partners and beneficiaries of the other, for loss of or damage to the property of the waiving Party, or the property of others under its control, to the extent of proceeds received as a result of such loss or damage under any insurance policy carried by Lessor or Lessee. Lessee and Lessor shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver is contained in this Lease. Lessor makes no representation that the limits of liability specified to be carried by Lessee under the terms of this Lease are adequate to protect either Party. If Lessee believes that the insurance coverage required under this Lease is insufficient to adequately protect Lessee, Lessee shall provide, at its own expense, such additional insurance as Lessee deems adequate.

### 8.3 **Indemnity; Safety Measures; Waiver of Claims.**

8.3.1 Lessee shall indemnify, protect, defend and hold harmless Lessor and its directors, officers, employees, and agents (collectively, "**Lessor Indemnitees**") from and

against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys' fees and costs), including any personal injury, death or property damage, now or hereafter arising from any occurrence in or about the Property, or from the Solar Project or the Solar Operations, or from any breach or default by Lessee in the performance of any obligation on the part of Lessee to be performed under the terms of this Lease, or from any Covered Contamination (as defined in Section 10.1), except to the extent such damage, loss, expense or liability is caused by the active negligence, gross negligence, or willful misconduct of such Lessor Indemnitee ("**Lessor Claims**"). In the event any action or proceeding shall be brought against any Lessor Indemnitee by reason of any Lessor Claim, Lessee upon notice from such Lessor Indemnitee shall defend the same at Lessee's expense with counsel reasonably satisfactory to such Lessor Indemnitee. The obligations of Lessee contained in this Section shall survive the termination of this Lease. Except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence or willful misconduct of such Lessor Indemnitee, Lessee hereby waives any claims against the Lessor Indemnitees for injury to Lessee's business or any loss of income therefrom or for damage to the equipment, goods, wares, merchandise or other property of Lessee, or for injury or death of Lessee's agents, employees, invitees, or any other person in or about the Property from any cause whatsoever, regardless of whether the same results from conditions existing upon the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee.

8.3.2 Lessor shall indemnify, protect, defend and hold harmless Lessee and its directors, officers, employees, and agents (collectively, "**Lessee Indemnitees**") from and against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys' fees and costs), including any personal injury, death or property damage, now or hereafter arising from any breach or default by Lessor in the performance of any obligation on the part of Lessor to be performed under the terms of this Lease, caused by the active negligence, gross negligence or willful misconduct of Lessor or its directors, officers, employees, and agents, or from Prior Covered Contamination or Lessor Covered Contamination (as defined in Section 10.2), except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence or willful misconduct of such Lessee Indemnitee ("**Lessee Claims**"). In the event any action or proceeding shall be brought against any Lessee Indemnitee by reason of any Lessee Claim, Lessor upon notice from such Lessee Indemnitee shall defend the same at Lessor's expense with counsel reasonably satisfactory to such Lessee Indemnitee. The obligations of Lessor contained in this Section shall survive the assignment or transfer of it rights, liabilities, or obligations under and the expiration or termination of this Lease. Except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence or willful misconduct of such Lessee Indemnitee, Lessor hereby waives any claims against the Lessee Indemnitees for injury to Lessor's business or any loss of income therefrom or for damage to the equipment, goods, wares, merchandise or other property of Lessor, or for injury or death of Lessor's agents, employees, invitees, or any other person in or about the Property or the Chevron Refinery from any cause whatsoever, regardless of whether the same results from conditions existing upon the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessor.

8.4 **Requirement of Governmental Agencies.** Lessee, at its sole cost and expense, shall comply in all respects with all Applicable Law. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee, Lessee shall, at its sole cost and expense, have the right to contest the validity or applicability to the Property or the Solar Project of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity relating to the Solar Project or Lessee's Solar Operations on the Property, provided that such contest does not create any liability of any kind to Lessor, and Lessee shall reimburse Lessor for any out-of-pocket costs (including attorneys' costs and fees) in connection with Lessor's required involvement in any such contest. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee at Lessee's sole cost and expense, but Lessee shall indemnify, protect, defend and hold harmless Lessor from and against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys' fees and costs) arising out of such contest, including without limitation, from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

8.5 **Liens.** Lessee shall not file, or allow to be filed, any lien against the Property. In the event any lien shall be filed, Lessee shall promptly take such action as will remove or satisfy the lien; provided, however, that Lessee may contest any lien (or any aspect thereof) and, pending the determination of such contest, postpone the removal or satisfaction thereof, except that Lessee shall not postpone such removal or satisfaction so long as to permit or cause any adverse effect on, or loss or impairment of title to, the Property or any of Lessor's real or personal property. If Lessee fails to timely remove or satisfy a lien, Lessor may, after thirty (30) days' prior written notice to Lessee stating with reasonable specificity the actions that will be taken by Lessor to remove or satisfy such lien, perform such actions for the account of Lessee and Lessee shall pay the cost thereof as additional rent. To the extent allowed by law, Lessee may bond to secure the lien so long as by law the bond will become the sole security for the lien and Lessor's use of or interest in the Chevron Refinery and the Property is not compromised.

9. **LESSOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**  
Lessor hereby represents, warrants and covenants to Lessee as follows:

9.1 **Exclusivity.** Lessor has not granted to any party other than Lessee rights to convert the solar resources of the Property for electrical energy or to otherwise use the Property for solar energy conversion purposes. Other than matters of record and those encumbrances listed in Exhibit B, Lessor has not granted a lease, license, or right to possession of any part of the Property for any other purpose. In no event during the term of this Lease shall Lessor construct, build or locate or allow others to construct, build or locate any Solar Energy System, Solar Energy Facilities, or similar project on the Property, or to use any part of the Property except for the purposes set forth in Section 3.5.

9.2 **Non-Interference.** Lessor will not initiate or conduct activities that could damage, impair or otherwise adversely affect the Solar Energy Facilities or their function. Except for the rights reserved and granted to Lessor in this Lease, neither Lessor nor any employee, officer, agent, or contractor or any other person acting on behalf of Lessor or at Lessor's direction or request shall impede or interfere with: (i) the siting, permitting, construction,

installation, maintenance, operation, replacement, or removal of Solar Energy Facilities on the Property; (ii) Lessee's access over the Property to the Solar Energy Facilities; (iii) the undertaking of any other activities of Lessee permitted under this Lease; (iv) the transmission of electric, electromagnetic or other forms of energy to or from the Property; or (v) the Solar Energy Facilities' exposure to sunlight (subject to the acknowledgement regarding dust and particulates in the fourth sentence of Section 2).

9.3 **Requirements of Governmental Agencies/Lenders.** To the extent required by any Applicable Law, Lessor, at no cost or expense to Lessor, shall reasonably cooperate with and assist Lessee in complying with or obtaining any land use permit and approval, tax-incentive or tax-abatement program approval, building permit, environmental impact review or any other approval reasonably required by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Solar Project, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Lessor for its actual expense directly incurred in connection with such cooperation.

9.4 **Quiet Enjoyment.** Subject to Lessor's rights of entry hereunder, Lessor covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Lease for its entire term without hindrance or interruption by Lessor or any person lawfully or equitably claiming by, through, under or superior to Lessor subject to the terms of this Lease.

9.5 **Acknowledgment of Lessee's Right to Erect Fences.** Subject to Lessor's rights of entry pursuant to the terms herein, Lessor acknowledges and agrees that Lessee may erect fences or other security measures around the Property or the Solar Project in accordance with Section 6.10 above. Lessee shall provide to Lessor keys or access codes to all fences constructed by Lessee on the Property.

## 10. **ENVIRONMENTAL REMEDIATION.**

10.1 **Environmental Remediation by Lessee.** In the event environmental contamination results from Lessee's operation and use of the Property and that environmental contamination is covered by applicable federal, state or local laws in effect and enforced during the Term, this Section 10.1 shall apply. The definitions and requirements of Section 10.2 shall apply to Prior Covered Contamination (as that term is defined in Section 10.2.1 below).

10.1.1 **"Covered Contamination"** means (i) any environmental contamination as a result of Lessee's use of the Property or the Solar Project that is covered by Applicable Law, (ii) any environmental contamination or threatened environmental contamination that results from any penetration, disturbance, or impairment of the landfill cap and drainage system or groundwater control systems by Lessee, its agents, employees, contractors, licensees, and invitees, and (iii) any other environmental condition that is covered by Applicable Law existing on the Property as of the Effective Date to the extent such condition is exacerbated by Lessee's operation and use of the Property or the Solar Project.

10.1.2 “**Claim Against Lessee**” means receipt by Lessor or Lessee of a notice, claim, demand, or complaint from any third party or from any government agency with jurisdiction for investigation, containment, remediation or removal of Covered Contamination, or for the payment of damages, costs, or expenses arising from or relating to the presence of or the escape, leakage, spillage, discharge, emission or release from the Property into, onto or under the Property, adjacent land, or any groundwater source, watercourse, body of water, or wetland, of any Covered Contamination alleged to have resulted from Lessee’s operation and use of the Property or the Solar Project.

10.1.3 If a Claim Against Lessee occurs, the Party first receiving notice of the Prior or Lessor Claim will immediately notify the other Party, and Lessee will proceed after receipt of notice of the claim to assess and, if required, to take any action necessary to fully and finally resolve the claim. If any investigation, containment, remediation or removal of Covered Contamination is undertaken, Lessee shall be deemed to have satisfied its obligations once Lessee completes the work to the satisfaction of the governmental agency having jurisdiction over the matter, or as otherwise required under any settlement agreement or court order. If Lessee, in good faith, believes that the claimed contamination is not Covered Contamination or that Lessee is not otherwise responsible for the Claim Against Lessee, then Lessee shall have the right to challenge such claim in an appropriate forum.

10.1.4 In the event action is taken against either Party regarding a Claim Against Lessee, or commenced by Lessee to challenge a Claim Against Lessee, Lessor shall cooperate with Lessee in the defense thereof.

## 10.2 **Environmental Remediation by Lessor.**

10.2.1 “**Prior Covered Contamination**” means environmental contamination and that was present in, on or under the Property prior to the Effective Date.

10.2.2 “**Lessor Covered Contamination**” means escape, leakage, spillage, discharge, emission or release from the Property into, onto or under the Property of environmental contamination caused by Lessor after the Effective Date and which is covered by Applicable Law.

10.2.3 Lessor shall disclose to Lessee any contamination not caused by Lessee but related to the Property that Lessor learns of subsequent to Lessee taking possession of the Property.

10.2.4 “**Prior Covered Contamination Claim or Contamination Claim**” (hereinafter, “**Prior or Lessor Claim**”) means receipt by Lessor or Lessee of a notice, claim, demand, or complaint from any third party, or from any government agency with jurisdiction for containment, remediation or removal of Prior Covered Contamination or Lessor Covered Contamination, or for the payment of damages, costs, or expenses arising from or relating to for the presence of or the escape, leakage, spillage, discharge, emission or release from the Property into, onto or under the Property, adjacent land, or any groundwater source, watercourse, body of water, or wetland, of any Prior Covered Contamination or Lessor Covered Contamination.

10.2.5 If a Prior or Lessor Claim occurs, the Party first receiving notice of the Prior or Lessor Claim will immediately notify the other Party, and Lessor will proceed after receipt of notice of the claim to assess and, if required, to take any action necessary to fully and finally resolve the claim. If any containment, remediation or removal of Prior Covered Contamination or Lessor Covered Contamination is undertaken, Lessor shall be deemed to have satisfied its obligations once Lessor completes the work to the satisfaction of the governmental agency having jurisdiction over the matter, or as otherwise required under any settlement agreement or court order. If Lessor, in good faith, believes that the claimed contamination is not Prior Covered Contamination or Lessor Covered Contamination or that Lessor is not otherwise responsible for the Prior or Lessor Claim, then Lessor shall have the right to challenge such claim in an appropriate forum.

10.2.6 In the event action is taken against either Party regarding a Prior or Lessor Claim, or commenced by Lessor to challenge a Prior or Lessor Claim, Lessee shall cooperate with Lessor in the defense thereof, provided such cooperation is at no material cost to Lessee and further provided that such cooperation would not expose Lessee to significant negative media or political attention.

10.3 **Survival of Obligations.** The Parties' obligations under this Section 10 shall survive transfer or assignment of the Parties' interests under this Lease or expiration or termination of this Lease.

## 11. **ASSIGNMENT AND SUBLETTING.**

11.1 **Assignment and Subletting Prohibited.** The Parties acknowledge that Lessee's status as a California Joint Powers Authority is an important basis on which the Parties are entering into this Lease and that Lessor would not lease the Property on the terms of this Lease to a party other than a governmental entity. The Parties further acknowledge that the Project Public Benefits would be significantly reduced and impeded if the Project ceased to be operated by Marin Clean Energy or another governmental entity. Accordingly, Lessee may not assign this Lease, sublet the Property or Solar Project or any part thereof, or any right or privilege appurtenant thereto, encumber its interest under this Lease or any rights of Lessee hereunder except to the extent permitted under Section 12.3, enter into any license or concession agreement respecting all or any portion of the Property, or suffer any other person to occupy or use the Property or any portion thereof (each, an "Assignment") without the prior written consent of Lessor, which consent may be given or withheld at Lessor's sole discretion, except as otherwise set forth in Sections 11.2 and 11.3 below. An encumbrance of Lessee's interest under this Lease or the Solar Project as security for a loan or other financing of the Solar Project, to the extent permitted by Section 12.3, shall not constitute an Assignment. If Lessee proposes to assign this Lease or sublet the Property, Lessee shall provide written notice thereof to Lessor, together with a detailed description of all terms of such Assignment and the proposed assignee or sublessee. If Lessee is a partnership or a limited liability company, a change in the general partner or manager of Lessee, a transfer, voluntary or involuntary, of more than 50% of the interests in the partnership or the company, or the dissolution of the partnership or the company, shall be deemed an Assignment. If Lessee is a corporation, any dissolution, merger, consolidation, or other reorganization of Lessee, or the transfer, either all at once or in a series of transfers, of a controlling percentage of the capital stock of Lessee, or the sale, or series of sales



within any one (1) year period, of all or substantially all of Lessee's assets located in, on, or about the Property, shall be deemed an Assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Lessee's capital stock issued, outstanding, and entitled to vote for the election of directors.

11.2 **Permitted Assignment to Government Entity.** Notwithstanding Section 11.1 above, Lessee may assign this Lease, sublet the Property or any part thereof, or any right or privilege appurtenant thereto, or license all or any proportion of the Property to a government entity, with Lessor's prior written consent, which consent may not be unreasonably withheld, conditioned, or delayed.

11.3 **Permitted Sublet for Development.** Notwithstanding Section 11.1 above, Lessee may sublet all or a portion of the Property to a third party (the "**Developer**") for the purposes of developing the Solar Project with Lessor's prior written consent, which consent may not be unreasonably withheld, conditioned, or delayed, subject to the following conditions: (i) Lessee remains the power off-taker pursuant to a power purchase agreement with the Developer; (ii) the term of the sublease is no longer than necessary for the Developer to realize the full benefit of any federal, state or local production tax credits and investment tax credits associated with the construction or operation of the Solar Project; (iii) the Developer is reasonably satisfactory to Lessor, taking into account such factors as the Developer's financial condition and experience developing comparable projects; (iv) Lessor and the Developer enter into a sublease agreement on terms and conditions reasonably satisfactory to Lessor; and (v) the sublease agreement does not expand the obligations or limit the rights of Lessor under this Lease.

11.4 **Lessor's Right of First Offer.** In the event Lessee elects to assign this Lease or sublease the Property (other than a sublease to the Developer), Lessor shall have a right of first offer as follows: Lessee shall give Lessor written notice specifying the terms and conditions on which Lessee desires to assign the Lease or sublease all or a portion of the Property and offering to assign or sublease to Lessor on the stated terms and conditions (the "**First Offer**"). Within thirty (30) days after receipt of the notice, Lessor shall either accept or reject the First Offer. If Lessor accepts the First Offer, then the parties shall proceed in accordance with the terms and conditions stated in the First Offer. If Lessor rejects the First Offer (or does not respond in writing within such thirty (30) day period, which failure shall act as a rejection), then Lessee shall be free to assign the Lease or sublease the Property to others, provided such assignment or sublease is on substantially similar terms as the First Offer to Lessor. Any offer of sale for a substantially reduced purchase price as compared to the First Offer, or with substantially different terms, must first be presented to Lessor as a new offer. For purposes hereof, the purchase price shall be considered "substantially reduced" if the total consideration payable to Lessee is less than 95% of the consideration payable pursuant to the terms specified in the First Offer.

11.5 **Assignments Generally.** Any Assignment without Lessor's prior written consent pursuant to this Section shall at Lessor's election be void, and shall constitute an Event of Default. If Lessee shall purport to assign this Lease, or sublease all or any portion of the Property, or permit any person or persons other than Lessee to occupy the Property, without Lessor's prior written consent, Lessor may collect rent from the person or persons then or

thereafter occupying the Property and apply the net amount collected to the rent reserved herein, but no such collection shall be deemed a waiver of Lessor's rights and remedies under this Section 11, or the acceptance of any such purported assignee, sublessee or occupant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. The consent by Lessor to any Assignment shall not constitute a waiver of the provisions of this Section 11, including the requirement of Lessor's prior written consent, with respect to any subsequent Assignment. In the event Lessor shall consent to an Assignment pursuant to this Section 11, Lessee shall nonetheless remain primarily liable for all obligations and liabilities of Lessee under this Lease, including but not limited to the payment of rent. Lessee shall reimburse Lessor upon demand for the reasonable out-of-pocket expenses, including reasonable attorneys' fees, incurred by Lessor in connection with the negotiation, review, and documentation of any requested Assignment. In the event of an assignment or sublease to an entity other than a governmental entity or the Developer, the rent shall be adjusted in accordance with Section 5.2 above.

12. **ESTOPPEL CERTIFICATES; ATTORNMENT; SUBORDINATION.**

12.1 **Lessor's Security.**

12.1.1 **Estoppel Certificate.** Lessee shall, within fifteen (15) days following request by Lessor, execute and deliver to Lessor an estoppel certificate: (a) certifying that this Lease has not been modified and is in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect; (b) stating the date to which the rent and other charges are paid in advance, if at all; (c) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessee hereunder, or if there are uncured defaults on the part of Lessee, stating the nature of such uncured defaults; and (d) evidencing the status of this Lease as may be reasonably required either by a lender making a loan to Lessor to be secured by a deed of trust or mortgage encumbering the Property or a purchaser of the Property from Lessor. In the event of any financing or sale of the Property by Lessor, Lessee shall deliver to Lessor the current financial statements of Lessee with an opinion of a certified public accountant, including a balance sheet and profit and loss statement for the then current fiscal year, and the two (2) immediately prior fiscal years, all if available without further preparation and all prepared in accordance with generally accepted accounting principles consistently applied. Lessor shall keep any financial statements of Lessee delivered to Lessor strictly confidential and shall endeavor to cause any prospective lender or purchaser to do the same. The failure by Lessee to deliver an estoppel certificate or to deliver any such financial statements within fifteen (15) days following such request shall be an Event of Default under this Lease.

12.1.2 **Attornment.** Lessee shall attorn to any third party purchasing or otherwise acquiring the Property at any sale or other proceeding, or pursuant to the exercise of any rights, powers or remedies under any mortgages or deeds of trust or ground leases now or hereafter encumbering all or any part of the Property, as if such third party had been named as Lessor under this Lease. Such attornment shall be upon all of the terms and conditions of this Lease. Lessee shall execute a new lease with such new Lessor on the same terms of this Lease if so required by such new Lessor.

## 12.2 Lessee's Security.

12.2.1 Estoppel Certificate. Lessor shall, within fifteen (15) days following request by Lessee, execute and deliver to Lessee an estoppel certificate: (a) certifying that this Lease has not been modified and is in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect; (b) stating the date to which the rent and other charges are paid in advance, if at all; (c) acknowledging that there are not, to Lessor's knowledge, any uncured defaults on the part of Lessee hereunder, or if there are uncured defaults on the part of Lessee, stating the nature of such uncured defaults; and (d) evidencing the status of this Lease as may be reasonably required either by the holder of a mortgage, grant a deed of trust on, and/or pledge of the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project ("**Leasehold Mortgage**") or by a Permitted Transferee (as defined below). The failure by Lessor to deliver an estoppel certificate within fifteen (15) days following such request shall be a default under this Lease. For purposes of this Lease, "**Permitted Transferee**" means (i) an assignee pursuant to an Assignment permitted under Section 11; (ii) a Leasehold Mortgagee that takes title to this Lease pursuant to a foreclosure of a Leasehold Mortgage or a sale in lieu thereof; or (iii) an Eligible Foreclosure Successor that takes title to this Lease pursuant to Section 12.3.12.

12.2.2 Attornment. Any Permitted Transferee shall succeed to the interest of Lessee under this Lease and shall have all the rights and duties of Lessee under this Lease and be bound to this Lease to the same extent as Lessee, but only during the period when such Permitted Transferee owns the leasehold estate. Any Permitted Transferee shall immediately provide Lessor with written notice of such transfer. Lessor shall attorn to any Permitted Transferee upon all of the terms and conditions of this Lease. If so required by the Permitted Transferee, Lessor shall execute a new lease with the Permitted Transferee on the same terms of this Lease. Where a Leasehold Mortgagee acquires title to this Lease or the Solar Project under Section 12.3, then the following breaches, if any, relating to the prior Lessee shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment for the benefit of creditors of Lessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the underlying fee-owned property, or (iv) filing any petition by, for or against Lessee under any chapter of the Federal Bankruptcy Code. The benefits afforded to any Permitted Transferee pursuant to this Section 12.2.2 are conditioned on (i) such Permitted Transferee assuming in writing all duties and obligations of Lessee under this Lease from and after the date the Permitted Transferee takes title to this Lease and (ii) such Permitted Transferee paying rent in accordance with Section 5.1, including any increase of Annual Rent to Fair Market Rent, if applicable.

12.2.3 Subordination. Lessor agrees that any mortgage, deed of trust, or other instrument of security now of record or which is recorded after the date of this Lease affecting the Property or any portion thereof, shall be subject to and subordinate to this Lease and any mortgage, grant of a deed of trust on, and/or pledge of the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project, and such subordination is hereby made effective without any further act of Lessor. Lessor further agrees that Lessor shall obtain from the holder of any mortgage, deed of trust, or other instrument of security affecting the Property now of record or which is recorded after the date of this Lease ("**Property Mortgage**") a written and acknowledged subordination, nondisturbance, and attornment

agreement in a commercially reasonable and recordable form, subject to Lessor's reasonable approval, that provides, among other things, that as long as Lessee performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance held by the Property Mortgagee, shall affect Lessee's or the Leasehold Mortgagee's rights under this Lease. The Property Mortgagee and Lessor shall execute and return to Lessee and the Leasehold Mortgagee the written and acknowledged agreement and any other documents reasonably required by Lessee and the Leasehold Mortgagee to accomplish the purposes of this Section, or comments to such agreement or documents, within seven (7) days after delivery thereof to Lessor and the Property Mortgagee, and the failure of the Lessor and the Property Mortgagee to execute, acknowledge, and return any such instruments or provide comments shall constitute a default hereunder.

### 12.3 Leasehold Mortgages.

12.3.1 Lessee's Right to Mortgage Lease and Solar Project. Lessee shall have the right, at any time and from time to time, to mortgage, grant a deed of trust on, and or pledge the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project, subject to Lessor's approval of the Leasehold Mortgagee or lender, which approval may not be unreasonably withheld, conditioned, or delayed. Lessee agrees to furnish Lessor with a correct and complete copy of any such security instrument. Lessor agrees that Lessee's interest under the Lease or the Solar Project may be encumbered under this section 12.3.1. In no event shall a security instrument under this section 12.3.1 encumber Lessor's fee interest in the underlying property.

12.3.2 Leasehold Mortgagee Consent to Lease Termination. There shall not be entered into between Lessor and Lessee any agreement of cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Lease without the prior written consent of the Leasehold Mortgagee, whose consent shall not be unreasonably withheld. This Lease shall not merge into the fee underlying the Property without the prior written consent of such Leasehold Mortgagee.

12.3.3 Leasehold Mortgagee's Right to Cure Default. Lessor, upon giving Lessee any notice under this Lease, including, without limitation, notice of an Event of Default, shall at the same time serve by one of the methods specified in Section 17.4 of this Lease, copies of such notice upon each Leasehold Mortgagee whose address has previously been provided to Lessor by Lessee in writing. No notice served upon Lessee (including, without limitation, a notice of termination of this Lease) shall be effective unless a copy has been served upon each Leasehold Mortgagee at the address provided by Lessee. Following receipt of any such notice of an Event of Default, each Leasehold Mortgagee shall have the right to remedy the Event of Default, or cause the same to be remedied, within the same time allowed to Lessee under Sections 14.1.1 and 14.1.2 of this Lease.

12.3.4 Leasehold Mortgagee's Right to Foreclose. If a noncurable breach of this Lease occurs, a Leasehold Mortgagee shall have the right to begin foreclosure proceedings and to obtain possession of the Lease and/or Solar Project, so long as the Leasehold Mortgagee (i) notifies Lessor, within 30 days after receipt of Lessor's notice of an Event of Default, of its intention to effect this remedy; (ii) diligently institutes steps or legal proceedings

to foreclose on or recover possession of the Lease (after the Leasehold Mortgagee has completed its customary pre-foreclosure due diligence requirements), and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and (iii) keeps and performs, during the foreclosure period (including the pre-foreclosure due diligence period), all of the covenants and conditions of this Lease.

12.3.5 **Multiple Leasehold Mortgagees.** In the event of conflict between the rights of multiple Leasehold Mortgagees, the rights of the respective Leasehold Mortgagees shall be determined in the order of priority of their Leasehold Mortgages.

12.3.6 **Leasehold Mortgagee Named as Additional Insured.** The name of the Leasehold Mortgagee may be added as a loss payee of any fire and extended coverage insurance carried by Lessee, provided that insurance proceeds are first used for repair and restoration as required by this Lease, unless a Leasehold Mortgagee's security has been impaired and such Leasehold Mortgagee is legally entitled to the application of the insurance proceeds to the unpaid indebtedness of Lessee, in which case such insurance proceeds shall be paid to the Leasehold Mortgagee up to the amount of the unpaid indebtedness secured by any such Leasehold Mortgage(s). The terms of this Section 12.3.6 do not modify or limit either Party's rights or obligations under Section 15.4.

12.3.7 **Liability of Leasehold Mortgagees.** Except with respect to payment of Annual Rent or additional rent and except as provided in Section 12.3.4, the Leasehold Mortgagee shall not be liable for the performance of Lessee's obligations under this Lease unless the Leasehold Mortgagee has succeeded to and has possession of the interest of Lessee under this Lease.

12.3.8 **Leasehold Mortgage Not Assignment.** The making of any Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or Transferee of this Lease or the leasehold estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Lessee under this Lease to be performed.

12.3.9 **Lessor's Receipt of Notices.** Lessor agrees, whenever requested by any Leasehold Mortgagee, to confirm, in writing, the receipt of any notice from the Leasehold Mortgagee.

12.3.10 **Assignment to Leasehold Mortgagee.** The Leasehold Mortgagee shall have the option to be assigned this Lease in the event that Lessee, Lessee's trustee or assignee elects to reject this Lease under Section 365(a) of the Bankruptcy Code. In the event that the Leasehold Mortgagee exercises its option to have this Lease assigned to it, such a rejection by Lessee, Lessee's trustee or assignee, whether by election, by operation of law or otherwise, shall not terminate this Lease if the Leasehold Mortgagee cures any outstanding Event of Default of Lessee under this Lease other than Events of Default of Lessee that are personal to Lessee and cannot be cured by a party other than Lessee, such as transfer and bankruptcy.

12.3.11 **Assignment of Rents.** Lessor consents to a provision in any Leasehold Mortgage or otherwise for an assignment of rents from subleases of the Improvements to the holder thereof, effective on the date on which the Leasehold Mortgagee has succeeded to and takes possession of the interest of Lessee under this Lease.

12.3.12 **Foreclosure Not a Breach.** The foreclosure of a Leasehold Mortgage, or any sale thereunder to an Eligible Foreclosure Successor, whether by judicial proceedings or by virtue of any power contained in any Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to any Leasehold Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute an Event of Default under this Lease and shall not require Lessor's consent, and upon such foreclosure, sale or conveyance and Leasehold Mortgagee's execution and delivery to Lessor of a lease assumption agreement in a commercially reasonable form, Lessor shall recognize the Leasehold Mortgagee, or such Eligible Foreclosure Successor, as Lessee under the Lease. For purposes of this Lease, "**Eligible Foreclosure Successor**" means an entity that (i) has, during the five (5) year period immediately preceding the transfer, owned and operated at least twenty-five (25) megawatts of inverter nameplate generating capacity of photovoltaic solar electricity generating equipment and facilities in accordance with applicable operating requirements, and (ii) is recognized nationally or internationally in the solar industry as having substantial experience managing, developing or operating solar photovoltaic energy facilities similar to the Solar Energy Facilities..

13. **TRANSFER OF LESSOR'S INTEREST.** If Lessor or any successor to Lessor sells, conveys, or transfers the Property or any portion thereof that is subject to this Lease (each such sale, conveyance, or transfer, a "**Transfer**"), so long as Lessor has delivered to Lessee prior written notice of any proposed Transfer, then all rights, liabilities and obligations of Lessor under this Lease accruing from and after such Transfer shall become the rights, liabilities and obligations of the transferee, and the transferring Lessor shall have no further right, obligation or liability under this Lease accruing thereafter. The term "Lessor" as used in this Lease, so far as the covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner at the time in question of the fee title to the Property. The covenants and obligations contained in this Lease on the part of Lessor shall, subject to the foregoing, be binding upon each Lessor hereunder only during this or its respective period of ownership. Lessee agrees to attorn to any new Lessor following a Transfer of which Lessee has notice pursuant to Section 12.1.2 above.

14. **DEFAULT AND TERMINATION.**

14.1 **Default by Lessee.** The occurrence of any of the following shall constitute a default and breach of this Lease by Lessee (each an "**Event of Default**"):

14.1.1 **Monetary Default.** The failure or omission by Lessee to pay amounts required to be paid hereunder when due, and such failure or omission has continued for five (5) days after Lessor has delivered written notice of the default to Lessee. Any such notice shall constitute the notice required under Section 1161 of the California Code of Civil Procedure (and/or any related or successor statutes regarding unlawful detainer actions), provided such notice is given in accordance with the requirements of such statute.

14.1.2 **Non-Monetary Default.** The failure or omission by Lessee to observe, keep or perform any of the other terms, agreements or conditions set forth in this Lease, and such failure or omission has continued for thirty (30) days after written notice from Lessor (or such longer period required to cure such failure or omission in the event the default is not reasonably susceptible of cure within a thirty (30) day period, but in no event shall such cure period exceed a total cure period of sixty (60) days after the occurrence of a non-monetary default, if Lessee commences such cure within the initial thirty (30) day period and diligently prosecutes such cure to completion).

14.1.3 **Bankruptcy by Lessee.** The occurrence of any of the following (i) Lessee files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it and such involuntary petition or request is not dismissed within forty-five (45) days after filing; (ii) Lessee's assignment of its assets for the benefit of its creditors; (iii) the sequestration of, attachment of, or execution on, any substantial part of the property of Lessee or on any property essential to the conduct of Lessee's business on the Property, and Lessee shall have failed to obtain a return or release on such property within forty five (45) days thereafter, or prior to sale pursuant to such sequestration, attachment or execution, whichever is earlier; or (iv) an entry of any of the following orders by a court having jurisdiction, and such order shall have continued for a period of ninety (90) days: (1) an order adjudicating Lessee to be bankrupt or insolvent, (2) an order appointing a receiver, trustee or assignee of Lessee's property in bankruptcy or any other proceeding, or (3) an order directing the winding up or liquidation of Lessee.

14.2 **Lessor's Remedies.** Upon any Event of Default, Lessor shall have the following remedies, in addition to all other rights and remedies provided by law or equity: (i) Lessor, as described in California Civil Code Section 1951.4, shall be entitled to keep this Lease in full force and effect for so long as Lessor does not terminate Lessee's right to possession (whether or not Lessee shall have abandoned the Property) and Lessor may enforce all of its rights and remedies under this Lease, including the right to recover Annual Rent and additional rent, plus interest at the Default Rate from the due date of each installment of Annual Rent or additional rent until paid; or (ii) Lessor may terminate Lessee's right to possession by giving Lessee written notice of termination. On the giving of the notice, this Lease and all of Lessee's rights in the Property will terminate. Any termination under this Section will not release Lessee from the payment of any sum then due Lessor or from any claim for damages or rent previously accrued or then accruing against Lessee.

In the event this Lease is terminated pursuant to this Section 14.2, Lessor may recover from Lessee: (1) the worth at the time of award of the unpaid rent which had been earned at the time of termination; plus (2) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss for the same period that Lessee proves could have been reasonably avoided; plus (3) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided; plus (4) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform Lessee's obligations under this Lease, or which in the ordinary course of things would be likely to result

therefrom, including without limitation, the following: (i) expenses for repairing or restoring the Property, including removing any equipment or alterations installed by Lessee; (ii) real estate leasing commissions, advertising costs and other expenses of reletting the Property; (iii) costs incurred as owner of the Property including without limitation taxes and insurance premiums thereon, utilities and security; and (iv) expenses in retaking possession of the Property; (v) attorneys' fees and court costs.

The "worth at the time of award" of the amounts referred to in subsections (1) and (2) of this Section 14.2 shall be computed by allowing interest at the Default Rate. The "worth at the time of award" of the amount referred to in subsection (3) of this Section shall be computed by discounting such amount at the discount rate of the Federal Reserve Board of San Francisco at the time of award plus one percent (1%). The term "time of award" as used in subsections (1), (2), and (3) shall mean the date of entry of a judgment or award against Lessee in an action or proceeding arising out of Lessee's breach of this Lease. The term "rent" as used in this Section shall include all sums required to be paid by Lessee to Lessor pursuant to the terms of this Lease.

This Lease may be terminated by a judgment specifically providing for termination, or by Lessor's delivery to Lessee of written notice specifically terminating this Lease. In no event shall any one or more of the following actions by Lessor, in the absence of a written election by Lessor to terminate this Lease, constitute a termination of this Lease or a waiver of Lessor's right to recover damages under this Section 14.2: (1) appointment of a receiver in order to protect Lessor's interest hereunder; (2) consent to any subletting of the Property or assignment of this Lease by Lessee, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or (3) any other action by Lessor or Lessor's agents intended to mitigate the adverse effects of any breach of this Lease by Lessee, including without limitation any action taken to maintain and preserve the Property, or any action taken to relet the Property or any portion thereof for the account of Lessee and in the name of Lessee.

Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, and under any other present or future law, in the event Lessee is evicted or Lessor otherwise lawfully takes possession of the Property by reason of any Event of Default.

If Lessee at any time shall fail to make any payment or perform any other act required to be made or performed by Lessee under this Lease, then Lessor may, but shall not be obligated to, make such payment or perform such other act to the extent Lessor may deem desirable, and may, in connection therewith, pay any and all expenses incidental thereto and employ counsel. No such action by Lessor shall be deemed a waiver by Lessor of any rights or remedies Lessor may have as a result of such failure by Lessee, or a release of Lessee from performance of such obligation. All sums so paid by Lessor, including without limitation all penalties, interest and costs in connection therewith, shall be due and payable by Lessee to Lessor on the day immediately following any such payment by Lessor, as additional rent. Lessor shall have the same rights and remedies for the nonpayment of any such sums as Lessor may be entitled to in the case of default by Lessee in the payment of rent.

Any amount due to Lessor under this Lease not paid when due shall bear interest at the lower of fifteen percent (15%) per annum, or the highest rate then allowed by law ("Default



**Rate**”), from the date due until paid in full. Payment of such interest shall not excuse or cure any default by Lessee under this Lease.

All sums payable by Lessee to Lessor or to third parties under this Lease in addition to such sums payable pursuant to Section 5 hereof shall be payable as additional sums of rent. For purposes of any unlawful detainer action by Lessor against Lessee pursuant to California Code of Civil Procedure Sections 1161-1174, or any similar or successor statutes, Lessor shall be entitled to recover as rent not only such sums specified in Section 5 as may then be overdue, but also all such additional sums of rent as may then be overdue.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies herein provided or permitted at law or in equity.

No member, official, or employee of Lessee shall be personally liable to Lessor or any successor in interest under any Event of Default or for any amount which may become due to Lessor or successor or on any obligations under the terms of this Lease.

14.3 **Default by Lessor.** Lessor’s failure or omission by Lessor to observe, keep or perform any of the terms, agreements or conditions set forth in this Lease, and such failure or omission has continued for thirty (30) days after written notice from Lessee (or such longer period required to cure such failure or omission in the event the default is not reasonably susceptible of cure within a thirty (30) day period, but in no event shall such cure period exceed a total cure period of sixty (60) days after the occurrence of a default, if Lessor commences such cure within the initial thirty (30) day period and diligently prosecutes such cure to completion).

14.3.1 **Lessee’s Remedies.** Upon any Event of Default, Lessee shall have the following remedies, in addition to all other rights and remedies provided by law or equity: (i) Lessee shall be entitled to keep this Lease in full force and effect for so long as Lessor does not terminate Lessee’s right to possession (whether or not Lessee shall have abandoned the Property) and Lessee may enforce all of its rights and remedies under this Lease; or (ii) Lessee may terminate this Lease by giving Lessor written notice of termination. On the giving of the notice, this Lease will terminate and subject to Sections 6.9 and 14.3 and other provisions of this Lease that survive the expiration or termination of this Lease, neither Party will have any further rights or obligations under the Lease, Termination of this Lease under this Section 14.2.1 will not release Lessor from the payment of any sum then due Lessee or from any claim for damages accrued or then accruing against Lessor. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies herein provided or permitted at law or in equity. No director, officer, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any Default by Lessor or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

14.4 **Surrender.** Lessee shall, upon expiration or sooner termination of this Lease, surrender the Property to Lessor in substantially the same condition as existed on the date Lessee originally took possession thereof, subject to the terms and conditions of Section 6.9 above.

14.5 **Holding Over.** This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Lessee after expiration shall not constitute a renewal or extension of the Lease or give Lessee any rights in or to the Property unless otherwise expressly provided in this Lease. Any holding over after expiration (or termination, as applicable) of the Term with the express written consent of Lessor shall be construed to be a month-to-month tenancy at one hundred twenty-five percent (125%) of the Fair Market Rent, which rent shall be paid monthly during such hold over period. The month-to-month tenancy shall be on the terms, provisions, and conditions of this Lease except as provided in the preceding sentence.

15. **CONDEMNATION; DAMAGE OR DESTRUCTION.**

15.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Property or the Solar Project, for any public use, then the interests and obligations of Lessee under this Lease in or affecting Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of Property or the Solar Project, or (ii) the date of the condemnation judgment. Lessee shall continue to pay all amounts payable hereunder to Lessor until the earlier of such dates, at which time Lessor and Lessee shall be relieved of any and all further obligations and conditions to each other under this Lease.

15.2 **Partial Taking.** If, at any time during the term of this Lease, any authority having the power of eminent domain shall condemn any portion of the Solar Project or the Property, then the interest and obligations of Lessee under this Lease as to any portion of the Solar Project or the Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of such portion of the Solar Project or the Property, or (ii) the date of the condemnation judgment, and, unless this Lease is terminated as hereinafter provided, this Lease shall continue in full force and effect as to the remainder of the Solar Project and the Property. Lessee shall, at its own cost and expense, make all necessary repairs or alterations to the improvements constructed on the Property in order to make the portion of the Solar Project or Property not taken a functional unit, and the portion of any condemnation proceedings expressly designated for such restoration work shall be paid to Lessee to reimburse Lessee for such purpose. Each Party hereto waives the provisions of California Code of Civil Procedure Section 1265.130 allowing either Party to petition the superior court to terminate this Lease in the event of a partial taking of the Property. If such partial condemnation renders the Solar Project unusable or uneconomic or renders the Property unusable for the Solar Project or Lessee's Solar Operations, Lessee may terminate this Lease.

15.3 **Apportionment, Distribution of Award.** On any taking covered by Sections 15.1 or 15.2 above, all compensation awarded upon a taking shall belong to and be paid to Lessor, except that Lessee shall receive from the award (i) a sum attributable to Lessee's improvements or alterations made to the Property by Lessee at Lessee's expense with Lessor's consent in accordance with this Lease, which Lessee has the right to remove from the Property pursuant to the provisions of this Lease, but are taken for public use or rendered unusable or uneconomic by the taking; (ii) if Lessee elects to remove any such improvements or alterations made to the Property at Lessee's expense due to the taking, Lessee shall receive the portion of the award to reimburse Lessee for its expenses for reasonable removal and relocation of its

improvements or alterations not to exceed the market value of such improvements or alterations on the date possession of the Property is taken; or (iii) Lessee's cost to restore the Solar Project as a functional unit under Section 15.2 above.

15.4 **Damage or Destruction.** Subject to Section 17.1 below, no damage to or destruction of any equipment or improvements installed or constructed by Lessee on the Property shall affect any of Lessee's obligations under this Lease or entitle Lessee to terminate or otherwise modify any provisions of this Lease. Lessee waives the provisions of California Civil Code Sections 1932(2) and 1933(4), and any similar or successor statutes relating to termination of leases when the thing leased is substantially or entirely destroyed, and agrees that any such occurrence shall instead be governed by the terms of this Lease.

## 16. **MISCELLANEOUS.**

16.1 **Force Majeure.** If performance of this Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration, up to a maximum of one hundred twenty (120) days, of such prevention, restriction or interference. The affected Party shall use commercially reasonable efforts to avoid or remove such causes of nonperformance, to mitigate the duration of any delay in performance, and shall continue performance hereunder to the extent permissible by the event of Force Majeure or whenever such causes are removed. A Force Majeure shall not excuse any obligation to pay any amounts when due and owing under this Lease. "**Force Majeure**" includes, but is not limited to, an act of God or the elements, site conditions, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance or strike or other labor difficulty suffered by a Party or caused by any third party beyond the reasonable control of such Party, or any act or omission of any third party not controlled by or affiliated with a Party. Financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure. Where an event of Force Majeure not covered by the insurance Lessee is required to maintain under this Lease destroys or severely damages the Solar Project or the Property such that the Solar Project or the Property is rendered permanently unusable for Lessee's Solar Operations, Lessee may terminate the Lease and neither Party shall have any further rights and obligations under the Lease except for terms of this Lease that (i) expressly survive termination and (ii) following the event of Force Majeure, can reasonably be performed.

## 16.2 **Confidentiality.**

16.2.1 Each Party shall treat as confidential information disclosed to it by any other Party pursuant to this Lease, including information concerning the Property and the Solar Project disclosed before or after the Effective Date (collectively, "**Confidential Information**"); provided, however, that the following information shall not be Confidential Information: (a) information that at the time of disclosure or acquisition was in the public domain or later entered the public domain other than by breach of this Section 16.2 or a confidentiality obligation owed to the disclosing Party, provided that all environmental information shall be Confidential Information, irrespective of whether such information is in the

public domain; (b) information that at the time of disclosure or acquisition was already known to and had been reduced to writing by the recipient; or (c) information that after disclosure or acquisition was received from a third party that had no duty to maintain the information in confidence.

16.2.2 Unless otherwise agreed to herein, or required by law, no Party shall, unless authorized by the disclosing Party to do so: (a) copy, reproduce, distribute or disclose to any Person any Confidential Information, or any facts related thereto; (b) permit any third party to have access to Confidential Information; or (c) use Confidential Information for any purpose other than for the purpose of pursuing the activities as contemplated herein. The disclosing Party hereby authorizes the receiving Party to disclose Confidential Information to its attorneys, lenders, or prospective assignees; provided, however, that the receiving Party shall require in writing such persons to treat Confidential Information in a manner consistent with this Lease.

16.2.3 In the event that a Party that has received Confidential Information from another Party is requested in any legal proceeding or by any governmental authority to disclose any Confidential Information under the California Public Records Act or the Freedom of Information Act, the receiving Party shall, to the extent permitted under Applicable Law, give the providing Party prompt notice of such request so that the providing Party may seek an appropriate protective order. If, in the absence of a protective order, the receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is required (after exhausting any appeal requested by the providing Party at the providing Party's expense and permitted under Applicable Law), the receiving Party may disclose such Confidential Information without liability hereunder provided that only such portion of the Confidential Information required to be disclosed shall be made available.

16.2.4 The obligations of the Parties contained in this Section 16.2 shall survive the assignment or transfer of the Parties' rights, liabilities, or obligations under and the expiration or termination of this Lease. Successors and Assigns

16.3 **Successors and Assigns.** This Lease shall burden the Property and shall run with the land. This Lease shall inure to the benefit of and be binding upon Lessor and Lessee and, to the extent provided in any Assignment or Transfer under Sections 11 or 13, any assignee or transferee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to "Lessee" in this Lease shall be deemed to include assignees that hold a direct ownership interest in this Lease and actually are exercising rights under this Lease to the extent consistent with such interest.

16.4 **Notices.** All notices or other communications required or permitted by this Lease, including payments to Lessor, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party. Any notice shall be addressed as follows:

If to Lessor:                   Chevron Products Company

Richmond Refinery  
841 Chevron Way  
Richmond, CA 94801  
510-242-4401  
Attn: Refinery Manager

With a copy to: Chevron Products Company  
Downstream Law Department  
6001 Bollinger Canyon Road  
San Ramon, CA 94583  
925-842-1000  
Attn: Office of General Counsel

If to Lessee: Marin Clean Energy  
781 Lincoln Avenue, Suite 320  
San Rafael, CA 94901  
dweisz@mceCleanEnergy.com  
Attn: Executive Officer

With a copy to: Troutman Sanders LLP  
805 SW Broadway, Suite 1560  
Portland, OR 97205-3326  
503-290-2338  
ben.fisher@troutmansanders.com  
Attn: Ben Fisher

Any Party may change its address for purposes of this Section by giving written notice of such change to the other parties in the manner provided in this Section.

16.5 **Entire Agreement; Amendments.** This Lease and the attached Exhibits constitutes the entire agreement between Lessor and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Lease, the lease created by this Lease, or any other matter referenced herein not expressly set forth in this Lease, or in a subsequent writing signed by both Parties, is null and void. This Lease shall not be modified or amended except in a writing signed by both Parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

16.6 **Legal Matters.**

16.6.1 **Governing Law; Dispute Resolution.** This Lease is governed by and shall be interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. In the event of any dispute or claim that arises out of or that relates to this Lease, or to the interpretation, termination, breach, existence, scope, or validity thereof (a "**Dispute**"), the Dispute shall be resolved in the Superior Court of Contra Costa County, California. In any such action, the Parties shall jointly request that the Superior Court appoint a

referee to resolve all legal and factual issues of the Dispute pursuant to Code of Civil Procedure Sections 638 et seq.

16.6.2 **No Consequential Damages.** Notwithstanding anything to the contrary in this Lease, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Lease.

16.6.3 **Attorney Fees.** If any action proceeding at law or in equity (collectively an "Action"), shall be brought to recover any rent under this Lease, or for or on account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Lease, or for the recovery of possession of the Property, the Prevailing Party shall be entitled to recover from the other Party as a part of such Action, or in a separate Action brought for that purpose, its reasonable attorney's fees and costs and expenses (including expert witness fees) incurred in connection with the prosecution or defense of such Action, including any appeal thereof. "Prevailing Party" within the meaning of this Section shall include, without limitation, a Party who brings an action against the other after the other is in breach or default, if such action is dismissed upon the other's payment of the sums allegedly due or upon the other's performance of the covenants allegedly breached, or if the Party commencing such action or proceeding obtains substantially the relief sought by it in such action, whether or not such action proceeds to a final judgment or determination.

16.6.4 **Partial Invalidity.** Should any provision of this Lease be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court's holding. Notwithstanding any other provision of this Lease, the parties agree that in no event shall the term of this Lease be longer than the longest period permitted by Applicable Law.

16.7 **Conflicts of Interest.** Conflicts of interest relating to this Lease are strictly prohibited and the provisions of this Section shall apply in reciprocity to both Parties. Except as otherwise expressly provided herein, neither Lessee nor Lessor nor any director, employee or agent of either Party shall give to or receive from any director, employee or agent of the other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate. Likewise, neither Lessee nor Lessor nor any director, employee or agent of either Party shall enter into any business relationship with any director, employee or agent of the other Party or any of its affiliates. Each Party shall promptly notify the other Party of any violation of this Section and any consideration received or paid as a result of such violation, which shall promptly be paid over or credited to the appropriate Party. Additionally, in the event of any violation of this Section, including any violation occurring prior to the Effective Date, resulting directly or indirectly in either Party's consent to enter into this Lease, either Party may at its option, terminate this Lease pursuant to the notice provisions contained in this Lease. Any legal, risk management or fiduciary representative(s) authorized by either Party may audit any and all pertinent records of the other Party for the sole purpose of determining whether there has been compliance with this Section.

16.8 **No Partnership.** Nothing contained in this Lease shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Lease.

16.9 **Brokerage Fee.** No brokerage fee or commission is payable to any person with respect to this Lease and each of Lessor and Lessee hereby indemnify and hold the other harmless from and against any claim for payment of such fee or commission from a person claiming to have represented it.

16.10 **Counterparts.** This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

16.11 **No Accord and Satisfaction.** No payment by Lessee, or receipt by Lessor, of an amount which is less than the full amount of Annual Rent and additional rent payable by Lessee hereunder at such time shall be deemed to be other than on account of (a) the earliest of such other sums due and payable, and thereafter (b) to the earliest rent due and payable hereunder. No endorsement or statement on any check or any letter accompanying any payment of rent or such other sums shall be deemed an accord and satisfaction, and Lessor may accept any such check or payment without prejudice to Lessor's right to receive payment of the balance of such rent and/or the other sums, or Lessor's right to pursue any remedies to which Lessor may be entitled to recover such balance.

16.12 **Time.** Time is of the essence with respect to the performance of each and every provision of this Lease in which time of performance is a factor. All references to days contained in this Lease shall be deemed to mean calendar days, unless otherwise specifically stated.

16.13 **Construction of Lease.** Each Party has been fully and competently represented by counsel of its own choosing in the negotiation and drafting of this Lease. Accordingly, the Parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Lease. Further, each Party acknowledges that it has read this entire document, including the attached exhibits and fully understands its terms and effect.

16.14 **Memorandum of Lease.** The Parties shall execute and acknowledge a memorandum of this Lease in the form attached as Exhibit D at the same time as the execution of the Lease. Lessee shall cause such memorandum to be recorded in the Official Records of the County of Contra Costa.

16.15 **No Recourse to Members of Lessee.** Lessee 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.) and is a public entity separate from its constituent members. Under Article VIII of Lessee's Operating Rules and Regulations, Lessee shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Lease. Lessor shall have no rights to and shall not make any claims, take any actions or assert any

remedies against any of Lessee's constituent members to the extent such claims arise from Lessee's obligations under this Lease.

(Signature Page Follows)



IN WITNESS WHEREOF, Lessee and Lessor have caused this Solar Energy Facility Site Lease to be executed and delivered by their duly authorized representatives as of the Effective Date.

**LESSOR: CHEVRON PRODUCTS COMPANY,**  
a Division of Chevron U.S.A Inc., a Pennsylvania corporation

By: \_\_\_\_\_

Its \_\_\_\_\_

**LESSEE: MARIN CLEAN ENERGY**

By: \_\_\_\_\_

Dawn Weisz

Its Executive Officer

MCE Board Resolution No. \_\_\_\_\_,  
Adopted on Oct 2, 2014

APPROVED AS TO FORM:

Troutman Sanders LLP

\_\_\_\_\_  
Ben Fisher

Counsel for Marin Clean Energy

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

All of that real property located in the City of Richmond, County of Contra Costa, California, more particularly described as follows:

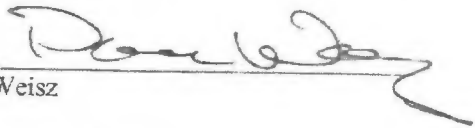
IN WITNESS WHEREOF, Lessee and Lessor have caused this Solar Energy Facility Site Lease to be executed and delivered by their duly authorized representatives as of the Effective Date.

**LESSOR: CHEVRON PRODUCTS COMPANY,**  
a Division of Chevron U.S.A Inc., a Pennsylvania corporation

By: \_\_\_\_\_

Its \_\_\_\_\_

**LESSEE: MARIN CLEAN ENERGY**

By:   
Dawn Weisz

Its Executive Officer

MCE Board Resolution No. \_\_\_\_\_  
Adopted on Oct 2, 2014

APPROVED AS TO FORM:

Troutman Sanders LLP

  
Ben Fisher

Counsel for Marin Clean Energy



**EXHIBIT "A-1"**  
LEGAL DESCRIPTION  
LEASE AREA 1

REAL PROPERTY IN THE CITY OF RICHMOND, CONTRA COSTA COUNTY, AND STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE SWAMP AND OVERFLOWED LANDS SURVEY NUMBER 190 AND TIDE LAND SURVEY NO. 5, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 3 IN DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS; THENCE SOUTH 88° 23' 37" WEST (NORTH 87° 11' EAST DEED) ALONG THE NORTH BOUNDARY LINE OF THE LAND CONVEYED TO ALLIED CHEMICAL AND DYE CORPORATION BY DEED DATED NOVEMBER 16, 1953, AND RECORDED DECEMBER 29, 1953, IN BOOK 2245 OF OFFICIAL RECORDS AT PAGE 534, RECORDS OF CONTRA COSTA COUNTY, 611.08 FEET TO THE NORTHWEST CORNER OF SAID LAND CONVEYED TO ALLIED CHEMICAL AND DYE CORPORATION; THENCE NORTH 70° 52' 30" WEST A DISTANCE OF 68.43 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 73°03'21" EAST A DISTANCE OF 113.69 FEET;

THENCE NORTH 2°18'47" WEST A DISTANCE OF 8.87 FEET;

THENCE NORTH 87°51'37" EAST A DISTANCE OF 18.17 FEET;

THENCE SOUTH 4°12'34" EAST A DISTANCE OF 28.07 FEET;

THENCE NORTH 86°54'17" EAST A DISTANCE OF 46.51 FEET;

THENCE NORTH 88°49'44" EAST A DISTANCE OF 318.90 FEET;

THENCE NORTH 3°28'02" WEST A DISTANCE OF 37.09 FEET;

THENCE NORTH 84°56'29" EAST A DISTANCE OF 186.31 FEET TO THE WEST LINE OF PARCEL 3 DESCRIBED IN DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS;

THENCE ALONG THE LAST MENTIONED WEST LINE NORTH 01°12'37" EAST A DISTANCE OF 10.06 FEET;

THENCE SOUTH 84°56'29" WEST A DISTANCE OF 187.41 FEET;

THENCE NORTH 3°35'44" WEST A DISTANCE OF 115.48 FEET;

THENCE SOUTH 90°00'00" WEST A DISTANCE OF 44.37 FEET;

THENCE NORTH 0°12'18" WEST A DISTANCE OF 30.59 FEET;

THENCE NORTH 2°48'28" EAST A DISTANCE OF 194.08 FEET, AT 119.3 FEET MORE OR LESS IS THE NORTH BOUNDARY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM EMILY A.

TEWKSBURY TO RICHMOND BELT RAILWAY, DATED APRIL 06, 1910, AND RECORDED JULY 14, 1911, IN BOOK 170 OF DEEDS, PAGE 30;

THENCE NORTH 84°35'50" WEST A DISTANCE OF 20.52 FEET;  
THENCE NORTH 2°36'19" EAST A DISTANCE OF 21.27 FEET;  
THENCE SOUTH 86°38'53" EAST A DISTANCE OF 20.66 FEET;  
THENCE NORTH 2°31'35" EAST A DISTANCE OF 353.44 FEET;  
THENCE NORTH 13°56'12" WEST A DISTANCE OF 106.94 FEET;  
THENCE NORTH 45°10'08" WEST A DISTANCE OF 66.62 FEET;  
THENCE NORTH 68°08'23" WEST A DISTANCE OF 192.43 FEET;  
THENCE NORTH 89°53'48" WEST A DISTANCE OF 27.02 FEET;  
THENCE SOUTH 1°21'14" EAST A DISTANCE OF 11.73 FEET;  
THENCE SOUTH 88°59'03" WEST A DISTANCE OF 17.21 FEET;  
THENCE NORTH 0°40'58" EAST A DISTANCE OF 12.06 FEET;  
THENCE SOUTH 89°53'44" WEST A DISTANCE OF 217.87 FEET;  
THENCE NORTH 63°59'11" WEST A DISTANCE OF 102.15 FEET;  
THENCE NORTH 46°01'27" WEST A DISTANCE OF 116.33 FEET;  
THENCE SOUTH 42°14'40" WEST A DISTANCE OF 36.90 FEET;  
THENCE NORTH 47°24'45" WEST A DISTANCE OF 20.54 FEET;  
THENCE NORTH 42°14'40" EAST A DISTANCE OF 37.35 FEET;  
THENCE NORTH 46°08'40" WEST A DISTANCE OF 21.48 FEET;  
THENCE NORTH 83°21'50" WEST A DISTANCE OF 77.42 FEET;  
THENCE SOUTH 79°30'49" WEST A DISTANCE OF 76.88 FEET;  
THENCE SOUTH 11°19'05" EAST A DISTANCE OF 5.28 FEET;  
THENCE SOUTH 77°16'24" WEST A DISTANCE OF 90.82 FEET;  
THENCE SOUTH 63°13'51" WEST A DISTANCE OF 20.70 FEET;  
THENCE NORTH 15°11'59" WEST A DISTANCE OF 32.63 FEET;  
THENCE NORTH 67°53'35" WEST A DISTANCE OF 15.30 FEET;  
THENCE NORTH 0°01'59" WEST A DISTANCE OF 26.61 FEET;  
THENCE NORTH 62°53'14" WEST A DISTANCE OF 45.05 FEET;

THENCE NORTH 72°16'25" WEST A DISTANCE OF 14.45 FEET;  
THENCE NORTH 82°44'58" WEST A DISTANCE OF 27.15 FEET;  
THENCE SOUTH 8°57'58" EAST A DISTANCE OF 6.25 FEET;  
THENCE SOUTH 86°13'54" WEST A DISTANCE OF 18.37 FEET;  
THENCE NORTH 3°02'11" WEST A DISTANCE OF 6.89 FEET;  
THENCE SOUTH 87°39'30" WEST A DISTANCE OF 56.03 FEET;  
THENCE SOUTH 1°31'17" EAST A DISTANCE OF 92.71 FEET;  
THENCE SOUTH 89°05'03" EAST A DISTANCE OF 7.93 FEET;  
THENCE SOUTH 0°50'50" EAST A DISTANCE OF 17.20 FEET;  
THENCE SOUTH 87°12'37" WEST A DISTANCE OF 7.81 FEET;  
THENCE SOUTH 1°25'41" EAST A DISTANCE OF 178.32 FEET;  
THENCE NORTH 88°36'15" EAST A DISTANCE OF 10.65 FEET;  
THENCE SOUTH 2°41'12" EAST A DISTANCE OF 16.62 FEET;  
THENCE SOUTH 1°39'34" WEST A DISTANCE OF 140.83 FEET;  
THENCE SOUTH 1°54'16" EAST A DISTANCE OF 76.41 FEET;  
THENCE NORTH 62°22'43" EAST A DISTANCE OF 29.64 FEET;  
THENCE SOUTH 23°09'49" EAST A DISTANCE OF 259.77 FEET;  
THENCE NORTH 88°57'15" EAST A DISTANCE OF 44.66 FEET;  
THENCE SOUTH 0°10'43" EAST A DISTANCE OF 565.86 FEET, AT 149.9 FEET MORE OR LESS IS THE  
NORTH BOUNDARY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM EMILY A.  
TEWKSBURY TO RICHMOND BELT RAILWAY, DATED APRIL 06, 1910, AND RECORDED JULY 14, 1911, IN  
BOOK 170 OF DEEDS, PAGE 30;  
THENCE SOUTH 2°51'02" EAST A DISTANCE OF 93.48 FEET;  
THENCE SOUTH 20°07'55" EAST A DISTANCE OF 35.78 FEET;  
THENCE SOUTH 1°18'41" WEST A DISTANCE OF 207.76 FEET;  
THENCE SOUTH 0°33'29" EAST A DISTANCE OF 194.46 FEET;  
THENCE SOUTH 41°04'10" EAST A DISTANCE OF 31.04 FEET;  
THENCE SOUTH 52°03'27" EAST A DISTANCE OF 24.62 FEET;  
THENCE SOUTH 61°46'31" EAST A DISTANCE OF 36.01 FEET;  
THENCE NORTH 61°34'56" EAST A DISTANCE OF 12.46 FEET;

THENCE NORTH 29°52'52" EAST A DISTANCE OF 391.87 FEET;  
THENCE NORTH 49°29'01" WEST A DISTANCE OF 7.95 FEET;  
THENCE NORTH 35°59'26" EAST A DISTANCE OF 14.39 FEET;  
THENCE SOUTH 56°18'04" EAST A DISTANCE OF 6.62 FEET;  
THENCE NORTH 31°09'31" EAST A DISTANCE OF 355.30 FEET;  
THENCE NORTH 56°20'06" WEST A DISTANCE OF 9.48 FEET;  
THENCE NORTH 23°59'03" EAST A DISTANCE OF 19.71 FEET;  
THENCE SOUTH 57°42'19" EAST A DISTANCE OF 12.28 FEET;  
THENCE NORTH 33°03'13" EAST A DISTANCE OF 6.27 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 29.76 ACRES MORE OR LESS.

A PLAT OF THE ABOVE DESCRIBED PARCEL OF LAND IS ATTACHED HERETO AS EXHIBIT E AND BY REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

---

RYAN M. SEXTON / PLS 9177



**EXHIBIT "A-2"**  
LEGAL DESCRIPTION  
LEASE AREA 2

REAL PROPERTY IN THE CITY OF RICHMOND, CONTRA COSTA COUNTY, AND STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE SWAMP AND OVERFLOWED LANDS SURVEY NUMBER 190 AND TIDE LAND SURVEY NO. 5, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 3 IN DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS SAID POINT BEARS SOUTH 88° 17' 17" WEST (NORTH 87° 11' EAST DEED) ALONG THE NORTH BOUNDARY LINE OF THE LAND CONVEYED TO ALLIED CHEMICAL AND DYE CORPORATION BY DEED DATED NOVEMBER 16, 1953, AND RECORDED DECEMBER 29, 1953, IN BOOK 2245 OF OFFICIAL RECORDS AT PAGE 534, RECORDS OF CONTRA COSTA COUNTY, 555.1 FEET, MORE OR LESS FROM THE NORTHWESTERLY BOUNDARY LINE OF CASTRO STREET 60 FEET WIDE; THENCE NORTH 1° 12' 37" EAST A DISTANCE OF 82.46 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 89°15'13" EAST A DISTANCE OF 146.89 FEET;

THENCE NORTH 88°10'20" EAST A DISTANCE OF 118.21 FEET;

THENCE NORTH 02°34'10" WEST A DISTANCE OF 17.25 FEET;

THENCE NORTH 88°59'09" EAST A DISTANCE OF 20.72 FEET;

THENCE SOUTH 01°11'02" EAST A DISTANCE OF 16.68 FEET;

THENCE NORTH 88°02'22" EAST A DISTANCE OF 50.44 FEET;

THENCE NORTH 87°10'55" EAST A DISTANCE OF 29.04 FEET;

THENCE NORTH 88°43'35" EAST A DISTANCE OF 147.87 FEET;

THENCE SOUTH 29°29'32" EAST A DISTANCE OF 86.61 FEET;

THENCE NORTH 30°33'57" EAST A DISTANCE OF 11.54 FEET;

THENCE NORTH 29°29'32" WEST A DISTANCE OF 98.57 FEET;

THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 132.45 FEET, THE CENTER OF WHICH BEARS NORTH 32°17'28" WEST, THROUGH A CENTRAL ANGLE OF 69°38'35" AND AN ARC DISTANCE OF 160.99 FEET;

THENCE NORTH 36°37'35" EAST A DISTANCE OF 17.24 FEET;

THENCE SOUTH 52°45'19" EAST A DISTANCE OF 25.06 FEET;

THENCE NORTH 31°35'24" EAST A DISTANCE OF 602.02 FEET;

THENCE SOUTH 86°30'30" EAST A DISTANCE OF 29.44 FEET;

THENCE NORTH 18°00'32" EAST A DISTANCE OF 18.13 FEET;

THENCE NORTH 11°07'42" EAST A DISTANCE OF 24.01 FEET;

THENCE NORTH 2°25'06" EAST A DISTANCE OF 44.60 FEET;

THENCE NORTH 3°20'04" WEST A DISTANCE OF 63.06 FEET;

THENCE NORTH 34°10'36" WEST A DISTANCE OF 34.18 FEET;

THENCE NORTH 0°09'54" WEST A DISTANCE OF 232.90 FEET, AT 136.9 FEET MORE OR LESS TO THE NORTHERN BOUNDARY LINE OF PARCEL 3 AS DESCRIBED IN THE DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS;

THENCE SOUTH 74°56'15" WEST A DISTANCE OF 82.03 FEET;

THENCE NORTH 88°22'32" WEST A DISTANCE OF 218.66 FEET;

THENCE NORTH 89°51'20" WEST A DISTANCE OF 123.30 FEET;

THENCE NORTH 88°53'53" WEST A DISTANCE OF 308.85 FEET;

THENCE SOUTH 89°59'02" WEST A DISTANCE OF 127.54 FEET;

THENCE SOUTH 51°33'28" WEST A DISTANCE OF 65.66 FEET;

THENCE SOUTH 0°00'00" WEST A DISTANCE OF 710.77 FEET, AT 72.1 FEET MORE OR LESS TO THE NORTHERN BOUNDARY LINE OF PARCEL 3 AS DESCRIBED IN THE DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS;

THENCE SOUTH 90°00'00" WEST A DISTANCE OF 8.35 FEET;

THENCE SOUTH 0°01'42" WEST A DISTANCE OF 319.85 FEET;

THENCE SOUTH 84°56'29" WEST A DISTANCE OF 17.43 FEET;

CONTAINING AN AREA OF 18.99 ACRES MORE OR LESS.

A PLAT OF THE ABOVE DESCRIBED PARCEL OF LAND IS ATTACHED HERETO AS EXHIBIT E AND BY REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

---

RYAN M. SEXTON / PLS 9177

**EXHIBIT "A-3"**  
LEGAL DESCRIPTION  
LEASE AREA 3

REAL PROPERTY IN THE CITY OF RICHMOND, CONTRA COSTA COUNTY, AND STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE SWAMP AND OVERFLOWED LANDS SURVEY NUMBER 190 AND TIDE LAND SURVEY NO. 5, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF PARCEL 3 IN DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS; THENCE NORTH 88° 17' 17" EAST (NORTH 87° 11' EAST DEED) ALONG THE NORTH BOUNDARY LINE OF THE LAND CONVEYED TO ALLIED CHEMICAL AND DYE CORPORATION BY DEED DATED NOVEMBER 16, 1953, AND RECORDED DECEMBER 29, 1953, IN BOOK 2245 OF OFFICIAL RECORDS AT PAGE 534, RECORDS OF CONTRA COSTA COUNTY, 555.1 FEET, MORE OR LESS TO THE NORTHWESTERLY BOUNDARY LINE OF CASTRO STREET 60 FEET WIDE; THENCE ALONG THE NORTHWESTERLY BOUNDARY LINE OF CASTRO STREET NORTH 30° 33' 57" EAST A DISTANCE OF 1055.37 FEET; THENCE NORTH 34° 25' 20" WEST A DISTANCE OF 38.31 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 30°19'16" WEST A DISTANCE OF 131.08 FEET

THENCE SOUTH 28°29'11" WEST A DISTANCE OF 90.61 FEET

THENCE NORTH 86°30'30" WEST A DISTANCE OF 12.42 FEET

THENCE NORTH 18°00'32" EAST A DISTANCE OF 18.13 FEET

THENCE NORTH 11°07'42" EAST A DISTANCE OF 24.01 FEET

THENCE NORTH 2°25'06" EAST A DISTANCE OF 44.60 FEET

THENCE NORTH 3°20'04" WEST A DISTANCE OF 63.06 FEET

THENCE NORTH 34°10'36" WEST A DISTANCE OF 34.18 FEET

THENCE NORTH 0°09'54" WEST A DISTANCE OF 232.90 FEET, AT 136.9 FEET MORE OR LESS TO THE NORTHERN BOUNDARY LINE OF PARCEL 3 AS DESCRIBED IN THE DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS;

THENCE NORTH 74°56'15" EAST A DISTANCE OF 28.45 FEET

THENCE NORTH 64°45'27" EAST A DISTANCE OF 21.90 FEET

THENCE NORTH 86°04'32" EAST A DISTANCE OF 71.27 FEET

THENCE SOUTH 36°13'23" EAST A DISTANCE OF 21.38 FEET

THENCE SOUTH 13°57'47" WEST A DISTANCE OF 33.66 FEET

THENCE SOUTH 76°19'59" EAST A DISTANCE OF 9.16 FEET  
THENCE SOUTH 23°06'45" EAST A DISTANCE OF 9.55 FEET  
THENCE SOUTH 6°21'15" EAST A DISTANCE OF 17.76 FEET  
THENCE SOUTH 17°24'24" WEST A DISTANCE OF 22.13 FEET  
THENCE SOUTH 11°14'07" WEST A DISTANCE OF 26.51 FEET  
THENCE SOUTH 3°58'43" EAST A DISTANCE OF 15.49 FEET  
THENCE SOUTH 15°04'13" EAST A DISTANCE OF 14.84 FEET  
THENCE SOUTH 31°33'23" EAST A DISTANCE OF 18.24 FEET  
THENCE SOUTH 5°52'12" WEST A DISTANCE OF 68.50 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 0.97 ACRES MORE OR LESS.

A PLAT OF THE ABOVE DESCRIBED PARCEL OF LAND IS ATTACHED HERETO AS EXHIBIT E AND BY REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

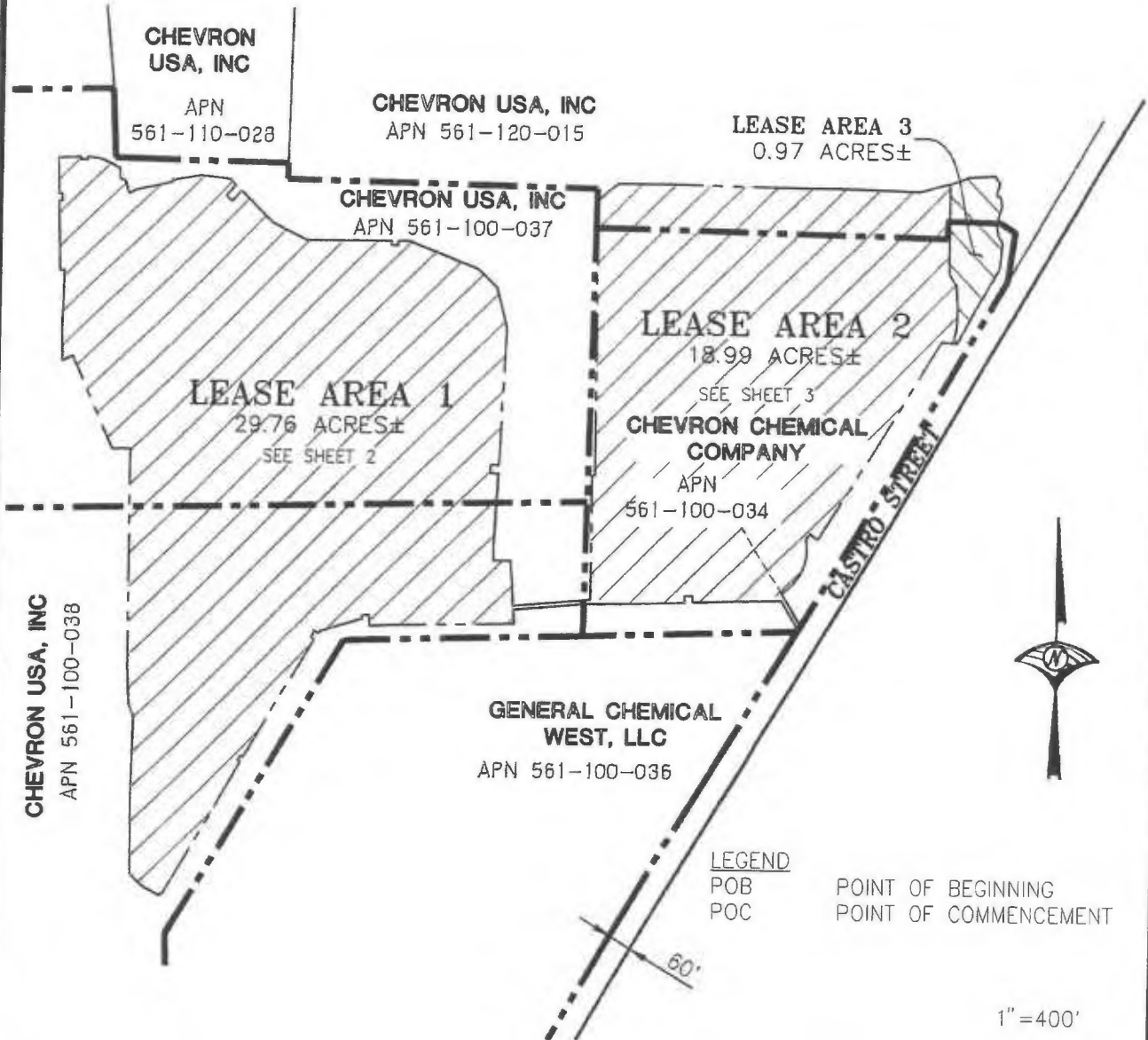
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RYAN M. SEXTON / PLS 9177

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION

MCE SOLAR  
LEASE AREA  
CITY OF RICHMOND  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA



**LEGEND**  
 POB POINT OF BEGINNING  
 POC POINT OF COMMENCEMENT

1" = 400'



**WOOD RODGERS**  
DEVELOPING • INNOVATIVE • DESIGN • SOLUTIONS

4301 Hacienda Drive, Suite 100  
Pleasanton, CA 94588 Tel 925.847.1556

MCE SOLAR  
LEASE AREA  
CITY OF RICHMOND  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

SEE SHEET 3 FOR  
COURSE TABLE  
APN  
561-100-037  
**CHEVRON USA, INC**  
**LEASE AREA 1**  
29.76 ACRES±

APN  
561-100-038  
**CHEVRON USA, INC**

POINT OF BEGINNING

POINT OF COMMENCEMENT

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION

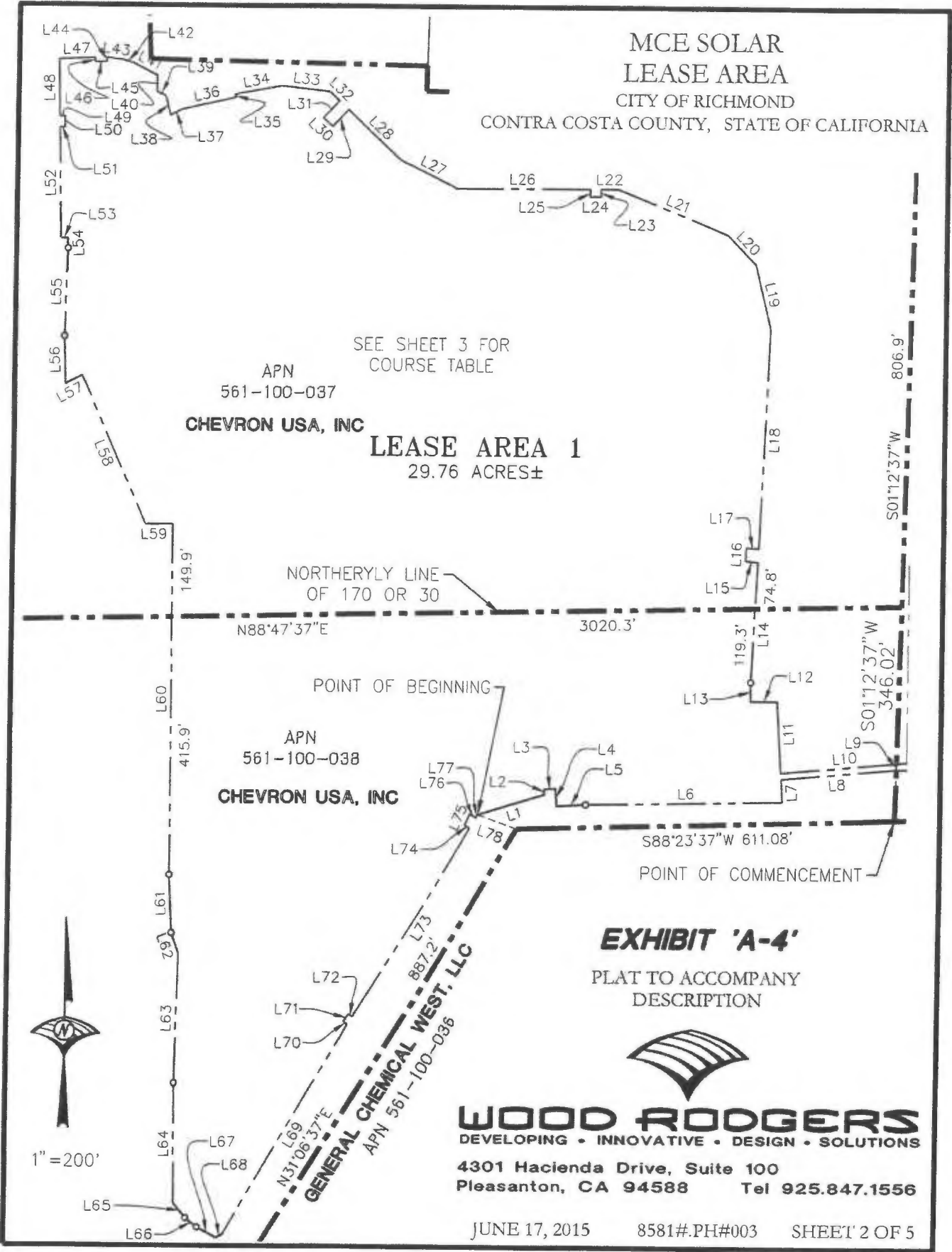


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1" = 200'



Line Table - This Sheet Only		
No.	Bearing	Length
L1	N73°03'21"E	113.69'
L2	N2°18'47"W	8.87'
L3	N87°51'37"E	18.17'
L4	S4°12'34"E	28.07'
L5	N86°54'17"E	46.51'
L6	N88°49'44"E	318.90'
L7	N3°28'02"W	37.09'
L8	N84°56'29"E	186.31'
L9	N1°12'37"E	10.06'
L10	N84°56'29"E	187.41'
L11	N3°35'44"W	115.48'
L12	W	44.37'
L13	N0°12'18"W	30.59'
L14	N2°48'28"E	194.08'
L15	N84°35'50"W	20.52'
L16	N2°36'19"E	21.27'
L17	N86°38'53"W	20.66'
L18	N2°31'35"E	353.44'
L19	N13°56'12"W	106.94'
L20	N45°10'08"W	66.62'
L21	N68°08'23"W	192.43'
L22	N89°53'48"W	27.02'
L23	N1°21'14"W	11.73'
L24	N88°59'03"E	17.21'
L25	N0°40'58"E	12.06'

L26	N89°53'44"E	217.87'
L27	N63°59'11"W	102.15'
L28	N46°01'27"W	116.33'
L29	N42°14'40"E	36.90'
L30	N47°24'45"W	20.54'
L31	N42°14'40"E	37.35'
L32	N46°08'40"W	21.48'
L33	N83°21'50"W	77.42'
L34	N79°30'49"E	76.88'
L35	N11°19'05"W	5.28'
L36	N77°16'24"E	90.82'
L37	N63°13'51"E	20.70'
L38	N15°11'59"W	32.63'
L39	N67°53'35"W	15.30'
L40	N0°01'59"W	26.61'
L41	N62°53'14"W	45.05'
L42	N72°16'25"W	14.45'
L43	N82°44'58"W	27.15'
L44	N8°57'58"W	6.25'
L45	N86°13'54"E	18.37'
L46	N3°02'11"W	6.89'
L47	N87°39'30"E	56.03'
L48	N1°31'17"W	92.71'
L49	N89°05'03"W	7.93'
L50	N0°50'50"W	17.20'
L51	N87°12'37"E	7.81'
L52	N1°25'41"W	178.32'

L53	N88°36'15"E	10.65'
L54	N2°41'12"W	16.62'
L55	N1°39'34"E	140.83'
L56	N1°54'16"W	76.41'
L57	N62°22'43"E	29.64'
L58	N23°09'49"W	259.77'
L59	N88°57'15"E	44.66'
L60	N0°10'43"W	565.86'
L61	N2°51'02"W	93.48'
L62	N20°07'55"W	35.78'
L63	N1°18'41"E	207.76'
L64	N0°33'29"W	194.46'
L65	N41°04'10"W	31.04'
L66	N52°03'27"W	24.62'
L67	N61°46'31"W	36.01'
L68	N61°34'56"E	12.46'
L69	N29°52'52"E	391.87'
L70	N49°29'01"W	7.95'
L71	N35°59'26"E	14.39'
L72	N56°18'04"W	6.62'
L73	N31°09'31"E	355.30'
L74	N56°20'06"W	9.48'
L75	N23°59'03"E	19.71'
L76	N57°42'19"W	12.28'
L77	N33°03'13"E	6.27'
L78	N70°52'30"W	68.43'

MCE SOLAR  
LEASE AREA

CITY OF RICHMOND  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION



**WOOD RODGERS**  
DEVELOPING • INNOVATIVE • DESIGN • SOLUTIONS

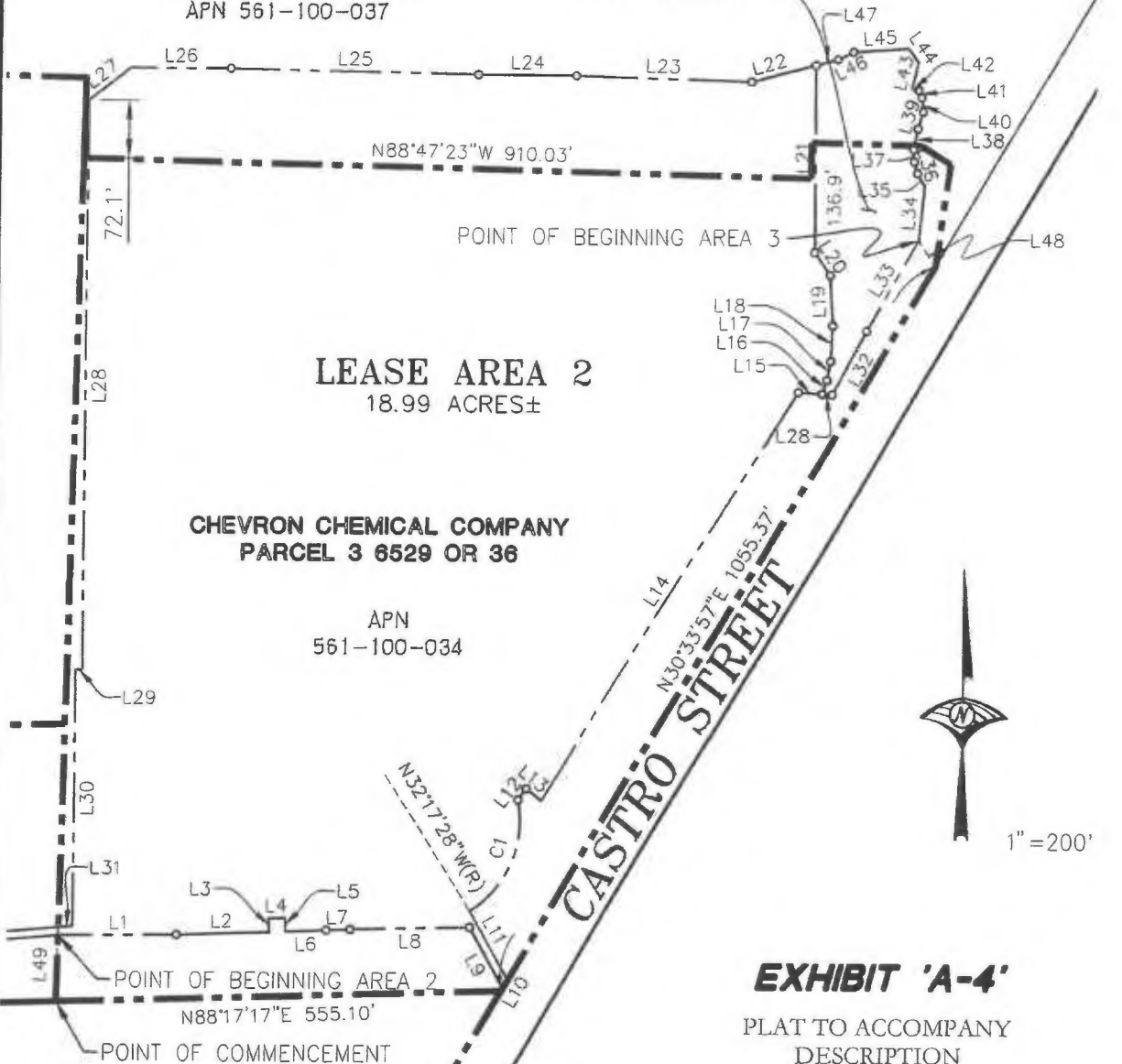
4301 Hacienda Drive, Suite 100  
Pleasanton, CA 94588 Tel 925.847.1556

MCE SOLAR  
LEASE AREA  
CITY OF RICHMOND  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

CHEVRON USA, INC  
DOC# 2001-014202-00  
APN 561-100-037

LEASE AREA 3  
0.97 ACRES±

CHEVRON USA, INC  
APN 561-120-015



CHEVRON CHEMICAL COMPANY  
PARCEL 3 6529 OR 36

APN  
561-100-034

GENERAL CHEMICAL WEST, LLC  
2245 OR 534

APN  
561-100-036

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION



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Pleasanton, CA 94588 Tel 925.847.1556



Line Table – This Sheet Only		
No.	Bearing	Length
L1	N89°15'13"E	146.89'
L2	N88°10'20"E	118.21'
L3	N2°34'10"W	17.25'
L4	N88°59'09"E	20.72'
L5	S1°11'02"E	16.68'
L6	N88°02'22"E	50.44'
L7	N87°10'55"E	29.04'
L8	N88°43'35"E	147.87'
L9	S29°29'32"E	86.61'
L10	N30°33'57"E	11.54'
L11	N29°29'32"W	98.57'
L12	N36°37'35"E	17.24'
L13	S52°45'19"E	25.06'
L14	N31°35'24"E	602.02'
L15	S86°30'30"E	29.44'
L16	N18°00'32"E	18.13'
L17	N11°07'42"E	24.01'
L18	N2°25'06"E	44.60'
L19	N3°20'04"W	63.06'
L20	N34°10'36"W	34.18'
L21	N0°09'54"W	232.90'
L22	S74°56'15"W	82.03'
L23	N88°22'32"W	218.66'
L24	N89°51'20"W	123.30'

L25	N88°53'53"W	308.85'
L26	N89°59'02"E	127.54'
L27	N51°33'28"E	65.66'
L28	N86°30'30"W	12.42'
L29	W	8.35'
L30	S0°01'42"W	319.85'
L31	S84°56'29"W	17.43'
L32	S28°29'11"W	90.61'
L33	S30°19'16"W	131.08'
L34	N5°52'12"E	68.50'
L35	N31°33'23"W	18.24'
L36	N15°04'13"W	14.84'
L37	N3°58'43"W	15.49'
L38	N11°14'07"E	26.51'
L39	N17°24'24"E	22.13'
L40	N6°21'15"W	17.76'
L41	N23°06'45"W	9.55'
L42	N76°19'59"W	9.16'
L43	N13°57'47"E	33.66'
L44	N36°13'23"W	21.38'
L45	N86°04'32"E	71.27'
L46	N64°45'27"E	21.90'
L47	N74°56'15"E	28.45'
L48	N34°25'20"W	38.31'
L49	N01°12'37"E	82.46'

Curve Table – This Sheet Only			
No.	Radius	Delta	Length
C1	132.45'	69°38'35"	160.99'

MCE SOLAR  
LEASE AREA  
CITY OF RICHMOND  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION



**WOOD RODGERS**  
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Pleasanton, CA 94588 Tel 925.847.1556

**EXHIBIT B**

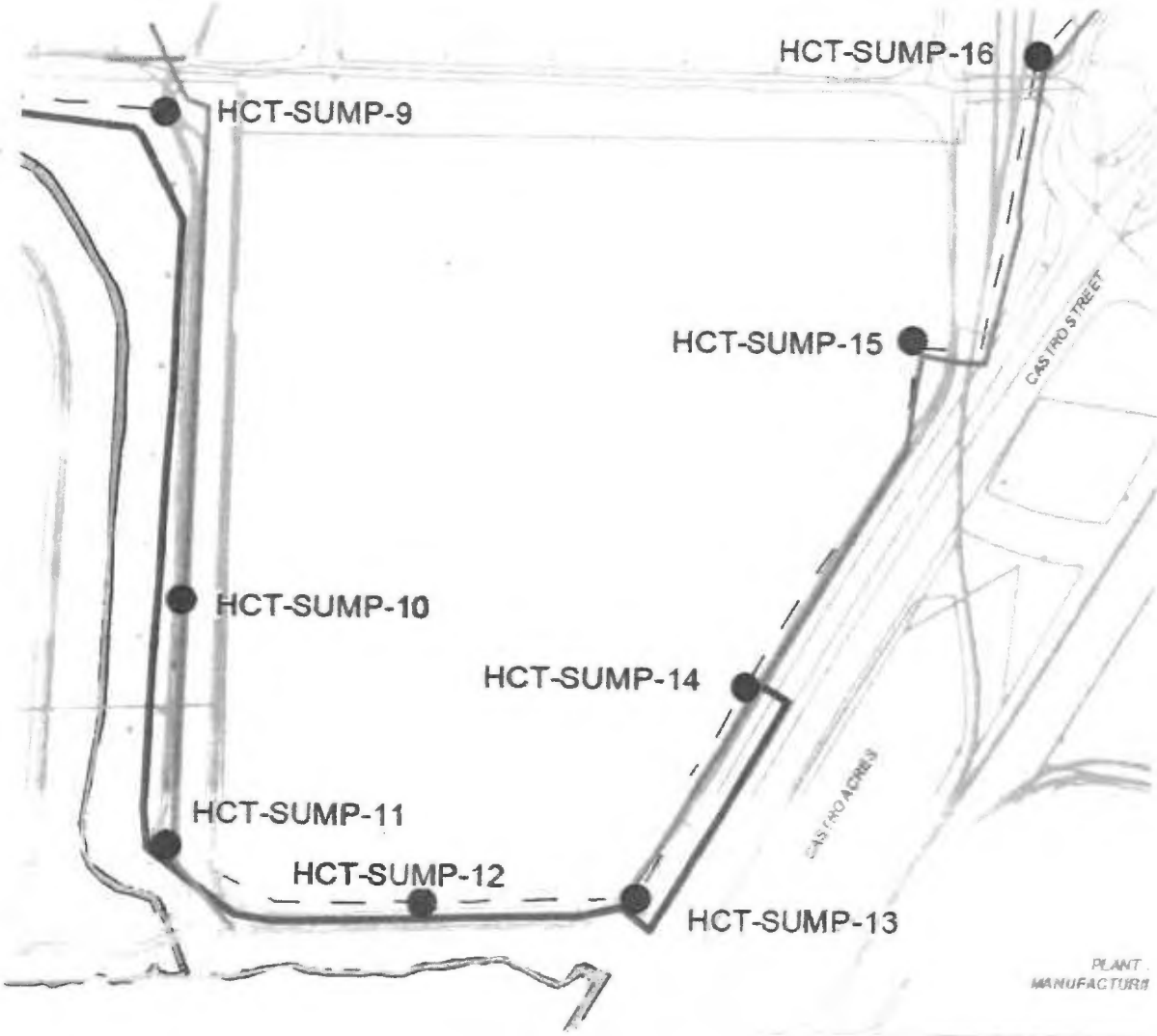
**LEASE EXCEPTIONS**



Exhibit B

**EXHIBIT C**

**DIAGRAM OF GROUNDWATER PROTECTION SYSTEM**



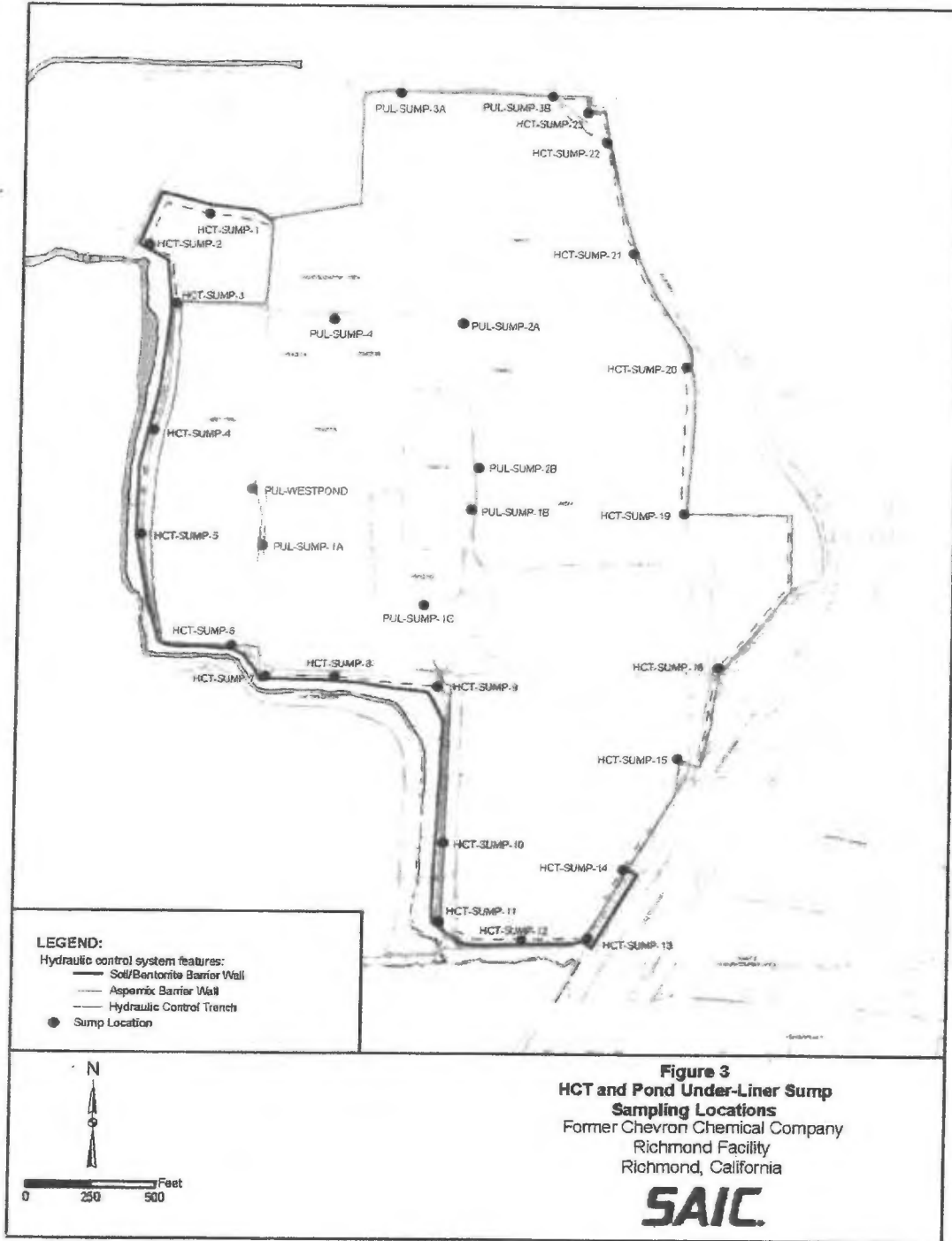


Exhibit C

## CONSENT TO SUBLEASE

This **CONSENT TO SUBLEASE** (this “**Consent**”) is entered into as of May 1, 2017, by and among **Chevron Products Company**, a Division of Chevron U.S.A. Inc., a Pennsylvania corporation (“**Lessor**”), **Marin Clean Energy**, a California Joint Powers Authority (“**Sublessor**”), and **MCE Solar One, LLC**, a Delaware limited liability company (“**Sublessee**”), with regard to the following facts:

### RECITALS:

A. Lessor, as “Lessor,” and Sublessor, as “Lessee,” are parties to that certain Solar Energy Facility Site Lease dated as of November 4, 2015, as amended by that certain First Amendment to Solar Energy Facility Site Lease of even date herewith (as so amended, the “**Master Lease**”), whereby Lessor leased to Sublessor certain real property located in the County of Contra Costa, State of California, totaling approximately fifty (50) gross acres, as more particularly described in the Master Lease, upon the terms and conditions contained therein (the “**Property**”). Initially capitalized terms which are used but not otherwise defined herein shall have the meanings given to them in the Master Lease.

B. Sublessor has requested Lessor’s consent to that certain Sublease Agreement of even date hereof with respect to the entirety of the Property (the “**Sublease**”). A copy of the Sublease is attached as Exhibit “A” hereto.

C. Lessor is willing to consent to the Sublease on the terms and conditions contained in this Consent.

NOW, THEREFORE, in consideration of the mutual covenants contained in this Consent, and for valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. Lessor’s Consent. Notwithstanding the conditions of Section 11.3 of the Master Lease, Lessor hereby consents to the Sublease and hereby approves Sublessee as a “Developer” subject to the terms and provisions of this Consent. The Sublease is subordinate to the Master Lease.

2. Limits of Consent. Neither the Sublease nor this Consent will:

2.1 Release or discharge Sublessor from any primary liability or obligation under the Master Lease, whether past, present or future, monetary or non-monetary;

2.2 Alter the primary liability of Sublessor to pay rent and other sums payable by Sublessor under the Master Lease, and perform all of Sublessor’s obligations under the Master Lease;

2.3 Without derogating from the provisions of Sections 2.4 and 2.5 of this Consent, operate as Lessor's agreement to be bound by any of the terms, covenants, conditions, provisions or agreements of the Sublease;

2.4 Be construed as a consent by Lessor to any further subletting either by Sublessor or by Sublessee, or any assignment by Sublessor of the Master Lease or (except for the assignment to an affiliate as provided in the last sentence of Section 15 of the Sublease which the Lessor consents to) assignment by Sublessee of the Sublease, whether or not the Sublease purports to permit the same; or

2.5 Except as provided in Section 1 of this Consent (as it relates to Section 11.3 of the Master Lease) and as provided in Sections 3 and 4 of this Consent, be construed to: (i) modify, waive, release or otherwise affect any of the terms, covenants, conditions, provisions or agreements of the Master Lease; (ii) waive any present or future breach of the Master Lease; (iii) limit or waive any of Lessor's rights under the Master Lease; (iv) enlarge or increase Lessor's obligations under the Master Lease; or (v) enlarge or increase Sublessee's rights and benefits in excess of the rights and benefits applicable to Sublessor under the Master Lease except to the extent such rights and benefits apply solely to the contractual relationship between Sublessor and Sublessee under the Sublease and the exercise thereof by Sublessee would not cause Sublessor to be in default under the Master Lease.

3. Additional Conditions. In the event of termination of the Master Lease for any reason, including pursuant to Section 4.1 of the Master Lease, Lessor may, at its sole option, either (i) terminate the Sublease, or (ii) take over all of the right, title and interest of Sublessor under the Sublease, in which case Sublessee will attorn to Lessor, but nevertheless Lessor will not be (1) liable for any previous act or omission of Sublessor under the Sublease, (2) subject to any defense or offset previously accrued in favor of the Sublessee against Sublessor, (3) bound by any previous modification of the Sublease made without Lessor's written consent, or (4) liable for any security deposit paid to Sublessor, except to the extent actually transferred to Lessor; provided, that, in the event that Sublessor or Sublessor's trustee or assignee elects to reject the Master Lease under Section 365(a) of the Bankruptcy Code, Sublessee shall have the option, exercised within sixty (60) days after such rejection, to (a) be assigned the Master Lease, or (b) enter into a new agreement with Lessor having the terms substantially similar to the Sublease. In the event that Sublessee exercises such option to have the Master Lease assigned to it, such a rejection by Sublessor or Sublessor's trustee or assignee, whether by election, by operation of law or otherwise, shall not terminate the Master Lease if the Sublessee cures any outstanding Event of Default of Lessee under the Master Lease other than Events of Default of Lessee that are personal to Lessee and cannot be cured by a party other than Lessee, and Lessor and Sublessee shall make any changes to the Master Lease necessitated by the substitution of parties, and other changes as the parties may mutually and reasonably agree, including that Sublessee will not be required to be a governmental entity or joint powers authority and that Annual Rent shall not be increased to Fair Market Rent due to the fact that the replacement lessee is not a governmental entity or joint powers authority). In the event that Sublessee exercises such option to enter into a new agreement with Lessor having the terms substantially similar to the Sublease, Lessor shall enter into such agreement with Sublessee for the remainder

of the Term (as defined in the Sublease). In the event of a default by Sublessor under the Master Lease, Lessor may consent to subsequent subleases and assignments of the Sublease or any amendments or modifications to the Sublease without notifying Sublessor and without obtaining Sublessor's consent. In all provisions of the Master Lease requiring the approval or consent of Lessee, Lessor shall obtain the approval or consent of both Sublessee and Sublessor.

4. Acknowledgements and Agreements. Lessor, Sublessor and Sublessee further acknowledge and agree as follows:

4.1 The encumbrance of Sublessee's interest in the Sublease or the Solar Project as security for a Financing (as defined in the Sublease) ("**Financing**") and the transfer of the Sublease or the Solar Project to a Financing Party (as defined in the Sublease) ("**Financing Party**") or an Eligible Foreclosure Successor shall not be subject to the right of First Offer set forth in Section 11.4 of the Master Lease or, in and of itself, cause Annual Rent to be increased to Fair Market Rent.

4.2 For purposes of calculating any award due to Lessee pursuant to Section 15.3 of the Master Lease, any improvements made by or expenses or costs incurred by Sublessee shall be taken into account, and Lessee shall pay the appropriate portion of any such award to Sublessee.

4.3 In the event action is taken against either Sublessor or Sublessee regarding a Claim Against Lessee or a Lessor Claim for which Sublessee is or may be liable under the Sublease, Sublessee shall have the right, at its own cost, to assume and conduct the defense in its own name. Sublessor shall cooperate with Sublessee in the defense thereof.

4.4 Sublessee shall have the right to mortgage, grant a deed of trust on, or pledge the Sublease and/or the Solar Project to the same extent permitted to Sublessor, in its capacity as "Lessee" pursuant to Section 12.3 of the Master Lease, and Lessor's covenants and obligations thereunder shall apply to any proposed subleasehold mortgagee to the same extent applicable to a leasehold mortgagee, including the requirement that any Lessor consent shall not be unreasonably withheld, conditioned or delayed. Lessor shall provide an estoppel certificate to such subleasehold mortgagee and a subordination agreement consistent with Sections 12.2.1 and 12.2.3, respectively, of the Master Lease. Lessor shall reasonably consider and respond to requests from any proposed subleasehold mortgagee to execute a commercially reasonable consent and agreement, including requests for commercially reasonable step-in and cure rights.

4.5 Lessor shall have the right to approve any change in the manager of Sublessee and any direct or indirect transferee of more than 50% of the interests in Sublessee, in each case, which approval may not be unreasonably withheld, conditioned, or delayed; provided, however, the following transfers shall be permitted without the requirement of Lessor's consent, provided that Sublessee shall provide at least 30 days' notice of such transfer and any documentation reasonably requested by Lessor: (i) a new manager of Sublessee which is an affiliate of FTP Power LLC, a Delaware limited liability company (d/b/a sPower) ("**sPower**"), (ii) a transferee of more than 50% of the

interests in Sublessee which is an affiliate of sPower, (iii) each of The AES Corporation or its affiliate and Alberta Investment Management Corporation or its affiliate as a direct or indirect parent of Sublessee, (iv) each of JPM Capital Corporation or its affiliate (“JPM”), U.S. Bancorp or its affiliate (“USB”), and The PNC Financial Services Group, Inc. or its affiliate (“PNC”), as a tax equity investor and limited liability company member in Sublessee or Sublessee’s direct parent regardless of the percentage membership interests held by JPM, USB or PNC in such entities, and (v) any direct or indirect transferee of interests in sPower; provided, in the case of clause (v), that (a) immediately following such transfer, sPower maintains a tangible net worth of at least \$250,000,000, and (b) such transfer is not undertaken as a subterfuge in order to avoid the Sublessee’s obligations under the Sublease. Lessor acknowledges that Sublessee has previously provided the required notice of transfer described in the foregoing clause (iii).

5. Fees and Expenses; Insurance Certificate. Pursuant to Section 11.5 of the Master Lease, Sublessor shall reimburse Lessor for costs and expenses, including reasonable attorneys’ fees, incurred by Lessor in connection with its review of the Sublease. Concurrently with its execution hereof, Sublessee shall provide Lessor with a certificate evidencing that Sublessee has in place the insurance required of Sublessor by the terms of the Master Lease.

6. Conflicting Provisions. In the event of any conflict between the terms of the Sublease and this Consent, the terms of this Consent shall prevail.

7. Notices. Any notice or other communication hereunder shall be given in writing and either (i) delivered in person, or (ii) delivered by an overnight commercial delivery service to the party to which such notice or communication is to be given, at the address set forth below or to such other address as either party shall have last designated by such notice to the other party. Each such notice or other communication shall be effective (a) if given by an overnight commercial delivery service, one (1) business day after such notice or communication is deposited with such service and addressed as aforesaid and (b) if given by personal delivery, when actually received.

To Lessor:

Chevron Products Company  
Richmond Refinery  
841 Chevron Way  
Richmond, CA 94801  
Attn: Refinery Manager

With a copy to:

Chevron Products Company  
Downstream Law Department  
6001 Bollinger Canyon Road  
San Ramon, CA 94583  
Attn: Office of General Counsel



To Sublessor:

Marin Clean Energy  
781 Lincoln Avenue, Suite 320  
San Rafael, CA 94901  
Attn: Executive Officer

To Sublessee:

MCE Solar One, LLC  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, UT 84106  
E-mail: [legal@spower.com](mailto:legal@spower.com)  
Attn: General Counsel

8. No Assignment. This Consent is not assignable, except in connection with a permitted transfer or assignment of the Master Lease or the Sublease, nor shall this Consent be deemed a consent to any amendment, modification, extension or renewal of the Sublease.

9. Brokerage Commissions. Sublessor covenants and agrees that under no circumstances shall Lessor be liable for any brokerage commission or other charge or expense in connection with the Sublease, and Sublessor hereby agrees to indemnify Lessor against same and against any cost or expense, including attorneys' fees, incurred by Lessor in resisting any claim for any such brokerage commission.

10. Counterparts. This Consent may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same binding agreement.

[Signature pages to follow.]

**IN WITNESS WHEREOF**, the parties have executed this Consent to Sublease effective as of the date first written above.

**LESSOR:**

CHEVRON PRODUCTS COMPANY, a Division  
of Chevron U.S.A. Inc., a Pennsylvania corporation

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**SUBLESSOR:**

MARIN CLEAN ENERGY,  
a California Joint Powers Authority

By: \_\_\_\_\_

Name: Dawn Weisz

Title: Executive Officer

**APPROVED AS TO FORM:**

Troutman Sanders LLP

\_\_\_\_\_  
Ben Fisher  
Counsel for Marin Clean Energy

**SUBLEESSEE:**

MCE SOLAR ONE, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT "A"

COPY OF SUBLEASE

[Attached]

## SUBLEASE AGREEMENT

This **SUBLEASE AGREEMENT** (this “**Sublease**”) is made and entered into as of May 1, 2017, by and between **Marin Clean Energy**, a California Joint Powers Authority (“**Sublessor**”), and **MCE Solar One, LLC**, a Delaware limited liability company (“**Sublessee**”).

WHEREAS, Chevron Products Company (“**Lessor**”) and Sublessor are parties to that certain Solar Energy Facility Site Lease dated as of November 4, 2015, as amended by that certain First Amendment to Solar Energy Facility Site Lease of even date herewith (as so amended, the “**Master Lease**”), whereby Lessor leased to Sublessor certain real property located in the County of Contra Costa, State of California, totaling approximately fifty (50) gross acres, as more particularly described in the Master Lease, upon the terms and conditions contained therein (the “**Property**”). All initially capitalized terms used herein shall have the same meanings ascribed to them in the Master Lease unless otherwise defined herein. A copy of the Master Lease is attached hereto as Exhibit “A”.

WHEREAS, Sublessor and Sublessee desire to enter into a sublease with respect to the Property on the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually covenant and agree as follows:

1. Sublease. Sublessor hereby subleases and demises to Sublessee and Sublessee hereby hires and subleases from Sublessor the entirety of the Property and Sublessor hereby grants to Sublessee a non-exclusive right to use the Permitted Roadways, upon and subject to the terms, covenants and conditions hereinafter set forth.

2. Sublease Term.

(a) The term of this Sublease (“**Term**”) shall commence on the date hereof (the “**Sublease Commencement Date**”), and end, unless sooner terminated as provided herein, on the date that is one hundred twenty (120) days after the twenty (20) year anniversary of the Commercial Operation Date (as defined in the PPA) (the “**Sublease Expiration Date**”).

(b) If for any reason the PPA is terminated, Sublessee may terminate the Sublease by giving Sublessor written notice of termination. Upon the purchase of the Solar Project by Sublessor pursuant to the PPA, this Sublease shall automatically be terminated.

3. Use. The Property and the Permitted Roadways shall be used and occupied by Sublessee solely and exclusively for the permitted purposes set forth in Sections 3.1, 3.2, 3.3 and 3.4(b) of the Master Lease, in compliance with the Master Lease and for no other purpose, subject to Lessor’s reserved rights.

4. Security Deposit. Concurrently with the execution of this Sublease, Sublessee shall deposit with Sublessor the sum of One Hundred Thousand and 00/100 Dollars

(\$100,000.00) (the “**Deposit**”), which shall be held by Sublessor as security for the full and faithful performance by Sublessee of its covenants and obligations under this Sublease. The Deposit is not an advance Rent deposit, an advance payment of any other kind, or a measure of Sublessor’s damages in case of Sublessee’s default. If Sublessee defaults in the full and timely performance of any or all of Sublessee’s covenants and obligations set forth in this Sublease, then, after the expiration of any applicable notice and cure period, Sublessor may, from time to time, without waiving any other remedy available to Sublessor, use the Deposit, or any portion of it, to the extent necessary to cure or remedy the default or to compensate Sublessor for all or a part of the damages sustained by Sublessor resulting from Sublessee’s default. Sublessee shall, within ten (10) business days after written demand therefor, pay to Sublessor the amount so applied in order to restore the Deposit to its original amount. Sublessee waives any restrictions on use of the Deposit set forth in California Civil Code Section 1950.7 to the extent inconsistent with the permissible uses of the Deposit agreed to above. Sublessor shall not be required to maintain the Deposit separate and apart from Sublessor’s general or other funds and Sublessor may commingle the Deposit with any of Sublessor’s general or other funds. Sublessee shall not at any time be entitled to interest on the Deposit. The Deposit, less any portion thereof which Sublessor is entitled to retain, shall be returned to Sublessee within thirty (30) days following the expiration of the Term or the date on which the Sublessee vacates the Property. Sublessor’s obligations to return the Deposit as set forth above shall survive the termination of this Sublease.

5. Incorporation of Terms of Master Lease.

(a) This Sublease is subject and subordinate to the Master Lease. Subject to the modifications set forth in this Sublease, the terms of the Master Lease are incorporated herein by reference, *mutatis mutandis*, and shall, as between Sublessor and Sublessee (as if they were “Lessor” and “Lessee,” respectively, under the Master Lease) constitute the terms of this Sublease except to the extent that they are modified by, the terms of this Sublease. In the event of any inconsistencies between the terms and provisions of the Master Lease and the terms and provisions of this Sublease, solely as between Sublessor and Sublessee, the terms and provisions of this Sublease shall govern. Sublessee acknowledges that it has reviewed the Master Lease and is familiar with the terms and conditions thereof.

(b) For the purposes of incorporation herein, the terms of the Master Lease are subject to the following additional modifications:

(i) In all provisions of the Master Lease (under the terms thereof and without regard to modifications thereof for purposes of incorporation into this Sublease) requiring the approval or consent of Lessor, Sublessee shall be required to obtain the approval or consent of both Sublessor and Lessor.

(ii) In all provisions of the Master Lease requiring Lessee to submit, exhibit to, supply or provide Lessor with evidence, certificates, or any other matter or thing, Sublessee shall be required to submit, exhibit to, supply or provide, as the case may be, the same to both Lessor and Sublessor.

(iii) The following provisions of the Master Lease shall not apply to this Sublease: (A) the right to renew the Term (as defined in the Master Lease) for the Extension Period under Section 4 of the Master Lease; (B) the initial sentence of Section 11.1 (Assignment and Subletting Prohibited); and (C) Sections 5.4 (Security Deposit), 6.11 (Viewing Platform), 11.2 (Permitted Assignment to Government Entity), 11.3 (Permitted Sublet for Development), 11.4 (Lessor's Right of First Offer), 12.1 (Lessor's Security), 16.14 (Memorandum of Lease) and 16.15 (No Recourse to Members of Lessee) and Exhibit D (Memorandum of Lease) of the Master Lease.

(iv) Sublessor may exercise early or partial termination rights with respect to this Sublease following an Early Termination Event Date or a Partial Termination Event Date, solely if and to the extent that Lessor exercises its early termination or partial termination rights pursuant to Sections 4.1 and 4.2 of the Master Lease.

(v) Notwithstanding the availability of insurance, in the event that the Solar Project or the Property is destroyed or materially damaged not as a result of Sublessee's gross negligence or intentional acts and the Solar Project or the Property is rendered permanently unusable for Solar Operations, Sublessee shall have the right to terminate this Sublease.

(vi) Annual Rent under this Sublease shall be \$1.00 for the Term and shall not be increased to Fair Market Rent, including in the event of an increase to Fair Market Rent under the Master Lease, provided that Annual Rent under this Sublease shall be increased to Fair Market Rent if (x) Annual Rent is increased under the Master Lease to Fair Market Rent at the fifteenth (15th) or twentieth (20th) anniversaries of the Effective Date and (y) the PPA has been terminated by Sublessor as a result of a default by Sublessee thereunder.

(vii) The deadline for Sublessee to perform its obligations to remove alterations and improvements installed on the Property, repair damage, and restore the Property, as set forth in the first sentence of Section 6.9 of the Master Lease (as incorporated herein by reference pursuant to Section 5(a)), shall be the Sublease Expiration Date (instead of sixty (60) days prior to the Sublease Expiration Date).

(viii) Subject to Lessor's approval right with respect to certain changes in the manager of Sublessee or direct or indirect transfers of more than 50% of the interests in Sublessee, as set forth in Section 4.5 of the Consent (as defined below), the last three sentences of Section 11.1 of the Master Lease shall not apply to this Sublease so long as the Sublessee is MCE Solar One, LLC.

(c) During the Term, Sublessee shall maintain the insurance required under Section 8.2 of the Master Lease, on all of the terms and conditions of the Master Lease, including the subrogation waiver pursuant to Section 8.2. All such policies shall name Sublessor, Lessor and any other party required to be so named under the Master Lease as additional insureds thereunder and shall be with carriers reasonably acceptable to Sublessor

and, in all events, in accordance with the requirements of the Master Lease except as otherwise provided hereinabove.

(d) Sublessor shall remain a governmental entity or joint powers authority, and Sublessor or an Approved Off-Taker shall remain the power off-taker pursuant to the PPA at all times during the Term as required under the Master Lease, except Sublessee may sell electricity, capacity and other products from the Solar Project to the power markets if the PPA terminates and no replacement PPA has been entered into.

(e) In the event that an action is taken against Sublessor or Sublessee regarding a Claim Against Lessee or a Lessor Claim for which Sublessee is or may be liable under the Sublease, Sublessee shall have the right, at its own cost, to assume and conduct the defense in its own name. Sublessor shall make available all information and assistance reasonably available and necessary for the defense of such third-party claim as Sublessee may reasonably request (including exercise by Sublessor of its rights under the Master Lease in connection therewith as directed by Sublessee) and cooperate with Sublessee in such defense.

6. Sublessee's Obligations. Sublessee covenants and agrees that all obligations of Sublessor under the Master Lease shall be done or performed by Sublessee with respect to the Property, except as otherwise provided by this Sublease, and Sublessee's obligations under this Sublease shall run to Sublessor and, to the extent such obligations are also obligations of Sublessor under the Master Lease, to Lessor. Sublessee agrees to indemnify Sublessor, and hold it harmless, from and against any and all claims, damages, losses, expenses and liabilities (including reasonable attorneys' fees) incurred as a result of Sublessee's negligence, intentional acts, or the non-performance, non-observance or non-payment of any of Sublessor's obligations under the Master Lease which, as a result of this Sublease, became an obligation of Sublessee from and after the Sublease Commencement Date. If Sublessee makes any payment to Sublessor pursuant to this indemnity, Sublessee shall be subrogated to the rights of Sublessor concerning said payment. In case any action or proceeding is brought against Sublessor and such claim is a claim for which Sublessee is obligated to indemnify Sublessor under this Section 6, Sublessee shall, upon request by Sublessor, resist and defend such action or proceeding using counsel reasonably acceptable to Sublessor. Sublessee shall not do, nor permit to be done, any act or thing which is, or with notice or the passage of time would be, a default under this Sublease. Such obligations shall survive the termination of this Sublease.

7. Sublessor's Obligations. Sublessor covenants and agrees that all obligations of Sublessor under the Master Lease, other than those which are to be done or performed by Sublessee, shall be done or performed by Sublessor. Sublessor agrees that Sublessee shall be entitled to receive all services and repairs to be provided by Lessor to Sublessor under the Master Lease. Sublessee shall look solely to Lessor for all such services and repairs and shall not, under any circumstances, seek nor require Sublessor to perform any of such services or repairs, nor shall Sublessee make any claim upon Sublessor for any damages which may arise by reason of Lessor's default under the Master Lease; provided, however, Sublessor shall provide all necessary assistance and cooperation to Sublessee to enforce Sublessor's rights under the Master Lease to compel performance by Lessor with respect to such services or repairs to which Sublessee is entitled. Any condition resulting from a default by Lessor shall not constitute as between Sublessor and Sublessee an eviction, actual or constructive, of

Sublessee and no such default shall excuse Sublessee from the performance or observance of any of its obligations to be performed or observed under this Sublease, or entitle Sublessee to receive any reduction in or abatement of the Rent provided for in this Sublease unless and to the extent Sublessor is excused from performance, or entitled to a reduction or abatement of its rental obligations to Lessor under the Master Lease also. In furtherance of the foregoing, Sublessee does hereby waive any cause of action and any right to bring any action against Sublessor by reason of any act or omission of Lessor under the Master Lease, subject to the right of assistance and cooperation from Sublessor described above. Sublessor shall extend all reasonable cooperation to Sublessee (at no material cost or liability to Sublessor) to enable Sublessee to receive the benefits under this Sublease, as the same are dependent upon performance under the Master Lease. Sublessor shall provide all necessary assistance and cooperation to Sublessee to enforce Sublessor's rights under the Master Lease and to compel performance by Lessor under the Master Lease to which Sublessee (or Sublessor, as appropriate) is entitled. Sublessor may not assign the Master Lease, sublet the Property or Solar Project or any part thereof, or any right or privilege appurtenant thereto, encumber its interest under the Master Lease or any rights of Sublessor under the Master Lease, enter into any license or concession agreement respecting all or any portion of the Property, or suffer any other person to occupy or use the Property or any portion thereof without the prior written consent of Sublessee, which consent may be given or withheld in Sublessee's sole discretion. Sublessor agrees to indemnify Sublessee, and hold it harmless, from and against any and all claims, damages, losses, expenses and liabilities (including reasonable attorneys' fees) incurred as a result of the non-performance, non-observance or non-payment of any of Sublessor's obligations under this Sublease and the Master Lease except obligations under the Master Lease which Sublessee is obligated to perform under this Sublease. If Sublessor makes any payment to Sublessee pursuant to this indemnity, Sublessor shall be subrogated to the rights of Sublessee concerning said payment. In case any action or proceeding is brought against Sublessee and such claim is a claim for which Sublessor is obligated to indemnify Sublessee under this Section 7, Sublessor shall, upon notice from Sublessee, resist and defend such action or proceeding (by counsel reasonably acceptable to Sublessee). Such obligations survive the termination of this Sublease.

8. Default by Sublessee. In the event Sublessee shall be in default of any covenant of, or shall fail to honor any obligation under, this Sublease, then, after the expiration of any applicable notice and cure period, Sublessor shall have available to it against Sublessee all of the remedies available to Lessor under the Master Lease in the event of a similar default on the part of Sublessor thereunder or at law.

9. Quiet Enjoyment. So long as Sublessee performs all of Sublessee's obligations hereunder, Sublessor shall not take any action, or fail to take any action, which would adversely affect Sublessee's right to peaceably and quietly have, hold and enjoy all of the rights granted by this Sublease for the entire Term.

10. Liens. Sublessor shall not file, or cause to be filed (through its action or inaction), any mortgage, deed of trust, lien or other encumbrance ("**Lien**") against the Property other than the recordation of the memorandum of the Master Lease and the memorandum of this Sublease. In the event any such Lien shall be filed, Sublessor shall promptly take such action as will remove or satisfy such Lien; provided, however, that Sublessor may contest any



such Lien (or any aspect thereof) and, pending the determination of such contest, postpone the removal or satisfaction thereof, except that Sublessor shall not postpone such removal or satisfaction so long as to permit or cause any adverse effect on, or loss or impairment of title to, the Property or any of Sublessee's real or personal property. If Sublessor fails to timely remove or satisfy any such Lien, Sublessee may, after thirty (30) days' prior written notice to Sublessor stating with reasonable specificity the actions that will be taken by Sublessee to remove or satisfy such Lien, perform such actions for the account of Sublessor and Sublessor shall pay the cost thereof. To the extent allowed by law, Sublessor may bond to secure the Lien so long as by law the bond will become the sole security for the Lien and Sublessee's use of or interest in the Property is not compromised.

11. Notices. Anything contained in any provision of this Sublease to the contrary notwithstanding, Sublessee agrees, with respect to the Property, to comply with and remedy any default in this Sublease which is Sublessee's obligation to cure, within the period allowed to Sublessor under the Master Lease, even if the notice of default from Sublessor to Sublessee is given after the corresponding notice of default from Lessor to Sublessor. Sublessor agrees to forward to Sublessee, within two (2) business days of receipt thereof by Sublessor, a copy of each notice (including each notice of default and notice from a governmental authority) received by Sublessor in its capacity as Lessee under the Master Lease. Sublessee agrees to forward to Sublessor, within two (2) business days of receipt thereof, copies of any notices received by Sublessee from Lessor or from any governmental authorities, to the extent notice from any such governmental authority is required to be delivered to Lessor under the Master Lease. All notices, demands and requests shall be in writing and shall be sent either by hand delivery or by a nationally recognized overnight courier service (e.g., Federal Express), in either case return receipt requested, to the address of the appropriate party. Notices may also be sent by electronic mail, if also sent by another permitted method. Notices, demands and requests so sent shall be deemed given when the same are received.

Notices to Sublessor shall be sent to:

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901  
E-mail: [dweisz@mcecleanenergy.com](mailto:dweisz@mcecleanenergy.com)  
Attn: Executive Officer

Notices to Sublessee shall be sent to:

MCE Solar One, LLC  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, UT 84106  
E-mail: [legal@spower.com](mailto:legal@spower.com)  
Attn: General Counsel

12. Broker. Sublessor and Sublessee represent and warrant to each other that no brokers were involved in connection with the negotiation or consummation of this Sublease.

Each party agrees to indemnify the other, and hold it harmless, from and against any and all claims, damages, losses, expenses and liabilities (including reasonable attorneys' fees) incurred by said party as a result of a breach of this representation and warranty by the other party.

13. Consent of Lessor. Section 11.3 of the Master Lease requires Sublessor to obtain the prior written consent of Lessor to sublease the Property. Lessor, Sublessor and Sublessee have entered into that certain Consent to Sublease dated of even date herewith (the "**Consent**"), pursuant to which Lessor has consented to this Sublease.

14. Termination of the Lease. If for any reason the term of the Master Lease shall terminate prior to the Sublease Expiration Date, this Sublease shall automatically be terminated. Sublessor shall not exercise any right to terminate the Master Lease without the prior written consent of Sublessee, which shall not be unreasonably withheld.

15. Assignment and Subletting. Independent of and in addition to any provisions of the Master Lease, it is understood and agreed that, except as expressly provided herein, Sublessee shall have no right to assign or sublet the Property or any portion thereof or any right or privilege appurtenant thereto and any such assignment or subletting shall be void. Sublessee shall not have any right to assign this Sublease or any interest therein, sublet the Property or Solar Project or any part thereof, enter into any license or concession agreement respecting all or any portion of the Property, or suffer or permit any other person (other than agents, servants or associates of the Sublessee) to occupy or use the Property or any portion thereof, without the prior written consent of Sublessor and Lessor, which consent may be given or withheld at Lessor's sole discretion. Any assignment or subletting by Sublessee without Sublessor's prior written consent shall be void and shall, at the option of Sublessor, terminate this Sublease. Notwithstanding anything to the contrary herein, as between Sublessor and Sublessee, any assignment in connection with a loan or in connection with another financing (including a tax equity financing) of the Property or any portion thereof or of the Solar Project or any sale and leaseback of the Solar Project (a "**Financing**"), any documents or instruments executed and/or recorded in connection with a Financing, the performance of obligations under such documents or instruments, and the exercise of remedies under such documents or instruments (including the assignment or transfer of the Sublease or the Solar Project to a lender or lenders or tax equity investor or its or their agent (a "**Financing Party**") or to an Eligible Foreclosure Successor in connection with a Financing or the exercise of remedies thereunder) shall not be considered an assignment of the Property or any portion thereof, this Sublease or the Solar Project or otherwise violate this Section 15 or Section 11.1 of the Master Lease (as incorporated herein by reference pursuant to Section 5(a)) (including an Assignment (or deemed Assignment pursuant to the last 3 sentences of Section 11.1 of the Master Lease as incorporated herein by reference pursuant to Section 5(a)) and shall not require the consent of Sublessor (but, for the avoidance of doubt, shall require the consent of Lessor). In connection with any Financing, the Financing Party shall be entitled to the rights and remedies of a "Leasehold Mortgagee" as provided in Section 12.3 of the Master Lease (as incorporated herein by reference pursuant to Section 5(a)) with respect to the Sublessee's rights to the Property and the Solar Project, the Sublease and other collateral relating thereto. In connection with any Financing, Sublessor shall in good faith negotiate and agree upon a consent and estoppel that is commercially reasonable and customary in the industry. In the event that the negotiation of such consent and estoppel exceeds one round of comments and revisions by each party, then

Sublessee agrees to pay the Sublessor's reasonable legal fees related to such negotiation. In addition, in connection with any Financing, if requested by Sublessee, Sublessor shall request an estoppel certificate from Lessor pursuant to Section 12.2.1 of the Master Lease.

16. Limitation of Estate. Sublessee's estate shall in all respects be limited to, and be construed in a fashion consistent with, the estate granted to Sublessor by Lessor. In the event Sublessor is prevented from performing any of its obligations under this Sublease by a breach by Lessor of a term of the Master Lease, then Sublessor's sole obligation in regard to its obligation under this Sublease shall be to use reasonable efforts in diligently pursuing the correction or cure by Lessor of Lessor's breach.

17. Entire Agreement. It is understood and acknowledged that there are no oral agreements between the parties hereto affecting this Sublease and this Sublease supersedes and cancels any and all previous negotiations, arrangements, brochures, agreements and understandings, if any, between the parties hereto or displayed by Sublessor to Sublessee with respect to the subject matter hereof, and none thereof shall be used to interpret or construe this Sublease. This Sublease and the Consent, including the exhibits attached hereto and thereto, contain all of the terms, covenants, conditions, warranties and agreements of the parties relating in any manner to the rental, use and occupancy of the Property and shall be considered to be the only agreements between the parties hereto and their representatives and agents with respect to the rental, use and occupancy of the Property. None of the terms, covenants, conditions or provisions of this Sublease can be modified, deleted or added to except in writing signed by the parties hereto. There are no other representations or warranties between the parties with respect to the rental, use and occupancy of the Property, and all reliance with respect to such representations and warranties is based totally upon the representations and warranties contained in this Sublease.

18. Conflicting Provisions. In the event of any conflict between the terms of this Sublease and the Consent, the terms of the Consent shall prevail.

19. Acceptance. The submission of this Sublease to Sublessee does not constitute an offer to lease. This Sublease shall become effective only upon the execution and delivery hereof by both Sublessor and Sublessee and the execution and delivery of the Consent by Sublessor, Sublessee and Lessor. Sublessor shall have no liability or obligation to Sublessee by reason of Sublessor's rejection of this Sublease or a failure to execute, acknowledge and deliver same to Sublessee.

20. Representations and Warranties. Each of Sublessor and Sublessee represents and warrants to the other that (a) it has the authority to enter into and perform its respective obligations under this Sublease, subject to the terms of the Master Lease, and that the individual executing this Sublease on behalf of Sublessor and Sublessee, respectively, has the authority to enter into this Sublease and to execute all other documents and perform all other acts as contemplated herein; (b) this Sublease constitutes the legal, valid and binding obligation of such party enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law; and (c) the

execution, delivery and performance by such party of its obligations under this Sublease have been duly authorized by all necessary organizational action, and do not require any consent (including from the Port) or approval other than the Consent and those which have already been obtained. Sublessor represents and warrants that (i) the Master Lease constitutes the legal, valid and binding obligation of Sublessor enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law; (ii) the execution, delivery and performance of its obligations under the Master Lease have been duly authorized by all necessary organizational action, and do not require any consent or approval (including from the Port) other than those which have already been obtained; (iii) the Master Lease has not been supplemented or amended; (iv) neither Sublessor or, to the knowledge of Sublessor, Lessor has assigned its interest in the Master Lease; (v) neither Sublessor or, to the knowledge of Sublessor, Lessor, is in default under the Master Lease; (vi) to Sublessor's knowledge, no event or circumstance has occurred and is continuing which, with the giving of notice, the passage of time or both, would constitute a default under the Master Lease or would give Lessor or Sublessor the right to terminate the Master Lease and (vii) the Solar Facility Permitting Date has not occurred under the Master Lease.

21. Miscellaneous. This Sublease shall be governed by and interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. In any action brought or arising out of this Sublease, the parties hereto hereby consent to the jurisdiction of any federal or state court having proper venue within the State of California and also consent to the service of process by any means authorized by California or federal law. The headings used in this Sublease are for convenience only and shall be disregarded in interpreting the substantive provisions of this Sublease. Time is of the essence of each term of this Sublease. If any provision of this Sublease shall be determined by a court of competent jurisdiction to be invalid, illegal or unenforceable, that portion shall be deemed severed therefrom and the remaining parts shall remain in full force as though the invalid, illegal, or unenforceable portion had never been a part thereof. This Sublease may be executed in one or more counterparts, all of which, taken together, shall constitute one and the same Sublease.

22. Memorandum of Sublease. Sublessor and Sublessee shall execute and acknowledge a memorandum of Sublease in a form reasonably acceptable to Sublessor and Sublessee, and shall be subject to Lessor's prior written approval, at the same time as the execution of this Sublease. Sublessee shall cause such memorandum to be recorded in the Official Records of the County of Contra Costa. Within five (5) business days following the termination of this Sublease, Sublessee and Sublessor shall execute, acknowledge and deliver a quitclaim deed, termination agreement, affidavit or similar document as may be required by Lessor or Lessor's title company, to remove any cloud on title to the Property created by this Sublease or resulting from the recordation of the memorandum of Sublease.

[Remainder of page intentionally left blank.]

IN WITNESS WHEREOF, the parties have entered into this Sublease Agreement as of the date first written above.

**SUBLESSOR:**

MARIN CLEAN ENERGY,  
a California Joint Powers Authority

By: \_\_\_\_\_

Name: Dawn Weisz

Title: Executive Officer

**APPROVED AS TO FORM:**

Troutman Sanders LLP

\_\_\_\_\_  
Ben Fisher

Counsel for Marin Clean Energy

**SUBLESSEE:**

MCE SOLAR ONE, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

EXHIBIT "A"

COPY OF MASTER LEASE

[Attached]

SOLAR ENERGY FACILITY SITE LEASE

between

CHEVRON PRODUCTS COMPANY, as Lessor

and

MARIN CLEAN ENERGY, as Lessee

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**SOLAR ENERGY FACILITY SITE LEASE**  
(Richmond Refinery)

This **SOLAR ENERGY FACILITY SITE LEASE** (this “**Lease**”) is made and entered into as of NOVEMBER 4, 2015 (the “**Effective Date**”), by and between **Chevron Products Company**, a division of Chevron U.S.A. Inc., a Pennsylvania corporation (“**Lessor**”), and **Marin Clean Energy**, a California Joint Powers Authority (“**Lessee**”). Each of Lessor and Lessee are sometimes referred to as a “**Party**” and collectively as the “**Parties.**”

**RECITALS**

A. Lessee is the developer, owner, and operator of photovoltaic solar energy generation equipment and facilities suitable for delivery of electrical energy to an electrical transmission grid owned and operated by a utility.

B. Lessor is the owner of certain real property located in Contra Costa County, California, identified as Assessor Parcel Numbers 561-100-034, 561-100-037, and 561-100-038 as depicted on the attached Exhibit A and incorporated herein by this reference (the “**Property**”), totaling approximately sixty (60) gross acres. The Property is part of a larger refinery owned and operated by Lessor (the “**Chevron Refinery**”).

C. Lessee desires to obtain from Lessor an exclusive lease for purposes of constructing, installing, operating, maintaining, repairing, replacing, and removing the Solar Project (defined below) to be located on the Property, together with a right of access on, over, and across those portions of the Chevron Refinery as reasonably necessary for the purpose of constructing, installing, operating maintaining, repairing, replacing, and removing from time to time the Solar Project installed on the Property.

D. Lessor desires to lease the Property to Lessee for the purposes set forth in Recital C and to grant Lessee such access rights as necessary for such purposes on the terms and conditions herein contained.

E. This Lease and Lessee’s development of the Solar Project will benefit the public by: allowing Lessee to provide electricity from renewable resources to members of the public and fulfill its role as a California Joint Powers Authority; teaching and educating the public about producing electricity from renewable resources; facilitating public oversight and involvement of the Solar Project; and securing energy supply, price stability, energy efficiencies, and local and economic workforce benefits (collectively, the “**Project Public Benefits**”). Lessee’s status as a California Joint Powers Authority and the Project Public Benefits that will result from the Solar Project being operated by Lessee are key factors in Lessor’s decision to lease the Property to Lessee on the terms of this Lease and Lessor would not lease the Property on the terms of this Lease to an entity other than a California Joint Powers Authority or other governmental entity that could provide the Project Public Benefits.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants and agreements herein contained, and intending to be legally bound hereby, Lessee and Lessor hereby agree as follows:

## AGREEMENT

1. **DEFINITIONS.** Capitalized terms not otherwise defined herein shall have the meaning set forth below:

1.1 **“Applicable Law”** means any Federal, State, or local laws, ordinances, or statutes, and the orders, rules, and regulations of any Federal, State, or local governmental agency, and the San Francisco Port Commission (the **“Port”**) applicable to the Property and improvements thereon, and the use and operation thereof.

1.2 **“Effective Date”** shall be the date on which both Parties have signed this Lease.

1.3 **“Environmental Attributes”** means any and all credits, benefits, emissions reductions, offsets and allowances of any kind, howsoever entitled, attributable to the Solar Energy Facilities or the electric energy, capacity or other generator-based products produced therefrom, including but not limited to (i) any avoided emissions of pollutants to the air, soil or water, such as sulfur oxides, nitrogen oxides and carbon monoxide, and any rights related thereto, (ii) any avoided emissions of methane, carbon dioxide and other “greenhouse gases” that have been determined by the United Nations Intergovernmental Panel on Climate Change or any other governmental, quasi-governmental or non-governmental agency or body to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere, and any rights related thereto, and (iii) any reporting rights relating to the reduction of “greenhouse gases” under Section 1605(b) of the National Energy Policy Act of 1992 or under any other federal, state, local or foreign law, rule or regulation related to the reduction of air pollutants or “greenhouse gases” or the trading of emissions or emissions credits, including so-called “green tags” or “green certificates.”

1.4 **“Environmental Incentives”** include, but are not limited to (i) federal, state or local production tax credits and investment tax credits associated with the construction or operation of the Solar Energy Facilities; (ii) any other financial incentives in the form of credits, reductions, or allowances associated with the Solar Energy Facilities that are applicable to a local, state or federal income taxation obligation, (iii) grants or subsidies in support of renewable energy, (iv) emission reduction credits encumbered or used by the Solar Energy Facilities for compliance with local, state, or federal operating or air quality permits, and (v) all rebates, benefits, reductions, tax deductions, offsets, and allowances and entitlements of any kind, howsoever entitled, resulting from the Environmental Attributes or the installation and operation of the Solar Energy Facilities.

1.5 **“Initial Energy Delivery Date”** means the initial date upon which electrical energy produced by the Solar Energy System is sold to the purchasing utility pursuant to the PPA.

1.6 **“Interconnection Facilities”** means all improvements, the purpose of which is to deliver electrical power from the Solar Energy Facilities to the electrical transmission grid of a utility, including, without limitation, transformers and electrical transmission lines.

1.7 “PPA” means a power purchase agreement entered into between Lessee and Pacific Gas and Electric Company with respect to the Solar Project.

1.8 “Solar Energy Facilities” means (a) the Solar Energy System; (b) electrical wires and cables required for the gathering and transmission of electrical energy and for communication purposes, which wires and cables may be placed overhead on appurtenant support structures; (c) one or more substations or interconnection or switching facilities from which Lessee may interconnect to a utility transmission system or the transmission system of another purchaser of electrical energy; (d) energy storage facilities; (e) solar energy measurement equipment; (f) maintenance yards, control buildings, control boxes and computer monitoring hardware; and (g) any other improvements, including roads, fixtures, facilities, fences, machinery and equipment useful or appropriate to accomplish any of the foregoing that are constructed or installed on the Property by Lessee; provided, however, the Solar Energy Facilities shall not be constructed in any location that would require an easement or right-of-way to be granted across other portions of Lessor’s property or interfere with Lessor’s ability to close the Integrated Waste Pond System north of the fertilizer plant evaporation ponds.

1.9 “Solar Energy System” means individual units or arrays of solar energy collection cells, panels, mirrors, lenses and related facilities necessary to harness sunlight for photovoltaic electric energy generation, including without limitation, heating, power generation systems, and fossil fuel-based boilers installed in connection with the Solar Energy Facilities, existing and future technologies used or useful in connection with the generation of electricity from sunlight, and associated support structures, braces, wiring, plumbing, remote monitoring, including without limitation the establishment at Lessee’s sole discretion of a land based or satellite based high speed internet connection, and related equipment constructed on the Property.

1.10 “Solar Operations” means solar energy resource evaluation; solar energy development; converting solar energy into **electrical** energy through the Solar Energy System; collecting and transmitting the electrical energy converted from solar energy; storing, collecting, and transmitting the electrical energy converted from solar energy; and any and all activities related to the foregoing conducted on the Property.

1.11 “Solar Project” means any and all Solar Energy Facilities, Interconnection Facilities, and the Viewing Platform, that are developed, constructed, and operated on the Property as an integrated system to generate and deliver electrical power to a utility or other power purchaser.

1.12 “Viewing Platform” means the viewing platform to be developed, constructed, and maintained by Lessee on the Property for the purpose of allowing the general public to observe the Solar Project during normal business hours.

2. **LEASE OF PROPERTY.** For good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Lessor, Lessor hereby leases the Property to Lessee and Lessee hereby leases the Property from Lessor. The lease of the Property is subject to: (i) all matters of record; (ii) all Applicable Laws; (iii) all items listed in Exhibit B; and (iv) authorization from the Port. Lessee acknowledges that Lessee has inspected the Property, is

aware of the general activities on neighboring properties and the Chevron Refinery, is aware that the Property has been or is currently the site of fertilizer plant evaporation ponds, one or more waste management units (a.k.a. landfills), various groundwater control systems (including hydraulic control trench, aspemix wall, clay liner, slurry barrier wall), Castro Creek and potential wetlands, and that the Property is suitable for the Solar Operations and Lessee accepts the Property in its present, AS-IS, WITH ALL FAULTS condition. Lessee acknowledges that activities on neighboring properties or the Chevron Refinery may generate dust or particulate matter that comes on to the Property and that Lessor will have no obligations or liabilities arising from or relating to such dust or particulate matter. Lessee also acknowledges that portions of the property have been filled and may continue to settle and that Lessor will have no obligations or liabilities arising from or relating to such settling. Lessee acknowledges that Lessor has made no representations or warranties regarding the Property or its physical condition or legal status.

3. **PURPOSES OF LEASE; PERMITTED USES.**

3.1 **Purpose of Lease for Solar Operations.** The lease created by this Lease is solely and exclusively for the Solar Project and throughout the term of this Lease, Lessee shall have exclusive possession of the Property and shall have the sole and exclusive right to use the Property for Solar Operations and to convert all of the solar resources of the Property for solar energy generation, subject to Lessor's reserved rights as otherwise set forth in this Lease. Except as expressly provided herein, Lessee shall have no right to use the Property for any other purpose.

3.2 **Permitted Uses of Property by Lessee for Solar Operations.** The rights granted to Lessee in this Lease with respect to Solar Operations permit Lessee to do the following without notice to or approval by Lessor, subject to the terms and conditions of this Lease:

3.2.1 construct, install, and operate the Solar Energy Facilities and the Interconnection Facilities on the Property;

3.2.2 maintain, clean, repair, replace, dispose of, and provide security for part or all of the Solar Energy Facilities and the Interconnection Facilities;

3.2.3 add or remove equipment as needed to increase or decrease the capacity of the Solar Energy System;

3.2.4 remove, trim, prune, top or otherwise control the growth of any tree, shrub, plant or other vegetation; on or that intrudes (or upon maturity could intrude) into the Property, including, without limitation, anything that could obstruct, interfere with or impair Solar Operations;

3.2.5 construct, access, and make available to the general public during normal business hours the Viewing Platform and remove the Viewing Platform at the end of the Term;

3.2.6 install and maintain on the Property communication lines and facilities, including wireless facilities, that carry communications to and from lands other than the Property;

3.2.7 place signage on the Property as reasonably approved by Lessor, subject to Applicable Law and the issuance of any required governmental permits;

3.2.8 remove the Solar Energy Facilities, the Interconnection Facilities, the Viewing Platform, and all other equipment or facilities as permitted under this Lease;

3.2.9 conduct in-person physical inspections of the Solar Energy Facilities and the Property; and

3.2.10 conduct press conferences and other media events on the Property with Lessor's prior written approval, which may not be unreasonably withheld.

3.3 **Use Restrictions**. In addition to the other terms and conditions contained in this Lease:

3.3.1 Lessee may not use the groundwater for any purpose whatsoever, nor may Lessee engage in any subsurface intrusions other than as required in the physical construction, maintenance, repair, alteration, replacement or removal of the Solar Project and in accordance with the requirements of Sections 6.3 and 6.5 below;

3.3.2 Lessee may conduct a Phase 1 environmental report or assessment of the Property. Lessee may not conduct any studies or tests that penetrate the ground or the landfill cap and drainage system located therein without Chevron's prior written consent, which may be granted or withheld in Lessor's sole discretion;

3.3.3 Lessee shall at all times use the Property so as not to damage or interfere with any facilities of Lessor or holders of easements on the Property or at the Chevron Refinery, or interfere with Lessor's operation of the Chevron Refinery (and, without limiting the generality of the foregoing, Lessee shall not damage or interfere with the groundwater protection system shown in Exhibit C);

3.3.4 Lessee may not commit or knowingly allow to be committed any violation of Applicable Law, public nuisance, act of waste or other act or thing in or about the Property that will in any manner obstruct or interfere with the rights of Lessor or other occupants of the Chevron Refinery or landowners adjacent to the Chevron Refinery or injure, solicit or canvass them, nor may Lessee allow the Property to be used for any unlawful purpose; and

3.3.5 Intentionally deleted.

3.3.6 Lessee acknowledges that the Property is located within a U.S. Foreign Trade Subzone 3B (the "**Zone**"). Lessor shall use commercially reasonable efforts to cause the Property to be deactivated from the Zone, provided that Lessee shall comply with all requirements imposed by the Foreign Trade Zone Board of the U.S. Dept. of Commerce ("**FTZ Board**"), U.S. Customs and Border Protection ("**CBP**"), the Port, and Lessor for construction

and operations within the Zone so long as the Property remains within the Zone. Lessee further acknowledges that Lessor retains the right to modify the terms and conditions of this Lease if required to comply with requirements imposed by the FTZ Board, CBP, or the Port. In the event that the Property is subsequently reactivated within the Zone following any deactivation, Lessee shall comply with all requirements imposed by the FTZ Board, CBP the Port and Lessor for construction and operations within the Zone.

3.4 **Roadway License.** As of the Effective Date, the Property is accessible from Richmond Parkway, a public road. If Lessee reasonably determines that the public roads, as they may exist from time to time, are not sufficient for purposes of access to the Property, Lessor shall grant to Lessee, at Lessee's request and at no additional cost or expense to Lessee except as provided below, for use by Lessee and its employees, agents, and contractors, a non-exclusive license on and along certain interior roads and private driveways within the Chevron Refinery, for ingress and egress by vehicular traffic between the public roads entering the Chevron Refinery and the Property, for the purposes of developing and operating the Solar Project (the "**Roadway License**"), subject to the terms of this Lease. The locations of the Roadway License areas and the terms of the Roadway License shall be mutually agreed upon by the Parties. Subject to Section 3.7, the Roadway License shall not be restricted as to hours of use nor shall advance notice of its use be required. Lessee shall pay its reasonable share of costs and expenses related to the improvement, maintenance, or repair of the roads covered by the Roadway License resulting from Lessee's use of the roads. Lessor shall be responsible for its reasonable share of the costs and expenses related to the improvement, maintenance, or repair of the roads shared with Lessee resulting from Lessor's use. Lessor reserves the right to designate different roads and private driveways and to relocate the roads and private driveways to be used by Lessee in accordance with the Roadway License; provided, however, Lessee will at all times be ensured reasonable access to the Property. The Roadway License will terminate upon the termination of this Lease.

3.5 **Lessor Access.** During the Term, Lessor shall have the right upon reasonable notice and at reasonable and safe times (except in an emergency, in which event no notice shall be required) to visit the Property and access the Solar Project for other purposes, including the following: (i) to comply with Applicable Law and policies of Lessor's insurance carrier(s); (ii) to prevent waste or deterioration of the Property, or to post notices of non-responsibility for alterations, additions, or repairs; or to show the Property to prospective purchasers or lenders; (iii) to access, repair, replace, and use existing groundwater protection systems on the Property, as shown in Exhibit C; and (iv) to operate, maintain, repair and replace any existing surface, subsurface and overhead pipelines and utility facilities servicing the Chevron Refinery. The Parties will cooperate to minimize any interference with the Solar Operations during the Term of this Lease. Lessor's rights of entry as set forth in this Section 3.5 shall be subject to the reasonable security regulations of Lessee, and to the requirement that Lessor shall use reasonable efforts to minimize interference with Lessee's business activities on the Property. Lessor shall be entitled to exercise the foregoing rights without any abatement of rent and without liability to Lessee for any injury or inconvenience to or interference with Lessee's business, quiet enjoyment of the Property, or any other loss occasioned thereby. Under no circumstances shall Lessor's access to the Property interfere with the Solar Energy System's exposure to sunlight. During the Term, Lessee shall allow all governmental entities and their



respective officials, agents and representatives to access to the Property at all times, and Lessee shall cooperate with such governmental entities in connection with any such access.

3.6 **Access Restrictions.** Notwithstanding anything in this Lease to the contrary, Lessor may, at any time and without prior notice, restrict access to the Property for health and safety reasons at its reasonable discretion. If it is not possible to provide such notice in advance of the restriction of access, Lessor shall provide the notice as soon as reasonably practicable after the restriction of access. Lessor shall remove the restriction as soon as reasonably practicable after imposing the restriction and notify Lessee of the removal of the restriction.

4. **TERM.** The term of this Lease will commence on the Effective Date and continue for a period of twenty-five (25) years (the “**Initial Term**”). Provided no Event of Default by Lessee under this Lease remains outstanding and uncured at the time Lessee gives notice to Lessor of the exercise of Lessee’s right to extend the term of this Lease, Lessee has the right and option to extend the term of this Lease for a period of five (5) years (the “**Extension Period**”), by delivering written notice of such extension to Lessor not less than one hundred eighty (180) days prior to the end of the Initial Term. For purposes of this Lease, “**Term**” means the Initial Term, as extended by the Extension Period, if exercised by Lessee, and “**Expiration Date**” means the last day of the Term.

4.1 **Early Termination.** Notwithstanding anything to the contrary in this Lease, Lessor has the right, exercisable at any time within one hundred eighty (180) days after the Early Termination Event Date (defined below), to terminate this Lease upon written notice to Lessee (the “**Early Termination Event Notice**”), which termination shall be effective one hundred twenty (120) days after the date of delivery of the Early Termination Event Notice to Lessee, in the event that: (i) the Operating Approvals (as defined in Section 6.4) have not been obtained by the date that is four (4) years after the Effective Date; (ii) Lessee has not commenced construction, as set forth in Section 6.5 below, by the date that is six (6) months after the Solar Facility Permitting Date; (iii) Lessee has not completed construction of the Solar Project with at least two (2) megawatts of inverter nameplate generating capacity and the Initial Energy Delivery Date has not occurred within one (1) year after the Solar Facility Permitting Date; (iv) Lessee fails to Continuously Operate the Solar Project (as defined in Section 6.8); or (v) Marin Clean Energy ceases to be a California Joint Powers Authority and does not transfer title to the Solar Facility to another government agency with a similar purpose (each such date that would trigger Lessor’s right to terminate, an “**Early Termination Event Date**”).

4.2 **Partial Termination.** Notwithstanding anything to the contrary in this Lease, Lessor has the right, exercisable at any time within one hundred eighty (180) days after the Partial Termination Event Date (defined below), to terminate this Lease with respect to any portion of the Property that has not been developed with Solar Energy Facilities by giving written notice to Lessee (the “**Partial Termination Event Notice**”), which termination shall be effective thirty (30) days after the date of delivery of the Partial Termination Event Notice to Lessee, in the event that: (i) on the fifth (5<sup>th</sup>) anniversary of the Initial Energy Delivery Date, Lessee has not developed Solar Energy Facilities on at least twenty-five (25) acres of the Property with at least two tenths (.2) of a megawatt of inverter nameplate generating capacity per Developed Acre; or (ii) on the tenth (10<sup>th</sup>) anniversary of the Initial Energy Delivery Date,

Lessee has not developed Solar Energy Facilities on the entire Property (less any portion of the Property on which it is infeasible to develop Solar Energy Facilities or on which other features of the Solar Project have been constructed) with at least two tenths (.2) of a megawatt of inverter nameplate generating capacity per Developed Acre (each such date that would trigger Lessor's right of partial termination, a "**Partial Termination Event Date**"). If Lessee's failure to meet the generating capacity requirements at either Partial Termination Event Date is reasonably caused by limitations imposed within an interconnection agreement with Pacific Gas & Electric, however, Lessor shall have no right to partial termination under this Section 4.2. For purposes of this Section, "**Developed Acre**" means each acre, or portion thereof, on which Solar Energy Facilities have been developed, net of all access roads, required setbacks and easements.

## 5. PAYMENTS TO LESSOR.

5.1 Annual Rent. Commencing on the Effective Date and throughout the Term of this Lease, Lessee shall pay rent to Lessor in the annual amount of One Dollar (\$1.00) (the "**Annual Rent**"); provided, however, that if Lessee ceases to be a governmental entity or if Lessee assigns this Lease or subleases all or any portion of the Property to an entity other than a governmental entity or the Developer (as defined in Section 11.3), then the Annual Rent will automatically increase to the Fair Market Rent, as defined below; provided, further, that on the fifteenth (15<sup>th</sup>) and twentieth (20<sup>th</sup>) anniversaries of the Effective Date and at the commencement of the Extension Period, the Annual Rent will automatically increase to the Fair Market Rent unless the Solar Project continues to provide Project Public Benefits. For purposes of this Section 5.1, the Solar Project shall be deemed to continue to provide Project Public Benefits if the sole energy off taker is a governmental entity. So long as the Annual Rent remains One Dollar (\$1.00), Lessee shall pay rent annually on the Effective Date and each anniversary thereof. If the Annual Rent increases to the Fair Market Rent, then rent will be payable in advance in quarterly instalments on the first day of each calendar quarter, prorated for any partial period. Lessee shall pay to Lessor the Annual Rent set forth above without deduction, offset, or abatement, and without prior notice or demand. Rent shall be payable in lawful money of the United States to Lessor at the address stated in the Section 17.4 to this Lease or to such other places as Lessor may from time to time designate in writing. Lessee's obligation to pay rent for any partial year shall be prorated. If any installment of rent or any other sum due from Lessee is not received by Lessor within five (5) days after Lessee's receipt of Lessor's written notice of such non-payment, Lessee shall pay to Lessor an additional sum equal to six percent (6%) of the amount overdue as a late charge. Notwithstanding the preceding sentence to the contrary, Lessor shall not be obligated to deliver any notice of non-payment as a condition to imposing a late charge more than once in any calendar year. Such late charge shall be added to the installment of rent due but unpaid and such sum shall bear interest from the date the installment of rent was due until paid at the Default Rate (as defined in Section 14.1.4). The amount of the late charge shall represent liquidated damages for, and a reasonable estimate of, Lessor's administrative costs of collection, the exact amount of which would be extremely difficult or impractical to fix. Lessor's acceptance of such late charge shall not excuse any default by Lessee hereunder, and shall not preclude Lessor from pursuing any other rights and remedies it may have relating to such default.

5.2 Fair Market Rent. For purposes of this Lease, "**Fair Market Rent**" means the rent (including annual increases) that a tenant would pay a willing landlord for a ground lease for property that is comparable to the Property in a comparable area in Contra

Costa, Marin, or Alameda Counties, California, taking into consideration such factors as the square footage of the Property; the length of the lease in question; appropriate inducements and concessions then being included in such comparable leases for comparable space, including but not limited to so-called free or abated rents; and the credit standing of Lessee. For purposes of the determination of Fair Market Rent in this Section 5.2, the Parties agree that the highest and best use of the Property shall be for a ground lease for a solar or other renewable energy system.

5.2.1 Lessor and Lessee shall negotiate Fair Market Rent within thirty (30) days following assignment of or transfer of the Lease to an entity other than a governmental entity or sublease of all or any portion of the Property to an entity other than a governmental entity or the Developer. In the event Lessor and Lessee cannot agree upon Fair Market Rent within the thirty (30) day period set forth above, then each Party shall within five (5) days, select an appraiser holding the MAI designation, or, if the MAI designation is eliminated, the closest available equivalent, holding all required California licenses and certifications, each with not less than ten (10) years of experience in commercial and industrial rentals in Marin, Contra Costa, or Alameda Counties, California. The two brokers so appointed shall appraise the Fair Market Rent taking into account the considerations set forth above and meet within thirty (30) days after their appointment to attempt to agree on the Fair Market Rent. The agreement of the appraisers as the Fair Market Rent shall be binding on the Parties.

5.2.2 If the two appraisers so appointed cannot reach agreement within five (5) days after their initial meeting, then within twenty-one (21) days after the failure of the appraisers to reach agreement ("**Notice Date**"), the two shall appoint a third appraiser with the same qualifications ("**Third Appraiser**"). Within five (5) days after the Parties' appraisers select the Third Appraiser, the proposed Third Appraiser shall make all disclosures required by CCP Section 1281.9 or equivalent provision of California Law if Section 1281.9 is repealed. Within fifteen (15) days after service of the proposed Third Appraiser's disclosure statement, each Party may disqualify the first proposed Third Appraiser with or without cause by written notice to the other Party, the Parties' appraisers and the proposed Third Appraiser. If a Party disqualifies the first proposed Third Appraiser, then the Parties' appraisers shall select a second proposed Third Appraiser within fifteen (15) days after the disqualification. The second proposed Third Appraiser shall make all required disclosures within five (5) days after his or her tentative selection by the Parties' appraisers. Each Party shall have fifteen (15) days after service of the disclosures to disqualify the second proposed Third Appraiser by written notice to the other Party, the Parties' appraisers, and the second proposed Third Appraiser, which disqualification shall only be for cause, as documented in the notice. If the second proposed Third Appraiser is disqualified, the Parties and their appraisers may repeat the process used for the second proposed Third Appraiser until they select a Third Appraiser who is not disqualified. However, except as the Parties may otherwise agree, after the first to occur of disqualification of the first proposed Third Appraiser or 110 days after the Notice Date, either Party may petition the Superior Court for Contra Costa County pursuant to CCP Section 1281.6 (or equivalent provision) to appoint a Third Appraiser who satisfies the requirements of Section 5.2.1 to act as arbitrator and Third Appraiser pursuant to Section 5.2.3 of this Lease. In the event of such a petition, a Party may petition the Court to disqualify a Court-appointed arbitrator only upon a showing of cause. Except as otherwise provided in this Section 5.2.2, CCP Sections 1281.9 and 1281.91 (or equivalent provisions) shall apply to the selection of the Third Appraiser. The Third Appraiser will be acting in an arbitration role, and thus the Third Appraiser will have the

immunity of a judicial officer from civil liability arising pursuant to CCP Section 1297.119 (or equivalent provision), which states: "An arbitrator has the immunity of a judicial officer from civil liability when acting in the capacity of arbitrator under any statute or contract."

5.2.3 The Third Appraiser shall appraise the Fair Market Rent for the Property taking into account the considerations set forth above and within twenty-one (21) days after the Third Appraiser's appointment, the three appraisers shall meet to attempt to agree on the Fair Market Rent. If agreement cannot be reached, then the two closest appraisals will be averaged, and such figure will become the Annual Rent and be binding on both Parties. Each Party shall pay the fee of its respective appraiser, and both Parties shall share the cost of the Third Appraiser, if necessary.

5.3 **Additional Rent; Net Lease.** All other costs and charges payable by Lessee in accordance with the terms of this Lease (including insurance premiums and maintenance costs) shall be deemed to be additional rent; provided, however, Lessor shall pay all real property taxes assessed upon the Property, excluding the Solar Project. All Base Monthly Rent and additional rent shall constitute "rent" for all purposes. Other than real property taxes, this rent payable by Lessee hereunder is intended to be absolutely net, and Lessor shall have no obligations to pay maintenance or other costs associated with the Property.

5.4 **Security Deposit.** Prior to commencement of construction or installation of any portion of the Solar Project, Lessee shall deposit with Lessor the sum of one hundred thousand dollars (\$100,000) (the "**Initial Deposit**") as security for the faithful performance by Lessee of all of its obligations hereunder. If the Annual Rent increases to Fair Market Rent pursuant to Section 5.1, then Lessee shall deposit with Lessor an additional sum equal to three months Annual Rent (together with the Initial Deposit, the "**Deposit**") as security for the faithful performance by Lessee of all of its obligations hereunder. If Lessee fails to pay rent or any other sums due hereunder, or otherwise defaults with respect to any provision of this Lease, after the expiration of any applicable notice and cure period, Lessor may use, apply, or retain all or any portion of the Deposit for the payment of any rent or other sum in default, or to compensate Lessor for the payment of any other sum which Lessor may become obligated to spend by reason of Lessee's default, or to compensate Lessor for any expenditures, loss or damage which Lessor may suffer thereby. Lessee waives any restrictions on use of the Deposit set forth in Section 1950.7 of the California Civil Code, to the extent inconsistent with the permissible uses of the Deposit agreed to above. If Lessor so uses or applies all or any portion of the Deposit, Lessee shall, within ten (10) business days after written demand therefor, deposit with Lessor an amount in cash sufficient to restore the Deposit to the full amount hereinabove stated. Lessor shall not be required to keep the Deposit separate from its general funds. The Deposit, less any portion thereof which Lessor is entitled to retain, shall be returned, without payment of interest, to Lessee (or at Lessor's option to the last assignee, if any, of Lessee's interest hereunder) within thirty (30) days after the later of the expiration of the term hereof, or the date on which Lessee vacates the Property.

## 6. **SOLAR PROJECT.**

6.1 **Ownership.** During the term of the Lease, Lessor shall have no ownership or other interest in any Solar Project installed on the Property, any Environmental Attributes

produced therefrom, or any Environmental Incentives attributable thereto. Lessee's furnishings, machinery and equipment, including solar panels and related electrical generating equipment, shall remain the property of Lessee and may be removed by Lessee, provided Lessee at Lessee's expense immediately after removal repairs any damage to the Property caused thereby. The manner of operation of the Solar Project, including, but not limited to, decisions on when to conduct maintenance, is within the sole discretion of Lessee.

6.2 **Maintenance.** Except for Lessor's Maintenance Obligation (as defined below), Lessee, at its sole cost and expense, shall keep in good and safe condition, order and repair the Property, and every part thereof, including without limitation: (a) performance of all weed abatement, rodent and pest control, disking and any similar activities, (b) all equipment and alterations installed by Lessee, and (c) any items of maintenance and repair to the Solar Energy Facilities which may be required by any governmental entity with jurisdiction. Lessee shall, at Lessee's expense, maintain in good condition and repair all improvements installed on the Property by Lessee, including, without limitation, all solar panels and related equipment comprising the Solar Energy Facilities. Lessor shall, at its sole cost and expense, keep in good and safe condition, order and repair Lessor's facilities, in, on or under the Property, including without limitation, a landfill cap and drainage system and various groundwater control systems and other remedial systems installed to address Prior Covered Contamination or Lessor Covered Contamination (as defined in Section 10.2) ("**Lessor's Maintenance Obligation**"); provided, however, Lessor shall have no obligation to repair any damage caused by Lessee, which repairs shall be performed by Lessee at its sole cost and expense. Except as to Lessor's Maintenance Obligation, Lessee hereby waives all rights it may have under Sections 1932(1), 1941, and 1942 of the California Civil Code, and any similar or successor statute or law which would otherwise afford Lessee the right to make repairs at Lessor's expense or to terminate this Lease because of Lessor's failure to keep the Property in good condition, order and repair. Except as to Lessor's Maintenance Obligation, Lessor shall have no obligation under this Lease to perform any alteration, maintenance, repair or replacement of any portion of the Property or any improvements installed thereon, nor to pay for any such alteration, maintenance, repair or replacement.

6.3 **Design.** Lessee, at its sole cost and expense, shall prepare detailed plans for the Solar Project for Lessor's review and approval, which approval may not be unreasonably withheld, conditioned, or delayed (the "**Plans**"). The Plans must show: (i) the location of all Solar Energy Facilities and Interconnection Facilities; (ii) the extent to which any of the Solar Energy Facilities or the Interconnection Facilities penetrate the ground; and (iii) any other matters reasonably requested by Lessor. Lessee shall obtain Lessor's written approval of the Plans prior to submitting the Plans to any third party, including the Port or any other government agency responsible for permitting or approving the Solar Project. If the Plans need to be revised for any reason after Lessor has approved the Plans, then Lessee shall submit the revised Plans to Lessor for Lessor's review and approval, which approval may not be unreasonably withheld, conditioned, or delayed. In no event will approval of the Plans by Lessor be deemed to constitute a representation by Lessor that the work called for in the Plans complies with applicable legal requirements. Without limiting the bases on which Lessor may withhold approval of the Plans, the parties acknowledge that it will be reasonable for Lessor to withhold approval of the Plans if: (i) construction of the Solar Energy Facilities or the Interconnection Facilities in accordance with the Plans would penetrate, harm, or otherwise interfere with any of

Lessor's facilities in, on, or under the Property, including, without limitation, a landfill cap and drainage system and various groundwater control systems; or (ii) the Plans would damage or impede Lessor's ability to access and use the existing groundwater protection system on the Property, as shown in Exhibit C. Lessee may not make any changes to the Plans without Lessor's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed.

6.4 **Permitting.** Prior to commencing construction or installation of any part of the Solar Project, Lessee, at its sole cost and expense, shall (i) obtain all required approvals and permits to construct and operate the Solar Project, including compliance with the California Environmental Quality Act, and (ii) enter into the PPA (collectively, the "**Operating Approvals**"). If Lessee has not obtained the Operating Approvals by the date that is four (4) years after the Effective Date, then Lessor may terminate this Lease pursuant to Section 4.1 above. The term "**Solar Facility Permitting Date**" will mean the date that Lessee has obtained all Operating Approvals.

6.5 **Construction.** Lessee, at its sole cost and expense, shall construct the Solar Project in accordance with the Plans approved by Lessor, the Operating Approvals, and all Applicable Laws. Lessee shall mobilize on the Property and commence construction on or before the date that is six (6) months after the Solar Facility Permitting Date. Lessee shall complete construction of the Solar Project with at least two (2) megawatts of inverter nameplate generating capacity and the Initial Energy Delivery Date shall occur within one year after the Solar Facility Permitting Date. If Lessee fails to meet any of the deadlines set forth in this Section 6.5, then Lessor may terminate the Lease pursuant to Section 4.1 above. During construction of the Solar Project, Lessee may not penetrate, harm, or otherwise interfere with any of Lessor's facilities in, on, or under the Property, including, without limitation, a landfill cap and drainage system and various groundwater control systems, and Lessee acknowledges the presence of the same. During construction of the Solar Project, Lessee shall, to the extent required by Applicable Law, employ hazardous operations contractors with experience working in a refinery environment. Upon completion of the Solar Project, Lessee, at its sole cost and expense, shall immediately deliver to Lessor "as-built" plans and specifications therefor. All construction work permitted to be done by Lessee shall be performed by a licensed contractor in a prompt, diligent, and good and workmanlike manner and in compliance with all applicable statutes, ordinances, regulations, codes and orders of governmental authorities and insurers of the Property and the requirements of this Lease.

6.6 **Alterations.** Except as otherwise expressly set forth in this Lease, Lessee shall not, without Lessor's prior written approval, which approval may not be unreasonably withheld, conditioned, or delayed, make any alterations or improvements in, on or about the Property. Should Lessee make any alterations or additions without obtaining Lessor's approval, Lessee shall immediately remove the same at Lessee's expense upon demand by Lessor. Any alteration or addition that Lessee shall desire to make in or about the Property shall be presented to Lessor in written form, with proposed detailed plans and specifications therefor prepared at Lessee's sole expense. Any consent by Lessor thereto shall be deemed conditioned upon Lessee's acquisition of all permits required to make such alteration from all appropriate governmental agencies, including the Port, the furnishing of copies thereof to Lessor prior to commencement of the work, and the compliance by Lessee with all conditions of said permits in

a prompt and expeditious manner, all at Lessee's sole expense. Upon completion of any such alteration or addition, Lessee, at its sole cost and expense, shall immediately deliver to Lessor "as-built" plans and specifications therefor. All construction work permitted to be done by Lessee shall be performed by a licensed contractor in a prompt, diligent, and good and workmanlike manner and in compliance with all applicable statutes, ordinances, regulations, codes and orders of governmental authorities and insurers of the Property and the requirements of this Lease. Lessee or its agents shall obtain and pay for all licenses and permits necessary therefor.

6.7 **Independent Interconnection.** Lessee, at its sole cost and expense, shall cause the Solar Energy Facilities to have independent Interconnection Facilities with Pacific Gas & Electric Company. Lessee acknowledges that Lessee may not use any existing electrical connection to the Chevron Refinery's electrical grid, substations, or any other electrical component of Lessor and that the Interconnection Facilities must be independent of the same.

6.8 **Continuous Operation.** Lessee, at its sole cost and expense, shall Continuously Operate the Solar Project. For purposes of this Agreement, Lessee will be deemed to "**Continuously Operate the Solar Project**" as long as the Solar Energy System generates photovoltaic electric energy and transmits such energy to the Interconnection Facilities at least (i) one (1) day during any calendar month and (ii) two hundred (200) days during any calendar year.

6.9 **Removal.** Lessee, at its sole cost and expense, no later than sixty (60) days prior to the Expiration Date, shall remove all alterations and improvements installed on the Property by Lessee and repair any damage occasioned thereby, and restore the Property to substantially the condition existing as of the Effective Date. The obligations of Lessee set forth in this Section will survive the termination of this Lease. Without limiting the generality of the above provisions, Lessee shall be required to remove all footings, foundations, underground utilities and similar improvements and equipment installed on the Property by Lessee. Lessee shall be liable to Lessor for Lessor's costs of removal of any abandoned alterations, improvements, or equipment of Lessee that Lessee fails to remove, together with the cost of returning the Property to its condition as of the date Lessee originally took possession and the transportation and storage or disposal costs of such items. If Lessee is performing its removal obligations under this Section 6.9 following the termination of the Lease, during such period of removal Lessee shall maintain the insurance required of Lessee under Section 8.2 and pay an occupancy fee to Lessor at the same rate as the effective rental rate under this Lease immediately prior to such termination.

6.10 **Security.** Lessee shall, at its sole expense, provide security services for the Property and the Solar Project as necessary to ensure the safety of the Property and its occupants (the "**Security Services**"). The Security Services must be provided in a manner consistent with Lessor's security procedures for the Chevron Refinery, a copy of which Lessor shall provide to Lessee upon request. As part of the Security Services, Lessee shall, at Lessee's cost, install additional fences around the Solar Project in a location and of a quality approved by Lessor, which approval may not be unreasonably withheld, conditioned, and delayed. Lessor will not be responsible for providing security guards or other security protection for all or any portion of the Property. Lessee shall not be responsible for providing security for roads on the Chevron

Refinery property used to access the Property. Within one month after the start of construction of the Solar Project, the Parties shall meet to coordinate and cooperate regarding (i) security for the Property and the portions of the Chevron Refinery in close proximity to the Property; and (ii) response to emergencies due to vandalism, terrorism, or natural disasters and the other emergencies described in Section 16 below. The Parties shall exchange contact information for security personnel who shall be available to respond to emergencies all day on every day of the year.

6.11 **Viewing Platform.** As part of the Solar Project, Lessee may construct the Viewing Platform in accordance with the Plans. Lessee shall operate the Viewing Platform in accordance with rules and regulations to be developed and agreed to by Lessee and Lessor, which rules and regulations will comply with Lessor's security procedures for the Chevron Refinery.

6.12 **Local Labor Requirements.** During any construction on the Property, Lessee shall comply with the following local labor requirements:

6.12.1 Lessee shall and shall cause its general contractor and any subcontractors to pay prevailing wages in the construction of the Generating Facilities as those wages are determined pursuant to Labor Code Sections 1720 *et seq.*, and implementing regulations of the Department of Industrial Relations, and all other applicable federal, state and local laws, regulations and ordinances pertaining to labor standards insofar as those laws, regulations and ordinances apply to the performance of this Agreement, including any applicable City of Richmond employment requirements, including but not limited to the City's Living Wage Ordinance (Richmond Municipal Code Chapter 2.60), the City's Business Opportunity Ordinance (Richmond Municipal Code Chapter 2.50), and the City's Local Employment Program Ordinance (Richmond Municipal Code Chapter 2.56). Lessee shall and shall cause its general contractor and any subcontractors to keep and retain such records as are necessary to determine compliance with any such applicable laws, regulations and ordinances. During the construction of the Solar Project, Lessee shall post at the construction sites the applicable prevailing rates of per diem wages under the City's Living Wage Ordinance. Lessee shall indemnify, hold harmless and defend (with counsel reasonably acceptable to Landlord) Landlord against any claims for damages, compensation, fines, penalties or other amounts arising out of failure or alleged failure of any person or entity (including Lessee and its general contractor and any subcontractors) to pay prevailing wages as determined pursuant to Labor Code Sections 1720 *et seq.*, and implementing regulations of the Department of Industrial Relations in connection with construction of the Solar Project. In addition, Lessee shall and shall cause its general contractor and any subcontractors to promptly deliver to Landlord, upon request, documents verifying its compliance with the Living Wage Ordinance, which include documents which evidence that each affected employee has been notified regarding the wages required to be paid pursuant to the Living Wage Ordinance. This Section 6.12 shall survive the termination of this Agreement. Lessee and all sub-contractors must use Employment and Training labor tracking software Elations for certified payroll reporting.

6.12.2 In addition to the hiring and subcontracting goals set forth in the City's Business Opportunity Ordinance and Local Employment Program Ordinance, Lessee shall make good faith efforts to employ the highest possible number of Richmond residents as follows:



6.12.2.1 At least 50% of the work force shall be residents of Richmond, North Richmond or San Pablo;

6.12.2.2 If a general contractor or any subcontractor makes good faith efforts to comply with the above work force composition but is unable to do so and documents such good faith efforts to Landlord's satisfaction, the above work force composition may be reduced prorata to the extent that the City Manager (or designee) and Lessee determine that there are insufficient qualified workers available from Richmond;

6.12.2.3 For purposes of calculating the work force composition, a general contractor may exclude one supervisor.

6.12.3 For the construction of the Solar Project, Lessee shall require its general contractor to solicit qualified subcontractors headquartered in Richmond prior to releasing solicitations for bids to subcontractors headquartered outside of Richmond. Lessee agrees to require its general contractor to use an open, competitive bidding process that allows equal opportunity for all potential bidders to submit bids for the work. If the general contractor makes good faith efforts to comply with the above subcontractor percentages but is unable to do so and documents such good faith efforts to Lessee's satisfaction, the above percentages may be reduced prorata to the extent that the Richmond City Manager (or designee) and Lessee determine that there are insufficient qualified firms headquartered in Richmond. Before entering into a contract with any subcontractor, Lessee or its general contractor shall first obtain Lessor's written approval of the subcontractor.

6.12.4 All subcontractors used for the electrical installation work shall hold a valid C-10 license issued by the California Contractors State License Board.

## 7. TAXES; UTILITIES.

7.1 Taxes on the Property and the Solar Project. Lessee's leasehold improvements shall be Lessee's personal property and shall not be considered real property. Commencing on the Effective Date and throughout the Term, Lessee shall pay directly to any charging authority prior to delinquency all taxes assessed against and levied upon Lessee's leasehold improvements, including without limitation the installation of the Solar Project on the Property, equipment and all other personal property of Lessee situated in or about the Property, and any reclassification of the Property as a result of the Solar Project or this Lease. Lessor shall pay all real property taxes assessed upon the Property (excluding the Solar Project), and shall be responsible for the payment of all real and personal property taxes and assessments levied on the Property value with respect to periods prior to the term of this Lease. Lessee's obligation to pay taxes shall be prorated as of the Effective Date and the Expiration Date (or the date of any sooner termination of the Term). Lessor shall cooperate with Lessee to ensure any and all property tax bills are delivered to the appropriate Party. If Lessor pays any taxes or assessments for which Lessee is responsible under this Section 7.1, Lessee shall, promptly on demand from Lessor, reimburse Lessor for such amounts as additional rent. If Lessee pays any taxes or assessments for which Lessor is responsible under this Section 7.1, Lessor shall, promptly on demand from Lessee, reimburse Lessee for such amounts.

7.2 **Tax Contests.** Each Party reserves the right to contest with taxing authorities any taxes or assessments imposed which it believes in good faith are excessive or from which it believes in good faith it should be exempt, provided that the contesting Party shall not allow any such taxes or assessments to remain unpaid for such length of time as would allow any part or all of the Property or the Solar Project to be sold or foreclosed upon or any property of the other Party to be subject to a lien for the nonpayment of same and the contesting Party shall pay any penalties or interest resulting from such contest.

7.3 **Utilities.** Commencing as of the Effective Date and throughout the Term, Lessee shall pay when due directly to the charging authority all charges for water, gas, electricity, telephone, refuse pickup and all other utilities and services supplied or furnished to the Property during the term of this Lease, together with any taxes thereon. Lessor will have no obligation to provide utilities or interconnection facilities to Lessee pursuant to this Lease. In no event shall Lessor be liable to Lessee for failure or interruption of any such utilities or services, and no such failure or interruption shall entitle Lessee to terminate this Lease or to withhold rent or other sums due hereunder.

8. **LESSEE'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**  
Lessee hereby represents, warrants and covenants to Lessor as follows:

8.1 **Location of Solar Project; Site Plans.** Subject to the procedures and requirements in Section 6.3 above, Lessee shall make all siting decisions with regard to the location and siting of the Solar Project subject to all Applicable Law. Lessee shall post the access roads it constructs within the Property going to and from the Solar Project as being private roads only for use by authorized personnel (including Lessor during Lessor's times of permitted entry hereunder) in connection with the Solar Project. Any road constructed by Lessee on the Property shall be subject to all easements and dedications of records as of the Effective Date.

8.2 **Insurance.** Commencing on the Effective Date, Lessee shall, at its sole cost and expense, obtain and maintain and keep in full force and effect during the Term a commercial general liability insurance policy applying to the condition, use, occupancy and maintenance of the Property and the business operated by Lessee, or any other occupant on the Property insuring Lessee and Lessor against loss or liability caused by Lessee's occupation and use of the Property under this Lease, in an amount not less than Three Million Dollars (\$3,000,000) of combined single limit liability coverage per occurrence, accident or incident, subject to a commercially reasonable deductible. All such policies shall include Broad Form Contractual liability insurance coverage insuring coverage for all of Lessee's indemnity obligations under this Lease. All such policies shall be written to apply to all bodily injury, property damage, personal injury and other covered loss, however occasioned. All such policies shall be endorsed to add Lessor and any lender or other party with an insurable interest in the Lease or the Property named by Lessor as an additional insured and to provide that any insurance maintained by Lessor shall be excess insurance only. Such coverage shall also contain endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including employees as additional insureds; and (iii) providing for coverage of employer's automobile non-ownership liability. All such insurance shall provide for severability of interests; shall provide that an act or omission of one of the named insureds shall not reduce or avoid coverage to the other named insureds; and shall afford coverage for all claims based on acts, omissions, injury

and damage, which claims occurred or arose (or the onset of which occurred or arose) in whole or in part during the policy period. Lessee shall also maintain Workers' Compensation insurance in accordance with California law. The limits of all insurance described in this Section 8.2 shall not, however, limit the liability of Lessee hereunder. If, in the reasonable opinion of Lessor, the amount of insurance required hereunder is less than the amount typically carried in the market by tenants of comparable industrial facilities in the vicinity of the Property, Lessee shall increase said insurance coverage to such market amount. Lessee shall also maintain any insurance coverage required by any utility company purchasing electrical power from Lessee's project. As of the completion of construction of the Solar Project, Lessee shall, at Lessee's sole expense, obtain and keep in force during the term of this Lease, a policy of fire and extended coverage insurance including a standard "all risk" endorsement, insuring the fixtures, equipment, personal property, leasehold improvements and alterations of Lessee within the Property for the full replacement value thereof, as the same may increase from time to time due to inflation or otherwise. The proceeds from any of such policies shall be used for the repair or replacement of such items so insured and, provided such insurance proceeds are used for such repair and replacement, Lessor shall have no interest in such insurance proceeds. During construction of the Solar Project, (a) Lessee shall maintain course of construction insurance applicable to the work in progress, and (b) Lessee's contractors shall maintain commercial general liability insurance and workers' compensation insurance comparable to that required of Lessee herein. The insurance required to be obtained by Lessee pursuant to this Section 8.2 shall be primary insurance and (a) shall provide that the insurer shall be liable for the full amount of the loss up to and including the total amount of liability set forth in the declarations without the right of contribution from any other insurance coverage of Lessor, (b) shall be carried with companies reasonably acceptable to Lessor, and (c) shall specifically provide that such policies shall not be subject to cancellation, reduction of coverage or other change except after at least thirty (30) days prior written notice to Lessor. Duly executed certificates evidencing the issuance of such policies, together with satisfactory evidence of payment of the premium thereon, shall be deposited with Lessor on or prior to the earlier of the Effective Date or the date on which Lessee or any of Lessee's agents or contractors enter the Property, and upon each renewal of such policies, which shall be effected not less than thirty (30) days prior to the expiration date of the term of such coverage. Lessee shall not do or permit to be done anything which shall invalidate any of the insurance policies referred to in this Section 8.2. Lessee and Lessor each hereby waives any and all rights of recovery against the other, or against the officers, employees, agents, partners and beneficiaries of the other, for loss of or damage to the property of the waiving Party, or the property of others under its control, to the extent of proceeds received as a result of such loss or damage under any insurance policy carried by Lessor or Lessee. Lessee and Lessor shall, upon obtaining the policies of insurance required hereunder, give notice to the insurance carrier or carriers that the foregoing mutual waiver is contained in this Lease. Lessor makes no representation that the limits of liability specified to be carried by Lessee under the terms of this Lease are adequate to protect either Party. If Lessee believes that the insurance coverage required under this Lease is insufficient to adequately protect Lessee, Lessee shall provide, at its own expense, such additional insurance as Lessee deems adequate.

### 8.3 **Indemnity; Safety Measures; Waiver of Claims.**

8.3.1 Lessee shall indemnify, protect, defend and hold harmless Lessor and its directors, officers, employees, and agents (collectively, "**Lessor Indemnitees**") from and

against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys' fees and costs), including any personal injury, death or property damage, now or hereafter arising from any occurrence in or about the Property, or from the Solar Project or the Solar Operations, or from any breach or default by Lessee in the performance of any obligation on the part of Lessee to be performed under the terms of this Lease, or from any Covered Contamination (as defined in Section 10.1), except to the extent such damage, loss, expense or liability is caused by the active negligence, gross negligence, or willful misconduct of such Lessor Indemnitee ("**Lessor Claims**"). In the event any action or proceeding shall be brought against any Lessor Indemnitee by reason of any Lessor Claim, Lessee upon notice from such Lessor Indemnitee shall defend the same at Lessee's expense with counsel reasonably satisfactory to such Lessor Indemnitee. The obligations of Lessee contained in this Section shall survive the termination of this Lease. Except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence or willful misconduct of such Lessor Indemnitee, Lessee hereby waives any claims against the Lessor Indemnitees for injury to Lessee's business or any loss of income therefrom or for damage to the equipment, goods, wares, merchandise or other property of Lessee, or for injury or death of Lessee's agents, employees, invitees, or any other person in or about the Property from any cause whatsoever, regardless of whether the same results from conditions existing upon the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessee.

8.3.2 Lessor shall indemnify, protect, defend and hold harmless Lessee and its directors, officers, employees, and agents (collectively, "**Lessee Indemnitees**") from and against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys' fees and costs), including any personal injury, death or property damage, now or hereafter arising from any breach or default by Lessor in the performance of any obligation on the part of Lessor to be performed under the terms of this Lease, caused by the active negligence, gross negligence or willful misconduct of Lessor or its directors, officers, employees, and agents, or from Prior Covered Contamination or Lessor Covered Contamination (as defined in Section 10.2), except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence or willful misconduct of such Lessee Indemnitee ("**Lessee Claims**"). In the event any action or proceeding shall be brought against any Lessee Indemnitee by reason of any Lessee Claim, Lessor upon notice from such Lessee Indemnitee shall defend the same at Lessor's expense with counsel reasonably satisfactory to such Lessee Indemnitee. The obligations of Lessor contained in this Section shall survive the assignment or transfer of it rights, liabilities, or obligations under and the expiration or termination of this Lease. Except to the extent such damages, losses, expenses or liability is caused by the active negligence, gross negligence or willful misconduct of such Lessee Indemnitee, Lessor hereby waives any claims against the Lessee Indemnitees for injury to Lessor's business or any loss of income therefrom or for damage to the equipment, goods, wares, merchandise or other property of Lessor, or for injury or death of Lessor's agents, employees, invitees, or any other person in or about the Property or the Chevron Refinery from any cause whatsoever, regardless of whether the same results from conditions existing upon the Property or from other sources or places, and regardless of whether the cause of such damage or injury or the means of repairing the same is inaccessible to Lessor.

8.4 **Requirement of Governmental Agencies.** Lessee, at its sole cost and expense, shall comply in all respects with all Applicable Law. In its sole discretion and through appropriate legal proceedings brought in the name of Lessee, Lessee shall, at its sole cost and expense, have the right to contest the validity or applicability to the Property or the Solar Project of any law, ordinance, statute, order, regulation, property assessment or the like now or hereafter made or issued by any federal, state, county, local or other governmental agency or entity relating to the Solar Project or Lessee's Solar Operations on the Property, provided that such contest does not create any liability of any kind to Lessor, and Lessee shall reimburse Lessor for any out-of-pocket costs (including attorneys' costs and fees) in connection with Lessor's required involvement in any such contest. Any such contest or proceeding, including any maintained in the name of Lessor, shall be controlled and directed by Lessee at Lessee's sole cost and expense, but Lessee shall indemnify, protect, defend and hold harmless Lessor from and against any and all claims, damages, losses, proceedings, causes of action, costs, expense or liability (including attorneys' fees and costs) arising out of such contest, including without limitation, from Lessee's failure to observe or comply during the contest with the contested law, ordinance, statute, order, regulation or property assessment.

8.5 **Liens.** Lessee shall not file, or allow to be filed, any lien against the Property. In the event any lien shall be filed, Lessee shall promptly take such action as will remove or satisfy the lien; provided, however, that Lessee may contest any lien (or any aspect thereof) and, pending the determination of such contest, postpone the removal or satisfaction thereof, except that Lessee shall not postpone such removal or satisfaction so long as to permit or cause any adverse effect on, or loss or impairment of title to, the Property or any of Lessor's real or personal property. If Lessee fails to timely remove or satisfy a lien, Lessor may, after thirty (30) days' prior written notice to Lessee stating with reasonable specificity the actions that will be taken by Lessor to remove or satisfy such lien, perform such actions for the account of Lessee and Lessee shall pay the cost thereof as additional rent. To the extent allowed by law, Lessee may bond to secure the lien so long as by law the bond will become the sole security for the lien and Lessor's use of or interest in the Chevron Refinery and the Property is not compromised.

9. **LESSOR'S REPRESENTATIONS, WARRANTIES AND COVENANTS.**  
Lessor hereby represents, warrants and covenants to Lessee as follows:

9.1 **Exclusivity.** Lessor has not granted to any party other than Lessee rights to convert the solar resources of the Property for electrical energy or to otherwise use the Property for solar energy conversion purposes. Other than matters of record and those encumbrances listed in Exhibit B, Lessor has not granted a lease, license, or right to possession of any part of the Property for any other purpose. In no event during the term of this Lease shall Lessor construct, build or locate or allow others to construct, build or locate any Solar Energy System, Solar Energy Facilities, or similar project on the Property, or to use any part of the Property except for the purposes set forth in Section 3.5.

9.2 **Non-Interference.** Lessor will not initiate or conduct activities that could damage, impair or otherwise adversely affect the Solar Energy Facilities or their function. Except for the rights reserved and granted to Lessor in this Lease, neither Lessor nor any employee, officer, agent, or contractor or any other person acting on behalf of Lessor or at Lessor's direction or request shall impede or interfere with: (i) the siting, permitting, construction,

installation, maintenance, operation, replacement, or removal of Solar Energy Facilities on the Property; (ii) Lessee's access over the Property to the Solar Energy Facilities; (iii) the undertaking of any other activities of Lessee permitted under this Lease; (iv) the transmission of electric, electromagnetic or other forms of energy to or from the Property; or (v) the Solar Energy Facilities' exposure to sunlight (subject to the acknowledgement regarding dust and particulates in the fourth sentence of Section 2).

9.3 **Requirements of Governmental Agencies/Lenders.** To the extent required by any Applicable Law, Lessor, at no cost or expense to Lessor, shall reasonably cooperate with and assist Lessee in complying with or obtaining any land use permit and approval, tax-incentive or tax-abatement program approval, building permit, environmental impact review or any other approval reasonably required by Lessee in connection with the development, financing, construction, installation, replacement, relocation, maintenance, operation or removal of the Solar Project, including execution of applications for such approvals and delivery of information and documentation related thereto, and execution, if required, of any orders or conditions of approval. Lessee shall reimburse Lessor for its actual expense directly incurred in connection with such cooperation.

9.4 **Quiet Enjoyment.** Subject to Lessor's rights of entry hereunder, Lessor covenants and warrants that Lessee shall peacefully hold and enjoy all of the rights granted by this Lease for its entire term without hindrance or interruption by Lessor or any person lawfully or equitably claiming by, through, under or superior to Lessor subject to the terms of this Lease.

9.5 **Acknowledgment of Lessee's Right to Erect Fences.** Subject to Lessor's rights of entry pursuant to the terms herein, Lessor acknowledges and agrees that Lessee may erect fences or other security measures around the Property or the Solar Project in accordance with Section 6.10 above. Lessee shall provide to Lessor keys or access codes to all fences constructed by Lessee on the Property.

## 10. **ENVIRONMENTAL REMEDIATION.**

10.1 **Environmental Remediation by Lessee.** In the event environmental contamination results from Lessee's operation and use of the Property and that environmental contamination is covered by applicable federal, state or local laws in effect and enforced during the Term, this Section 10.1 shall apply. The definitions and requirements of Section 10.2 shall apply to Prior Covered Contamination (as that term is defined in Section 10.2.1 below).

10.1.1 **"Covered Contamination"** means (i) any environmental contamination as a result of Lessee's use of the Property or the Solar Project that is covered by Applicable Law, (ii) any environmental contamination or threatened environmental contamination that results from any penetration, disturbance, or impairment of the landfill cap and drainage system or groundwater control systems by Lessee, its agents, employees, contractors, licensees, and invitees, and (iii) any other environmental condition that is covered by Applicable Law existing on the Property as of the Effective Date to the extent such condition is exacerbated by Lessee's operation and use of the Property or the Solar Project.

10.1.2 **“Claim Against Lessee”** means receipt by Lessor or Lessee of a notice, claim, demand, or complaint from any third party or from any government agency with jurisdiction for investigation, containment, remediation or removal of Covered Contamination, or for the payment of damages, costs, or expenses arising from or relating to the presence of or the escape, leakage, spillage, discharge, emission or release from the Property into, onto or under the Property, adjacent land, or any groundwater source, watercourse, body of water, or wetland, of any Covered Contamination alleged to have resulted from Lessee’s operation and use of the Property or the Solar Project.

10.1.3 If a Claim Against Lessee occurs, the Party first receiving notice of the Prior or Lessor Claim will immediately notify the other Party, and Lessee will proceed after receipt of notice of the claim to assess and, if required, to take any action necessary to fully and finally resolve the claim. If any investigation, containment, remediation or removal of Covered Contamination is undertaken, Lessee shall be deemed to have satisfied its obligations once Lessee completes the work to the satisfaction of the governmental agency having jurisdiction over the matter, or as otherwise required under any settlement agreement or court order. If Lessee, in good faith, believes that the claimed contamination is not Covered Contamination or that Lessee is not otherwise responsible for the Claim Against Lessee, then Lessee shall have the right to challenge such claim in an appropriate forum.

10.1.4 In the event action is taken against either Party regarding a Claim Against Lessee, or commenced by Lessee to challenge a Claim Against Lessee, Lessor shall cooperate with Lessee in the defense thereof.

## 10.2 **Environmental Remediation by Lessor.**

10.2.1 **“Prior Covered Contamination”** means environmental contamination and that was present in, on or under the Property prior to the Effective Date.

10.2.2 **“Lessor Covered Contamination”** means escape, leakage, spillage, discharge, emission or release from the Property into, onto or under the Property of environmental contamination caused by Lessor after the Effective Date and which is covered by Applicable Law.

10.2.3 Lessor shall disclose to Lessee any contamination not caused by Lessee but related to the Property that Lessor learns of subsequent to Lessee taking possession of the Property.

10.2.4 **“Prior Covered Contamination Claim or Contamination Claim”** (hereinafter, **“Prior or Lessor Claim”**) means receipt by Lessor or Lessee of a notice, claim, demand, or complaint from any third party, or from any government agency with jurisdiction for containment, remediation or removal of Prior Covered Contamination or Lessor Covered Contamination, or for the payment of damages, costs, or expenses arising from or relating to for the presence of or the escape, leakage, spillage, discharge, emission or release from the Property into, onto or under the Property, adjacent land, or any groundwater source, watercourse, body of water, or wetland, of any Prior Covered Contamination or Lessor Covered Contamination.

10.2.5 If a Prior or Lessor Claim occurs, the Party first receiving notice of the Prior or Lessor Claim will immediately notify the other Party, and Lessor will proceed after receipt of notice of the claim to assess and, if required, to take any action necessary to fully and finally resolve the claim. If any containment, remediation or removal of Prior Covered Contamination or Lessor Covered Contamination is undertaken, Lessor shall be deemed to have satisfied its obligations once Lessor completes the work to the satisfaction of the governmental agency having jurisdiction over the matter, or as otherwise required under any settlement agreement or court order. If Lessor, in good faith, believes that the claimed contamination is not Prior Covered Contamination or Lessor Covered Contamination or that Lessor is not otherwise responsible for the Prior or Lessor Claim, then Lessor shall have the right to challenge such claim in an appropriate forum.

10.2.6 In the event action is taken against either Party regarding a Prior or Lessor Claim, or commenced by Lessor to challenge a Prior or Lessor Claim, Lessee shall cooperate with Lessor in the defense thereof, provided such cooperation is at no material cost to Lessee and further provided that such cooperation would not expose Lessee to significant negative media or political attention.

10.3 **Survival of Obligations.** The Parties' obligations under this Section 10 shall survive transfer or assignment of the Parties' interests under this Lease or expiration or termination of this Lease.

## 11. **ASSIGNMENT AND SUBLETTING.**

11.1 **Assignment and Subletting Prohibited.** The Parties acknowledge that Lessee's status as a California Joint Powers Authority is an important basis on which the Parties are entering into this Lease and that Lessor would not lease the Property on the terms of this Lease to a party other than a governmental entity. The Parties further acknowledge that the Project Public Benefits would be significantly reduced and impeded if the Project ceased to be operated by Marin Clean Energy or another governmental entity. Accordingly, Lessee may not assign this Lease, sublet the Property or Solar Project or any part thereof, or any right or privilege appurtenant thereto, encumber its interest under this Lease or any rights of Lessee hereunder except to the extent permitted under Section 12.3, enter into any license or concession agreement respecting all or any portion of the Property, or suffer any other person to occupy or use the Property or any portion thereof (each, an "**Assignment**") without the prior written consent of Lessor, which consent may be given or withheld at Lessor's sole discretion, except as otherwise set forth in Sections 11.2 and 11.3 below. An encumbrance of Lessee's interest under this Lease or the Solar Project as security for a loan or other financing of the Solar Project, to the extent permitted by Section 12.3, shall not constitute an Assignment. If Lessee proposes to assign this Lease or sublet the Property, Lessee shall provide written notice thereof to Lessor, together with a detailed description of all terms of such Assignment and the proposed assignee or sublessee. If Lessee is a partnership or a limited liability company, a change in the general partner or manager of Lessee, a transfer, voluntary or involuntary, of more than 50% of the interests in the partnership or the company, or the dissolution of the partnership or the company, shall be deemed an Assignment. If Lessee is a corporation, any dissolution, merger, consolidation, or other reorganization of Lessee, or the transfer, either all at once or in a series of transfers, of a controlling percentage of the capital stock of Lessee, or the sale, or series of sales



within any one (1) year period, of all or substantially all of Lessee's assets located in, on, or about the Property, shall be deemed an Assignment. The phrase "controlling percentage" means the ownership of, and the right to vote, stock possessing at least fifty-one percent (51%) of the total combined voting power of all classes of Lessee's capital stock issued, outstanding, and entitled to vote for the election of directors.

11.2 **Permitted Assignment to Government Entity.** Notwithstanding Section 11.1 above, Lessee may assign this Lease, sublet the Property or any part thereof, or any right or privilege appurtenant thereto, or license all or any proportion of the Property to a government entity, with Lessor's prior written consent, which consent may not be unreasonably withheld, conditioned, or delayed.

11.3 **Permitted Sublet for Development.** Notwithstanding Section 11.1 above, Lessee may sublet all or a portion of the Property to a third party (the "**Developer**") for the purposes of developing the Solar Project with Lessor's prior written consent, which consent may not be unreasonably withheld, conditioned, or delayed, subject to the following conditions: (i) Lessee remains the power off-taker pursuant to a power purchase agreement with the Developer; (ii) the term of the sublease is no longer than necessary for the Developer to realize the full benefit of any federal, state or local production tax credits and investment tax credits associated with the construction or operation of the Solar Project; (iii) the Developer is reasonably satisfactory to Lessor, taking into account such factors as the Developer's financial condition and experience developing comparable projects; (iv) Lessor and the Developer enter into a sublease agreement on terms and conditions reasonably satisfactory to Lessor; and (v) the sublease agreement does not expand the obligations or limit the rights of Lessor under this Lease.

11.4 **Lessor's Right of First Offer.** In the event Lessee elects to assign this Lease or sublease the Property (other than a sublease to the Developer), Lessor shall have a right of first offer as follows: Lessee shall give Lessor written notice specifying the terms and conditions on which Lessee desires to assign the Lease or sublease all or a portion of the Property and offering to assign or sublease to Lessor on the stated terms and conditions (the "**First Offer**"). Within thirty (30) days after receipt of the notice, Lessor shall either accept or reject the First Offer. If Lessor accepts the First Offer, then the parties shall proceed in accordance with the terms and conditions stated in the First Offer. If Lessor rejects the First Offer (or does not respond in writing within such thirty (30) day period, which failure shall act as a rejection), then Lessee shall be free to assign the Lease or sublease the Property to others, provided such assignment or sublease is on substantially similar terms as the First Offer to Lessor. Any offer of sale for a substantially reduced purchase price as compared to the First Offer, or with substantially different terms, must first be presented to Lessor as a new offer. For purposes hereof, the purchase price shall be considered "substantially reduced" if the total consideration payable to Lessee is less than 95% of the consideration payable pursuant to the terms specified in the First Offer.

11.5 **Assignments Generally.** Any Assignment without Lessor's prior written consent pursuant to this Section shall at Lessor's election be void, and shall constitute an Event of Default. If Lessee shall purport to assign this Lease, or sublease all or any portion of the Property, or permit any person or persons other than Lessee to occupy the Property, without Lessor's prior written consent, Lessor may collect rent from the person or persons then or

thereafter occupying the Property and apply the net amount collected to the rent reserved herein, but no such collection shall be deemed a waiver of Lessor's rights and remedies under this Section 11, or the acceptance of any such purported assignee, sublessee or occupant, or a release of Lessee from the further performance by Lessee of covenants on the part of Lessee herein contained. The consent by Lessor to any Assignment shall not constitute a waiver of the provisions of this Section 11, including the requirement of Lessor's prior written consent, with respect to any subsequent Assignment. In the event Lessor shall consent to an Assignment pursuant to this Section 11, Lessee shall nonetheless remain primarily liable for all obligations and liabilities of Lessee under this Lease, including but not limited to the payment of rent. Lessee shall reimburse Lessor upon demand for the reasonable out-of-pocket expenses, including reasonable attorneys' fees, incurred by Lessor in connection with the negotiation, review, and documentation of any requested Assignment. In the event of an assignment or sublease to an entity other than a governmental entity or the Developer, the rent shall be adjusted in accordance with Section 5.2 above.

12. **ESTOPPEL CERTIFICATES; ATTORNMENT; SUBORDINATION.**

12.1 **Lessor's Security.**

12.1.1 **Estoppel Certificate.** Lessee shall, within fifteen (15) days following request by Lessor, execute and deliver to Lessor an estoppel certificate: (a) certifying that this Lease has not been modified and is in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect; (b) stating the date to which the rent and other charges are paid in advance, if at all; (c) acknowledging that there are not, to Lessee's knowledge, any uncured defaults on the part of Lessee hereunder, or if there are uncured defaults on the part of Lessee, stating the nature of such uncured defaults; and (d) evidencing the status of this Lease as may be reasonably required either by a lender making a loan to Lessor to be secured by a deed of trust or mortgage encumbering the Property or a purchaser of the Property from Lessor. In the event of any financing or sale of the Property by Lessor, Lessee shall deliver to Lessor the current financial statements of Lessee with an opinion of a certified public accountant, including a balance sheet and profit and loss statement for the then current fiscal year, and the two (2) immediately prior fiscal years, all if available without further preparation and all prepared in accordance with generally accepted accounting principles consistently applied. Lessor shall keep any financial statements of Lessee delivered to Lessor strictly confidential and shall endeavor to cause any prospective lender or purchaser to do the same. The failure by Lessee to deliver an estoppel certificate or to deliver any such financial statements within fifteen (15) days following such request shall be an Event of Default under this Lease.

12.1.2 **Attornment.** Lessee shall attorn to any third party purchasing or otherwise acquiring the Property at any sale or other proceeding, or pursuant to the exercise of any rights, powers or remedies under any mortgages or deeds of trust or ground leases now or hereafter encumbering all or any part of the Property, as if such third party had been named as Lessor under this Lease. Such attornment shall be upon all of the terms and conditions of this Lease. Lessee shall execute a new lease with such new Lessor on the same terms of this Lease if so required by such new Lessor.

## 12.2 Lessee's Security.

12.2.1 **Estoppel Certificate.** Lessor shall, within fifteen (15) days following request by Lessee, execute and deliver to Lessee an estoppel certificate: (a) certifying that this Lease has not been modified and is in full force and effect or, if modified, stating the nature of such modification and certifying that this Lease, as so modified, is in full force and effect; (b) stating the date to which the rent and other charges are paid in advance, if at all; (c) acknowledging that there are not, to Lessor's knowledge, any uncured defaults on the part of Lessee hereunder, or if there are uncured defaults on the part of Lessee, stating the nature of such uncured defaults; and (d) evidencing the status of this Lease as may be reasonably required either by the holder of a mortgage, grant a deed of trust on, and/or pledge of the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project ("**Leasehold Mortgagee**") or by a Permitted Transferee (as defined below). The failure by Lessor to deliver an estoppel certificate within fifteen (15) days following such request shall be a default under this Lease. For purposes of this Lease, "**Permitted Transferee**" means (i) an assignee pursuant to an Assignment permitted under Section 11; (ii) a Leasehold Mortgagee that takes title to this Lease pursuant to a foreclosure of a Leasehold Mortgage or a sale in lieu thereof; or (iii) an Eligible Foreclosure Successor that takes title to this Lease pursuant to Section 12.3.12.

12.2.2 **Attornment.** Any Permitted Transferee shall succeed to the interest of Lessee under this Lease and shall have all the rights and duties of Lessee under this Lease and be bound to this Lease to the same extent as Lessee, but only during the period when such Permitted Transferee owns the leasehold estate. Any Permitted Transferee shall immediately provide Lessor with written notice of such transfer. Lessor shall attorn to any Permitted Transferee upon all of the terms and conditions of this Lease. If so required by the Permitted Transferee, Lessor shall execute a new lease with the Permitted Transferee on the same terms of this Lease. Where a Leasehold Mortgagee acquires title to this Lease or the Solar Project under Section 12.3, then the following breaches, if any, relating to the prior Lessee shall be deemed cured: (i) attachment, execution of or other judicial levy upon the leasehold estate, (ii) assignment for the benefit of creditors of Lessee, (iii) judicial appointment of a receiver or similar officer to take possession of the leasehold estate or the underlying fee-owned property, or (iv) filing any petition by, for or against Lessee under any chapter of the Federal Bankruptcy Code. The benefits afforded to any Permitted Transferee pursuant to this Section 12.2.2 are conditioned on (i) such Permitted Transferee assuming in writing all duties and obligations of Lessee under this Lease from and after the date the Permitted Transferee takes title to this Lease and (ii) such Permitted Transferee paying rent in accordance with Section 5.1, including any increase of Annual Rent to Fair Market Rent, if applicable.

12.2.3 **Subordination.** Lessor agrees that any mortgage, deed of trust, or other instrument of security now of record or which is recorded after the date of this Lease affecting the Property or any portion thereof, shall be subject to and subordinate to this Lease and any mortgage, grant of a deed of trust on, and/or pledge of the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project, and such subordination is hereby made effective without any further act of Lessor. Lessor further agrees that Lessor shall obtain from the holder of any mortgage, deed of trust, or other instrument of security affecting the Property now of record or which is recorded after the date of this Lease ("**Property Mortgagee**") a written and acknowledged subordination, nondisturbance, and attornment

agreement in a commercially reasonable and recordable form, subject to Lessor's reasonable approval, that provides, among other things, that as long as Lessee performs its obligations under this Lease, no foreclosure of, deed given in lieu of foreclosure of, or sale under the encumbrance, and no steps or procedures taken under the encumbrance held by the Property Mortgagee, shall affect Lessee's or the Leasehold Mortgagee's rights under this Lease. The Property Mortgagee and Lessor shall execute and return to Lessee and the Leasehold Mortgagee the written and acknowledged agreement and any other documents reasonably required by Lessee and the Leasehold Mortgagee to accomplish the purposes of this Section, or comments to such agreement or documents, within seven (7) days after delivery thereof to Lessor and the Property Mortgagee, and the failure of the Lessor and the Property Mortgagee to execute, acknowledge, and return any such instruments or provide comments shall constitute a default hereunder.

### 12.3 Leasehold Mortgages.

12.3.1 Lessee's Right to Mortgage Lease and Solar Project. Lessee shall have the right, at any time and from time to time, to mortgage, grant a deed of trust on, and or pledge the Lease and/or the Solar Project as security for a loan or other financing of the Solar Project, subject to Lessor's approval of the Leasehold Mortgagee or lender, which approval may not be unreasonably withheld, conditioned, or delayed. Lessee agrees to furnish Lessor with a correct and complete copy of any such security instrument. Lessor agrees that Lessee's interest under the Lease or the Solar Project may be encumbered under this section 12.3.1. In no event shall a security instrument under this section 12.3.1 encumber Lessor's fee interest in the underlying property.

12.3.2 Leasehold Mortgagee Consent to Lease Termination. There shall not be entered into between Lessor and Lessee any agreement of cancellation, termination, surrender, acceptance of surrender, amendment or modification of this Lease without the prior written consent of the Leasehold Mortgagee, whose consent shall not be unreasonably withheld. This Lease shall not merge into the fee underlying the Property without the prior written consent of such Leasehold Mortgagee.

12.3.3 Leasehold Mortgagee's Right to Cure Default. Lessor, upon giving Lessee any notice under this Lease, including, without limitation, notice of an Event of Default, shall at the same time serve by one of the methods specified in Section 17.4 of this Lease, copies of such notice upon each Leasehold Mortgagee whose address has previously been provided to Lessor by Lessee in writing. No notice served upon Lessee (including, without limitation, a notice of termination of this Lease) shall be effective unless a copy has been served upon each Leasehold Mortgagee at the address provided by Lessee. Following receipt of any such notice of an Event of Default, each Leasehold Mortgagee shall have the right to remedy the Event of Default, or cause the same to be remedied, within the same time allowed to Lessee under Sections 14.1.1 and 14.1.2 of this Lease.

12.3.4 Leasehold Mortgagee's Right to Foreclose. If a noncurable breach of this Lease occurs, a Leasehold Mortgagee shall have the right to begin foreclosure proceedings and to obtain possession of the Lease and/or Solar Project, so long as the Leasehold Mortgagee (i) notifies Lessor, within 30 days after receipt of Lessor's notice of an Event of Default, of its intention to effect this remedy; (ii) diligently institutes steps or legal proceedings

to foreclose on or recover possession of the Lease (after the Leasehold Mortgagee has completed its customary pre-foreclosure due diligence requirements), and thereafter prosecutes the remedy or legal proceedings to completion with due diligence and continuity; and (iii) keeps and performs, during the foreclosure period (including the pre-foreclosure due diligence period), all of the covenants and conditions of this Lease.

12.3.5 **Multiple Leasehold Mortgagees.** In the event of conflict between the rights of multiple Leasehold Mortgagees, the rights of the respective Leasehold Mortgagees shall be determined in the order of priority of their Leasehold Mortgages.

12.3.6 **Leasehold Mortgagee Named as Additional Insured.** The name of the Leasehold Mortgagee may be added as a loss payee of any fire and extended coverage insurance carried by Lessee, provided that insurance proceeds are first used for repair and restoration as required by this Lease, unless a Leasehold Mortgagee's security has been impaired and such Leasehold Mortgagee is legally entitled to the application of the insurance proceeds to the unpaid indebtedness of Lessee, in which case such insurance proceeds shall be paid to the Leasehold Mortgagee up to the amount of the unpaid indebtedness secured by any such Leasehold Mortgage(s). The terms of this Section 12.3.6 do not modify or limit either Party's rights or obligations under Section 15.4.

12.3.7 **Liability of Leasehold Mortgagees.** Except with respect to payment of Annual Rent or additional rent and except as provided in Section 12.3.4, the Leasehold Mortgagee shall not be liable for the performance of Lessee's obligations under this Lease unless the Leasehold Mortgagee has succeeded to and has possession of the interest of Lessee under this Lease.

12.3.8 **Leasehold Mortgage Not Assignment.** The making of any Leasehold Mortgage shall not be deemed to constitute an assignment or transfer of this Lease or of the leasehold estate, nor shall any Leasehold Mortgagee, as such, be deemed to be an assignee or Transferee of this Lease or the leasehold estate so as to require such Leasehold Mortgagee, as such, to assume the performance of any of the terms, covenants or conditions on the part of Lessee under this Lease to be performed.

12.3.9 **Lessor's Receipt of Notices.** Lessor agrees, whenever requested by any Leasehold Mortgagee, to confirm, in writing, the receipt of any notice from the Leasehold Mortgagee.

12.3.10 **Assignment to Leasehold Mortgagee.** The Leasehold Mortgagee shall have the option to be assigned this Lease in the event that Lessee, Lessee's trustee or assignee elects to reject this Lease under Section 365(a) of the Bankruptcy Code. In the event that the Leasehold Mortgagee exercises its option to have this Lease assigned to it, such a rejection by Lessee, Lessee's trustee or assignee, whether by election, by operation of law or otherwise, shall not terminate this Lease if the Leasehold Mortgagee cures any outstanding Event of Default of Lessee under this Lease other than Events of Default of Lessee that are personal to Lessee and cannot be cured by a party other than Lessee, such as transfer and bankruptcy.

12.3.11 **Assignment of Rents.** Lessor consents to a provision in any Leasehold Mortgage or otherwise for an assignment of rents from subleases of the Improvements to the holder thereof, effective on the date on which the Leasehold Mortgagee has succeeded to and takes possession of the interest of Lessee under this Lease.

12.3.12 **Foreclosure Not a Breach.** The foreclosure of a Leasehold Mortgage, or any sale thereunder to an Eligible Foreclosure Successor, whether by judicial proceedings or by virtue of any power contained in any Leasehold Mortgage, or any conveyance of the leasehold estate created hereby from Lessee to any Leasehold Mortgagee through, or in lieu of, foreclosure or other appropriate proceedings in the nature thereof, shall not breach any provision of or constitute an Event of Default under this Lease and shall not require Lessor's consent, and upon such foreclosure, sale or conveyance and Leasehold Mortgagee's execution and delivery to Lessor of a lease assumption agreement in a commercially reasonable form, Lessor shall recognize the Leasehold Mortgagee, or such Eligible Foreclosure Successor, as Lessee under the Lease. For purposes of this Lease, "**Eligible Foreclosure Successor**" means an entity that (i) has, during the five (5) year period immediately preceding the transfer, owned and operated at least twenty-five (25) megawatts of inverter nameplate generating capacity of photovoltaic solar electricity generating equipment and facilities in accordance with applicable operating requirements, and (ii) is recognized nationally or internationally in the solar industry as having substantial experience managing, developing or operating solar photovoltaic energy facilities similar to the Solar Energy Facilities..

13. **TRANSFER OF LESSOR'S INTEREST.** If Lessor or any successor to Lessor sells, conveys, or transfers the Property or any portion thereof that is subject to this Lease (each such sale, conveyance, or transfer, a "**Transfer**"), so long as Lessor has delivered to Lessee prior written notice of any proposed Transfer, then all rights, liabilities and obligations of Lessor under this Lease accruing from and after such Transfer shall become the rights, liabilities and obligations of the transferee, and the transferring Lessor shall have no further right, obligation or liability under this Lease accruing thereafter. The term "Lessor" as used in this Lease, so far as the covenants or obligations on the part of Lessor are concerned, shall be limited to mean and include only the owner at the time in question of the fee title to the Property. The covenants and obligations contained in this Lease on the part of Lessor shall, subject to the foregoing, be binding upon each Lessor hereunder only during this or its respective period of ownership. Lessee agrees to attorn to any new Lessor following a Transfer of which Lessee has notice pursuant to Section 12.1.2 above.

14. **DEFAULT AND TERMINATION.**

14.1 **Default by Lessee.** The occurrence of any of the following shall constitute a default and breach of this Lease by Lessee (each an "**Event of Default**"):

14.1.1 **Monetary Default.** The failure or omission by Lessee to pay amounts required to be paid hereunder when due, and such failure or omission has continued for five (5) days after Lessor has delivered written notice of the default to Lessee. Any such notice shall constitute the notice required under Section 1161 of the California Code of Civil Procedure (and/or any related or successor statutes regarding unlawful detainer actions), provided such notice is given in accordance with the requirements of such statute.

14.1.2 **Non-Monetary Default.** The failure or omission by Lessee to observe, keep or perform any of the other terms, agreements or conditions set forth in this Lease, and such failure or omission has continued for thirty (30) days after written notice from Lessor (or such longer period required to cure such failure or omission in the event the default is not reasonably susceptible of cure within a thirty (30) day period, but in no event shall such cure period exceed a total cure period of sixty (60) days after the occurrence of a non-monetary default, if Lessee commences such cure within the initial thirty (30) day period and diligently prosecutes such cure to completion).

14.1.3 **Bankruptcy by Lessee.** The occurrence of any of the following (i) Lessee files for protection or liquidation under the bankruptcy laws of the United States or any other jurisdiction or has an involuntary petition in bankruptcy or a request for the appointment of a receiver filed against it and such involuntary petition or request is not dismissed within forty-five (45) days after filing; (ii) Lessee's assignment of its assets for the benefit of its creditors; (iii) the sequestration of, attachment of, or execution on, any substantial part of the property of Lessee or on any property essential to the conduct of Lessee's business on the Property, and Lessee shall have failed to obtain a return or release on such property within forty five (45) days thereafter, or prior to sale pursuant to such sequestration, attachment or execution, whichever is earlier; or (iv) an entry of any of the following orders by a court having jurisdiction, and such order shall have continued for a period of ninety (90) days: (1) an order adjudicating Lessee to be bankrupt or insolvent, (2) an order appointing a receiver, trustee or assignee of Lessee's property in bankruptcy or any other proceeding, or (3) an order directing the winding up or liquidation of Lessee.

14.2 **Lessor's Remedies.** Upon any Event of Default, Lessor shall have the following remedies, in addition to all other rights and remedies provided by law or equity: (i) Lessor, as described in California Civil Code Section 1951.4, shall be entitled to keep this Lease in full force and effect for so long as Lessor does not terminate Lessee's right to possession (whether or not Lessee shall have abandoned the Property) and Lessor may enforce all of its rights and remedies under this Lease, including the right to recover Annual Rent and additional rent, plus interest at the Default Rate from the due date of each installment of Annual Rent or additional rent until paid; or (ii) Lessor may terminate Lessee's right to possession by giving Lessee written notice of termination. On the giving of the notice, this Lease and all of Lessee's rights in the Property will terminate. Any termination under this Section will not release Lessee from the payment of any sum then due Lessor or from any claim for damages or rent previously accrued or then accruing against Lessee.

In the event this Lease is terminated pursuant to this Section 14.2, Lessor may recover from Lessee: (1) the worth at the time of award of the unpaid rent which had been earned at the time of termination; plus (2) the worth at the time of award of the amount by which the unpaid rent which would have been earned after termination until the time of award exceeds the amount of such rental loss for the same period that Lessee proves could have been reasonably avoided; plus (3) the worth at the time of award of the amount by which the unpaid rent for the balance of the term after the time of award exceeds the amount of such rental loss for the same period that Lessee proves could be reasonably avoided; plus (4) any other amount necessary to compensate Lessor for all the detriment proximately caused by Lessee's failure to perform Lessee's obligations under this Lease, or which in the ordinary course of things would be likely to result

therefrom, including without limitation, the following: (i) expenses for repairing or restoring the Property, including removing any equipment or alterations installed by Lessee; (ii) real estate leasing commissions, advertising costs and other expenses of reletting the Property; (iii) costs incurred as owner of the Property including without limitation taxes and insurance premiums thereon, utilities and security; and (iv) expenses in retaking possession of the Property; (v) attorneys' fees and court costs.

The "worth at the time of award" of the amounts referred to in subsections (1) and (2) of this Section 14.2 shall be computed by allowing interest at the Default Rate. The "worth at the time of award" of the amount referred to in subsection (3) of this Section shall be computed by discounting such amount at the discount rate of the Federal Reserve Board of San Francisco at the time of award plus one percent (1%). The term "time of award" as used in subsections (1), (2), and (3) shall mean the date of entry of a judgment or award against Lessee in an action or proceeding arising out of Lessee's breach of this Lease. The term "rent" as used in this Section shall include all sums required to be paid by Lessee to Lessor pursuant to the terms of this Lease.

This Lease may be terminated by a judgment specifically providing for termination, or by Lessor's delivery to Lessee of written notice specifically terminating this Lease. In no event shall any one or more of the following actions by Lessor, in the absence of a written election by Lessor to terminate this Lease, constitute a termination of this Lease or a waiver of Lessor's right to recover damages under this Section 14.2: (1) appointment of a receiver in order to protect Lessor's interest hereunder; (2) consent to any subletting of the Property or assignment of this Lease by Lessee, whether pursuant to provisions hereof concerning subletting and assignment or otherwise; or (3) any other action by Lessor or Lessor's agents intended to mitigate the adverse effects of any breach of this Lease by Lessee, including without limitation any action taken to maintain and preserve the Property, or any action taken to relet the Property or any portion thereof for the account of Lessee and in the name of Lessee.

Lessee waives all rights of redemption or relief from forfeiture under California Code of Civil Procedure Sections 1174 and 1179, and under any other present or future law, in the event Lessee is evicted or Lessor otherwise lawfully takes possession of the Property by reason of any Event of Default.

If Lessee at any time shall fail to make any payment or perform any other act required to be made or performed by Lessee under this Lease, then Lessor may, but shall not be obligated to, make such payment or perform such other act to the extent Lessor may deem desirable, and may, in connection therewith, pay any and all expenses incidental thereto and employ counsel. No such action by Lessor shall be deemed a waiver by Lessor of any rights or remedies Lessor may have as a result of such failure by Lessee, or a release of Lessee from performance of such obligation. All sums so paid by Lessor, including without limitation all penalties, interest and costs in connection therewith, shall be due and payable by Lessee to Lessor on the day immediately following any such payment by Lessor, as additional rent. Lessor shall have the same rights and remedies for the nonpayment of any such sums as Lessor may be entitled to in the case of default by Lessee in the payment of rent.

Any amount due to Lessor under this Lease not paid when due shall bear interest at the lower of fifteen percent (15%) per annum, or the highest rate then allowed by law ("**Default**



**Rate**”), from the date due until paid in full. Payment of such interest shall not excuse or cure any default by Lessee under this Lease.

All sums payable by Lessee to Lessor or to third parties under this Lease in addition to such sums payable pursuant to Section 5 hereof shall be payable as additional sums of rent. For purposes of any unlawful detainer action by Lessor against Lessee pursuant to California Code of Civil Procedure Sections 1161-1174, or any similar or successor statutes, Lessor shall be entitled to recover as rent not only such sums specified in Section 5 as may then be overdue, but also all such additional sums of rent as may then be overdue.

No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies herein provided or permitted at law or in equity.

No member, official, or employee of Lessee shall be personally liable to Lessor or any successor in interest under any Event of Default or for any amount which may become due to Lessor or successor or on any obligations under the terms of this Lease.

**14.3 Default by Lessor.** Lessor’s failure or omission by Lessor to observe, keep or perform any of the terms, agreements or conditions set forth in this Lease, and such failure or omission has continued for thirty (30) days after written notice from Lessee (or such longer period required to cure such failure or omission in the event the default is not reasonably susceptible of cure within a thirty (30) day period, but in no event shall such cure period exceed a total cure period of sixty (60) days after the occurrence of a default, if Lessor commences such cure within the initial thirty (30) day period and diligently prosecutes such cure to completion).

**14.3.1 Lessee’s Remedies.** Upon any Event of Default, Lessee shall have the following remedies, in addition to all other rights and remedies provided by law or equity: (i) Lessee shall be entitled to keep this Lease in full force and effect for so long as Lessor does not terminate Lessee’s right to possession (whether or not Lessee shall have abandoned the Property) and Lessee may enforce all of its rights and remedies under this Lease; or (ii) Lessee may terminate this Lease by giving Lessor written notice of termination. On the giving of the notice, this Lease will terminate and subject to Sections 6.9 and 14.3 and other provisions of this Lease that survive the expiration or termination of this Lease, neither Party will have any further rights or obligations under the Lease, Termination of this Lease under this Section 14.2.1 will not release Lessor from the payment of any sum then due Lessee or from any claim for damages accrued or then accruing against Lessor. No remedy or election hereunder shall be deemed exclusive but shall, wherever possible, be cumulative with all other remedies herein provided or permitted at law or in equity. No director, officer, or employee of Lessor shall be personally liable to Lessee or any successor in interest in the event of any Default by Lessor or for any amount which may become due to Lessee or successor or on any obligations under the terms of this Lease.

**14.4 Surrender.** Lessee shall, upon expiration or sooner termination of this Lease, surrender the Property to Lessor in substantially the same condition as existed on the date Lessee originally took possession thereof, subject to the terms and conditions of Section 6.9 above.

14.5 **Holding Over.** This Lease shall terminate without further notice at the expiration of the Term. Any holding over by Lessee after expiration shall not constitute a renewal or extension of the Lease or give Lessee any rights in or to the Property unless otherwise expressly provided in this Lease. Any holding over after expiration (or termination, as applicable) of the Term with the express written consent of Lessor shall be construed to be a month-to-month tenancy at one hundred twenty-five percent (125%) of the Fair Market Rent, which rent shall be paid monthly during such hold over period. The month-to-month tenancy shall be on the terms, provisions, and conditions of this Lease except as provided in the preceding sentence.

15. **CONDEMNATION; DAMAGE OR DESTRUCTION.**

15.1 **Complete Taking.** If, at any time, any authority having the power of eminent domain shall condemn all or substantially all of the Property or the Solar Project, for any public use, then the interests and obligations of Lessee under this Lease in or affecting Property shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of Property or the Solar Project, or (ii) the date of the condemnation judgment. Lessee shall continue to pay all amounts payable hereunder to Lessor until the earlier of such dates, at which time Lessor and Lessee shall be relieved of any and all further obligations and conditions to each other under this Lease.

15.2 **Partial Taking.** If, at any time during the term of this Lease, any authority having the power of eminent domain shall condemn any portion of the Solar Project or the Property, then the interest and obligations of Lessee under this Lease as to any portion of the Solar Project or the Property so taken shall cease and terminate upon the earlier of (i) the date that the condemning authority takes physical possession of such portion of the Solar Project or the Property, or (ii) the date of the condemnation judgment, and, unless this Lease is terminated as hereinafter provided, this Lease shall continue in full force and effect as to the remainder of the Solar Project and the Property. Lessee shall, at its own cost and expense, make all necessary repairs or alterations to the improvements constructed on the Property in order to make the portion of the Solar Project or Property not taken a functional unit, and the portion of any condemnation proceedings expressly designated for such restoration work shall be paid to Lessee to reimburse Lessee for such purpose. Each Party hereto waives the provisions of California Code of Civil Procedure Section 1265.130 allowing either Party to petition the superior court to terminate this Lease in the event of a partial taking of the Property. If such partial condemnation renders the Solar Project unusable or uneconomic or renders the Property unusable for the Solar Project or Lessee's Solar Operations, Lessee may terminate this Lease.

15.3 **Apportionment, Distribution of Award.** On any taking covered by Sections 15.1 or 15.2 above, all compensation awarded upon a taking shall belong to and be paid to Lessor, except that Lessee shall receive from the award (i) a sum attributable to Lessee's improvements or alterations made to the Property by Lessee at Lessee's expense with Lessor's consent in accordance with this Lease, which Lessee has the right to remove from the Property pursuant to the provisions of this Lease, but are taken for public use or rendered unusable or uneconomic by the taking; (ii) if Lessee elects to remove any such improvements or alterations made to the Property at Lessee's expense due to the taking, Lessee shall receive the portion of the award to reimburse Lessee for its expenses for reasonable removal and relocation of its

improvements or alterations not to exceed the market value of such improvements or alterations on the date possession of the Property is taken; or (iii) Lessee's cost to restore the Solar Project as a functional unit under Section 15.2 above.

15.4 **Damage or Destruction.** Subject to Section 17.1 below, no damage to or destruction of any equipment or improvements installed or constructed by Lessee on the Property shall affect any of Lessee's obligations under this Lease or entitle Lessee to terminate or otherwise modify any provisions of this Lease. Lessee waives the provisions of California Civil Code Sections 1932(2) and 1933(4), and any similar or successor statutes relating to termination of leases when the thing leased is substantially or entirely destroyed, and agrees that any such occurrence shall instead be governed by the terms of this Lease.

16. **MISCELLANEOUS.**

16.1 **Force Majeure.** If performance of this Lease or of any obligation hereunder is prevented or substantially restricted or interfered with by reason of an event of Force Majeure (defined below), the affected Party, upon giving notice to the other Party, shall be excused from such performance to the extent of and for the duration, up to a maximum of one hundred twenty (120) days, of such prevention, restriction or interference. The affected Party shall use commercially reasonable efforts to avoid or remove such causes of nonperformance, to mitigate the duration of any delay in performance, and shall continue performance hereunder to the extent permissible by the event of Force Majeure or whenever such causes are removed. A Force Majeure shall not excuse any obligation to pay any amounts when due and owing under this Lease. "**Force Majeure**" includes, but is not limited to, an act of God or the elements, site conditions, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance or strike or other labor difficulty suffered by a Party or caused by any third party beyond the reasonable control of such Party, or any act or omission of any third party not controlled by or affiliated with a Party. Financial cost alone or as the principal factor shall not constitute grounds for a claim of Force Majeure. Where an event of Force Majeure not covered by the insurance Lessee is required to maintain under this Lease destroys or severely damages the Solar Project or the Property such that the Solar Project or the Property is rendered permanently unusable for Lessee's Solar Operations, Lessee may terminate the Lease and neither Party shall have any further rights and obligations under the Lease except for terms of this Lease that (i) expressly survive termination and (ii) following the event of Force Majeure, can reasonably be performed.

16.2 **Confidentiality.**

16.2.1 Each Party shall treat as confidential information disclosed to it by any other Party pursuant to this Lease, including information concerning the Property and the Solar Project disclosed before or after the Effective Date (collectively, "**Confidential Information**"); provided, however, that the following information shall not be Confidential Information: (a) information that at the time of disclosure or acquisition was in the public domain or later entered the public domain other than by breach of this Section 16.2 or a confidentiality obligation owed to the disclosing Party, provided that all environmental information shall be Confidential Information, irrespective of whether such information is in the

public domain; (b) information that at the time of disclosure or acquisition was already known to and had been reduced to writing by the recipient; or (c) information that after disclosure or acquisition was received from a third party that had no duty to maintain the information in confidence.

16.2.2 Unless otherwise agreed to herein, or required by law, no Party shall, unless authorized by the disclosing Party to do so: (a) copy, reproduce, distribute or disclose to any Person any Confidential Information, or any facts related thereto; (b) permit any third party to have access to Confidential Information; or (c) use Confidential Information for any purpose other than for the purpose of pursuing the activities as contemplated herein. The disclosing Party hereby authorizes the receiving Party to disclose Confidential Information to its attorneys, lenders, or prospective assignees; provided, however, that the receiving Party shall require in writing such persons to treat Confidential Information in a manner consistent with this Lease.

16.2.3 In the event that a Party that has received Confidential Information from another Party is requested in any legal proceeding or by any governmental authority to disclose any Confidential Information under the California Public Records Act or the Freedom of Information Act, the receiving Party shall, to the extent permitted under Applicable Law, give the providing Party prompt notice of such request so that the providing Party may seek an appropriate protective order. If, in the absence of a protective order, the receiving Party is nonetheless advised by counsel that disclosure of the Confidential Information is required (after exhausting any appeal requested by the providing Party at the providing Party's expense and permitted under Applicable Law), the receiving Party may disclose such Confidential Information without liability hereunder provided that only such portion of the Confidential Information required to be disclosed shall be made available.

16.2.4 The obligations of the Parties contained in this Section 16.2 shall survive the assignment or transfer of the Parties' rights, liabilities, or obligations under and the expiration or termination of this Lease. Successors and Assigns

16.3 **Successors and Assigns.** This Lease shall burden the Property and shall run with the land. This Lease shall inure to the benefit of and be binding upon Lessor and Lessee and, to the extent provided in any Assignment or Transfer under Sections 11 or 13, any assignee or transferee, and their respective heirs, transferees, successors and assigns, and all persons claiming under them. References to "Lessee" in this Lease shall be deemed to include assignees that hold a direct ownership interest in this Lease and actually are exercising rights under this Lease to the extent consistent with such interest.

16.4 **Notices.** All notices or other communications required or permitted by this Lease, including payments to Lessor, shall be in writing and shall be deemed given when personally delivered, or in lieu of such personal service, five (5) days after deposit in the United States mail, first class, postage prepaid, certified, or the next business day if sent by reputable overnight courier, provided receipt is obtained and charges prepaid by the delivering Party. Any notice shall be addressed as follows:

If to Lessor:                   Chevron Products Company

Richmond Refinery  
841 Chevron Way  
Richmond, CA 94801  
510-242-4401  
Attn: Refinery Manager

With a copy to: Chevron Products Company  
Downstream Law Department  
6001 Bollinger Canyon Road  
San Ramon, CA 94583  
925-842-1000  
Attn: Office of General Counsel

If to Lessee: Marin Clean Energy  
781 Lincoln Avenue, Suite 320  
San Rafael, CA 94901  
dweisz@mceCleanEnergy.com  
Attn: Executive Officer

With a copy to: Troutman Sanders LLP  
805 SW Broadway, Suite 1560  
Portland, OR 97205-3326  
503-290-2338  
ben.fisher@troutmansanders.com  
Attn: Ben Fisher

Any Party may change its address for purposes of this Section by giving written notice of such change to the other parties in the manner provided in this Section.

16.5 **Entire Agreement; Amendments.** This Lease and the attached Exhibits constitutes the entire agreement between Lessor and Lessee respecting its subject matter. Any agreement, understanding or representation respecting the Property, this Lease, the lease created by this Lease, or any other matter referenced herein not expressly set forth in this Lease, or in a subsequent writing signed by both Parties, is null and void. This Lease shall not be modified or amended except in a writing signed by both Parties. No purported modifications or amendments, including, without limitation, any oral agreement (even if supported by new consideration), course of conduct or absence of a response to a unilateral communication, shall be binding on either Party.

16.6 **Legal Matters.**

16.6.1 **Governing Law; Dispute Resolution.** This Lease is governed by and shall be interpreted in accordance with the laws of the State of California, without regard to principles of conflicts of law. In the event of any dispute or claim that arises out of or that relates to this Lease, or to the interpretation, termination, breach, existence, scope, or validity thereof (a "**Dispute**"), the Dispute shall be resolved in the Superior Court of Contra Costa County, California. In any such action, the Parties shall jointly request that the Superior Court appoint a

referee to resolve all legal and factual issues of the Dispute pursuant to Code of Civil Procedure Sections 638 et seq.

16.6.2 **No Consequential Damages.** Notwithstanding anything to the contrary in this Lease, neither Party shall be entitled to, and each of Lessor and Lessee hereby waives any and all rights to recover, consequential, incidental, and punitive or exemplary damages, however arising, whether in contract, in tort, or otherwise, under or with respect to any action taken in connection with this Lease.

16.6.3 **Attorney Fees.** If any action proceeding at law or in equity (collectively an “Action”), shall be brought to recover any rent under this Lease, or for or on account of any breach of or to enforce or interpret any of the terms, covenants, or conditions of this Lease, or for the recovery of possession of the Property, the Prevailing Party shall be entitled to recover from the other Party as a part of such Action, or in a separate Action brought for that purpose, its reasonable attorney’s fees and costs and expenses (including expert witness fees) incurred in connection with the prosecution or defense of such Action, including any appeal thereof. “Prevailing Party” within the meaning of this Section shall include, without limitation, a Party who brings an action against the other after the other is in breach or default, if such action is dismissed upon the other’s payment of the sums allegedly due or upon the other’s performance of the covenants allegedly breached, or if the Party commencing such action or proceeding obtains substantially the relief sought by it in such action, whether or not such action proceeds to a final judgment or determination.

16.6.4 **Partial Invalidity.** Should any provision of this Lease be held in a final and unappealable decision by a court of competent jurisdiction to be either invalid, void or unenforceable, the remaining provisions hereof shall remain in full force and effect and unimpaired by the court’s holding. Notwithstanding any other provision of this Lease, the parties agree that in no event shall the term of this Lease be longer than the longest period permitted by Applicable Law.

16.7 **Conflicts of Interest.** Conflicts of interest relating to this Lease are strictly prohibited and the provisions of this Section shall apply in reciprocity to both Parties. Except as otherwise expressly provided herein, neither Lessee nor Lessor nor any director, employee or agent of either Party shall give to or receive from any director, employee or agent of the other Party any gift, entertainment or other favor of significant value, or any commission, fee or rebate. Likewise, neither Lessee nor Lessor nor any director, employee or agent of either Party shall enter into any business relationship with any director, employee or agent of the other Party or any of its affiliates. Each Party shall promptly notify the other Party of any violation of this Section and any consideration received or paid as a result of such violation, which shall promptly be paid over or credited to the appropriate Party. Additionally, in the event of any violation of this Section, including any violation occurring prior to the Effective Date, resulting directly or indirectly in either Party’s consent to enter into this Lease, either Party may at its option, terminate this Lease pursuant to the notice provisions contained in this Lease. Any legal, risk management or fiduciary representative(s) authorized by either Party may audit any and all pertinent records of the other Party for the sole purpose of determining whether there has been compliance with this Section.

16.8 **No Partnership.** Nothing contained in this Lease shall be construed to create an association, joint venture, trust or partnership covenant, obligation or liability on or with regard to any one or more of the parties to this Lease.

16.9 **Brokerage Fee.** No brokerage fee or commission is payable to any person with respect to this Lease and each of Lessor and Lessee hereby indemnify and hold the other harmless from and against any claim for payment of such fee or commission from a person claiming to have represented it.

16.10 **Counterparts.** This Lease may be executed with counterpart signature pages and in duplicate originals, each of which shall be deemed an original, and all of which together shall constitute a single instrument.

16.11 **No Accord and Satisfaction.** No payment by Lessee, or receipt by Lessor, of an amount which is less than the full amount of Annual Rent and additional rent payable by Lessee hereunder at such time shall be deemed to be other than on account of (a) the earliest of such other sums due and payable, and thereafter (b) to the earliest rent due and payable hereunder. No endorsement or statement on any check or any letter accompanying any payment of rent or such other sums shall be deemed an accord and satisfaction, and Lessor may accept any such check or payment without prejudice to Lessor's right to receive payment of the balance of such rent and/or the other sums, or Lessor's right to pursue any remedies to which Lessor may be entitled to recover such balance.

16.12 **Time.** Time is of the essence with respect to the performance of each and every provision of this Lease in which time of performance is a factor. All references to days contained in this Lease shall be deemed to mean calendar days, unless otherwise specifically stated.

16.13 **Construction of Lease.** Each Party has been fully and competently represented by counsel of its own choosing in the negotiation and drafting of this Lease. Accordingly, the Parties agree that any rule of construction of contracts resolving any ambiguities against the drafting party shall be inapplicable to this Lease. Further, each Party acknowledges that it has read this entire document, including the attached exhibits and fully understands its terms and effect.

16.14 **Memorandum of Lease.** The Parties shall execute and acknowledge a memorandum of this Lease in the form attached as Exhibit D at the same time as the execution of the Lease. Lessee shall cause such memorandum to be recorded in the Official Records of the County of Contra Costa.

16.15 **No Recourse to Members of Lessee.** Lessee 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.) and is a public entity separate from its constituent members. Under Article VIII of Lessee's Operating Rules and Regulations, Lessee shall be solely responsible for all debts, obligations and liabilities accruing and arising out of this Lease. Lessor shall have no rights to and shall not make any claims, take any actions or assert any

remedies against any of Lessee's constituent members to the extent such claims arise from Lessee's obligations under this Lease.

(Signature Page Follows)



IN WITNESS WHEREOF, Lessee and Lessor have caused this Solar Energy Facility Site Lease to be executed and delivered by their duly authorized representatives as of the Effective Date.

**LESSOR: CHEVRON PRODUCTS COMPANY,**  
a Division of Chevron U.S.A Inc., a Pennsylvania corporation

By: \_\_\_\_\_

Its \_\_\_\_\_

**LESSEE: MARIN CLEAN ENERGY**

By: \_\_\_\_\_

Dawn Weisz

Its Executive Officer

MCE Board Resolution No. \_\_\_\_\_,  
Adopted on Oct 2, 2014

APPROVED AS TO FORM:

Troutman Sanders LLP

\_\_\_\_\_  
Ben Fisher

Counsel for Marin Clean Energy

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

All of that real property located in the City of Richmond, County of Contra Costa, California, more particularly described as follows:

IN WITNESS WHEREOF, Lessee and Lessor have caused this Solar Energy Facility Site Lease to be executed and delivered by their duly authorized representatives as of the Effective Date.

**LESSOR: CHEVRON PRODUCTS COMPANY,**  
a Division of Chevron U.S.A Inc., a Pennsylvania corporation

By: \_\_\_\_\_

Its \_\_\_\_\_

**LESSEE: MARIN CLEAN ENERGY**

By:   
Dawn Weisz

Its Executive Officer

MCE Board Resolution No. \_\_\_\_\_  
Adopted on Oct 2, 2014

APPROVED AS TO FORM:

Troutman Sanders LLP

  
Ben Fisher

Counsel for Marin Clean Energy



**EXHIBIT "A-1"**  
LEGAL DESCRIPTION  
LEASE AREA 1

REAL PROPERTY IN THE CITY OF RICHMOND, CONTRA COSTA COUNTY, AND STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE SWAMP AND OVERFLOWED LANDS SURVEY NUMBER 190 AND TIDE LAND SURVEY NO. 5, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 3 IN DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS; THENCE SOUTH 88° 23' 37" WEST (NORTH 87° 11' EAST DEED) ALONG THE NORTH BOUNDARY LINE OF THE LAND CONVEYED TO ALLIED CHEMICAL AND DYE CORPORATION BY DEED DATED NOVEMBER 16, 1953, AND RECORDED DECEMBER 29, 1953, IN BOOK 2245 OF OFFICIAL RECORDS AT PAGE 534, RECORDS OF CONTRA COSTA COUNTY, 611.08 FEET TO THE NORTHWEST CORNER OF SAID LAND CONVEYED TO ALLIED CHEMICAL AND DYE CORPORATION; THENCE NORTH 70° 52' 30" WEST A DISTANCE OF 68.43 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 73°03'21" EAST A DISTANCE OF 113.69 FEET;

THENCE NORTH 2°18'47" WEST A DISTANCE OF 8.87 FEET;

THENCE NORTH 87°51'37" EAST A DISTANCE OF 18.17 FEET;

THENCE SOUTH 4°12'34" EAST A DISTANCE OF 28.07 FEET;

THENCE NORTH 86°54'17" EAST A DISTANCE OF 46.51 FEET;

THENCE NORTH 88°49'44" EAST A DISTANCE OF 318.90 FEET;

THENCE NORTH 3°28'02" WEST A DISTANCE OF 37.09 FEET;

THENCE NORTH 84°56'29" EAST A DISTANCE OF 186.31 FEET TO THE WEST LINE OF PARCEL 3 DESCRIBED IN DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS;

THENCE ALONG THE LAST MENTIONED WEST LINE NORTH 01°12'37" EAST A DISTANCE OF 10.06 FEET;

THENCE SOUTH 84°56'29" WEST A DISTANCE OF 187.41 FEET;

THENCE NORTH 3°35'44" WEST A DISTANCE OF 115.48 FEET;

THENCE SOUTH 90°00'00" WEST A DISTANCE OF 44.37 FEET;

THENCE NORTH 0°12'18" WEST A DISTANCE OF 30.59 FEET;

THENCE NORTH 2°48'28" EAST A DISTANCE OF 194.08 FEET, AT 119.3 FEET MORE OR LESS IS THE NORTH BOUNDARY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM EMILY A.

TEWKSBURY TO RICHMOND BELT RAILWAY, DATED APRIL 06, 1910, AND RECORDED JULY 14, 1911, IN BOOK 170 OF DEEDS, PAGE 30;

THENCE NORTH 84°35'50" WEST A DISTANCE OF 20.52 FEET;

THENCE NORTH 2°36'19" EAST A DISTANCE OF 21.27 FEET;

THENCE SOUTH 86°38'53" EAST A DISTANCE OF 20.66 FEET;

THENCE NORTH 2°31'35" EAST A DISTANCE OF 353.44 FEET;

THENCE NORTH 13°56'12" WEST A DISTANCE OF 106.94 FEET;

THENCE NORTH 45°10'08" WEST A DISTANCE OF 66.62 FEET;

THENCE NORTH 68°08'23" WEST A DISTANCE OF 192.43 FEET;

THENCE NORTH 89°53'48" WEST A DISTANCE OF 27.02 FEET;

THENCE SOUTH 1°21'14" EAST A DISTANCE OF 11.73 FEET;

THENCE SOUTH 88°59'03" WEST A DISTANCE OF 17.21 FEET;

THENCE NORTH 0°40'58" EAST A DISTANCE OF 12.06 FEET;

THENCE SOUTH 89°53'44" WEST A DISTANCE OF 217.87 FEET;

THENCE NORTH 63°59'11" WEST A DISTANCE OF 102.15 FEET;

THENCE NORTH 46°01'27" WEST A DISTANCE OF 116.33 FEET;

THENCE SOUTH 42°14'40" WEST A DISTANCE OF 36.90 FEET;

THENCE NORTH 47°24'45" WEST A DISTANCE OF 20.54 FEET;

THENCE NORTH 42°14'40" EAST A DISTANCE OF 37.35 FEET;

THENCE NORTH 46°08'40" WEST A DISTANCE OF 21.48 FEET;

THENCE NORTH 83°21'50" WEST A DISTANCE OF 77.42 FEET;

THENCE SOUTH 79°30'49" WEST A DISTANCE OF 76.88 FEET;

THENCE SOUTH 11°19'05" EAST A DISTANCE OF 5.28 FEET;

THENCE SOUTH 77°16'24" WEST A DISTANCE OF 90.82 FEET;

THENCE SOUTH 63°13'51" WEST A DISTANCE OF 20.70 FEET;

THENCE NORTH 15°11'59" WEST A DISTANCE OF 32.63 FEET;

THENCE NORTH 67°53'35" WEST A DISTANCE OF 15.30 FEET;

THENCE NORTH 0°01'59" WEST A DISTANCE OF 26.61 FEET;

THENCE NORTH 62°53'14" WEST A DISTANCE OF 45.05 FEET;

THENCE NORTH 72°16'25" WEST A DISTANCE OF 14.45 FEET;

THENCE NORTH 82°44'58" WEST A DISTANCE OF 27.15 FEET;

THENCE SOUTH 8°57'58" EAST A DISTANCE OF 6.25 FEET;

THENCE SOUTH 86°13'54" WEST A DISTANCE OF 18.37 FEET;

THENCE NORTH 3°02'11" WEST A DISTANCE OF 6.89 FEET;

THENCE SOUTH 87°39'30" WEST A DISTANCE OF 56.03 FEET;

THENCE SOUTH 1°31'17" EAST A DISTANCE OF 92.71 FEET;

THENCE SOUTH 89°05'03" EAST A DISTANCE OF 7.93 FEET;

THENCE SOUTH 0°50'50" EAST A DISTANCE OF 17.20 FEET;

THENCE SOUTH 87°12'37" WEST A DISTANCE OF 7.81 FEET;

THENCE SOUTH 1°25'41" EAST A DISTANCE OF 178.32 FEET;

THENCE NORTH 88°36'15" EAST A DISTANCE OF 10.65 FEET;

THENCE SOUTH 2°41'12" EAST A DISTANCE OF 16.62 FEET;

THENCE SOUTH 1°39'34" WEST A DISTANCE OF 140.83 FEET;

THENCE SOUTH 1°54'16" EAST A DISTANCE OF 76.41 FEET;

THENCE NORTH 62°22'43" EAST A DISTANCE OF 29.64 FEET;

THENCE SOUTH 23°09'49" EAST A DISTANCE OF 259.77 FEET;

THENCE NORTH 88°57'15" EAST A DISTANCE OF 44.66 FEET;

THENCE SOUTH 0°10'43" EAST A DISTANCE OF 565.86 FEET, AT 149.9 FEET MORE OR LESS IS THE NORTH BOUNDARY LINE OF THE PARCEL OF LAND DESCRIBED IN THE DEED FROM EMILY A. TEWKSBUURY TO RICHMOND BELT RAILWAY, DATED APRIL 06, 1910, AND RECORDED JULY 14, 1911, IN BOOK 170 OF DEEDS, PAGE 30;

THENCE SOUTH 2°51'02" EAST A DISTANCE OF 93.48 FEET;

THENCE SOUTH 20°07'55" EAST A DISTANCE OF 35.78 FEET;

THENCE SOUTH 1°18'41" WEST A DISTANCE OF 207.76 FEET;

THENCE SOUTH 0°33'29" EAST A DISTANCE OF 194.46 FEET;

THENCE SOUTH 41°04'10" EAST A DISTANCE OF 31.04 FEET;

THENCE SOUTH 52°03'27" EAST A DISTANCE OF 24.62 FEET;

THENCE SOUTH 61°46'31" EAST A DISTANCE OF 36.01 FEET;

THENCE NORTH 61°34'56" EAST A DISTANCE OF 12.46 FEET;

THENCE NORTH 29°52'52" EAST A DISTANCE OF 391.87 FEET;  
THENCE NORTH 49°29'01" WEST A DISTANCE OF 7.95 FEET;  
THENCE NORTH 35°59'26" EAST A DISTANCE OF 14.39 FEET;  
THENCE SOUTH 56°18'04" EAST A DISTANCE OF 6.62 FEET;  
THENCE NORTH 31°09'31" EAST A DISTANCE OF 355.30 FEET;  
THENCE NORTH 56°20'06" WEST A DISTANCE OF 9.48 FEET;  
THENCE NORTH 23°59'03" EAST A DISTANCE OF 19.71 FEET;  
THENCE SOUTH 57°42'19" EAST A DISTANCE OF 12.28 FEET;  
THENCE NORTH 33°03'13" EAST A DISTANCE OF 6.27 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 29.76 ACRES MORE OR LESS.

A PLAT OF THE ABOVE DESCRIBED PARCEL OF LAND IS ATTACHED HERETO AS EXHIBIT E AND BY REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

---

RYAN M. SEXTON / PLS 9177



**EXHIBIT "A-2"**  
LEGAL DESCRIPTION  
LEASE AREA 2

REAL PROPERTY IN THE CITY OF RICHMOND, CONTRA COSTA COUNTY, AND STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE SWAMP AND OVERFLOWED LANDS SURVEY NUMBER 190 AND TIDE LAND SURVEY NO. 5, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF PARCEL 3 IN DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS SAID POINT BEARS SOUTH 88° 17' 17" WEST (NORTH 87° 11' EAST DEED) ALONG THE NORTH BOUNDARY LINE OF THE LAND CONVEYED TO ALLIED CHEMICAL AND DYE CORPORATION BY DEED DATED NOVEMBER 16, 1953, AND RECORDED DECEMBER 29, 1953, IN BOOK 2245 OF OFFICIAL RECORDS AT PAGE 534, RECORDS OF CONTRA COSTA COUNTY, 555.1 FEET, MORE OR LESS FROM THE NORTHWESTERLY BOUNDARY LINE OF CASTRO STREET 60 FEET WIDE; THENCE NORTH 1° 12' 37" EAST A DISTANCE OF 82.46 FEET TO THE TRUE POINT OF BEGINNING;

THENCE NORTH 89°15'13" EAST A DISTANCE OF 146.89 FEET;

THENCE NORTH 88°10'20" EAST A DISTANCE OF 118.21 FEET;

THENCE NORTH 02°34'10" WEST A DISTANCE OF 17.25 FEET;

THENCE NORTH 88°59'09" EAST A DISTANCE OF 20.72 FEET;

THENCE SOUTH 01°11'02" EAST A DISTANCE OF 16.68 FEET;

THENCE NORTH 88°02'22" EAST A DISTANCE OF 50.44 FEET;

THENCE NORTH 87°10'55" EAST A DISTANCE OF 29.04 FEET;

THENCE NORTH 88°43'35" EAST A DISTANCE OF 147.87 FEET;

THENCE SOUTH 29°29'32" EAST A DISTANCE OF 86.61 FEET;

THENCE NORTH 30°33'57" EAST A DISTANCE OF 11.54 FEET;

THENCE NORTH 29°29'32" WEST A DISTANCE OF 98.57 FEET;

THENCE ALONG A NON-TANGENT CURVE TO THE LEFT HAVING A RADIUS OF 132.45 FEET, THE CENTER OF WHICH BEARS NORTH 32°17'28" WEST, THROUGH A CENTRAL ANGLE OF 69°38'35" AND AN ARC DISTANCE OF 160.99 FEET;

THENCE NORTH 36°37'35" EAST A DISTANCE OF 17.24 FEET;

THENCE SOUTH 52°45'19" EAST A DISTANCE OF 25.06 FEET;

THENCE NORTH 31°35'24" EAST A DISTANCE OF 602.02 FEET;

THENCE SOUTH 86°30'30" EAST A DISTANCE OF 29.44 FEET;

THENCE NORTH 18°00'32" EAST A DISTANCE OF 18.13 FEET;

THENCE NORTH 11°07'42" EAST A DISTANCE OF 24.01 FEET;

THENCE NORTH 2°25'06" EAST A DISTANCE OF 44.60 FEET;

THENCE NORTH 3°20'04" WEST A DISTANCE OF 63.06 FEET;

THENCE NORTH 34°10'36" WEST A DISTANCE OF 34.18 FEET;

THENCE NORTH 0°09'54" WEST A DISTANCE OF 232.90 FEET, AT 136.9 FEET MORE OR LESS TO THE NORTHERN BOUNDARY LINE OF PARCEL 3 AS DESCRIBED IN THE DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS;

THENCE SOUTH 74°56'15" WEST A DISTANCE OF 82.03 FEET;

THENCE NORTH 88°22'32" WEST A DISTANCE OF 218.66 FEET;

THENCE NORTH 89°51'20" WEST A DISTANCE OF 123.30 FEET;

THENCE NORTH 88°53'53" WEST A DISTANCE OF 308.85 FEET;

THENCE SOUTH 89°59'02" WEST A DISTANCE OF 127.54 FEET;

THENCE SOUTH 51°33'28" WEST A DISTANCE OF 65.66 FEET;

THENCE SOUTH 0°00'00" WEST A DISTANCE OF 710.77 FEET, AT 72.1 FEET MORE OR LESS TO THE NORTHERN BOUNDARY LINE OF PARCEL 3 AS DESCRIBED IN THE DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS;

THENCE SOUTH 90°00'00" WEST A DISTANCE OF 8.35 FEET;

THENCE SOUTH 0°01'42" WEST A DISTANCE OF 319.85 FEET;

THENCE SOUTH 84°56'29" WEST A DISTANCE OF 17.43 FEET;

CONTAINING AN AREA OF 18.99 ACRES MORE OR LESS.

A PLAT OF THE ABOVE DESCRIBED PARCEL OF LAND IS ATTACHED HERETO AS EXHIBIT E AND BY REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

---

RYAN M. SEXTON / PLS 9177

**EXHIBIT "A-3"**  
LEGAL DESCRIPTION  
LEASE AREA 3

REAL PROPERTY IN THE CITY OF RICHMOND, CONTRA COSTA COUNTY, AND STATE OF CALIFORNIA DESCRIBED AS FOLLOWS:

BEING A PORTION OF THE SWAMP AND OVERFLOWED LANDS SURVEY NUMBER 190 AND TIDE LAND SURVEY NO. 5, DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHEAST CORNER OF PARCEL 3 IN DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS; THENCE NORTH 88° 17' 17" EAST (NORTH 87° 11' EAST DEED) ALONG THE NORTH BOUNDARY LINE OF THE LAND CONVEYED TO ALLIED CHEMICAL AND DYE CORPORATION BY DEED DATED NOVEMBER 16, 1953, AND RECORDED DECEMBER 29, 1953, IN BOOK 2245 OF OFFICIAL RECORDS AT PAGE 534, RECORDS OF CONTRA COSTA COUNTY, 555.1 FEET, MORE OR LESS TO THE NORTHWESTERLY BOUNDARY LINE OF CASTRO STREET 60 FEET WIDE; THENCE ALONG THE NORTHWESTERLY BOUNDARY LINE OF CASTRO STREET NORTH 30° 33' 57" EAST A DISTANCE OF 1055.37 FEET; THENCE NORTH 34° 25' 20" WEST A DISTANCE OF 38.31 FEET TO THE TRUE POINT OF BEGINNING;

THENCE SOUTH 30°19'16" WEST A DISTANCE OF 131.08 FEET

THENCE SOUTH 28°29'11" WEST A DISTANCE OF 90.61 FEET

THENCE NORTH 86°30'30" WEST A DISTANCE OF 12.42 FEET

THENCE NORTH 18°00'32" EAST A DISTANCE OF 18.13 FEET

THENCE NORTH 11°07'42" EAST A DISTANCE OF 24.01 FEET

THENCE NORTH 2°25'06" EAST A DISTANCE OF 44.60 FEET

THENCE NORTH 3°20'04" WEST A DISTANCE OF 63.06 FEET

THENCE NORTH 34°10'36" WEST A DISTANCE OF 34.18 FEET

THENCE NORTH 0°09'54" WEST A DISTANCE OF 232.90 FEET, AT 136.9 FEET MORE OR LESS TO THE NORTHERN BOUNDARY LINE OF PARCEL 3 AS DESCRIBED IN THE DEED TO CHEVRON CHEMICAL COMPANY RECORDED NOVEMBER 29, 1971 IN BOOK 6529, PAGE 36, OFFICIAL RECORDS;

THENCE NORTH 74°56'15" EAST A DISTANCE OF 28.45 FEET

THENCE NORTH 64°45'27" EAST A DISTANCE OF 21.90 FEET

THENCE NORTH 86°04'32" EAST A DISTANCE OF 71.27 FEET

THENCE SOUTH 36°13'23" EAST A DISTANCE OF 21.38 FEET

THENCE SOUTH 13°57'47" WEST A DISTANCE OF 33.66 FEET

THENCE SOUTH 76°19'59" EAST A DISTANCE OF 9.16 FEET  
THENCE SOUTH 23°06'45" EAST A DISTANCE OF 9.55 FEET  
THENCE SOUTH 6°21'15" EAST A DISTANCE OF 17.76 FEET  
THENCE SOUTH 17°24'24" WEST A DISTANCE OF 22.13 FEET  
THENCE SOUTH 11°14'07" WEST A DISTANCE OF 26.51 FEET  
THENCE SOUTH 3°58'43" EAST A DISTANCE OF 15.49 FEET  
THENCE SOUTH 15°04'13" EAST A DISTANCE OF 14.84 FEET  
THENCE SOUTH 31°33'23" EAST A DISTANCE OF 18.24 FEET  
THENCE SOUTH 5°52'12" WEST A DISTANCE OF 68.50 FEET TO THE POINT OF BEGINNING.

CONTAINING AN AREA OF 0.97 ACRES MORE OR LESS.

A PLAT OF THE ABOVE DESCRIBED PARCEL OF LAND IS ATTACHED HERETO AS EXHIBIT E AND BY REFERENCE MADE A PART HEREOF.

THIS DESCRIPTION HAS BEEN PREPARED BY ME, OR UNDER MY DIRECTION, IN CONFORMANCE WITH THE PROFESSIONAL LAND SURVEYORS ACT.

---

RYAN M. SEXTON / PLS 9177

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION

MCE SOLAR  
LEASE AREA  
CITY OF RICHMOND  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA



**WOOD RODGERS**  
DEVELOPING • INNOVATIVE • DESIGN • SOLUTIONS

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Pleasanton, CA 94588 Tel 925.847.1556

MCE SOLAR  
LEASE AREA  
CITY OF RICHMOND  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

SEE SHEET 3 FOR  
COURSE TABLE  
APN  
561-100-037  
**CHEVRON USA, INC**  
**LEASE AREA 1**  
29.76 ACRES±

APN  
561-100-038  
**CHEVRON USA, INC**

POINT OF BEGINNING

POINT OF COMMENCEMENT

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION

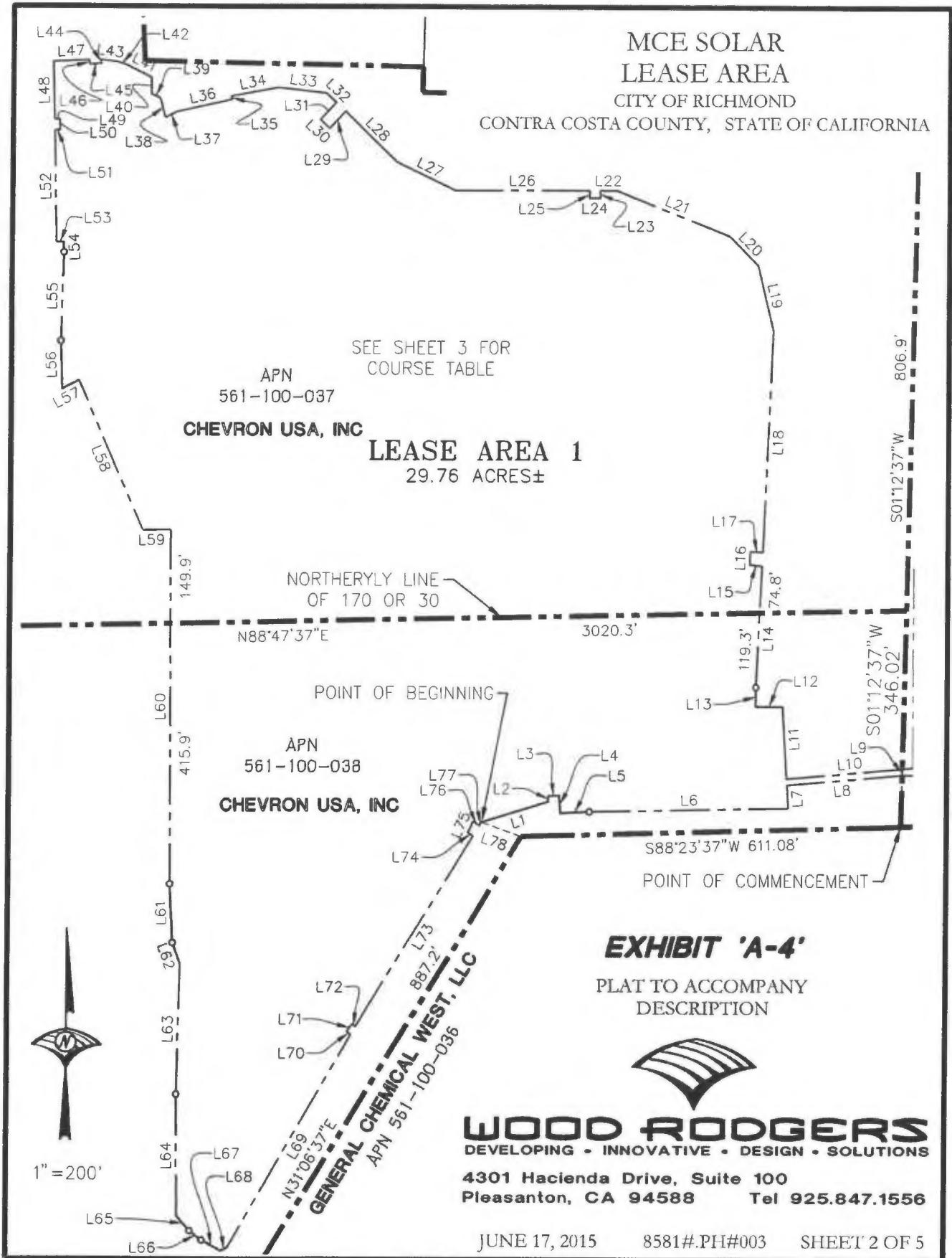


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1" = 200'



Line Table - This Sheet Only

No.	Bearing	Length
L1	N73°03'21"E	113.69'
L2	N2°18'47"W	8.87'
L3	N87°51'37"E	18.17'
L4	S4°12'34"E	28.07'
L5	N86°54'17"E	46.51'
L6	N88°49'44"E	318.90'
L7	N3°28'02"W	37.09'
L8	N84°56'29"E	186.31'
L9	N1°12'37"E	10.06'
L10	N84°56'29"E	187.41'
L11	N3°35'44"W	115.48'
L12	W	44.37'
L13	N0°12'18"W	30.59'
L14	N2°48'28"E	194.08'
L15	N84°35'50"W	20.52'
L16	N2°36'19"E	21.27'
L17	N86°38'53"W	20.66'
L18	N2°31'35"E	353.44'
L19	N13°56'12"W	106.94'
L20	N45°10'08"W	66.62'
L21	N68°08'23"W	192.43'
L22	N89°53'48"W	27.02'
L23	N1°21'14"W	11.73'
L24	N88°59'03"E	17.21'
L25	N0°40'58"E	12.06'

L26	N89°53'44"E	217.87'
L27	N63°59'11"W	102.15'
L28	N46°01'27"W	116.33'
L29	N42°14'40"E	36.90'
L30	N47°24'45"W	20.54'
L31	N42°14'40"E	37.35'
L32	N46°08'40"W	21.48'
L33	N83°21'50"W	77.42'
L34	N79°30'49"E	76.88'
L35	N11°19'05"W	5.28'
L36	N77°16'24"E	90.82'
L37	N63°13'51"E	20.70'
L38	N15°11'59"W	32.63'
L39	N67°53'35"W	15.30'
L40	N0°01'59"W	26.61'
L41	N62°53'14"W	45.05'
L42	N72°16'25"W	14.45'
L43	N82°44'58"W	27.15'
L44	N8°57'58"W	6.25'
L45	N86°13'54"E	18.37'
L46	N3°02'11"W	6.89'
L47	N87°39'30"E	56.03'
L48	N1°31'17"W	92.71'
L49	N89°05'03"W	7.93'
L50	N0°50'50"W	17.20'
L51	N87°12'37"E	7.81'
L52	N1°25'41"W	178.32'

L53	N88°36'15"E	10.65'
L54	N2°41'12"W	16.62'
L55	N1°39'34"E	140.83'
L56	N1°54'16"W	76.41'
L57	N62°22'43"E	29.64'
L58	N23°09'49"W	259.77'
L59	N88°57'15"E	44.66'
L60	N0°10'43"W	565.86'
L61	N2°51'02"W	93.48'
L62	N20°07'55"W	35.78'
L63	N1°18'41"E	207.76'
L64	N0°33'29"W	194.46'
L65	N41°04'10"W	31.04'
L66	N52°03'27"W	24.62'
L67	N61°46'31"W	36.01'
L68	N61°34'56"E	12.46'
L69	N29°52'52"E	391.87'
L70	N49°29'01"W	7.95'
L71	N35°59'26"E	14.39'
L72	N56°18'04"W	6.62'
L73	N31°09'31"E	355.30'
L74	N56°20'06"W	9.48'
L75	N23°59'03"E	19.71'
L76	N57°42'19"W	12.28'
L77	N33°03'13"E	6.27'
L78	N70°52'30"W	68.43'

MCE SOLAR  
LEASE AREA

CITY OF RICHMOND  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION



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MCE SOLAR  
LEASE AREA

CITY OF RICHMOND

CONTRA COSTA COUNTY, STATE OF CALIFORNIA

**CHEVRON USA, INC**  
DOC# 2001-014202-00  
APN 561-100-037

**LEASE AREA 3**  
0.97 ACRES±

**CHEVRON USA, INC**  
APN 561-120-015

**LEASE AREA 2**  
18.99 ACRES±

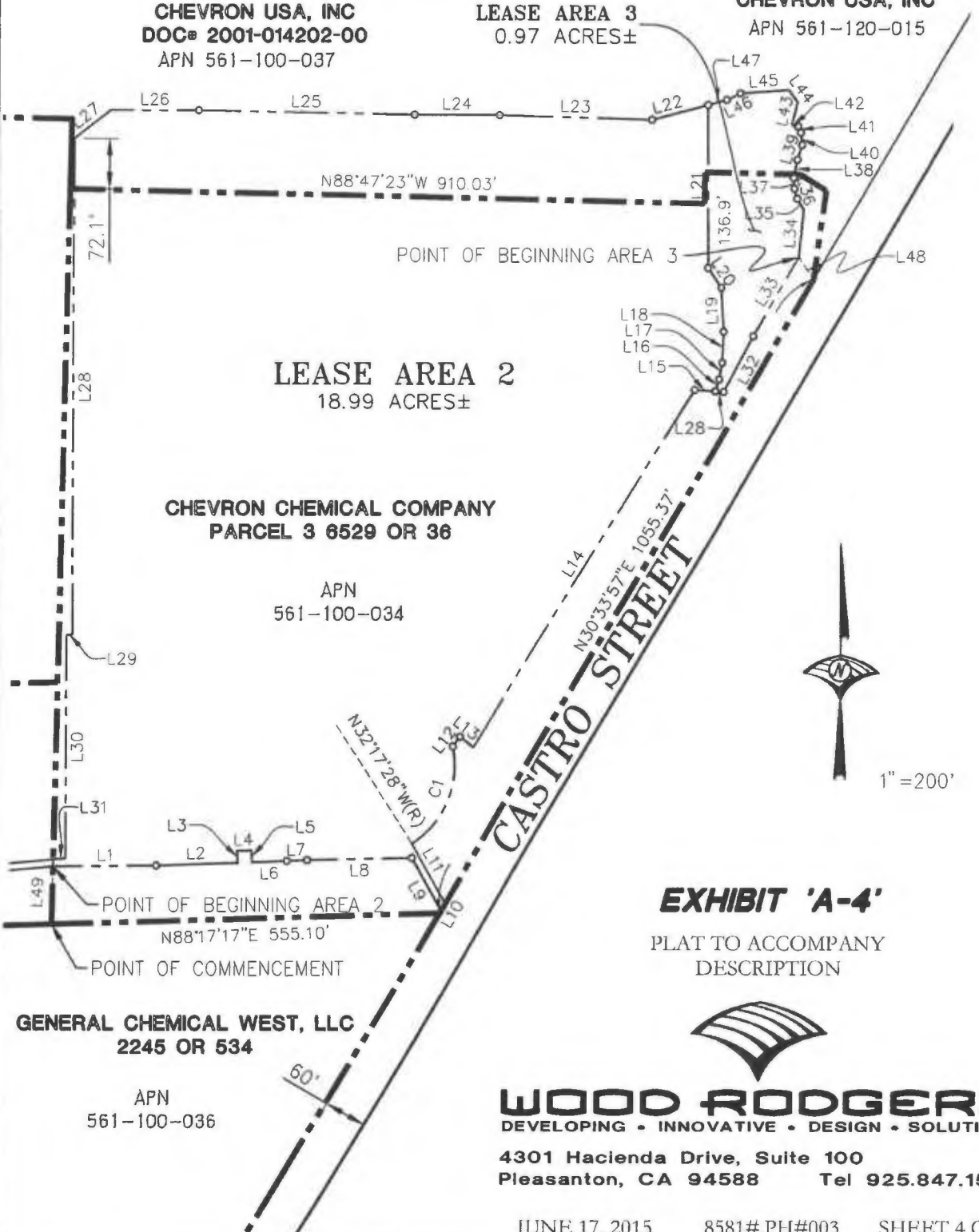
**CHEVRON CHEMICAL COMPANY**  
PARCEL 3 6529 OR 36

APN  
561-100-034

**GENERAL CHEMICAL WEST, LLC**  
2245 OR 534

APN  
561-100-036

**CASTRO STREET**



1"=200'

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION



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Pleasanton, CA 94588 Tel 925.847.1556



Line Table - This Sheet Only		
No.	Bearing	Length
L1	N89°15'13"E	146.89'
L2	N88°10'20"E	118.21'
L3	N2°34'10"W	17.25'
L4	N88°59'09"E	20.72'
L5	S1°11'02"E	16.68'
L6	N88°02'22"E	50.44'
L7	N87°10'55"E	29.04'
L8	N88°43'35"E	147.87'
L9	S29°29'32"E	86.61'
L10	N30°33'57"E	11.54'
L11	N29°29'32"W	98.57'
L12	N36°37'35"E	17.24'
L13	S52°45'19"E	25.06'
L14	N31°35'24"E	602.02'
L15	S86°30'30"E	29.44'
L16	N18°00'32"E	18.13'
L17	N11°07'42"E	24.01'
L18	N2°25'06"E	44.60'
L19	N3°20'04"W	63.06'
L20	N34°10'36"W	34.18'
L21	N0°09'54"W	232.90'
L22	S74°56'15"W	82.03'
L23	N88°22'32"W	218.66'
L24	N89°51'20"W	123.30'

L25	N88°53'53"W	308.85'
L26	N89°59'02"E	127.54'
L27	N51°33'28"E	65.66'
L28	N86°30'30"W	12.42'
L29	W	8.35'
L30	S0°01'42"W	319.85'
L31	S84°56'29"W	17.43'
L32	S28°29'11"W	90.61'
L33	S30°19'16"W	131.08'
L34	N5°52'12"E	68.50'
L35	N31°33'23"W	18.24'
L36	N15°04'13"W	14.84'
L37	N3°58'43"W	15.49'
L38	N11°14'07"E	26.51'
L39	N17°24'24"E	22.13'
L40	N6°21'15"W	17.76'
L41	N23°06'45"W	9.55'
L42	N76°19'59"W	9.16'
L43	N13°57'47"E	33.66'
L44	N36°13'23"W	21.38'
L45	N86°04'32"E	71.27'
L46	N64°45'27"E	21.90'
L47	N74°56'15"E	28.45'
L48	N34°25'20"W	38.31'
L49	N01°12'37"E	82.46'

Curve Table - This Sheet Only			
No.	Radius	Delta	Length
C1	132.45'	69°38'35"	160.99'

MCE SOLAR  
LEASE AREA  
CITY OF RICHMOND  
CONTRA COSTA COUNTY, STATE OF CALIFORNIA

**EXHIBIT 'A-4'**

PLAT TO ACCOMPANY  
DESCRIPTION



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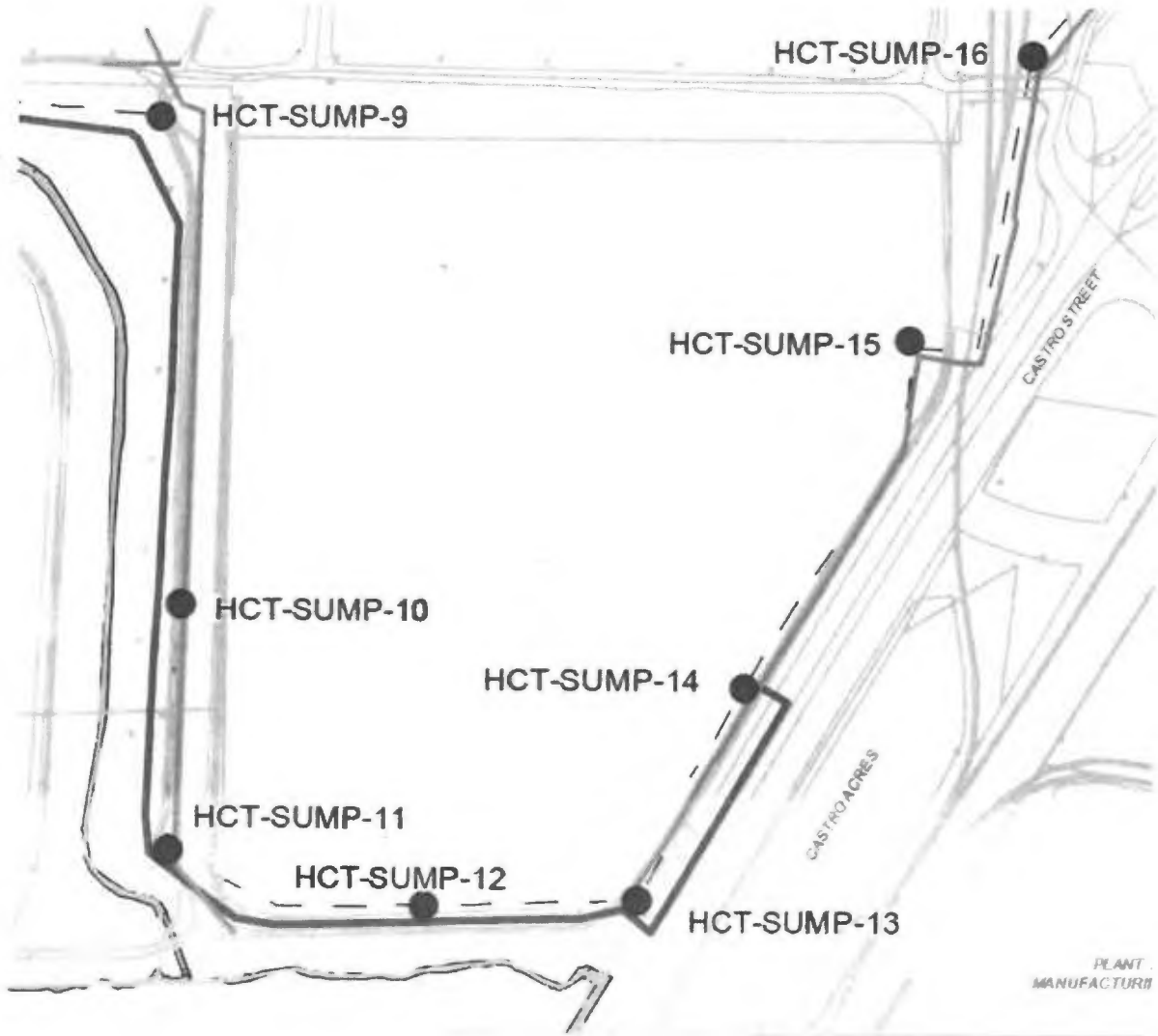
**EXHIBIT B**

**LEASE EXCEPTIONS**



**EXHIBIT C**

**DIAGRAM OF GROUNDWATER PROTECTION SYSTEM**





## FIRST AMENDMENT TO SOLAR ENERGY FACILITY SITE LEASE

This FIRST AMENDMENT TO SOLAR ENERGY FACILITY SITE LEASE (this “**Amendment**”) by and between **Chevron Products Company**, a division of Chevron U.S.A. Inc., a Pennsylvania corporation (“**Lessor**”), and **Marin Clean Energy**, a California Joint Powers Authority (“**Lessee**”), is made and entered into as of May 1, 2017. Each of Lessor and Lessee are sometimes referred to individually as a “**Party**,” and collectively as the “**Parties**.”

### RECITALS

A. Lessor and Lessee are parties to that certain Solar Energy Facility Site Lease (Richmond Refinery) dated as of November 4, 2015 (the “**Lease**”) with respect to certain real property located in Contra Costa County, California, as more particularly described in the Lease. Initially capitalized terms that are used but not otherwise defined herein shall have the meanings ascribed to them in the Lease.

B. Lessor and Lessee wish to amend the Lease, on the terms and conditions herein.

NOW, THEREFORE, in consideration of the foregoing and mutual covenants and agreements herein contained, Lessor and Lessee hereby agree as follows:

### AGREEMENT

1. Amendment to Lease. All terms defined in the Recitals of this Amendment are hereby incorporated into the Lease by this reference. The Lease is hereby amended as follows:

a. Exhibits. Exhibit A to the Lease is hereby amended and restated in the form of Exhibit A (Legal Description) attached hereto. The new Exhibit E (Depiction of Permitted Roadways) and Exhibit F (Approximate Location of PG&E and AT&T Easements) attached hereto are hereby added in the proper alphabetical order of exhibits as new Exhibits E and F, respectively, to the Lease.

b. Property. Recital B of the Lease is hereby amended and restated to read as follows:

“B. Lessor is the owner of certain real property located along Richmond Parkway in Contra Costa County, California, as depicted on the attached Exhibit A and incorporated herein by this reference (the “**Property**”), totaling approximately fifty (50) gross acres. The Property is part of a larger refinery owned and operated by Lessor (the “**Chevron Refinery**”).”

c. Definitions.

(A) Approved Off-Taker. Section 1 of the Lease is hereby amended to add a new definition as a new 1.1B, as follows:

“1.1B **“Approved Off-Taker”** means Pacific Gas & Electric Company, Southern California Edison Company, San Diego Gas & Electric Company, Southern California Public Power Authority, Northern California Power Agency, Sacramento Municipal Utility District, City of Palo Alto, Sonoma Clean Power, Clean Power SF, Peninsula Clean Energy, Alameda County CCA, or any other power off-taker approved by Lessor, in Lessor’s sole but reasonable discretion.”

(B) Effective Date. Section 1.2 of the Lease is hereby amended and restated to read as follows:

“1.2 **“Effective Date”** shall have the meaning given to it in the introductory paragraph of this Lease.”

(C) PPA. Section 1.7 of the Lease is hereby amended and restated to read as follows:

“1.7 **“PPA”** means a power purchase agreement entered into between Lessee and Developer with respect to the Solar Project or any substitution or replacement thereof entered into between Developer and an Approved Off-Taker.”

(D) Solar Energy Facilities. Section 1.8 of the Lease is hereby amended to add the following sentence at the end of the definition: “Notwithstanding the foregoing, Lessee shall have the right to request that Lessor grant easements over Lessor’s property in favor of Pacific Gas & Electric Company and AT&T for the purposes of distribution, transmission and collection of electrical energy and communications from the Solar Project, to the extent that such easements are reasonably required for the construction and operation of the Solar Project, and Lessor shall reasonably cooperate in connection with such request, provided that (i) the approximate locations of the easements shall be as depicted in Exhibit F hereto, and the exact locations of the easement areas shall be subject to Lessor’s prior written approval; (ii) such easements shall not interfere with Lessor’s use or operation of Lessor’s property or the Chevron Refinery (including the groundwater protection system shown in Exhibit C), or any other existing easements or rights-of-way over Lessor’s property, and shall not violate any existing or future covenants, conditions or restrictions affecting Lessor’s property; (iii) such easements shall automatically terminate one hundred twenty (120) days following the expiration or earlier termination of the Lease or removal of the Solar Project from the Property; (iv) Lessee and the easement holder shall remove all conduits, facilities, transmission lines, communication cabling and any other equipment (collectively, **“Utilities Equipment”**) from Lessor’s property one hundred twenty (120) days following the expiration or earlier termination of the Lease or removal of the Solar Project from the Property, and Lessee and such easement holder shall restore Lessor’s property to the same condition prior to the installation all such Utilities Equipment, all at Lessee’s and such easement holder’s sole cost and expense; and (v) each easement agreement shall be in a form and substance that is acceptable to Lessor in its sole but reasonable discretion, and shall provide, in addition to any other requirements imposed by Lessor in its sole, but reasonable discretion, that (a) such easements shall automatically terminate one hundred twenty (120) days following the expiration or earlier termination of the Lease or removal of the Solar Project from the Property, and shall expressly require Lessee and each easement holder to, upon such termination of such easement, deliver a recordable termination of

easement agreement in a form that is sufficient to cause such easements to be removed from title to Lessor's property and otherwise reasonably acceptable and (b) Lessee and such easement holder shall be jointly and severally liable for removing the Utilities Equipment from Lessor's property and restoring Lessor's property to its original condition upon such termination of such easement, all at Lessee's and such easement holder's sole cost and expense."

d. Lease of Property. The second sentence of Section 2 of the Lease is hereby amended and restated to read as follows: "The lease of the Property is subject to: (i) all matters of record; (ii) all Applicable Laws; and (iii) all items listed in Exhibit B."

e. U.S. Foreign Trade Subzone. Section 3.3.6 of the Lease is hereby amended and restated to read as follows: "Lessee acknowledges that the Chevron Refinery is located within a U.S. Foreign Trade Subzone 3B (the "**Zone**"). Lessor has caused the Property to be deactivated from the Zone. Lessor shall not request that the Property become subsequently reactivated within the Zone during the Term. Without limiting Lessor's covenant in the immediately preceding sentence, if for any reason the Property is reactivated within the Zone, Lessor shall use commercially reasonable efforts to cause the Property to be deactivated from the Zone and Lessee shall comply with all requirements imposed by the Foreign Trade Zone Board of the U.S. Dept. of Commerce, U.S. Customs and Border Protection and the Port for construction and operations within the Zone for so long as the Property remains within the Zone."

f. Roadway License. The paragraph following the heading "Roadway License" in Section 3.4 of the Lease is hereby renumbered as Section 3.4(a) and a new Section 3.4(b) of the Lease is hereby added to read as follows: "Lessor hereby grants to Lessee the non-exclusive right to use certain interior roads ("**Permitted Roadways**") pursuant to Section 3.4(a) for the purposes of developing and operating the Solar Project, subject to the terms of the Lease, provided that Lessee's use of the Permitted Roadways shall not unduly interfere with Lessor's ownership and operation of the Chevron Refinery, Lessor's reserved rights with respect to the Property or Lessor's rights or obligations under this Lease. The locations of the Permitted Roadways are depicted on Exhibit E. For the avoidance of doubt, Lessor's reserved rights to designate different roads and driveways pursuant to Section 3.4(a) shall continue to apply to the Permitted Roadways. Lessee acknowledges that during Lessee's construction of the Solar Project, Lessor will incur additional costs for providing security guards at various gates along the Permitted Roadways. Lessee shall reimburse Lessor in full for such security costs, which are estimated to equal \$713 daily on average for three (3) guards as of the date of this Amendment. Lessee acknowledges that such amount is an estimate as of the date of this Amendment only, and such security costs may increase. Lessor will invoice Lessee for the actual incurred costs not less frequently than monthly, and Lessor shall use commercially reasonable efforts to deliver a final invoice not later than 8 weeks after Lessee's completion of construction of the Solar Project in accordance with the terms and conditions of the Lease. Lessee shall reimburse Lessor for such security costs within twenty (20) days of receipt of an invoice therefor."

g. Early Termination. Clause (v) of Section 4.1 of the Lease is hereby amended to correct the reference to "Solar Facility" by replacing it with "Solar Project".

h. Design. The third sentence of Section 6.3 of the Lease is hereby amended to delete the words “the Port or” and “other”.

i. Permitting. Section 6.4 of the Lease is hereby amended and restated to read as follows: “Prior to commencing construction or installation of any part of the Solar Project, Lessee, at its sole cost and expense, shall (i) obtain all required approvals and permits to construct the Solar Project, including compliance with the California Environmental Quality Act, and (ii) enter into the PPA (collectively, the “**Construction Approvals**”). If Lessee has not obtained all Construction Approvals and all required approvals and permits to operate the Solar Project (collectively with the Construction Approvals, the “**Operating Approvals**”) by the date that is four (4) years after the Effective Date, then Lessor may terminate this Lease pursuant to Section 4.1 above. The term “**Solar Facility Permitting Date**” will mean the date that Lessee has obtained all Construction Approvals.”

j. Installation. The fourth sentence of Section 6.6 of the Lease is hereby amended to delete the words “, including the Port”.

k. Continuous Operation. Section 6.8 of the Lease is hereby amended to add the following sentence at the end thereof: “For the avoidance of doubt, this covenant shall be subject to Section 16.1 below, and Lessee’s performance of this covenant shall be excused for the duration of a Force Majeure event pursuant to the terms and conditions of Section 16.1; provided, however, for purposes of this Section 6.8, the one hundred twenty (120)-day limitation shall be increased to a limitation of three hundred sixty-five (365) days in the event of a Force Majeure event that results in material damage to or destruction of the Solar Project. When the causes of any such Force Majeure event are removed or the one hundred twenty (120)-day period (or the three hundred sixty-five (365)-day period, in the event of material damage to or destruction of the Solar Project) expires, whichever occurs first, Lessee’s compliance with (A) clause (i) of this Section 6.8 shall be reinstated and required for each remaining full month of the calendar year in which the Force Majeure event occurred, and (B) clause (ii) of this Section 6.8 shall be measured on a pro rata basis, where generation and transmission of energy from the Solar Energy System to the Interconnection Facilities shall occur at a rate of at least 54.79% (equal to the ratio of 200/365) of days in such calendar year (including days in such calendar year both prior to and following the event of Force Majeure), provided that for any Force Majeure event that does not result in material damage to or destruction of the Solar Project, generation and transmission of energy from the Solar Energy System to the Interconnection Facilities shall occur at least 134 days (calculated at the rate of 54.79% of 245 days [365 days minus 120 days, the maximum Force Majeure period]) in such calendar year (including days in such calendar year both prior to and following the event of Force Majeure).”

l. Environmental Remediation by Lessee. The first sentence of Section 10.1.3 of the Lease is hereby amended to correct the reference to “Prior or Lessor Claim” by replacing it with “Claim Against Lessee”.

m. Eligible Foreclosure Successor. The second sentence of Section 12.3.12 is hereby amended and restated to read as follows: “For purposes of this Lease, “**Eligible Foreclosure Successor**” means an entity that has, during the five (5)-year period immediately preceding the transfer (directly or through an affiliate), owned (or leased) or operated (or



contracted with entities that owned (or leased) or operated) at least one hundred (100) megawatts of inverter nameplate generating capacity of photovoltaic solar electricity generating equipment and facilities.”

n. **Damage or Destruction.** The first sentence of Section 15.4 of the Lease is hereby amended to correct the cross-reference to “Section 17.1” by replacing it with “Section 16.1 (Force Majeure)”.

o. **Force Majeure.** The fourth sentence of Section 16.1 of the Lease is hereby amended and restated to read as follows: “‘**Force Majeure**’ includes, but is not limited to, an act of God or the elements, site conditions, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, terrorism, lightning, earthquake, flood or similar cataclysmic event, an act of public enemy, war, blockade, civil insurrection, riot, civil disturbance or strike or other labor difficulty suffered by a Party, any action or inaction (so long as the Party to be excused due to Force Majeure is diligently pursuing any required permit or approval from the applicable governmental entity, and such Party must provide evidence of such diligent efforts and report such efforts to the other Party no less frequently than weekly) of a governmental entity, or any other event caused by any third party beyond the reasonable control of such Party, any curtailment of the Solar Project (x) by the California Independent System Operator (“CAISO”) or Pacific Gas & Electric Company (or its successor) as owner of the transmission and/or distribution facilities to which the Solar Project is interconnected (the “**Transmission Owner**”) due to (i) an electric system emergency, (ii) any situation that affects normal function of the electric system, the electric system integrity or integrity of other systems connected thereto, or (iii) maintenance of Transmission Owner’s transmission or distribution facilities, or (y) as required under an interconnection agreement with respect to the Solar Project with the Transmission Owner, or any other act or omission of any third party (other than a governmental entity, which shall be subject to the foregoing diligent efforts covenant) not controlled by or affiliated with a Party.”

2. **Effect of Amendment.** Except as expressly amended under this Amendment, all provisions of the Lease shall remain in full force and effect. In the event of any conflict between this Amendment and the Lease, this Amendment shall control to the extent of such conflict.

3. **Entire Agreement.** This Amendment constitutes the entire agreement between the parties pertaining to the subject matter hereof, and the final, complete and exclusive expression of the terms and conditions thereof. All prior agreements, representations, negotiations and understandings of the parties hereto, oral or written, express or implied, are hereby superseded and merged herein. This Amendment may be executed in one or more counterparts, each of which shall be deemed an original, and all of which shall constitute one and the same binding agreement.

[Signature pages to follow.]

IN WITNESS WHEREOF, the undersigned have executed this First Amendment to Solar Energy Facility Site Lease as of the date first written above.

LESSOR:

CHEVRON U.S.A. INC.,  
a Pennsylvania corporation, by its division,  
Chevron Products Company

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

LESSEE:

MARIN CLEAN ENERGY,  
a California Joint Powers Authority

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

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

[Attached]

**EXHIBIT E**

**DEPICTION OF PERMITTED ROADWAYS**

[Attached]

**EXHIBIT F**

**APPROXIMATE LOCATION OF PG&E AND AT&T EASEMENTS**

[Attached]

**Assignment and Second Amendment to Escrow Agreement**

THIS ASSIGNMENT AND SECOND AMENDMENT TO ESCROW AGREEMENT (this “*Second Amendment*”) is made and entered into as of \_\_\_\_\_, 2017, by and among Marin Clean Energy, a California joint powers authority (“*Assignor*”), MCE Solar One, LLC, a Delaware limited liability company (“*Assignee*”), Pacific Gas and Electric Company, a California corporation (“*PG&E*”) and Wells Fargo Bank, a National Association, as escrow agent (the “*Escrow Agent*”) with reference to the facts set forth below.

WHEREAS, Stion MCE Solar One, LLC, a California limited liability company (the “*Prior Assignor*”), PG&E, and Escrow Agent entered into that certain Escrow Agreement effective as of August 24, 2015 related to the project identified as Chevron 2MW, Queue #1122-WD (the “*Original Escrow Agreement*”), as amended by the Assignment and First Amendment to Escrow Agreement between Prior Assignor, Assignor (as assignee), PG&E, and Escrow Agent dated September 2, 2016 (the “*First Amendment*”) and together with the Original Escrow Agreement, the “*Escrow Agreement*” and Assignor’s entire right, title and interest under the Escrow Agreement is referred to as the “*Escrow Interest*”).

WHEREAS, Assignor wishes to transfer and assign the Escrow Interest to Assignee; and

WHEREAS, the parties hereto wish to amend the Escrow Agreement to reflect the Assignment of the Escrow Interest to the Assignee.

NOW, THEREFORE, in consideration of the premises, of the mutual covenants herein contained and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. ASSUMPTION.

1.1 The parties hereby acknowledge and agree that Assignee is a successor of Assignor in connection with the Escrow Agreement and that the Escrow Agreement, as amended hereby, is binding upon Assignee, and that Assignee is conclusively deemed to have consented and agreed to every restriction, provision, covenant, right, limitation and obligation of Assignor contained in the Escrow Agreement, as modified herein.

1.2 Assignee hereby agrees to assume each and every duty and obligation belonging to Assignor, as the case may be, under the Escrow Agreement.

1.3 Notwithstanding any other provision of this Second Amendment, Assignor shall remain liable to PG&E for each and every duty and obligation belonging to the Assignor, as the case may be, under the Escrow Agreement.

1.4 All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or (ii) when signed for by recipient, if sent  
Assignment and Second Amendment to Escrow Agreement (Chevron 2MW, Queue #1122-WD)

registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties.

2. AMENDMENTS TO THE ESCROW AGREEMENT.

2.1 All references throughout the Escrow Agreement referring to Assignor as Party A shall now be read to refer to Assignee.

2.2 Party A's Bank account information is hereby amended to the following:

Bank Name: Zions First National Bank  
Bank Address: Salt Lake City, UT  
ABA Routing No: 124000054  
Account name: Sustainable Power Group LLC  
Account No: 275026979

2.3 Party A's contact information in accordance with the notice provisions of the Escrow Agreement is hereby amended to the following:

MCE Solar One, LLC  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106  
Tel No.: (801) 679-3500  
Email: legal@spower.com  
Attention: General Counsel

2.4 Party A's contact information in accordance with Section 11 and Schedule 1 of the Escrow Agreement (consisting of telephone numbers and authorized signatures for person(s) designated to give Funds Transfer Instructions) is hereby amended as follows:

<u>Name:</u>	<u>Telephone Number</u>	<u>Signature</u>
Sean McBride Authorized Representative	(801) 679-3500	_____

2.5 The parties hereby amend Section 4(f) of the Escrow Agreement to add the Assignor (Marin Clean Energy, a California joint powers authority) as an additional required signer for any notice of release of Escrow Deposit as follows:

(f) If the Escrow Agent receives notice that Party A is entitled to the release of the Escrow Deposit or a portion of the Escrow Deposit and such notice is signed by authorized signers from both Party A and Party B (or in a notice thereto designating different authorized signers in accordance with the Escrow Agent's prescribed procedures for replacing authorized signers), and such notice is signed by a purported authorized signer of Assignor, then such amount shall be paid to Party A.

3. MISCELLANEOUS.

3.1 Limitation of Amendment. The amendments set forth above shall be limited precisely as written, the manner and to the extent described above and nothing in this Second Amendment shall be deemed to constitute a waiver or amendment of any other provision of the Escrow Agreement or constitute a consent to any other transaction, except as specifically provided herein. In the event of any inconsistency between the Escrow Agreement and this Second Amendment, this Second Amendment shall prevail.

3.2 Documents Otherwise Unchanged. Except as expressly set forth herein, the terms, provision and conditions of the Escrow Agreement shall remain in full force and effect and in all other respects are hereby ratified and confirmed.

3.3 Incorporation of this Amendment. This Second Amendment shall be construed as one with the Escrow Agreement and the Escrow Agreement shall be read and construed throughout so as to incorporate this Second Amendment. All referenced to "this Agreement" in the Escrow Agreement shall mean the Escrow Agreement as amended by this Second Amendment.

3.4 Execution in Counterparts. This Second Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Second Amendment by facsimile or other electronic means of communication shall be effective as delivery of a manually executed counterpart of this Second Amendment.

[Signature Page Follows]



IN WITNESS WHEREOF, each of the parties hereto by its officer or representative thereunto duly authorized has duly executed this Assignment and Second Amendment to Escrow Agreement as of the date set forth beneath such officer's or representative's signature.

**Assignor:**

MARIN CLEAN ENERGY

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901

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

Attention: Dawn Weisz

**Assignee:**

SUSTAINABLE POWER GROUP, LLC

Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106

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

Attention: Josh Skogen

**PG&E:**

PACIFIC GAS AND ELECTRIC COMPANY

Pacific Gas and Electric Company  
245 Market Street  
Mail Code N7L  
San Francisco, CA 94105-1702

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

Attention: Director, Electric  
Generation Interconnection

**Escrow Agent:**

WELLS FARGO BANK, NATIONAL ASSOCIATION

Wells Fargo Bank,  
National Association Corporate  
333 S Grand Ave, 5<sup>th</sup> Fl.  
Los Angeles, CA 90071

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

Attention: Municipal & Escrow Solutions

**Assignment and Second Amendment to Escrow Agreement**

THIS ASSIGNMENT AND SECOND AMENDMENT TO ESCROW AGREEMENT (this "**Second Amendment**") is made and entered into as of \_\_\_\_\_, 2017, by and among Marin Clean Energy, a California joint powers authority ("**Assignor**"), MCE Solar One, LLC, a Delaware limited liability company ("**Assignee**"), Pacific Gas and Electric Company, a California corporation ("**PG&E**") and Wells Fargo Bank, a National Association, as escrow agent (the "**Escrow Agent**") with reference to the facts set forth below.

WHEREAS, Stion MCE Solar One, LLC, a California limited liability company (the "**Prior Assignor**"), PG&E, and Escrow Agent entered into that certain Escrow Agreement effective as of August 24, 2015 related to the project identified as Chevron 8.5MW, Queue #1157-WD (the "**Original Escrow Agreement**"), as amended by the Assignment and First Amendment to Escrow Agreement between Prior Assignor, Assignor (as assignee), PG&E, and Escrow Agent dated September 2, 2016 (the "**First Amendment**") and together with the Original Escrow Agreement, the "**Escrow Agreement**" and Assignor's entire right, title and interest under the Escrow Agreement is referred to as the "**Escrow Interest**").

WHEREAS, Assignor wishes to transfer and assign the Escrow Interest to Assignee; and

WHEREAS, the parties hereto wish to amend the Escrow Agreement to reflect the Assignment of the Escrow Interest to the Assignee.

NOW, THEREFORE, in consideration of the premises, of the mutual covenants herein contained and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **ASSUMPTION.**

1.1 The parties hereby acknowledge and agree that Assignee is a successor of Assignor in connection with the Escrow Agreement and that the Escrow Agreement, as amended hereby, is binding upon Assignee, and that Assignee is conclusively deemed to have consented and agreed to every restriction, provision, covenant, right, limitation and obligation of Assignor contained in the Escrow Agreement, as modified herein.

1.2 Assignee hereby agrees to assume each and every duty and obligation belonging to Assignor, as the case may be, under the Escrow Agreement.

1.3 Notwithstanding any other provision of this Second Amendment, Assignor shall remain liable to PG&E for each and every duty and obligation belonging to the Assignor, as the case may be, under the Escrow Agreement.

1.4 All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or (ii) when signed for by recipient, if sent Assignment and Second Amendment to Escrow Agreement (Chevron 8.5MW, Queue #1157-WD)

registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties.

2. AMENDMENTS TO THE ESCROW AGREEMENT.

2.1 All references throughout the Escrow Agreement referring to Assignor as Party A shall now be read to refer to Assignee.

2.2 Party A’s Bank account information is hereby amended to the following:

Bank Name: Zions First National Bank  
Bank Address: Salt Lake City, UT  
ABA Routing No: 124000054  
Account name: Sustainable Power Group LLC  
Account No: 275026979

2.3 Party A’s contact information in accordance with the notice provisions of the Escrow Agreement is hereby amended to the following:

MCE Solar One, LLC  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106  
Tel No.: (801) 679-3500  
Email: legal@spower.com  
Attention: General Counsel

2.4 Party A’s contact information in accordance with Section 11 and Schedule 1 of the Escrow Agreement (consisting of telephone numbers and authorized signatures for person(s) designated to give Funds Transfer Instructions) is hereby amended as follows:

<u>Name:</u>	<u>Telephone Number</u>	<u>Signature</u>
Sean McBride Authorized Representative	(801) 679-3500	_____

2.5 The parties hereby amend Section 4(f) of the Escrow Agreement to add the Assignor (Marin Clean Energy, a California joint powers authority) as an additional required signer for any notice of release of Escrow Deposit as follows:

(f) If the Escrow Agent receives notice that Party A is entitled to the release of the Escrow Deposit or a portion of the Escrow Deposit and such notice is signed by authorized signers from both Party A and Party B (or in a notice thereto designating different authorized signers in accordance with the Escrow Agent's prescribed procedures for replacing authorized signers), and such notice is signed by a purported authorized signer of Assignor, then such amount shall be paid to Party A.

3. MISCELLANEOUS.

3.1 Limitation of Amendment. The amendments set forth above shall be limited precisely as written, the manner and to the extent described above and nothing in this Second Amendment shall be deemed to constitute a waiver or amendment of any other provision of the Escrow Agreement or constitute a consent to any other transaction, except as specifically provided herein. In the event of any inconsistency between the Escrow Agreement and this Second Amendment, this Second Amendment shall prevail.

3.2 Documents Otherwise Unchanged. Except as expressly set forth herein, the terms, provision and conditions of the Escrow Agreement shall remain in full force and effect and in all other respects are hereby ratified and confirmed.

3.3 Incorporation of this Amendment. This Second Amendment shall be construed as one with the Escrow Agreement and the Escrow Agreement shall be read and construed throughout so as to incorporate this Second Amendment. All referenced to "this Agreement" in the Escrow Agreement shall mean the Escrow Agreement as amended by this Second Amendment.

3.4 Execution in Counterparts. This Second Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Second Amendment by facsimile or other electronic means of communication shall be effective as delivery of a manually executed counterpart of this Second Amendment.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto by its officer or representative thereunto duly authorized has duly executed this Assignment and Second Amendment to Escrow Agreement as of the date set forth beneath such officer's or representative's signature.

**Assignor:**

MARIN CLEAN ENERGY

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901

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

Attention: Dawn Weisz

**Assignee:**

MCE SOLAR ONE, LLC

MCE Solar One, LLC  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106

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

Attention: Sean McBride

**PG&E:**

PACIFIC GAS AND ELECTRIC COMPANY

Pacific Gas and Electric Company  
245 Market Street  
Mail Code N7L  
San Francisco, CA 94105-1702

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

Attention: Director, Electric  
Generation Interconnection

**Escrow Agent:**

WELLS FARGO BANK, NATIONAL ASSOCIATION

Wells Fargo Bank,  
National Association Corporate  
333 S Grand Ave, 5<sup>th</sup> Fl.  
Los Angeles, CA 90071

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

Attention: Municipal & Escrow Solutions

## **EXHIBIT A**

### **ASSIGNED AGREEMENTS**

1. Small Generator Interconnection Request (Application Form), dated as of January 21, 2015, by and between Pacific Gas & Electric Company and Stion MCE Solar One (PG&E WDT Queue #1122-WD).
2. Fast Track Process Initial Review, dated as of February 5, 2015, by and between Pacific Gas & Electric Company and Stion MCE Solar One (PG&E WDT Queue #1122-WD).
3. Fast Track Process Supplemental Review, dated as of March 22, 2015, by and between Pacific Gas & Electric Company and Stion MCE Solar One (PG&E WDT Queue #1122-WD).
4. Small Generator Interconnection Agreement, dated as of August 5, 2015, by and between Pacific Gas & Electric Company and Stion MCE Solar One, LLC (PG&E WDT Queue #1122-WD), designated as Service Agreement # 314 under PG&E's FERC Electric Tariff Volume No. 4, Wholesale Distribution Tariff.
5. Consent to Assignment and Agreement, dated as of July 24, 2016, by and among Pacific Gas & Electric Company, Stion MCE Solar One, LLC and Marin Clean Energy (PG&E WDT Queue #1122-WD).
6. First Amendment to Small Generator Interconnection Agreement, dated as of October 26, 2016, by and between Pacific Gas & Electric Company and Marin Clean Energy (PG&E WDT Queue #1122-WD).



## EXHIBIT B

### ASSIGNEE CONTACT INFORMATION

The Assignee provides the following contact information to PG&E so PG&E may direct all future communication regarding the assigned Facility to the appropriate contact in a timely fashion. The related PG&E contact information also is provided below for the Assignee's records.

#### For General Communications

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

For the Assignee:

MCE Solar One, LLC  
Attn: General Counsel  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106  
(801) 679-3500  
[legal @spower.com](mailto:legal@spower.com)

For PG&E:

Pacific Gas and Electric Company  
Attention: Electric Generation Interconnection - Contract Management  
245 Market Street  
Mail Code N7L  
San Francisco, California 94105-1702  
Phone: (415) 972-5394  
Email: [EGIContractMgmt@pge.com](mailto:EGIContractMgmt@pge.com)

For Billing and Payment

Billings and payments shall be sent to the addresses below:

For the Assignee:

MCE Solar One, LLC\_  
Attn: Accounts Payable\_  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106  
(801) 679-3518  
[accountspayable@spower.com](mailto:accountspayable@spower.com)

Pacific Gas and Electric Company  
Attention: Electric Generation Interconnection - Contract Management  
245 Market Street  
Mail Code N7L  
San Francisco, California 94105-1702  
Phone: (415) 972-5394  
Email: [EGContractMgmt@pge.com](mailto:EGContractMgmt@pge.com)

Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

For the Assignee:

MCE Solar One, LLC  
Attn: General Counsel  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600\_  
Salt Lake City, Utah 84106  
(801) 679-3500  
[legal@spower.com](mailto:legal@spower.com)

For PG&E:

Pacific Gas and Electric Company  
Attention: Electric Generation Interconnection - Contract Management  
245 Market Street  
Mail Code N7L  
San Francisco, California 94105-1702  
Phone: (415) 972-5394  
Email: [EGICContractMgmt@pge.com](mailto:EGICContractMgmt@pge.com)

Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Assignee's Operating Representative:

MCE Solar One, LLC  
Attn: Operations Manager  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106  
(855) 679-3553  
[realtime@spower.com](mailto:realtime@spower.com), [outages@spower.com](mailto:outages@spower.com)

Distribution Provider's Operating Representative:

Pacific Gas and Electric Company  
Concord Distribution Control Center  
1020 Detroit Ave, Concord, CA 94518-2401

Work Management Desk (Planned Clearance Requests)  
Attention: Richmond District (AOR 3- East Bay Division)  
Phone: 844-743-2100

Real Time Operator Desk (Real Time Operational Issues)  
Attention: Richmond District (AOR 3- East Bay Division)  
Phone: 844-743-3322

Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

**Assignment and Second Amendment to Escrow Agreement**

THIS ASSIGNMENT AND SECOND AMENDMENT TO ESCROW AGREEMENT (this "***Second Amendment***") is made and entered into as of \_\_\_\_\_, 2017, by and among Marin Clean Energy, a California joint powers authority ("***Assignor***"), MCE Solar One, LLC, a Delaware limited liability company ("***Assignee***"), Pacific Gas and Electric Company, a California corporation ("***PG&E***") and Wells Fargo Bank, a National Association, as escrow agent (the "***Escrow Agent***") with reference to the facts set forth below.

WHEREAS, Stion MCE Solar One, LLC, a California limited liability company (the "***Prior Assignor***"), PG&E, and Escrow Agent entered into that certain Escrow Agreement effective as of August 24, 2015 related to the project identified as Chevron 8.5MW, Queue #1157-WD (the "***Original Escrow Agreement***"), as amended by the Assignment and First Amendment to Escrow Agreement between Prior Assignor, Assignor (as assignee), PG&E, and Escrow Agent dated September 2, 2016 (the "***First Amendment***") and together with the Original Escrow Agreement, the "***Escrow Agreement***" and Assignor's entire right, title and interest under the Escrow Agreement is referred to as the "***Escrow Interest***").

WHEREAS, Assignor wishes to transfer and assign the Escrow Interest to Assignee; and

WHEREAS, the parties hereto wish to amend the Escrow Agreement to reflect the Assignment of the Escrow Interest to the Assignee.

NOW, THEREFORE, in consideration of the premises, of the mutual covenants herein contained and of other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties hereto hereby agree as follows:

1. **ASSUMPTION.**

1.1 The parties hereby acknowledge and agree that Assignee is a successor of Assignor in connection with the Escrow Agreement and that the Escrow Agreement, as amended hereby, is binding upon Assignee, and that Assignee is conclusively deemed to have consented and agreed to every restriction, provision, covenant, right, limitation and obligation of Assignor contained in the Escrow Agreement, as modified herein.

1.2 Assignee hereby agrees to assume each and every duty and obligation belonging to Assignor, as the case may be, under the Escrow Agreement.

1.3 Notwithstanding any other provision of this Second Amendment, Assignor shall remain liable to PG&E for each and every duty and obligation belonging to the Assignor, as the case may be, under the Escrow Agreement.

1.4 All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or (ii) when signed for by recipient, if sent Assignment and Second Amendment to Escrow Agreement (Chevron 8.5MW, Queue #1157-WD)

registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties.

2. AMENDMENTS TO THE ESCROW AGREEMENT.

2.1 All references throughout the Escrow Agreement referring to Assignor as Party A shall now be read to refer to Assignee.

2.2 Party A’s Bank account information is hereby amended to the following:

Bank Name: Zions First National Bank  
Bank Address: Salt Lake City, UT  
ABA Routing No: 124000054  
Account name: Sustainable Power Group LLC  
Account No: 275026979

2.3 Party A’s contact information in accordance with the notice provisions of the Escrow Agreement is hereby amended to the following:

MCE Solar One, LLC  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106  
Tel No.: (801) 679-3500  
Email: legal@spower.com  
Attention: General Counsel

2.4 Party A’s contact information in accordance with Section 11 and Schedule 1 of the Escrow Agreement (consisting of telephone numbers and authorized signatures for person(s) designated to give Funds Transfer Instructions) is hereby amended as follows:

<u>Name:</u>	<u>Telephone Number</u>	<u>Signature</u>
Sean McBride Authorized Representative	(801) 679-3500	_____

2.5 The parties hereby amend Section 4(f) of the Escrow Agreement to add the Assignor (Marin Clean Energy, a California joint powers authority) as an additional required signer for any notice of release of Escrow Deposit as follows:

(f) If the Escrow Agent receives notice that Party A is entitled to the release of the Escrow Deposit or a portion of the Escrow Deposit and such notice is signed by authorized signers from both Party A and Party B (or in a notice thereto designating different authorized signers in accordance with the Escrow Agent's prescribed procedures for replacing authorized signers), and such notice is signed by a purported authorized signer of Assignor, then such amount shall be paid to Party A.

3. MISCELLANEOUS.

3.1 Limitation of Amendment. The amendments set forth above shall be limited precisely as written, the manner and to the extent described above and nothing in this Second Amendment shall be deemed to constitute a waiver or amendment of any other provision of the Escrow Agreement or constitute a consent to any other transaction, except as specifically provided herein. In the event of any inconsistency between the Escrow Agreement and this Second Amendment, this Second Amendment shall prevail.

3.2 Documents Otherwise Unchanged. Except as expressly set forth herein, the terms, provision and conditions of the Escrow Agreement shall remain in full force and effect and in all other respects are hereby ratified and confirmed.

3.3 Incorporation of this Amendment. This Second Amendment shall be construed as one with the Escrow Agreement and the Escrow Agreement shall be read and construed throughout so as to incorporate this Second Amendment. All referenced to "this Agreement" in the Escrow Agreement shall mean the Escrow Agreement as amended by this Second Amendment.

3.4 Execution in Counterparts. This Second Amendment may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Second Amendment by facsimile or other electronic means of communication shall be effective as delivery of a manually executed counterpart of this Second Amendment.

[Signature Page Follows]

IN WITNESS WHEREOF, each of the parties hereto by its officer or representative thereunto duly authorized has duly executed this Assignment and Second Amendment to Escrow Agreement as of the date set forth beneath such officer's or representative's signature.

**Assignor:**

MARIN CLEAN ENERGY

Marin Clean Energy  
1125 Tamalpais Avenue  
San Rafael, CA 94901

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

Attention: Dawn Weisz

**Assignee:**

MCE SOLAR ONE, LLC

MCE Solar One, LLC  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, Utah 84106

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

Attention: Sean McBride

**PG&E:**

PACIFIC GAS AND ELECTRIC COMPANY

Pacific Gas and Electric Company  
245 Market Street  
Mail Code N7L  
San Francisco, CA 94105-1702

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

Attention: Director, Electric  
Generation Interconnection

**Escrow Agent:**

WELLS FARGO BANK, NATIONAL ASSOCIATION

Wells Fargo Bank,  
National Association Corporate  
333 S Grand Ave, 5<sup>th</sup> Fl.  
Los Angeles, CA 90071

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

Attention: Municipal & Escrow Solutions



## CONSENT TO ASSIGNMENT AND AGREEMENT

This Consent to Assignment and Agreement is by and among **PACIFIC GAS AND ELECTRIC COMPANY** (“PG&E”), a California corporation, **MARIN CLEAN ENERGY (MCE)**, a California joint powers authority (“Assignor”), and **MCE SOLAR ONE, LLC**, a Delaware limited liability company (“Assignee”).

### RECITALS

A. Assignor currently owns the Chevron 8.5 photovoltaic electric generating facility (“Facility”) located on parcel # APN 561-100-034 (037) along Castro Road, Richmond, CA (Contra Costa County) 94801, which will be interconnected with PG&E’s electric system, and will receive standby service from PG&E. This project has an interconnection Queue number of 1157-WD and the executed SGIA Service Agreement number, SA#334 under PG&E’s FERC Electric Tariff Volume No. 4, Wholesale Distribution Tariff.

B. Assignor wishes to sell the Facility to Assignee, and Assignee wishes to buy the Facility.

C. In connection with this sale, Assignor wishes to assign to Assignee various agreements with PG&E related to the Facility that are listed on Exhibit A (the “Assigned Agreements”).

D. In connection with this sale, the Assignee also provides to PG&E the updated customer contact information listed in Exhibit B, such contact information to be used by PG&E for all Facility-related communication following execution of this Consent to Assignment.

**NOW THEREFORE**, PG&E hereby consents to an assignment by Assignor to Assignee of whatever rights, title and interest it may have in and to the Assigned Agreements, under the following terms and conditions:

1. Assignor and Assignee each recognize and acknowledge that PG&E makes no representation or warranty, express or implied, that Assignor has any right, title, or interest in the Assigned Agreements. Assignee is responsible for satisfying itself as to the existence and extent of Assignor’s right, title, and interest in the Assigned Agreements and Assignee expressly releases PG&E from any liability resulting from the assignment, to which PG&E is consenting herein. Assignee and Assignor further release PG&E from any liability for consenting to any future assignments of the Agreements by Assignee or Assignor.

2. Assignee agrees that it takes the assignments of the Assigned Agreements subject to any defenses or causes of action PG&E may have against Assignor.

3. Assignee acknowledges that the assignments of Assigned Agreements may be subject to previous assignments, liens or claims executed or arising prior to the date of execution of this Consent to Assignment and Agreement.

4. Assignor hereby agrees that it shall remain liable to PG&E for each and every duty and obligation belonging to the Assignor, as the case may be, under the Assigned Agreements.

5. Assignee hereby agrees to assume each and every duty and obligation belonging to the Assignor, as the case may be, under the Assigned Agreements.

6. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties.

7. Assignee hereby agrees that it will not reassign its rights, title or interest in and to the Assigned Agreements without the prior consent of PG&E, which shall not be unreasonably withheld.

8. Assignor hereby requests that PG&E substitute Assignee for Assignor as the notice addressee under the Assigned Agreements.

9. This Consent to Assignment and Agreement is neither a modification of nor an amendment to the Assigned Agreements.

10. The parties hereto agree that this Consent to Assignment and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

11. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

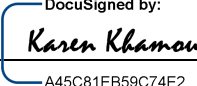
12. This Consent to Assignment and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the parties hereto by its officer or representative thereunto duly authorized has duly executed this Consent to Assignment and Agreement as of the date set forth beneath such officer's or representative's signature.

PACIFIC GAS AND ELECTRIC COMPANY  
Attn: Karen Khamou  
245 Market Street  
Mail Code N7L  
San Francisco, CA 94105-1702

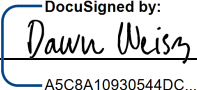
**PACIFIC GAS AND ELECTRIC COMPANY, a California Corp**

Signature:  \_\_\_\_\_  
A45C81EB59C74E2...  
Name: Karen Khamou  
Title: Acting Director, Electric Generation Interconnection  
Date: 4/13/2017

IN WITNESS WHEREOF, each of the parties hereto by its officer or representative thereunto duly authorized has duly executed this Consent to Assignment and Agreement as of the date set forth beneath such officer's or representative's signature.

MARIN CLEAN ENERGY  
Attn: Dawn Weisz, CEO  
1125 Tamalpais Avenue  
San Rafael, CA 94901

**MARIN CLEAN ENERGY, a California Joint Powers Authority**

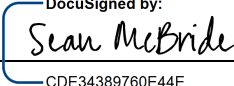
Signature:  \_\_\_\_\_  
Name: Dawn Weisz \_\_\_\_\_  
Title: Chief Executive Officer \_\_\_\_\_  
Date: 4/5/2017 \_\_\_\_\_

IN WITNESS WHEREOF, each of the parties hereto by its officer or representative thereunto duly authorized has duly executed this Consent to Assignment and Agreement as of the date set forth beneath such officer's or representative's signature.

Accepted and agreed to:

MCE SOLAR ONE, LLC  
Attention: Sean McBride  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, UT 84016

**MCE SOLAR ONE, LLC, a Delaware limited liability company**

Signature:  \_\_\_\_\_  
Name: Sean McBride \_\_\_\_\_  
Title: Authorized Signatory \_\_\_\_\_  
Date: 4/13/2017 \_\_\_\_\_

## **EXHIBIT A**

### **ASSIGNED STUDY RESULTS AND AGREEMENTS**

1. Small Generator Interconnection Request (Application Form), dated January 23, 2015 by and between Pacific Gas & Electric Company and Stion Corporation (PG&E WDT Queue #1157-WD).
2. Independent Study Process Electrical Independence Test results, dated March 2015, by and between Pacific Gas & Electric Company and Stion Corporation for the project, Chevron 8.5 (PG&E WDT Queue #1157-WD).
3. Independent Study Process System Impact Study results, dated July 8, 2015, by and between Pacific Gas & Electric Company and Stion Corporation for the project, Chevron 8.5 (PG&E WDT Queue #1157-WD).
4. Independent Study Process Facilities Study results dated November 6, 2015, by and between Pacific Gas & Electric Company and Stion Corporation for the project, Chevron 8.5 (PG&E WDT Queue #1157-WD).
5. Small Generator Interconnection Agreement for the project, Chevron 8.5, executed February 16, 2016 by and between Pacific Gas & Electric Company and Stion MCE Solar One, LLC (PG&E WDT Queue #1157-WD), designated as Service Agreement #334 under PG&E's FERC Electric Tariff Volume No. 4, Wholesale Distribution Tariff.
6. Consent to Assignment and Agreement of the Small Generator Interconnection Agreement for the project, Chevron 8.5, executed August 4, 2016, by and among Pacific Gas & Electric Company, Stion MCE Solar One, LLC and Marin Clean Energy (PG&E WDT Queue #1157-WD).
7. First Amendment to Small Generator Interconnection Agreement for the project, Chevron 8.5, executed August 24, 2016, by and between Pacific Gas & Electric Company and Marin Clean Energy (PG&E WDT Queue #1157-WD).

## **EXHIBIT B**

### **ASSIGNEE CONTACT INFORMATION**

The Assignee provides the following contact information to PG&E so PG&E may direct all future communication regarding the assigned Facility to the appropriate contact in a timely fashion. The related PG&E contact information also is provided below for the Assignee's records.

#### For General Communications

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

For the Assignee:

**MCE Solar One, LLC**

Attn: General Counsel

c/o Sustainable Power Group, LLC, 2180 South 1300 East, Suite 600

Salt Lake City, Utah 84106

(801) 679-3500

[legal@spower.com](mailto:legal@spower.com)

For PG&E:

**Pacific Gas and Electric Company**

Attention: Electric Generation Interconnection - Contract Management

245 Market Street

Mail Code N7L

San Francisco, California 94105-1702

Phone: (415) 972-5394

Email: [EGContractMgmt@pge.com](mailto:EGContractMgmt@pge.com)

#### For Billing and Payment

Billings and payments shall be sent to the addresses below:

For the Assignee:

**MCE Solar One, LLC**

Attn: Accounts Payable

c/o Sustainable Power Group, LLC, 2180 South 1300 East, Suite 600

Salt Lake City, Utah 84106

(801) 679-3518

[accountspayable@spower.com](mailto:accountspayable@spower.com)

For PG&E:

**Pacific Gas and Electric Company**

Attention: Electric Generation Interconnection - Contract Management

245 Market Street

Mail Code N7L

San Francisco, California 94105-1702

Phone: (415) 972-5394

Email: [EGICContractMgmt@pge.com](mailto:EGICContractMgmt@pge.com)

Alternative Forms of Notice

Any notice or request required or permitted to be given by either Party to the other and not required by this Agreement to be given in writing may be so given by telephone, facsimile or e-mail to the telephone numbers and e-mail addresses set out below:

For the Assignee:

**MCE Solar One, LLC**

Attn: General Counsel

c/o Sustainable Power Group, LLC, 2180 South 1300 East, Suite 600

Salt Lake City, Utah 84106

(801) 679-3500

[legal@spower.com](mailto:legal@spower.com)

For PG&E:

**Pacific Gas and Electric Company**

Attention: Electric Generation Interconnection - Contract Management

245 Market Street

Mail Code N7L

San Francisco, California 94105-1702

Phone: (415) 972-5394

Email: [EGICContractMgmt@pge.com](mailto:EGICContractMgmt@pge.com)

Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.



Assignee's Operating Representative:

**MCE Solar One, LLC**

Attn: Operations Manager

c/o Sustainable Power Group, LLC, 2180 South 1300 East, Suite 600

Salt Lake City, Utah 84106

(855) 679-3553

[realtime@spower.com](mailto:realtime@spower.com) and [outages@spower.com](mailto:outages@spower.com)

Distribution Provider's Operating Representative:

**Pacific Gas and Electric Company**

**Concord Distribution Control Center**

1020 Detroit Ave.

Concord, CA 94518-2401

Real-Time Operations Concerns:

Phone: (844) 743-3322

Work Management Desk (Scheduling):

Phone: (844) 743-2100

**Region:** Bay Area

**Area of Responsibility (AOR):** 3

**Division:** East Bay

**District:** Richmond

Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.

## CONSENT TO ASSIGNMENT AND AGREEMENT

This Consent to Assignment and Agreement is by and among **PACIFIC GAS AND ELECTRIC COMPANY** (“PG&E”), a California corporation, **MARIN CLEAN ENERGY (MCE)**, a California joint powers authority (“Assignor”), and **MCE SOLAR ONE, LLC**, a Delaware limited liability company (“Assignee”).

### RECITALS

A. Assignor currently owns the Chevron 8.5 photovoltaic electric generating facility (“Facility”) located on parcel # APN 561-100-034 (037) along Castro Road, Richmond, CA (Contra Costa County) 94801, which will be interconnected with PG&E’s electric system, and will receive standby service from PG&E. This project has an interconnection Queue number of 1157-WD and the executed SGIA Service Agreement number, SA#334 under PG&E’s FERC Electric Tariff Volume No. 4, Wholesale Distribution Tariff.

B. Assignor wishes to sell the Facility to Assignee, and Assignee wishes to buy the Facility.

C. In connection with this sale, Assignor wishes to assign to Assignee various agreements with PG&E related to the Facility that are listed on Exhibit A (the “Assigned Agreements”).

D. In connection with this sale, the Assignee also provides to PG&E the updated customer contact information listed in Exhibit B, such contact information to be used by PG&E for all Facility-related communication following execution of this Consent to Assignment.

**NOW THEREFORE**, PG&E hereby consents to an assignment by Assignor to Assignee of whatever rights, title and interest it may have in and to the Assigned Agreements, under the following terms and conditions:

1. Assignor and Assignee each recognize and acknowledge that PG&E makes no representation or warranty, express or implied, that Assignor has any right, title, or interest in the Assigned Agreements. Assignee is responsible for satisfying itself as to the existence and extent of Assignor’s right, title, and interest in the Assigned Agreements and Assignee expressly releases PG&E from any liability resulting from the assignment, to which PG&E is consenting herein. Assignee and Assignor further release PG&E from any liability for consenting to any future assignments of the Agreements by Assignee or Assignor.

2. Assignee agrees that it takes the assignments of the Assigned Agreements subject to any defenses or causes of action PG&E may have against Assignor.

3. Assignee acknowledges that the assignments of Assigned Agreements may be subject to previous assignments, liens or claims executed or arising prior to the date of execution of this Consent to Assignment and Agreement.

4. Assignor hereby agrees that it shall remain liable to PG&E for each and every duty and obligation belonging to the Assignor, as the case may be, under the Assigned Agreements.

5. Assignee hereby agrees to assume each and every duty and obligation belonging to the Assignor, as the case may be, under the Assigned Agreements.

6. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties.

7. Assignee hereby agrees that it will not reassign its rights, title or interest in and to the Assigned Agreements without the prior consent of PG&E, which shall not be unreasonably withheld.

8. Assignor hereby requests that PG&E substitute Assignee for Assignor as the notice addressee under the Assigned Agreements.

9. This Consent to Assignment and Agreement is neither a modification of nor an amendment to the Assigned Agreements.

10. The parties hereto agree that this Consent to Assignment and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules that may direct the application of the laws of another jurisdiction.

11. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

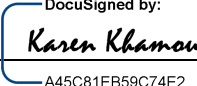
12. This Consent to Assignment and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

[Signature Pages Follow]

IN WITNESS WHEREOF, each of the parties hereto by its officer or representative thereunto duly authorized has duly executed this Consent to Assignment and Agreement as of the date set forth beneath such officer's or representative's signature.

PACIFIC GAS AND ELECTRIC COMPANY  
Attn: Karen Khamou  
245 Market Street  
Mail Code N7L  
San Francisco, CA 94105-1702

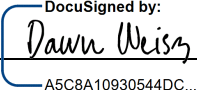
**PACIFIC GAS AND ELECTRIC COMPANY, a California Corp**

Signature:  \_\_\_\_\_  
A45C81EB59C74E2...  
Name: Karen Khamou  
Title: Acting Director, Electric Generation Interconnection  
Date: 4/13/2017

IN WITNESS WHEREOF, each of the parties hereto by its officer or representative thereunto duly authorized has duly executed this Consent to Assignment and Agreement as of the date set forth beneath such officer's or representative's signature.

MARIN CLEAN ENERGY  
Attn: Dawn Weisz, CEO  
1125 Tamalpais Avenue  
San Rafael, CA 94901

**MARIN CLEAN ENERGY, a California Joint Powers Authority**

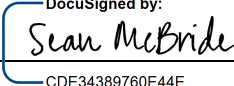
Signature:  \_\_\_\_\_  
Name: Dawn Weisz \_\_\_\_\_  
Title: Chief Executive Officer \_\_\_\_\_  
Date: 4/5/2017 \_\_\_\_\_

IN WITNESS WHEREOF, each of the parties hereto by its officer or representative thereunto duly authorized has duly executed this Consent to Assignment and Agreement as of the date set forth beneath such officer's or representative's signature.

Accepted and agreed to:

MCE SOLAR ONE, LLC  
Attention: Sean McBride  
c/o Sustainable Power Group, LLC  
2180 South 1300 East, Suite 600  
Salt Lake City, UT 84016

**MCE SOLAR ONE, LLC, a Delaware limited liability company**

Signature:  \_\_\_\_\_  
CDE34389760E44E...

Name: Sean McBride

Title: Authorized Signatory

Date: 4/13/2017

## **EXHIBIT A**

### **ASSIGNED STUDY RESULTS AND AGREEMENTS**

1. Small Generator Interconnection Request (Application Form), dated January 23, 2015 by and between Pacific Gas & Electric Company and Stion Corporation (PG&E WDT Queue #1157-WD).
2. Independent Study Process Electrical Independence Test results, dated March 2015, by and between Pacific Gas & Electric Company and Stion Corporation for the project, Chevron 8.5 (PG&E WDT Queue #1157-WD).
3. Independent Study Process System Impact Study results, dated July 8, 2015, by and between Pacific Gas & Electric Company and Stion Corporation for the project, Chevron 8.5 (PG&E WDT Queue #1157-WD).
4. Independent Study Process Facilities Study results dated November 6, 2015, by and between Pacific Gas & Electric Company and Stion Corporation for the project, Chevron 8.5 (PG&E WDT Queue #1157-WD).
5. Small Generator Interconnection Agreement for the project, Chevron 8.5, executed February 16, 2016 by and between Pacific Gas & Electric Company and Stion MCE Solar One, LLC (PG&E WDT Queue #1157-WD), designated as Service Agreement #334 under PG&E's FERC Electric Tariff Volume No. 4, Wholesale Distribution Tariff.
6. Consent to Assignment and Agreement of the Small Generator Interconnection Agreement for the project, Chevron 8.5, executed August 4, 2016, by and among Pacific Gas & Electric Company, Stion MCE Solar One, LLC and Marin Clean Energy (PG&E WDT Queue #1157-WD).
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## **EXHIBIT B**

### **ASSIGNEE CONTACT INFORMATION**

The Assignee provides the following contact information to PG&E so PG&E may direct all future communication regarding the assigned Facility to the appropriate contact in a timely fashion. The related PG&E contact information also is provided below for the Assignee's records.

#### For General Communications

Unless otherwise provided in this Agreement, any written notice, demand, or request required or authorized in connection with this Agreement ("Notice") shall be deemed properly given if delivered in person, delivered by recognized national courier service, or sent by first class mail, postage prepaid, to the person specified below:

For the Assignee:

**MCE Solar One, LLC**

Attn: General Counsel

c/o Sustainable Power Group, LLC, 2180 South 1300 East, Suite 600

Salt Lake City, Utah 84106

(801) 679-3500

[legal@spower.com](mailto:legal@spower.com)

For PG&E:

**Pacific Gas and Electric Company**

Attention: Electric Generation Interconnection - Contract Management

245 Market Street

Mail Code N7L

San Francisco, California 94105-1702

Phone: (415) 972-5394

Email: [EGContractMgmt@pge.com](mailto:EGContractMgmt@pge.com)

#### For Billing and Payment

Billings and payments shall be sent to the addresses below:

For the Assignee:

**MCE Solar One, LLC**

Attn: Accounts Payable

c/o Sustainable Power Group, LLC, 2180 South 1300 East, Suite 600

Salt Lake City, Utah 84106

(801) 679-3518

[accountspayable@spower.com](mailto:accountspayable@spower.com)



For PG&E:

**Pacific Gas and Electric Company**

Attention: Electric Generation Interconnection - Contract Management

245 Market Street

Mail Code N7L

San Francisco, California 94105-1702

Phone: (415) 972-5394

Email: [EGICContractMgmt@pge.com](mailto:EGICContractMgmt@pge.com)

Alternative Forms of Notice

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For the Assignee:

**MCE Solar One, LLC**

Attn: General Counsel

c/o Sustainable Power Group, LLC, 2180 South 1300 East, Suite 600

Salt Lake City, Utah 84106

(801) 679-3500

[legal@spower.com](mailto:legal@spower.com)

For PG&E:

**Pacific Gas and Electric Company**

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San Francisco, California 94105-1702

Phone: (415) 972-5394

Email: [EGICContractMgmt@pge.com](mailto:EGICContractMgmt@pge.com)

Designated Operating Representative

The Parties may also designate operating representatives to conduct the communications which may be necessary or convenient for the administration of this Agreement. This person will also serve as the point of contact with respect to operations and maintenance of the Party's facilities.

Assignee's Operating Representative:

**MCE Solar One, LLC**

Attn: Operations Manager

c/o Sustainable Power Group, LLC, 2180 South 1300 East, Suite 600

Salt Lake City, Utah 84106

(855) 679-3553

[realtime@spower.com](mailto:realtime@spower.com) and [outages@spower.com](mailto:outages@spower.com)

Distribution Provider's Operating Representative:

**Pacific Gas and Electric Company**

**Concord Distribution Control Center**

1020 Detroit Ave.

Concord, CA 94518-2401

Real-Time Operations Concerns:

Phone: (844) 743-3322

Work Management Desk (Scheduling):

Phone: (844) 743-2100

**Region:** Bay Area

**Area of Responsibility (AOR):** 3

**Division:** East Bay

**District:** Richmond

Changes to the Notice Information

Either Party may change this information by giving five Business Days written notice prior to the effective date of the change.



# Community Power Coalition

The Community Power Coalition is a collective powerhouse of advocates working on sustainability, environmental justice, and low-income issues.

Formed in 2014, we are focused on the interests of underrepresented and historically marginalized constituencies through collaborations with our local partners and open dialogue with our communities.



## Our mission is to:

- Expand access to affordable renewable energy and energy efficiency programs;
- Advance equitable, local sustainable workforce and economic development;
- Accelerate the transition to a cleaner and more efficient energy economy; and
- Build and develop inclusive programs and policies for all MCE communities



## 2016 Coalition Survey Results

Most important actions for CCAs to support disadvantaged communities:

1. Provide energy efficiency and solar rebates
2. Lower electricity rates (e.g., lower generation rates, reduce PCIA)
3. Local development of renewable energy projects



# Meet the Coalition

# Regular Members





# Visiting Members



Ever wondered why CCA put  
“Community” before “Choice”?

- 1) Awareness
- 2) Access
- 3) Activism
- 4) Advantages
- 5) All the Above



# Education and Awareness

- General Info Sharing

## General Updates

- CalCCA formed
- 2016 McGlashan Advocacy Award
- California procurement
- Update on Contra Costa County discussion of CCA

## MCE Updates

- Grace Peralta presenting on MCE's Multifamily Energy Efficiency Program
- Low Income Families and Tenants (LIFT) pilot

## Legislative & Regulatory Issues

- Summary of CPUC *en banc* (Feb 1<sup>st</sup>)
- PG&E's PCIA increase, working group update
- PG&E proposing to charge PCIA to Medical Baseline customers

Sample Community Power Coalition agenda

# Education and Awareness

- General Info Sharing
- Two-way Dialogue



MCE Solar One RichmondBUILD workers

# Education and Awareness

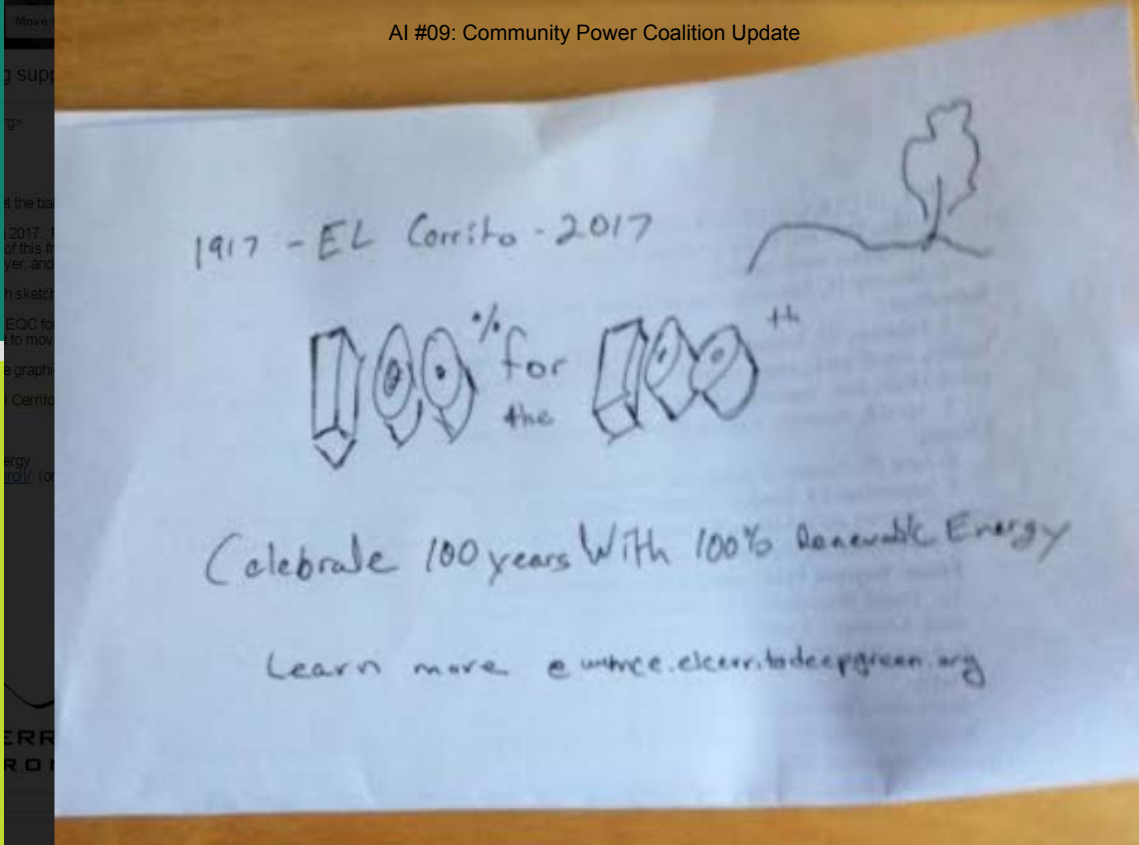
- General Info Sharing
- Two-way Dialogue
- Cross-county Collaborations



Coordinating a Tri-County  
Deep Green Push

# Access

- Community Initiatives



Turning this...

# Access

- Community Initiatives



**100** | **100**  
PERCENT | YEARS

Celebrate our 100<sup>th</sup> with 100% renewable energy

Into this!

Encouraging **Deep Green** to celebrate El Cerrito's Centennial Celebration



# Access

- Community Initiatives
- Multilingual Materials



MCE en Charlando Con Teresa Foster

# MCE的服務條款和條件

## Access

- Community Initiatives
- Multilingual Materials

**價格** MCE 的電力價格既穩定又具有成本競爭力。任何價格上的變動皆會在MCE公開的董事會會議上通過並適當的知會公眾。PG 價格變動將影響MCE和PG&E的成本比較。PG&E公司向MCE客戶收取月度電力提供商變動調整費 (PCIA) 和特許權使用附加費 (Fra Surcharge)。這些費用一向都包含在我們的成本比較中。請到[www.mceCleanEnergy.org/rates](http://www.mceCleanEnergy.org/rates)查看 MCE和PG&E的成本比較，或 1 (888) 632-3674 以獲取詳情。費率和成本的比較可能會隨時間而改變。財政援助方案像CARE (加利福尼亞替代價格能源援助) 和Medical Baseline Allowance (醫療基準津貼) 在MCE將維持不變。如果您在PG&E參加了任何這些計畫，而且繼續用MCE後將可以繼續。

**計費** 您將每月收到來自PG&E的單一賬單，其中將包括MCE的發電費。MCE的發電費會取代PG&E的發電費。MCE的收費並非重複的。PG&E將繼續對供送電的服務收取費用。如果您不選擇MCE，PG&E將恢復對您收取發電費。

**登記註冊** MCE於2015年五月成為默認的發電商。根據2002年通過並簽署成為法律的加利福尼亞州議會法案117，要求像MCE這樣註冊客戶。在2015年五月定期續取電錶日，您的帳戶已自動被納入到MCE的淺綠色50%的可再生能源的服務中。您可以在任何時候以選擇深綠色100%的可再生能源。若要選擇退出，或參加深綠色計畫，請撥打1 (888) 632-3674 或訪問[WWW.MCECLEANENERGY](http://WWW.MCECLEANENERGY) 請時請準備好您的PG&E的帳戶信息以便處理您的請求。

**退出** 您可在何時要求退出，請撥打1 (888) 632-3674 或訪問[WWW.MCECLEANENERGY.ORG/OPT-OUT](http://WWW.MCECLEANENERGY.ORG/OPT-OUT) 聯絡時請準備好您的PG&E的帳戶信息以便處理您的請求。如果您在MCE服務啟動之前或啟動後60天內不退出MCE服務，您將需要繳納一次性的管理費 (僅限於\$5-25元)，在一年內就不得返回MCE，並且將受到PG&E公司的服務條款和條件約束。有關更多PG&E公司的條款和條件，請到[MCECLEANENERGY.ORG/TERMS](http://MCECLEANENERGY.ORG/TERMS)。如果在MCE的服務啟動前或在服務啟動第60天內退出，或者取消電力服務，您將不會被收取管理費。出請求必須在您的帳戶的電錶續取日期五個工作日之前收到，才可在下一個計費週期開始時切换到PG&E公司的服務。您的帳戶將會當天被轉移到PG&E，在單一帳單週期內不能轉移。您會被收取所有在取消或轉移電服務到PG&E之前，MCE代表您採購的所有電費未能支付。如果您在書面通知後14個日曆天未支付帳單，MCE將會將您的帳戶轉移到PG&E。如果您的服務被轉移，您將會被要求

MCE是一個不以營利為目的，以社區為基礎的組織，負責管理的董事會官員由 MARIN 縣，NAPA 非法入縣，BENICIA，EL CERRITO RICHMOND 和 SAN PABLO 市所選出，我們致力於保護客戶的隱私。請上 [WWW.MCECLEANENERGY.ORG/PRIVACY](http://WWW.MCECLEANENERGY.ORG/PRIVACY) 了解更多。

# Access

- Community Initiatives
- Multilingual Materials

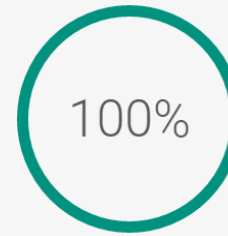
## Verde Claro



50% energía renovable

COMUNÍQUESE CON NOSOTROS  
ACERCA DEL VERDE CLARO

## Verde Fuerte



100% energía renovable

REGÍSTRASE EN VERDE FUERTE

## Sol Local



100% energía local y solar

COMUNÍQUESE CON NOSOTROS  
ACERCA DEL SOL LOCAL

## Su opción hace una diferencia

\$35.500

Reembolsos solares recibidos  
por los clientes de MCE desde  
2012

122.102

Toneladas métricas de gases  
de efecto invernadero (GHG)  
eliminados entre 2010 y 2014

7.765.057

Galones de agua ahorrados a  
través nuestro programa de  
ahorros de energía

2.400

Puestos de trabajo en California  
apoyados por MCE

Did you know we have a full Spanish site?

# Access

- Community Initiatives
- Multilingual Materials
- Outreach and Events



2016: 264 events attended  
2017: 116 events attended or scheduled...  
and counting!

# Activism

- PCIA



Protesting the 95% PCIA increase, Dec. 2015  
Pictured here: MCL, Sierra Club, Sunflower Alliance

# Activism

- PCIA



Protesting the 95% PCIA increase, Dec. 2015  
Pictured here: Mainstreet Moms

# Activism

- PCIA
- Deep Green



Deep Green House Parties

# Activism

- PCIA
- Deep Green



 mcecleanenergy  
Mill Valley, Californ... Following

11 likes 7w

mcecleanenergy Many thanks to all who attended last night's Mill Valley City Council Meeting to show support regarding the city's possible adoption of MCE's Deep Green 100% Renewable Energy Program. You are making a difference for your community and your planet! #support #cleanpower #cleanenergy #brightmind #community #teamwork

 Add a comment... ...

Deep Green Novato, Corte Madera,  
and Larkspur!  
Half of premium for local renewable  
development fund



# Activism

- PCIA
- Deep Green
- Supporting CCA



Coalition partners attended Feb. *en banc*,  
speak to CPUC on CCA issues

# Activism

- PCIA
- Deep Green
- Supporting CCA

AI #09: Community Power Coalition Update



MCE's annual Charles F. McGlashan Advocacy Award recognizes passion, dedication & leadership in promoting MCE's mission. 2016 recipient: Sustainable Napa County

# Activism

- PCIA
- Deep Green
- Supporting CCA
- Thought Partners



Just Transition Panel:  
MCE, Sierra Club, APEN, CBE

# Advantages

- Local Jobs (FIT)



2MW of new solar at Freethy Industrial Park:  
26 jobs ~ RichmondBUILD  
\$550,000 annual revenue ~ 600 homes/year

# Advantages

- Local Jobs



1MW of new solar at Cooley Quarry, Novato  
Local Sol ~ 17 jobs  
GHG impact: remove 56 cars/year

# Advantages

- Local Jobs



10.5MW Solar One on Chevron brownfield:  
341 jobs ~ RichmondBUILD  
Q4 2017 ~ Minimum 50% local labor  
Expected 60% union labor

# Advantages

- Local Jobs
- Energy Efficiency



2017: Energize Richmond Campaign  
4 days ~ 85 businesses  
64% free energy audits ~ 58% ESL

# Advantages

- Local Jobs
- Energy Efficiency



2017: Energize Richmond Campaign  
4 days ~ 85 businesses  
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# Advantages

- Local Jobs
- Energy Efficiency
- Solar



2012-2017: MCE has allocated \$115,000 for low-income solar rebates in partnership with GRID Alternatives

# Advantages

- Local Jobs
- Energy Efficiency
- Solar



2016: MCE customers earned \$1M+  
 2017: Expect MCE customers earn \$1.2M+

# Advantages

- Local Jobs
- Energy Efficiency
- Solar
- All the Above



MCE Workforce Development contracts:  
MCCDC ~\$240,000  
Rising Sun ~\$140,000  
RichmondBUILD ~\$100,000



**A green future is  
everyone's choice.**

**At MCE we're proud  
to serve our diverse  
communities.**

The Community Power Coalition is an essential part of our dedication to sustained, impactful, genuine community education and engagement.

All groups throughout MCE's service area are welcome to join in the dialogue, collaborate on community initiatives, and help Community Choice put Community first.