



**Marin Clean Energy
Board of Directors Meeting
Thursday, May 21, 2015
7:00 P.M.**

Kathrin Sears, **Chair**
County of Marin

Tom Butt, **Vice Chair**
City of Richmond

Bob McCaskill
City of Belvedere

Alan Schwartzman
City of Benicia

Sloan C. Bailey
Town of Corte Madera

Greg Lyman
City of El Cerrito

Barbara Coler
Town of Fairfax

Kevin Haroff
City of Larkspur

Garry Lion
City of Mill Valley

Brad Wagenknecht
County of Napa

Denise Athas
City of Novato

Carla Small
Town of Ross

Ford Greene
Town of San Anselmo

Genoveva Calloway
City of San Pablo

Andrew McCullough
City of San Rafael

Ray Withy
City of Sausalito

Emmett O'Donnell
Town of Tiburon

1125 Tamalpais Avenue
San Rafael, CA 94901

1 (888) 632-3674
mceCleanEnergy.org

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

Agenda Page 1 of 2

1. Board Announcements (Discussion)
2. Public Open Time (Discussion)
3. Report from Executive Officer (Discussion)
4. Consent Calendar (Discussion/Action)
 - C.1 4.16.15 Meeting Minutes
 - C.2 Approved Contracts Update
 - C.3 MCE Staff Position Adjustments
 - C.4 First Addendum to First Agreement with Low Voltage Security, Inc.
 - C.5 First Addendum to Second Agreement with The PFM Group
5. Resolution 2015-03 of the Board of Directors of MCE to Serve as Regional Liaison for Property Assessed Clean Energy Programs in Marin County (Discussion/Action)
6. Adjustment to MCE Retirement Plans (Discussion/Action)



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Agenda Page 2 of 2

7. Grant from San Francisco Foundation (Discussion/Action)
8. Amended and Restated Power Purchase Agreements with
Stion MCE Solar One, LLC (Discussion/Action)
9. Energy Efficiency Update (Discussion)
10. Regulatory and Legislative Updates (Discussion)
11. Board Member & Staff Matters (Discussion)
12. Adjourn



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Office of Governor

Edmund G. Brown Jr.



FOR IMMEDIATE RELEASE:

Contact: Governor's Press Office

Wednesday, April 29, 2015

(916) 445-4571

Governor Brown Establishes Most Ambitious Greenhouse Gas Reduction Target in North America

New California Goal Aims to Reduce Emissions 40 Percent Below 1990 Levels by 2030

SACRAMENTO – Governor Edmund G. Brown Jr. today issued an executive order to establish a California greenhouse gas reduction target of 40 percent below 1990 levels by 2030 – the most aggressive benchmark enacted by any government in North America to reduce dangerous carbon emissions over the next decade and a half.

“With this order, California sets a very high bar for itself and other states and nations, but it’s one that must be reached – for this generation and generations to come,” said Governor Brown.

This executive action sets the stage for the important work being done on climate change by the Legislature.

The Governor’s executive order aligns California’s greenhouse gas reduction targets with those of leading international governments ahead of the United Nations Climate Change Conference in Paris later this year. The 28-nation European Union, for instance, set the same target for 2030 just last October.

California is on track to meet or exceed the current target of reducing greenhouse gas emissions to 1990 levels by 2020, as established in the California Global Warming Solutions Act of 2006 (AB 32). California’s new emission reduction target of 40 percent below 1990 levels by 2030 will make it possible to reach the ultimate goal of reducing emissions 80 percent under 1990 levels by 2050. This is in line with the scientifically established levels needed in the U.S. to limit global warming below 2 degrees Celsius – the warming threshold at which scientists say there will likely be major climate disruptions such as super droughts and rising sea levels.

World Leaders React

United Nations Framework Convention on Climate Change Executive Secretary Christiana Figueres:

“California and Governor Brown have clearly understood, internalised and articulated the science of climate change and today have aligned the state to the growing global understanding of the step changes and strategies needed over the coming years and decades. Resolving climate change requires a swift peaking of emissions and a deep decarbonisation of the global economy by the second half of the century. California’s announcement is a realisation and a determination that will gladly resonate with other inspiring actions within the United States and around the globe. It is yet another reason for optimism in advance of the UN climate conference in Paris in December.”

World Bank Group President Jim Yong Kim: “Four consecutive years of exceptional drought has brought home the harsh reality of rising global temperatures to the communities and businesses of

California. There can be no substitute for aggressive national targets to reduce harmful greenhouse emissions, but the decision today by Governor Brown to set a 40 percent reduction target for 2030 is an example of climate leadership that others must follow.”

Premier of Ontario, Canada Kathleen Wynne: “I applaud Governor Brown's continued leadership on climate change. This shows the important role that sub-national governments can play in shaping a strong global agreement on climate change later this year in Paris.”

Former New York Mayor Michael Bloomberg: “California’s 2030 goal to reduce carbon emissions is not only bold, it's necessary – for the economy and our future.”

NextGen Climate Founder Tom Steyer: “When it comes to climate change, California has emerged as a global leader – proving that we don’t have to choose between a healthy environment and a strong economy. Today Governor Brown took that leadership to the next level. By setting an ambitious and achievable target to reduce emissions of climate-altering pollutants 40 percent by 2030, Governor Brown is setting a course that will build upon the hundreds of thousands of good paying advanced energy jobs in California, improve the health and wellbeing of Californians and continue our global leadership to solve the greatest challenge of our generation.”

Princeton University Professor Michael Oppenheimer: “Governor Brown’s ground-breaking commitment not only shows that solving the climate problem goes hand-in-hand with economic growth and technology leadership, but points the way toward a climate solution for other states and the world.”

Climate Adaptation

The executive order also specifically addresses the need for climate adaptation and directs state government to:

- Incorporate climate change impacts into the state’s Five-Year Infrastructure Plan;
- Update the Safeguarding California Plan – the state climate adaption strategy – to identify how climate change will affect California infrastructure and industry and what actions the state can take to reduce the risks posed by climate change;
- Factor climate change into state agencies’ planning and investment decisions; and
- Implement measures under existing agency and departmental authority to reduce greenhouse gas emissions.

California’s Response to Climate Change

In his [inaugural address](#) earlier this year, Governor Brown announced that within the next 15 years, California will increase from one-third to 50 percent our electricity derived from renewable sources; reduce today’s petroleum use in cars and trucks by up to 50 percent; double the efficiency savings from existing buildings and make heating fuels cleaner; reduce the release of methane, black carbon and other potent pollutants across industries; and manage farm and rangelands, forests and wetlands so they can store carbon.

Since taking office, Governor Brown has signed accords to fight climate change with leaders from [Mexico](#), [China](#), [Canada](#), [Japan](#), [Israel](#) and [Peru](#). The Governor also [issued a groundbreaking call](#) to action with hundreds of world-renowned researchers and scientists – called the [consensus statement](#) – which translates key scientific climate findings from disparate fields into one unified document. The impacts of climate change are already being felt in California and will disproportionately impact the state's most vulnerable populations.

The text of the executive order is below:

Executive Department

State of California

EXECUTIVE ORDER B-30-15

WHEREAS climate change poses an ever-growing threat to the well-being, public health, natural resources, economy, and the environment of California, including loss of snowpack, drought, sea level rise, more frequent and intense wildfires, heat waves, more severe smog, and harm to natural and working lands, and these effects are already being felt in the state; and

WHEREAS the Intergovernmental Panel on Climate Change concluded in its Fifth Assessment Report, issued in 2014, that "[w]arming of the climate system is unequivocal, and since the 1950s, many of the observed changes are unprecedented over decades to millennia" and that "[c]ontinued emission of greenhouse gases will cause further warming and long-lasting changes in all components of the climate system, increasing the likelihood of severe, pervasive and irreversible impacts for people and ecosystems;" and

WHEREAS projections of climate change show that, even under the best-case scenario for global emission reductions, additional climate change impacts are inevitable, and these impacts pose tremendous risks to the state's people, agriculture, economy, infrastructure and the environment; and

WHEREAS climate change will disproportionately affect the state's most vulnerable citizens; and

WHEREAS building on decades of successful actions to reduce pollution and increase energy efficiency the California Global Warming Solutions Act of 2006 placed California at the forefront of global and national efforts to reduce the threat of climate change; and

WHEREAS the Intergovernmental Panel on Climate Change has identified limiting global warming to 2 degrees Celsius or less by 2050 as necessary to avoid potentially catastrophic climate change impacts, and remaining below this threshold requires accelerated reductions of greenhouse gas emissions; and

WHEREAS California has established greenhouse gas emission reduction targets to reduce greenhouse gas emissions to 1990 levels by 2020 and further reduce such emissions to 80 percent below 1990 levels by 2050; and

WHEREAS setting an interim target of emission reductions for 2030 is necessary to guide regulatory policy and investments in California in the midterm, and put California on the most cost-effective path for long term emission reductions; and

WHEREAS all agencies with jurisdiction over sources of greenhouse gas emissions will need to continue to develop and implement emissions reduction programs to reach the state's 2050 target and attain a level of emissions necessary to avoid dangerous climate change; and



WHEREAS taking climate change into account in planning and decision making will help the state make more informed decisions and avoid high costs in the future.

NOW, THEREFORE, I, EDMUND G. BROWN JR., Governor of the State of California, in accordance with the authority vested in me by the Constitution and statutes of the State of California, in particular Government Code sections 8567 and 8571 of the California Government Code, do hereby issue this Executive Order, effective immediately

IT IS HEREBY ORDERED THAT:


1. A new interim statewide greenhouse gas emission reduction target to reduce greenhouse gas emissions to 40 percent below 1990 levels by 2030 is established in order to ensure California meets its target of reducing greenhouse gas emissions to 80 percent below 1990 levels by 2050.
2. All state agencies with jurisdiction over sources of greenhouse gas emissions shall implement measures, pursuant to statutory authority, to achieve reductions of greenhouse gas emissions to meet the 2030 and 2050 greenhouse gas emissions reductions targets.
3. The California Air Resources Board shall update the Climate Change Scoping Plan to express the 2030 target in terms of million metric tons of carbon dioxide equivalent.
4. The California Natural Resources Agency shall update every three years the state's climate adaptation strategy, *Safeguarding California*, and ensure that its provisions are fully implemented. The *Safeguarding California* plan will:
 - Identify vulnerabilities to climate change by sector and regions, including, at a minimum, the following sectors: water, energy, transportation, public health, agriculture, emergency services, forestry, biodiversity and habitat, and ocean and coastal resources;
 - Outline primary risks to residents, property, communities and natural systems from these vulnerabilities, and identify priority actions needed to reduce these risks; and
 - Identify a lead agency or group of agencies to lead adaptation efforts in each sector.
5. Each sector lead will be responsible to:
 - Prepare an implementation plan by September 2015 to outline the actions that will be taken as identified in *Safeguarding California*, and
 - Report back to the California Natural Resources Agency by June 2016 on actions taken.
6. State agencies shall take climate change into account in their planning and investment decisions, and employ full life-cycle cost accounting to evaluate and compare infrastructure investments and alternatives.

7. State agencies' planning and investment shall be guided by the following principles
 - Priority should be given to actions that both build climate preparedness and reduce greenhouse gas emissions;
 - Where possible, flexible and adaptive approaches should be taken to prepare for uncertain climate impacts;
 - Actions should protect the state's most vulnerable populations; and
 - Natural infrastructure solutions should be prioritized.
8. The state's Five-Year Infrastructure Plan will take current and future climate change impacts into account in all infrastructure projects
9. The Governor's Office of Planning and Research will establish a technical, advisory group to help state agencies incorporate climate change impacts into planning and investment decisions.
10. The state will continue its rigorous climate change research program focused on understanding the impacts of climate change and how best to prepare and adapt to such impacts.

This Executive Order is not intended to create, and does not, create any rights or benefits, whether substantive or procedural, enforceable at law or in equity, against the State of California, its agencies, departments, entities, officers, employees, or any other person.

I FURTHER DIRECT that as soon as hereafter possible, this Order be filed in the Office of the Secretary of State and that widespread publicity and notice be given to this Order.

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 29th day of April 2015.


EDMUND G. BROWN JR.
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



###

MARIN CLEAN ENERGY

BOARD MEETING MINUTES

Thursday, April 16, 2015

7:00 P.M.

SAN RAFAEL CORPORATE CENTER, TAMALPAIS ROOM
750 LINDARO STREET, SAN RAFAEL, CA 94901

Roll Call: Chair Sears called the regular Board meeting to order at 7:00 p.m. An established quorum was met.

Present: Denise Athas, City of Novato
Bob Ravasio, (Alternate to Sloan Bailey), Town of Corte Madera
Tom Butt, Vice Chair, City of Richmond
Rich Kinney (Alternate to Genoveva Calloway), City of San Pablo
Barbara Coler, Town of Fairfax
Ford Greene, Town of San Anselmo
Greg Lyman, City of El Cerrito
Bob McCaskill, City of Belvedere
Keith Caldwell (Alternate to Brad Wagenknecht), County of Napa
Kate Sears, Chair, County of Marin

Absent: Andrew McCullough, City of San Rafael
Kevin Haroff, City of Larkspur
Gary Lion, City of Mill Valley
Emmett O'Donnell, Town of Tiburon
Carla Small, Town of Ross
Ray Withy, City of Sausalito
Alan Schwartzman, City of Benicia

Staff: Dawn Weisz, Executive Officer
Jamie Tuckey, Communications Director
Kirby Dusel, Technical Consultant
John Dalessi, Technical Consultant
Brian Goldstein, Technical Consultant
Jennifer Dowdell, Interim Deputy Director
Jose Perez, Administrative Assistant
Darlene Jackson, Clerk

1. Board Announcements (Discussion)

There were no Board member announcements.

2. Public Open Time (Discussion):

Member of the public Sam Sparrow asked what Marin Clean Energy will be doing for Earth Day next week. He reported that \$1 trillion of new money will be coming into the solar industry. He suggested the Board consider building a large array and have it open as an IPO for Marin Clean Energy customers and, thereafter, the open market.

Dale Miller, President, Golden Gate Electric Vehicle Association, spoke about impediments to replacing gas with electric cars which he thinks is the lack of access to electricity. He disagreed with MCE's filling of protests with the CPUC to not offer rebates and felt MCE's recommendations for pilot projects and metering of EV's is counter-productive. He urged the Board to work to support EV charging connections and not to delay this effort.

Janelle Freebill, EV driver, voiced opposition to MCE's filing to the CPUC to oppose PG&E's proposal to expand availability of charging stations and infrastructure. She said she does not need PG&E's rebate, asked MCE to re-think its opposition, and asked the Board to embrace EV's in a positive and forward-thinking way.

Chair Sears asked for staff response to public comments.

Jeremy Waen, MCE's Regulatory Team Analyst, said MCE's purpose is GHG reduction, the rapid deployment of EV's and rapid adoption of electricity as a fuel, and this is fundamental for a sustainable community. Also fundamental is MCE's value of customer choice, and he believes the application proposal would essentially allow PG&E to command, control and own the entirety of the EV structure build-out to the charging stations themselves, and it does not allow for customer choice as far as who their electricity is coming from or competitive markets for EV charging equipment. MCE has worked very closely with other parties and has a coalition of 9 parties meeting with Commissioners regarding consumer choice.

Regarding the low carbon fuel standard, Mr. Waen said MCE is not protesting the fact that PG&E is attempting to return a credit to EV owners, but the low carbon fuel standard is about fuel consumption and there is little or no connection at all between actual fuel consumption and the rebate values. There is no difference with someone using PG&E's power and someone using MCE's light green power or deep green power, and there has been a lack of detail and thought. MCE is not trying to stop the rebate program but protesting it so the Commission will give it closer review so they will tell PG&E to revise their proposal and make it more true to the intent of the program to actually buy into electricity usage and not have some arbitrary value. MCE firmly supports the use of EV's and for them to address climate change, the adoption of EV's and widespread use of electricity as a fuel is fundamental.

3. Report from Chief Executive Officer (Discussion)

Dawn Weisz, Chief Executive Officer, gave the following report:

- She welcomed the new Corte Madera Alternative Board member Bob Ravasio and thanked him for attending the meeting for Board member Bailey.
- MCE will be hosting a 5-year anniversary celebration from 10:00 a.m. to 1:00 p.m. on May 7th which will serve as a nice opportunity to welcome everybody to their new offices at 1125 Tamalpais Avenue. They plan to highlight some of the new local development projects that are getting built by MCE which include the Feed-in-Tariff projects, the MCE Solar One project, the very large 10.5 MW project, and will be conducting a field trip to the Cooley Quarry Landfill project where they are building solar for their local customers, which should be on line by July.
- MCE has received two awards since the last Board meeting; the Green Business of the Year Award from the San Rafael Chamber of Commerce. They were honored at a State of the City Dinner on March 19th. The second award given to MCE was the Acterra 2015 Business Environmental Award in the category of environmental innovation for their Community Choice Aggregation Program. MCE will be honored at Acterra's 25th Anniversary Business Environmental Awards Reception in Mountain View on April 28th.
- MCE has fully moved into their new location 1125 Tamalpais Avenue, formerly known as 700 Fifth Avenue. They were successful in changing the address so it matches the main entrance on Tamalpais Avenue. Committee and public meetings will be hosted here and staff hopes to host their next Board meeting here, depending on furniture delivery.
- Regarding PACE financing, many people may have been approached by one or several PACE financing providers over the last couple of months. Beckie Menten, from MCE's Team and Dana Armanino from the County of Marin have been working together to develop protocols to address the many inquiries they are receiving about the PACE program for financing improvements on their property. While they encourage these programs, they want to ensure there is a set of best practices and guidelines that providers adhere to. Dana Armanino has created a draft participation agreement which is included in the packet which they will be asking providers to sign before providing service in the community, and they do not see it as a barrier. Lastly, programs under consideration include Hero, Fig Tree Financing, Wide Green and Alliance IG. She asked Board members to let staff know if they would like more information.

Board member Coler commented that the Town of Fairfax adopted the Cal-First and designated MCE to be their liaison. Recently she was approached by Hero. At that time they used a model agreement received from Ms. Menten and she thought this was the main program now. Ms. Armanino explained that Cal-First is one of several programs that operate PACE programs. The County and most cities have adopted Cal-First first, but because everyone is getting more comfortable with the PACE program they feel it is time to open up that market and allow homeowners to have a choice in which provider they work with. They want to make sure there are those best management practices, and Cal-First is also going to sign the participation agreement. Once these new participants also sign that agreement, they will bring a Board packet to the Board of Supervisors which includes resolutions for each one. She said cities must authorize each program individually to allow them to operate. They plan to get everything set up in a sample packet which they eventually will take to the Board and share with all cities. She

clarified with Board member Coler that the Town of Fairfax will have to authorize four more resolutions in order to allow the next four to operate and each will have their own resolution.

Board member Coler asked about Fannie Mae and Freddie Mac, and Ms. Armanino said there has been no movement on their part but MCE feels that with the creation of the Loan Loss Reserve program by the Governor and the State, each of the programs either have to agree to participate in that program or have a comparable loan loss reserve program that would make any lender whole for the PACE portion of the assessments given the fact that the risk from FHFA has been lowered substantially.

Board member Coler said nine months ago they adopted the Cal-First program with no interested parties to date. She asked Ms. Armanino to provide information on how the Governor's program is really helping, given there is no participation. She said they sent a letter to the administration regarding Fannie Mae and Freddie Mac and their reluctance to change. Ms. Armanino said she does not believe the FHFA issue has cooled the market for California. She said 35 assessments have been completed, but they do not have the breakdown on jurisdictions and expect to get these by the end of the month. She will be getting back to each of the cities with updated information on this. She noted that Cal-First's interest rates are a little high as compared to a home equity loan so it is not as attractive, but they want to open the market to other case providers which might stimulate competition and homeowners who may find that Hero or another provider fits their purposes better than Cal-First.

Chair Sears asked when information about the other PACE providers will be brought to the Board of Supervisors. Ms. Armanino said the participation agreement is now being reviewed by each of the program providers and afterwards they will take it to County Counsel and MCE's counsel for final review, and hope to bring the packet to the Board of Supervisors in June.

- Ms. Weisz continued her report and stated there are 1% energy efficiency loans available for organizations, including cities, counties, special districts, hospitals, California State agencies, and there are zero percent loans available for school districts, charter schools, offices of education and college districts. She asked Board members to apprise Ms. Menten of any projects in their respective jurisdictions which might be a good fit. The zero percent interest loans are through Proposition 39 and in order to be eligible, the entity must be designated as a Proposition 39 designee. Also, another great resource for Marin public entities is Dana Armanino and her program.

Chair Sears asked if this loan information is being sent out to city and town managers, and Ms. Weisz said she believes they are but she will confirm this and said it is included in the Board packet with links to sign up for the loans.

- Jamie Tuckey, Communications Director, announced that MCE is celebrating Earth Day this year by attending several different events. This weekend there is an event in El Cerrito on April 18th. MCE will be at Sir Francis Drake High School's Earth Day Event on April 22nd and the following weekend, they will be at Napa County's Earth Day Festival

on April 25th. They are also inviting community members to take action this year on Earth Day by choosing Deep Green and will be running half page advertisements to celebrate and offer action items for people who want to participate. They will run ads in the Pacific Sun, Contra Costa Times, the Benicia Herald and the Napa Valley Register. They will also send out an e-Newsletter and social media promotions.

4. Consent Calendar (Discussion/Action):

C.1 3.5.15 Meeting Minutes

Board member Greene referred to Item C.1; the minutes, and requested that Board members be identified by name in future meeting minutes.

C.2 Approved Contracts Update

C.3 MCE Staff Position Adjustment

Board member Coler referred to Item C.3 and asked if the Power Supply Contracts Manager Tier II is right below the Director of Power Resources, commenting that the salary level is a large jump. Ms. Weisz said yes. Board member Coler also asked if the market study compares to PG&E-equivalent positions. Ms. Weisz said no; the most useful comparisons are public agencies because MCE is a public agency. If MCE looked at private agencies comparisons would come in higher. She noted; however, they also looked at Sonoma Clean Power that tends to have very competitive staff compensation ranges as well as SMUD, Alameda Power Authority and water districts.

C.4 Second Addendum to First Agreement with North Bay Office Furniture, LLC

ACTION: It was M/S/C (Greene/McCaskill) to approve the Consent Calendar consisting of Items C.1 through C.4. Motion carried by unanimous roll call vote: 10-0-7 (Absent: McCullough, Haroff, Lion, O'Donnell, Small, Withy, Schwartzman).

5. Monthly Budget Report (Discussion)

John Dalessi, Technical Consultant, stated they have actual financial results through February which is 11 months into the fiscal year. Revenue and expenses both come in a little bit under budget and net income is right at budget. In looking at retail sales, they expect that by the end of the fiscal year they will be right at budget, and things are looking good as projected.

Chair Sears asked and confirmed there was no public comment.

6. Repayment of Loans with River City Bank and Related Budget Adjustment for FY 15/16 (Discussion/Action)

Jennifer Dowdell, Interim Deputy Director, stated the Board is proposing to redeem about \$1.2 million of two term loans from River City Bank. As background, these began as working capital facilities during the launch. They were short-term facilities and when they became due, were rolled over. In one case, a 5-year term loan and in another case, just short of 5 years. At the time MCE did not have the financial flexibility to pay those off, but the rates on them are quite high at 5.25% and 4.5% and both carry a pre-payment penalty.

Now that there are sufficient amounts in their operating funds and savings, staff proposes these be paid off and collect basically an interest savings of about \$84,000. This includes prepayment penalty of \$26,000, so the total savings is about \$110,000. Currently, funds on hand to pay those off are not earning interest and staff would propose paying those off tomorrow to avoid another payment and capture the savings, and is asking that the Board approve that action.

Board member Caldwell asked if interest rates were so high because the organization was just starting up or because MCE did not have a lot of credit history, noting that he was not on the Board at that time, but concurs they are high. Ms. Weisz said when these loans were negotiated they had a different economic environment, but in addition MCE was very young and had no assets and many liabilities which contributed to the offering at that time.

Board member Caldwell asked if MCE's funds run through the County Treasurer to utilize their investment portfolio at all. Ms. Weisz said no; there is completely separate accounting as MCE is not affiliated at all with the County Treasurer or any of their member jurisdictions. As a separate agency, they have separate debts and liabilities.

Board member Caldwell commented that in Napa County they allow other agencies to invest through the County's investments, and even with earning zero percent on their checking account, they roll funds every night to collect interest on a daily basis. He suggested MCE work through the County Treasurer and take advantage of some of these. Ms. Weisz said the Executive Committee will hold discussion in early May about reserves and needs and what MCE might be able to do to optimize any cash reserves on hand and she thanked Board member Caldwell for his suggestion.

Chair Sears concurred and said since no Board members were on the Board at MCE's creation one of the issues when formed was being able to insulate participants in the JPA from liability. She assumed this was an important driver in keeping these kinds of fund balances separate from any other entity. Now that they are in a different financial situation, she thinks the timing is good to revisit alternatives.

ACTION: It was M/S/C (Lyman/Caldwell) to authorize full repayment of both River City Bank Term loans and approve proposed budget adjustment for the fiscal year ending March 31, 2016. Motion carried by unanimous roll call vote: 10-0-7 (Absent: McCullough, Haroff, Lion, O'Donnell, Small, Withy, Schwartzman).

7. Feed in-Tariff Program Review (Discussion/Action)

Kirby Dusel, Technical Consultant, gave a PowerPoint presentation to the Board on the annual review of the Feed-In Tariff (FIT) Program. He said from time to time MCE will review this program which is intended to promote the development of smaller scale, locally situated renewable energy projects of 1 MW or smaller. They all use fuel sources that are eligible under the California Renewables Portfolio Standard Programs, such as light, solar and wind.

He said the idea is to offer a standard contract with non-negotiated prices that are intended to reflect the above-market cost of developing programs within MCE's service territory. They go through this exercise once a year and look at how the program is structured, price, what the participatory cap might be, as well as the power purchase agreement used to contract for these various facilities. They make sure they are in line with the market of other competitive options, namely PG&E's feed-in tariff program which is called the Renewable Market Adjusting Tariff or "REMAT". Other considerations are items like legislation, regulations, or other concerns that might influence changes the Board might consider making to the program. Once these items of interest are identified at the staff level, they take them to the Technical Committee where they are discussed and ask the committee to make a recommendation with regards to changes they are considering making and then bring those changes to the Board.

Currently, MCE has one project which is actually delivering electric energy to customers under the Feed-in Tariff program which is the 1 MW solar project, located at the San Rafael Airport. In addition, there is almost 5.7 MW in their development queue as part of a total overall 10 MW participatory cap. They are making nice progress and at the 5-year anniversary event the Board will see where one of these projects is developed. He thinks it is an apt time to consider changes to the program, particularly when undergoing expansion.

Mr. Dusel noted that in 2015, MCE's retail sales will be growing by about 50% which is considerable growth. In consideration of that growth and with new communities beginning to operate, staff felt it was appropriate to consider looking at this program to create opportunities within those new communities. The three areas of focal point are the overall participatory cap, pricing and how it aligns with current market trends, and pricing options that are available under PG&E's Feed-in Tariff program. Also, they included a project buy-out option which they typically included in their more recent power purchase agreements, particularly with larger scale PV solar projects.

They also looked at a couple of items on a preliminary basis and deferred further evaluation of these items until another annual review. Those items include evaluation of energy storage projects and how those might fit in to the Feed-in Tariff at a later date and also whether or not they want to incorporate certain pricing incentives for certain types of development sites on disturbed lands, use of specific labor sectors, ease of interconnection, etc.

With regard to the participatory cap, it is set at 10 MW. MCE has about 5.7 MW that has been committed either through contract or through inclusion with their development queue. In light of their expansion in 2015 staff thought it would be a good idea to consider looking at growing this cap to allow for participation within these new member communities. This growth coupled with trends makes it a prime reason to consider increasing the cap at this point in time. In staging that increase in the participatory cap in line with their expected growth they would be looking at the cap increasing up to 15 MW which would result in an overall potential financial impact just under \$1 million a year. They look at these additional MW's included under the program and the cost they would be paying for that energy, which is about \$900,000 of additional cost per year. However, this would be phased in over a multiple year development period. He said increasing this cap would do really well to ensure the on-going access to the Feed-in Tariff program development opportunities. And, based on their assessment of administrative impacts, it does not seem there would be a major stress on staff as a result of this change.

In terms of pricing, Mr. Dusel said they have evolved over time. When they originally launched the program it was small and in line with their customer base. They had a 2 MW participatory cap at that time and the pricing they offered was tied to the prices they were paying through their Shell Energy North America Power Purchase Agreement. Since then, the market has evolved substantially. This consideration tied to some recent trends and pricing for PG&E's Feed-in Tariff program led them to re-evaluate how they are looking at their pricing scheme. He referred to a chart showing pricing conditions which depicts the original intent to capture expected efficiencies that would be gained in the renewable energy space over time. Because they have realized those, it is appropriate to have this trajectory. Currently they are in Condition 3 and if they were to consider increasing the cap from 10 MW to 15 MW, they would need to accommodate the additional capacity. They also want to make sure they offer competitive advantages for customers but not so far out of market that they are giving money away.

Mr. Dusel then presented the proposed pricing changes that are spliced in with the existing Feed-in Tariff pricing schedule which are existing prices. He noted that the red text represents changes they have incorporated to better align their program with current market conditions and also provide some incremental incentives that may be available to project developers.

Chair Sears asked Mr. Dusel to discuss changes proposed for Condition 5 and she asked if there is a particular reason why changing the existing condition was a good idea. Mr. Dusel explained that the \$89.23 base price for PG&E's Feed-in Tariff program is a key number for MCE when looking at its pricing scheme. It is noteworthy that they have progressive pricing steps that they work through as participation in their Feed-in Tariff program increases. To date, the bulk of participation in their program has focused on PV solar projects. Much like MCE's program, PG&E also has a three-prong pricing approach where they have a pricing scheme related to peak delivery, a base pricing scheme for bio-gas, landfill gas projects, and an off-peak or as available pricing scheme and this will focus on wind development opportunities. He stated the base price PG&E originally offered at \$89.23 a MW hour has already fallen off to \$57.23 based

on the level of participation they have seen. This price is delivery adjusted which means the base price equates for a PV solar project to about \$75/MW hour when considering there are pricing adjustments/increases that are awarded to these projects when they deliver during peak times of day. So the price MCE is competing for PV solar is roughly \$75, but for the other two buckets of prices and projects, the base and intermittent price, PG&E has not received strong participation so the price is still \$89.23.

MCE wants to make sure it has the appropriate incentives in place to make this more interesting to prospective developers in order to make sure they offer a competitive alternative. He noted that for a base load project which is expected to deliver power on a round-the-clock basis, even though the time of delivery adjustments will play in on average, they are intended to net out to the base price. So during peak times the multipliers are higher. During the night they are lower, but if delivering the same quantities at all hours of the day, it nets out to the base price.

For intermittent resources that typically deliver a disproportionate share of their power in the nighttime or off-peak hours, one would expect that price to be adjusted downward. Therefore, in both instances they still have a very competitive offering with this pricing schedule adjustment.

Mr. Dusel said in terms of the buyout option, this the third recommendation for the Board to consider. He said MCE, particularly with its PV solar power purchase agreements, is now regularly including buyout options and while it is not mandatory, MCE may buy the project from the developer for a certain price. What staff is recommending now is to include similar language as what already exists in their other PPA's with their Feed-in Tariff PPA. It creates no obligation but is just an option.

To summarize, Mr. Dusel said the recommendations are to increase the participatory cap of their Feed-in Tariff program from 10 MW to 15 MW, adjust the price schedule to accommodate the expanded participatory cap, as well as some competitive adjustments to make sure they are the preferred option for local renewable project developers, and also the inclusion of standardized language within their Feed-in Tariff Power Purchase Agreement to create an option for project buyout at some point in the future.

Board member Coler said she is assuming they would also expand this to every new jurisdiction within MCE's territory. Mr. Dusel said yes; the way the tariff is written; the language is broad and intended to be generic in that the service territory is defined as MCE's entire service territory. As MCE's territory grows in time any communities that join will, by default, be included as eligible.

Board member Coler referred to the option for the project buyout and she said if this were to be included as a standard option, she asked and confirmed there were elements to consider when buying it out in the future. Mr. Dusel added that it creates the structure if both parties agree to move forward with that buyout option and it creates no obligation whatsoever.

Board member Coler said before she was on this Board, Larry Bragman brought forward the idea of prevailing wage for hiring MCE employees. She wondered if, in order to buy a project, ultimately one of the terms would be that there would be certain considerations for those developers that when they build the project, that they pay prevailing wage to mirror the same social principles MCE agrees on, and she would propose this sort of language.

Chair Sears noted that this came to the Technical Committee first and had a similar presentation with good discussion and the Committee supports the proposal. Board member Coler asked if the Board would consider paying prevailing wage when there is consideration of a buyout.

Ms. Weisz stated MCE does have a Workforce policy and former Director Bragman played a role bringing it forward. The Technical Committee discussed incorporating any labor-related provisions into the Feed-in Tariff but they did not reach any firm determination about what they would want to include and it was deferred to a later date. However, this can be brought back to the Technical Committee to determine if Board members are interested in incorporating that, but they wanted to bring these recommendations for technical changes first.

Mr. Dusel stated one of the concepts discussed briefly with the Technical Committee was the idea of offering price differentials if there were certain labor requirements. However, it was not definitive enough at this time to move forward with a specific proposal so the idea is between now and the next review to continue gathering that information and come back with a more definitive proposal so they could incorporate that in the future.

Board member Coler said in the event that MCE wanted to exercise the buyout option where someone builds on a Brownfield site or something similar, she asked if there is some sort of liability or indemnifications that would go with that so that MCE does not eventually get stuck with a property that might have environmental liability that a state agency then requires environmental cleanup. She would definitely suggest the Technical Committee consider adding some sort of indemnification as MCE would want to be sure that someday in the future it is not required to join in on the cleanup. Mr. Dusel said all of their PPA's have indemnification language and he does not recall how it extends to the buyout provision and they can certainly look into this.

Chair Sears said while the Committee did not get into specifics with the buyout provision, at a time when MCE may want to purchase property it would want to look at all of these issues to ensure it is not taking on inappropriate liability. Therefore, she does not think MCE would change its practices because it is a Feed-in Tariff project. Mr. Dusel said it is reasonable to assume there will only be select cases where they would want to critically evaluate these ownership opportunities and in those instances, they would go through due diligence as done on similar projects.

Board member Lyman asked if Board member Coler's suggestion is to include prevailing wage requirements along with the buyout language included in the agreement. Board member Coler said the Technical Committee does not want to include it at this time, but it is said one of the things that can be considered in the future.

Mr. Dusel noted there was research done at the staff level to identify what the cost difference would be of developing a project with the use of prescriptive union labor requirements, and it was not definitive at this time. Therefore, they want to take some time between now and their next review to compile information on this issue.

Board member Coler asked if there is the possibility of having a standard provision to state these are considerations "including but not limited to" so five years into the future, if MCE decided it wanted to buy it they would have the option of introducing other considerations. Ms. Weisz noted that the discussions they had about prevailing wage were more tied to the rate that they would pay for the power. They were not coupling this with the buyout options, and she did not think there would be an advantage of layering that in when they are having buyout discussions. What they did talk about was maybe they should allow some type of incentive in their PPA rate that encourages prevailing wage, so this is what they need more information on.

Board member O'Donnell asked what percentage of the 15 MW would represent MCE's purchase power. Mr. Dusel said it is quite small and he referred to a slide in the PowerPoint under Current Fit Status, which indicates that the San Rafael Airport currently delivers about .1%, so they are looking at 1.5% of their total supply, and this is substantially because of the resource type they are likely to see participating in the Feed-in Tariff program because PV solar projects only produce electric energy during daylight hours, or a 25% capacity factor. If it were a bio-mass facility it would be a lot more.

Board member O'Donnell asked what percentage of their expenditures the 1.5% would represent. Mr. Dusel said he has not done the math on this, but it would probably be something like 2.5%. It would be disproportionately higher because of the incentives.

Board member Greene said as to the buyout option, the purpose of this is so there is a choice, and it does not make sense to frontload conditions into the exercise of the choice. All of the policies MCE has as an organization will be brought to bear on that possibility when considering it.

Public Comments:

Stan Sparrow distributed a copy of a Bloomberg report to Mr. Dusel and said the report mentions that the coal, nuclear and utility industries are buying up all of the solar arrays. He thinks it is therefore important that MCE has first option to buy.

ACTION: It was M/S/C (Coler/Athas) to approve the Feed in-Tariff Program. Motion carried by unanimous roll call vote: 10-0-7 (Absent: McCullough, Haroff, Lion, O'Donnell, Small, Withy, Schwartzman).

8. Greenhouse Gas Emissions Analysis for Calendar Year 2013 (Discussion/Action)

Mr. Dusel referred to the staff report and said for newer Board members, he gave a background, stating one of MCE's fundamental goals and objectives is focused on reducing GHG emissions, particularly those related to the power sector. One key metric that exists to measure progress and compare one entity to another is development of a portfolio emissions factor which represents the emissions' intensity associated with the various power sources that are included with any utility resource mix. The staff report goes through how MCE conducts that process each year, what information is taken into consideration and also information regarding discussions occurring in the industry. He said it is very important to MCE, PG&E and various other stakeholders to ensure there is a level playing field in how this information is calculated and presented.

Mr. Dusel said due to the availability of information within the electric utility industry occurring on a lag basis, they are just now providing the Board with an overview of the calendar year 2013 emissions factor and how it compares to the similar factor which has been calculated by PG&E. The process PG&E goes through results in their publication of that statistic about 12-15 months after the operating year for which that statistic relates.

Any resource that emits pollutants during the generation of electric power tends to increase emissions factors, and any resource that does not emit pollutants such as renewable energy sources, hydro-electric power and nuclear generation tends to reduce emissions factors. Unfortunately there is no standard that has been offered by any regulatory authority to which MCE or any other entity must adhere to. What they have is a publicly available emissions reporting regime administered by the California Air Resources Board (CARB), and MCE conforms with its reporting obligations under that program as does PG&E and other entities, but that program does not hand down how these emissions statistics should be calculated and communicated to customers of utilities. Therefore, when creating this statistic, MCE endeavors to generate an alignment between the information customers see and it is designed to take the power content label and translate it into how emissions are derived through delivery of those different power sources.

Mr. Dusel referred to the table on page 4 of the staff report and gave a brief overview of 2013 renewable energy sources, purchases and percentages of sources, and they consider the emissions' intensity associated with each fuel source category. This information is published by CARB in their mandatory reporting requirements for GHG emissions and the second table on page 4 identifies how they calculate MCE's GHG emissions factor by attributing the appropriate emissions intensity for each fuel category and build it up into a total emissions quantity. He commented that MCE's 2013 aggregate portfolio emissions factor was approximately 17% lower than PG&E's reported emissions factor.

Mr. Dusel noted the two additional attachments to the staff report are a more detailed discussion of the methodology employed by MCE in calculating its GHG emissions. He said there has been a lot of interest surrounding discussion of GHG emissions factors. The PUC has been trying to schedule a workshop on this subject and MCE will be participating in it and he believes it will be worthwhile for MCE to work towards the development of a single methodology for GHG emission factor calculations to avoid confusion around the subject.

The recommendation before the Board is to approve the release and posting of this information for use by MCE customers and members of the public.

Board member Lyman asked what percentage of customers are deep green, and Mr. Dusel replied it is now just over 3%, but in 2013 it was approximately 2%.

Board member Athas recognized the significant growth of MCE and she asked when 2014 power supply content statistics will be available. Mr. Dusel stated they are almost done with collecting all of the information needed for 2014 and should have everything within the upcoming 3 to 4 weeks.

Board member Coler said now that they are moving into natural gas, she asked and confirmed that natural gas will be included in the table and have its own line item representing the volume, proportion of total supply and emission factor.

Board member Coler asked if there is an estimate of what percentage of the power supply for light green and deep clean is coming from unbundled renewable energy because this has been continually asked. Mr. Dusel said these statistics are being calculated now and staff will have this information available soon. Staff is keenly aware of the sensitivity surrounding the issue and fundamentally these are important products available, but there are some concerns about them, and MCE seeks to wean the supply portfolio away from unbundled renewable energy certificates to the greatest extent practical and this information will be available soon.

Chair Sears applauded Mr. Dusel for his statistical work, noting this is an acutely important piece of information, and recognized also the importance of its accuracy.

ACTION: It was M/S/C (Caldwell/Lyman) to approve the Greenhouse Gas Emissions Analysis for Calendar Year 2013. Motion carried by unanimous roll call vote: 10-0-7 (Absent: McCullough, Haroff, Lion, O'Donnell, Small, Withy, Schwartzman).

9. Second Amendment to Lease Agreement with 700 Fifth Avenue, LLC (Discussion/Action)

Ms. Weisz stated the Board approved a 10-year lease agreement on September 4, 2014 with 700 Fifth Avenue, LLC. The size of the building is a 10,000 square foot commercial space in downtown San Rafael. There were several improvements that were included in the original lease agreement, some of which have been completed and some which are still underway,

which she briefly described. At this time they have ADA compliance with door widths and restrooms, and completion of the elevator will be the final step in full compliance. She said most improvements in the interior of the building have been substantially completed.

The Lessor of the new building was able to accommodate some of their interim work needs during the transition and due to that accommodate, staff believes it is reasonable to waive the proposed liquidated damages for late occupancy because they were able to move in at the time they needed to and not pay for any damages for being late. However, she noted that the liquidated damages will not be waived at this time for any delay completing the elevator or any non-occupancy related improvements and this has been clarified in the lease agreement.

Ms. Weisz said because the landlord was not as prompt in providing feedback on the lease agreement, there were some last minute changes proposed after the item was released for the Board packet, which she highlighted as follows:

- Item 3 regarding additional language relating to elevator damages; and
- Additional, non-substantive language added in paragraph 4; Consent of the Lessee to have pet dogs on the premises.

Board Lyman asked if there is consideration or recognition that work is sometimes out of the contractor's control because it takes time for state inspectors to arrive. Ms. Weisz said yes, it is taken into consideration and staff will be tracking this closely during the elevator completion. At this point, they have been involved in weekly construction meetings and potential delays are tied to a lack of early bids being put out and a lack of in-depth analysis of the bids that came back in. The lessor is currently looking to select a different model for an elevator, which will create additional delays. Permit issues have not yet come into play, but delays at this time are due to elevator selection. The lease states that the elevator must be completed within 90 days of the occupancy date. The key purpose of the second amendment is to codify the occupancy date as April 1st which gives the Lessor until July 1st to have the elevator operational. At that time, liquidated damages would be \$4,000 per month for any delay after that month, pro-rated per day.

Chair Sears asked and confirmed there was no public comment.

ACTION: It was M/S/C (Sears/Greene) to authorize approval of the Second Amendment to Lease Agreement with 700 Fifth Avenue, LLC. Motion carried by unanimous roll call vote: 10-0-7 (Absent: McCullough, Haroff, Lion, O'Donnell, Small, Withy, Schwartzman).

10. Communications Update (Discussion)

Jamie Tuckey, Communications Director, stated a couple of months ago she presented to the Board Community Outreach plans for unincorporated Napa County, Benicia, El Cerrito, and San Pablo. With the addition of these communities, they are expanding their customer base by

roughly 30%, and over the last few months the Public Affairs Team has been busy implementing these plans.

She reported that today the Napa enrollment is complete, with all Napa County customers having enrolled in February. The enrollments for Benicia, San Pablo and El Cerrito are scheduled to occur next month in May. Thus far, staff has sent out three notices to the account holders in each of those communities, sent out 56 unique enrollment notices that have been mailed out, and have contacted 475 different community organizations and businesses throughout those service areas.

Ms. Tuckey said before the Board is a lengthy list of community events for 2015, and to date, the team has already participated in 81 public events and meetings since January. They have 29 scheduled for mid-June to total 110 events.

She provided sample advertisements running in Napa County and said there are 15,700 eligible accounts. They participated in 9 events this year starting in November and participated in 10 other events in 2014. They also formed good relationships with Sustainable Napa County, Napa Valley Vintners, and Visit Napa Valley. Those three organization distributed newsletters to constituents about MCE. To date, there have been 172 deep green enrollments, a 90% participation rate in light green and a 9% opt out rate. She said across all communities that the top two reasons for opting out are concerns or disliking the automatic enrollment and concerns about rates. The other three reasons are concerns with government-run agency, billing concerns and reliability concerns.

She provided sample advertisements in Benicia, a full page advertisement in the Benicia Herald, and because of misinformation and questions circulated in that community about renewable energy supply compared to PG&E, how MCE operates and how it is governed, the team changed their tactic to be more information-based in their advertisements. In Benicia there are just under 13,000 eligible accounts and the team has 33 events planned and community newsletters have been circulated by 6 organizations. They also included an insert about MCE in the water bill, as well. Benicia customers will not be enrolled until May. They have had 115 deep green enrollments, 85% of customers who are planning on being in light green, and there is a 14% opt out rate.

Regarding El Cerrito, Ms. Tuckey presented sample advertisements and said they have just under 11,500 eligible accounts, 18 events scheduled and community newsletters have been sent. Currently, El Cerrito is taking the lead on deep green enrollments with 340 enrollments already, which represents 3% of the customer base which is great. The opt-out rate is low at 7%.

She presented advertisements for the City of San Pablo, said there are just over 10,000 eligible accounts and 21 events are scheduled, 3 community newsletters have been sent out, and to date there have been 172 deep green enrollments and the opt out rate is at 9%. Reasons for opting out mirror El Cerrito's.

Ms. Tuckey discussed the Deep Green program and said they have community campaigns implemented by grass roots organizations. She thanked Main Street Moms who implemented an extensive campaign, wrote two articles in the West Marin Citizen and Point Reyes Light, paid for advertisements about Deep Green, created flyers, and also did a radio interview in West Marin. As a result, MCE experienced a 14% increase in Deep Green enrollments in West Marin.

She thanked Fairfax Action Committee, stating last week they initiated a Deep Green Campaign on April 4th and they kicked off their campaign with a table at Good Earth. Board member Coler thanked staff and noted they will also have a table at the Farmer's Market.

Ms. Tuckey thanked the San Anselmo Quality of Life Commission who is also doing a Deep Green campaign. Thus far, there has been an increase of just over 5% in San Anselmo in Deep Green enrollment.

Ms. Tuckey reported that MCE's two websites; the mcecleanenergy.org and the marincleanenergy.org, have been officially merged. Staff will send an email with links where Board members can find the meeting agendas, calendar schedule and key documents.

Lastly, Ms. Tuckey presented a sample of the advertisement for Earth Day to be published in local newspapers on April 22nd.

Board members thanked Ms. Tuckey and the Public Affairs Team for their amazing work.

11. Board Member & Staff Matters (Discussion)

Chair Sears, Board members and staff welcomed Jose Perez, Administrative Assistant for the Internal Operations team, who joined MCE's team on April 13th.

12. Adjournment:

The Board of Directors adjourned the meeting at 9:01 p.m. to the next regular Board meeting on May 21, 2015.

Kate Sears, Chair

Attest:

Dawn Weisz, Secretary



May 21, 2015

TO: Marin Clean Energy Board

FROM: Sarah Estes-Smith, Internal Operations Coordinator

RE: Report on Approved Contracts (Agenda Item #4 – C.2)

Dear Board Members:

SUMMARY:

In March 2013 your Board adopted Resolution 2013-04 which authorized the Chief Executive Officer to enter into and execute agreements for an amount not to exceed \$25,000 within a fiscal year consistent with the Board approved budget, the Joint Powers Agreement, and the Operating Rules and Regulations.

In November 2012 your Board approved the MCE Integrated Resource Plan authorizing the Chief Executive Officer to enter into and execute short term power purchase agreements for energy, capacity and renewable energy for less than or equal to 12 months, as well as medium-term contracts for energy, capacity and renewable energy for terms of greater than 12 months and less than or equal to 5 years in conjunction with the MCE Board Chair. Short and medium term power purchase agreements must be pursuant to a MCE Board approved Integrated Resource Plan. A committee of the MCE Board is consulted prior to execution of any medium-term contract by the Chief Executive Officer and MCE Board Chair.

The following chart summarizes agreements of this nature which have been entered into during the previous month:

| Month | Purpose | Contractor | Maximum Annual Contract Amount | Term of Contract |
|-------|--|-------------------------------|---|------------------|
| April | Independent Registered Municipal Advisor (IRMA) and credit rating establishment services | PFM Group | \$15,000 | 11 months |
| April | Addendum to decrease Core Services billing rate and increase approximate annual customer electric load | Pacific Energy Advisors | Core services: \$0.35 per megawatt hour of MCE electricity usage / Supplemental services: \$50,000 | 5 years |
| April | Photography services for advertising and marketing purposes | Kathleen Harrison Photography | \$5,500 | 11 months |
| April | 30,000 MWh of bundled energy May-December 2015 | Calpine Energy Services | \$360,000 | 8 months |
| April | 34 MW System Resource Adequacy | Cal Peak, LLC | \$25,500 | 1 month |

| | | | | |
|-------|--|---------------------------------------|------------|-----------|
| April | Worker's Compensation Insurance May 2015-May 2016 | Preferred Employers Insurance Company | \$22,358 | 12 months |
| April | Liability Insurance: Crime Insurance Program July 2015-July 2016 | Alliant Insurance Services, Inc. | \$950 | 12 months |
| April | Liability Insurance: Difference in Conditions April 2015-April 2016 | Alliant Insurance Services, Inc. | \$2,367.20 | 12 months |

Recommendation: Information only. No action required.



May 21, 2015

TO: Marin Clean Board of Directors

FROM: Katie Gaier, Human Resources Coordinator

RE: Staff Positions- Salary Adjustments (Agenda Item #04 – C.3)

ATTACHMENT: Draft Community Development Manager Position Description

Dear Board Members:

SUMMARY:

Marin Clean Energy is recruiting for the position of Manager of Business and Community Development for the Public Affairs Team. During the recruitment process, it has been determined that the position of Community Development Manager should be reviewed and the job description revised to include more comprehensive duties, including supervisory responsibilities. In addition, because the two positions may be working at parallel levels, the Community Development Manager salary range needs to be adjusted accordingly.

If the recommendation to increase the salary range of the Community Development Manager is approved, there will be compaction between that position and the Manager of Account Services, which is a more senior position within the Public Affairs Team. As a result, the Manager of Account Services salary range should also be adjusted accordingly.

An internal comparison in level of responsibility and skill level can be made between the Manager of Account Services and the Senior Regulatory Analyst as both are advanced journey level positions with lead work and supervisory duties.

At its May 6, 2015 meeting, the Executive Committee reviewed the staff recommendations for the salary changes for these MCE positions and recommended that your Board approve the salary adjustments accordingly.

Recommendation

Approve an increase in the salary range for the Community Development Manager from \$68,290 – \$89,302 to \$77,833 - \$96,657 and an increase in the salary range for Manager of Account Services from \$77,833 - \$96,657 to \$90,032 - \$100,744 with exact compensation for the incumbents to be determined by the Chief Executive Officer within the Board approved budget.



Job Description

Community Development Manager

Summary

The Community Development Manager works under direction of the Director of Public Affairs and has a wide range of responsibilities for advancing Marin Clean Energy's programs and conducting strategic community outreach and advocacy within the Public Affairs division.

Class Characteristics

The Community Development Manager works independently to interface with a wide range of community, stakeholder, and customer groups, conducting strategic outreach and community organizing efforts to advance MCE programs. The Community Development Manager is responsible for cultivating, developing, and maintaining relationships with key customer and stakeholder groups, and for communicating MCE's central messages consistently to target audiences via professional networking, printed literature, web-based material, electronic correspondence, public presentations, and verbal interactions. The incumbent also participates in community events and performs related work and tasks as needed including local government outreach and responds to inquiries from customers via email, telephone, and in-person dialogue. The Community Development Manager is also responsible for sales related activities on MCE's behalf through effective communications and physical visits to customer sites.

Supervisory Responsibilities

This position may require some supervisory responsibilities.

Essential Duties and Responsibilities (Illustrative Only)

- Plan, organize and implement community outreach efforts to enhance marketing of MCE services to the general public, customers, and public agencies.
- Initiate and develop collaborative relationships with community members, local business owners, municipal staff, public officials, and other key stakeholders.
- Expand Deep Green, Local Sol and Light Green customer participation by emailing, in-site visits, and cold-calling if necessary.
- Emphasize product and service features and benefits, quote costs, and discuss customer terms.
- Build and foster a network of referrals to create new opportunities for customer growth.
- Deliver presentations to various community groups and local representatives.

- Participate in public events to distribute information about MCE and interact with members of the public.
- Cultivate partnerships and mobilize public support for Deep Green and Local Sol co-branding and other promotional opportunities.
- Act as a liaison to local groups, civic institutions, and community-based organizations.
- Respond to customer inquiries.

Break-down of Time spent on various work areas

| | |
|-----------------------------------|-----|
| Community outreach and organizing | 70% |
| Responding to customer inquiries | 30% |

Experience/Education

Education and experience equivalent to a Bachelor's degree in communications, public administration, environmental planning or a related field and four years of experience in community outreach, or equivalent experience. Experience working in a public utility and/or a Community Choice Aggregate program is desirable.

Knowledge of

- Marin Clean Energy electric service options and customer programs
- The mission and goals of Marin Clean Energy
- Environmental policy, public administration, and energy regulation
- Microsoft Office Suite including Excel, Word, PowerPoint and Adobe Acrobat
- Diverse communities and cultures.

Ability to

- Utilize strong interpersonal and phone etiquette skills, verbal communications, grammatical and professional business skill sets to promote and explain MCE programs
- Establish and maintain effective working relationships with persons encountered in the performance of duties
- Handle multiple projects in an efficient and time-sensitive manner
- Work independently to resolve issues quickly and effectively
- Manage multiple priorities and quickly adapt to changing priorities in a fast paced, dynamic environment
- Take responsibility for work product
- Coordinate work with community groups
- Work accurately and swiftly under pressure
- Demonstrate patience, tact, courtesy, and flexibility
- Read, write and speak Spanish is desirable
- Sell MCE products and programs

Language and Reasoning Skills

- Exercise sound judgment, creative problem solving, and commercial awareness.
- Develop high-quality writing, research and communication work products.
- Deliver clear oral and written communication.
- Interact professionally and effectively with customers, commercial partners, MCE staff team and Board of Directors.
- Apply strong analytical and problem-solving skills.
- Manage projects and time efficiently.

Mathematical Skills

Ability to add, subtract, multiply, and divide in all units of measure, using whole numbers, common fractions, and decimals. Ability to compute rate, ratio, and percent and to draw and interpret bar graphs.

Physical Demands

The physical demands described here are representative of those that must be met by an employee to successfully perform the essential functions of this job. While performing the duties of this job, the employee is frequently required to use hands to finger, handle, or feel and reach with hands and arms. The employee is occasionally required to stand.

The employee must occasionally lift and/or move up to 20 pounds.

Work Environment

The work environment characteristics described here are representative of those an employee encounters while performing the essential functions of this job. The noise level in the office work environment is usually moderate. The incumbent also works in the field at community meetings and other functions.

ADA Compliance

MCE will make reasonable accommodation of the known physical or mental limitations of a qualified applicant with a disability upon request.



May 21, 2015

TO: Marin Clean Energy Board of Directors

FROM: Sarah Estes-Smith, Internal Operations Coordinator

RE: First Addendum to First Agreement with Low Voltage Security, Inc.
(Agenda Item #04 – C.4)

ATTACHMENTS:

- A. First Agreement with Low Voltage Security, Inc.
- B. First Addendum to First Agreement with Low Voltage Security, Inc.

Dear Board Members:

SUMMARY:

On March 12, 2015, MCE entered into the First Agreement with Low Voltage Security, Inc. ("Agreement") to install security devices at the new MCE office. The Agreement stated that the maximum cost to MCE would be \$25,000.

MCE staff requests approval of the First Addendum to the First Agreement with Low Voltage Security, Inc. (LVS), which would increase the contract's maximum cost by \$9,450 for a total contract amount not to exceed \$34,450. The increase allows for changes to the original scope of services, including the purchase and installation of replacement hardware, alarm system monitoring services, and the ongoing maintenance of the entire security system.

The original scope of services stated that LVS would utilize the existing MAG lock hardware in place in the building when installing the new access control system. This decision was made with the purpose of preventing waste and keeping costs low. It was unknown until installation began that the existing hardware was no longer functional. A change order was requested to purchase and install new hardware to replace the existing MAG locks at the front gate and front door. Additionally, LVS recommended the installation of a security screen across the front gate in order to make its newly installed lock tamper-proof. Another change order was requested for time and materials necessary to tie in the fire alarm system with the access control system, as requested by the Fire Marshal. The Fire Marshal has also suggested that it may be necessary to install a push bar on the front gate for easier egress in the event of an emergency. These existing and potential change orders would not exceed \$7,000, including all time and materials.

Additional services included in the proposed new scope of services are ongoing system maintenance and alarm monitoring. LVS offers a flat monthly fee of \$200 for ongoing maintenance of all installed security devices. The alarm monitoring service is an

additional \$45 per month and allows specific MCE staff members to be notified in the case of an activated burglar alarm. The service also contacts the appropriate authority – police, fire, ambulance, etc. – in the case of another emergency.

Recommendation: Approve First Addendum to First Agreement with Low Voltage Security, Inc.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND LOW VOLTAGE SECURITY, INC.**

THIS FIRST AGREEMENT ("Agreement") is made and entered into this day **March 12, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and LOW VOLTAGE SECURITY, INC., hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to provide the following services: installation of security devices at new MCE office located at 700 Fifth Avenue in San Rafael, CA;

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 invoice MCE 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 **\$25,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **February 23, 2015**, and shall terminate on **March 31, 2016**. 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:

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

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.

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.

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 (5) calendar 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 thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- 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 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 Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19. NOTICES below.

19. NOTICES

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Agreement Manager and all notices shall be given to MCE at the following location:

Contract Manager: Sarah Estes-Smith

MCE Address: 1125 Tamalpais Avenue

San Rafael, CA 94901

Email Address: invoices@mcecleanenergy.org

Telephone No.: (415) 464-6028

Notices shall be given to Contractor at the following address:

| | |
|----------------|-----------------------------|
| Contractor: | Paul Thompson |
| Address: | 8050 Oak Way |
| | Windsor, CA 95492 |
| Email Address: | paul@lowvoltagesecurity.com |
| Telephone No.: | (707) 396-1467 |

20. **ACKNOWLEDGEMENT OF EXHIBITS**

| | | | |
|-------------------|-------------------------------------|----------------------------------|------------------------------|
| | <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 | |
| <u>EXHIBIT C.</u> | <input checked="" type="checkbox"/> | Project Estimates | |

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

APPROVED BY
Marin Clean Energy:

By: [Signature]
CEO
Date: 3-18-15

By: N/A
Chairperson
Date: _____

CONTRACTOR:

By: [Signature]
Name: Paul Thompson
Date: March 12, 2015

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

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

Contractor will provide installation services for the following devices at new MCE office located at 700 Fifth Avenue in San Rafael, CA as requested and directed by MCE staff:

Access Control System – installation and termination:

- 1-gate, 2-entries, 2-stairwell doors are the 5 locations for access readers to be placed
- There will be a request to exit PIR to open the doors for egress/with a push button backup for emergencies
- All system main panels and batteries will be located in the IT room
- This is using the existing MAG lock hardware already in place on site

Alarm System – installation of security devices for final termination:

- 2-main entry, 1-rear entry, 2-gates, 2-stairwell doors, 1-server room, 1-roof hatch
- These are all the contact locations that will be covered
- The areas of motion detection consist of 2-entry areas, 1-corridor, 3-east conference rooms, 2-2nd floor area in case the elevator gains unauthorized access to the 2nd floor
- Twin keypads at both entry points, horn on the 1st floor, panel located in the server room (phone line will be needed)

CCTV Services – installation and training of security camera system:

- Full High Definition security camera system with 1080p resolution and full network system

Contractor will complete the full and accurate installation and testing of the above security measures. Contractor will provide detailed instructions to MCE staff on daily use of the equipment and provide follow-up support and troubleshooting as needed, up to the maximum time/fees allowed under this Agreement.

EXHIBIT B
FEES AND PAYMENT SCHEDULE

For services provided under this agreement, MCE shall pay the Contractor in accordance with the following payment fees/schedule:

| | |
|-----------------------|-------------|
| Access Control System | \$9,260.82 |
| Alarm System | \$4,262.03 |
| CCTV Services | \$11,469.97 |

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$25,000** for the term of the agreement.

EXHIBIT C
PROJECT ESTIMATES

Low Voltage Security, Inc.

8050 Oak Way
Windsor, CA 95492paul@lowvoltagesecurity.com
lowvoltagesecurity.com

Estimate #

Date

Estimate #

1/14/2015

473

Name / Address

MCE Clean Energy
700 Fifth Avenue
San Rafael, CA 94901

| | | Terms | Rep | Project |
|-------------------|---|-------------|----------|----------|
| | | 30% deposit | PT | |
| Item | Description | Qty | Rate | Total |
| Proposal - Access | LVS is pleased to present this proposal for the following Access Control System: 1-gate, 2-entries, 2-stairwell doors are the 5 locations for access readers to be placed. There will be a request to exit PIR to open the doors for egress/ with a push button backup for emergencies. All system main panels and batteries will be located in the IT room. | | | 0.00 |
| Note | THIS IS USING THE EXISTING MAG LOCK HARDWARE ALREADY IN PLACE ON SITE. | | | 0.00 |
| KEYSCAN | CQ-AURORA KEYSAN AURORA AC SOFTWARE 1 CQ-CA8500 8 READER/DOOR CONTROL UNIT 5 CQ-KPROX2 PROXIMITY READER & PLATE 2 DS-DS150I REQUEST TO EXIT PIR - GREY 2 PW-PS1270 12V 7AH SLA BATTERY F1 1 AX-AL600ULX 6A PWR SPLY/CHGR LRG CAB & XFMR 1 CQ-USBSER USB COMMUNICATION ADAPTER 1 HU-1346PCK50 PROXKEY III, PROG.BLK 50 PK | 1 | 6,561.85 | 6,561.85 |
| CL20948-R | Access Wire 22/2,22/4,18/4,22/6 SHIELDED | 600 | 0.70 | 420.00T |
| cat-6 | Category 6 wire for networks and video | 30 | 0.32 | 9.60T |
| Connectors | Hardware and Fasteners | 5 | 25.00 | 125.00T |
| Labor-Access | Installation and termination of Access control system | 20 | 105.00 | 2,100.00 |
| Sign/Fax | If this estimate meets your approval, please sign and e-mail back to Paul@lowvoltagesecurity.com PO# _____ | | | 0.00 |

PRINT NAME

SIGNATURE

DATE

Paul Weiss
Paul Weiss
2-25-15

we look forward to future business with you

Total

EXHIBIT C
PROJECT ESTIMATES

Low Voltage Security, Inc.

8050 Oak Way
Windsor, CA 95492paul@lowvoltagesecurity.com
lowvoltagesecurity.com

Date

Estimate #

1/14/2015

473

Name / Address

MCE Clean Energy
700 Fifth Avenue
San Rafael, CA 94901

Terms

Rep

Project

30% deposit

PT

| Item | Description | Qty | Rate | Total |
|------|--|-----|-------|-------|
| | ----- CHANGE ORDER ----- February 24, 2015 > Decreased quantity of CL20948-R from 1,200 to 600. Decreased price of CL20948-R from \$840.00 to \$420.00. (-\$420.00) > Decreased price of Labor-Access from \$2,300.00 to \$2,100.00. (-\$200.00) Total change to estimate -\$653.60 ----- Sales Tax | | 8.00% | 44.37 |

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Total

\$9,260.82

EXHIBIT C
PROJECT ESTIMATES

Low Voltage Security, Inc.

8050 Oak Way
Windsor, CA 95492paul@lowvoltagesecurity.com
lowvoltagesecurity.com

Estimate #

Date

Estimate #

1/14/2015

472

Name / Address

MCE Clean Energy
700 Fifth Avenue
San Rafael, CA 94901

| | | Terms | Rep | Project |
|----------------------|--|-------------|----------|----------|
| | | 30% deposit | PT | |
| Item | Description | Qty | Rate | Total |
| Proposal - Alarm | LVS is pleased to present this proposal for the following Alarm System. 2-main entry, 1-rear entry, 2-gates, 2-stairwell doors, 1-server room, and 1-roof hatch. These are all the contact locations that will be covered. The areas of motion detection consist of, 2-entry areas, 1-corridor, 3-east conference rooms, 2-2nd floor area in case the elevator gains unauthorized access to the second floor. Twin keypads at both entry points, horn on the first floor, panel located in the server room. (phone line will be needed) | | | 0.00 |
| honeywell | WIRED,35 DUAL TEC,TMPR,100LB P 1 V20P60PK V20P,6160,ATTACK PACK 1 GSMX4G 4G RADIO F/VISTA W/2-WAY VOC 2 4219 8ZN EXPANDER 2 6280W LCD KEYPAD 7" COLOR TOUCH WHT 2 WAVE2 2-TN SRN 106DB 10 944T-WH 3/8"D PRESS FIT TERM 3/4" WHT 1 UZ-NP712 12V 7AH SLA BATTERY | 1 | 2,113.74 | 2,113.74 |
| 22gauge 4 conduct... | 22/4 alarm wire | 600 | 0.29 | 174.00T |
| cat-6 | Category 6 wire for networks and video | 30 | 0.32 | 9.60T |
| Connectors | Hardware and Fasteners | 10 | 25.00 | 250.00T |
| Labor-Term alarm | Installation of security devices for final termination | 16 | 105.00 | 1,680.00 |
| Sign/Fax | If this estimate meets your approval, please sign and e-mail back to Paul@lowvoltagesecurity.com PO# | | | 0.00 |

PRINT NAME

SIGNATURE

DATE

Dawn Weise
Dawn Weise
2-25-15

we look forward to future business with you

Total

EXHIBIT C
PROJECT ESTIMATES

Low Voltage Security, Inc.

8050 Oak Way
Windsor, CA 95492

paul@lowvoltagesecurity.com

lowvoltagesecurity.com

Estimate

Date

Estimate #

1/14/2015

472

Name / Address

MCE Clean Energy
700 Fifth Avenue
San Rafael, CA 94901

Terms

Rep

Project

30% deposit

PT

Item

Description

Qty

Rate

Total

----- CHANGE ORDER -----

February 24, 2015

> Decreased quantity of 22gauge 4 conductor wire from
1,200 to 600. Decreased price of 22gauge 4 conductor wire
from \$348.00 to \$174.00. (-\$174.00)> Decreased quantity of Labor-Term alarm from 18 to 16.
Decreased price of Labor-Term alarm from \$1,890.00 to
\$1,680.00. (-\$210.00)

Total change to estimate -\$397.92

Sales Tax

8.00%

34.69

we look forward to future business with you

Total

\$4,262.03

EXHIBIT C
PROJECT ESTIMATES

Low Voltage Security, Inc.

8050 Oak Way
Windsor, CA 95492paul@lowvoltagesecurity.com
lowvoltagesecurity.com

Date

Estimate #

1/14/2015

471

Name / Address

MCE Clean Energy
700 Fifth Avenue
San Rafael, CA 94901

Terms

Rep

Project

30% deposit

PT

| Item | Description | Qty | Rate | Total |
|-----------------|--|-----|----------|----------|
| Proposal - CCTV | LVS is pleased to present this proposal for the following CCTV Services: | | | 0.00 |
| | Full High Definition security camera system with 1080p resolution and full network system | | | |
| EVIP-01 | Single IP camera license | 7 | 125.00 | 875.00T |
| IP-4000-R2 | Exacqvision 4 TerrabyteNVR server up to 64 IP cameras capable network on multiple OS systems, PC< blackberry, tablets. Stand alone turn key system | 1 | 2,289.50 | 2,289.50 |
| AV1355 | 1.3 MP MEGADOME (Armored) H.264 IP Camera | 7 | 775.50 | 5,428.50 |
| SWITCH POE | NETWORK POE 8 PORT SWITCH | 1 | 399.00 | 399.00T |
| cat-6 | Category 6 wire for networks and video | 330 | 0.32 | 105.60T |
| Connectors | Hardware and Fasteners | 6 | 25.00 | 150.00T |
| Labor-CCTV | Installation and Training of the new CCTV security camera system | 20 | 105.00 | 2,100.00 |
| Sign/Fax | If this estimate meets your approval, please sign and e-mail back to Paul@lowvoltagesecurity.com PO# _____ | | | 0.00 |

PRINT NAME

SIGNATURE

DATE

----- CHANGE ORDER -----

February 24, 2015

> Decreased price of AV1355 from \$5,775.00 to \$5,428.50.
(-\$346.50)

Total change to estimate -\$346.50

we look forward to future business with you

Total

EXHIBIT C
PROJECT ESTIMATES

Low Voltage Security, Inc.

8050 Oak Way
Windsor, CA 95492paul@lowvoltagesecurity.com
lowvoltagesecurity.com

Estimate

Date

Estimate #

1/14/2015

471

Name / Address

MCE Clean Energy
700 Fifth Avenue
San Rafael, CA 94901

| | | Terms | Rep | Project |
|------|--|--------------|-------|---------|
| | | 30% deposit | PT | |
| Item | Description | Qty | Rate | Total |
| | ----- CHANGE ORDER ----- February 24, 2015 > Decreased price of IP-4000-R2 from \$2,489.50 to \$2,289.50. (-\$200.00) > Decreased quantity of cat-6 from 700 to 330. Decreased price of cat-6 from \$224.00 to \$105.60. (-\$118.40) > Decreased quantity of Connectors from 7 to 6. Decreased price of Connectors from \$175.00 to \$150.00. (-\$25.00) Total change to estimate -\$354.87 ----- Sales Tax | | 8.00% | 122.37 |
| | | Total | | |
| | | \$11,469.97 | | |

we look forward to future business with you

**FIRST ADDENDUM TO FIRST AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND LOW VOLTAGE SECURITY, INC.**

This FIRST ADDENDUM is made and entered into on May 21, 2015, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and LOW VOLTAGE SECURITY, INC., (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement to provide security device installation services at the new MCE office dated March 12, 2015 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the agreement obligated Contractor to be compensated an amount not to exceed \$25,000 for the security device installation services described within the scope therein; and

WHEREAS the parties desire to amend the agreement to increase the contract amount by \$9,450 for a total not to exceed \$34,450, and adjust the scope of services in Exhibit A to include ongoing security device maintenance and alarm monitoring services.

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

AGREEMENT

1. 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 **\$34,450**.

2. Exhibit A is hereby replaced in its entirety as follows:

EXHIBIT A
SCOPE OF SERVICES (required)

Phase 1 – Installation

Contractor will provide installation services for the following devices at new MCE office located at 1125 Tamalpais Avenue in San Rafael, CA as requested and directed by MCE staff:

Access Control System – installation and termination:

- 1-gate, 2-entries, 2-stairwell doors are the 5 locations for access readers to be placed
- There will be a request to exit PIR to open the doors for egress/with a push button backup for emergencies
- All system main panels and batteries will be located in the IT room
- This is using the existing MAG lock hardware already in place on site

Alarm System – installation of security devices for final termination:

- 2-main entry, 1-rear entry, 2-gates, 2-stairwell doors, 1-server room, 1-roof hatch
- These are all the contact locations that will be covered
- The areas of motion detection consist of 2-entry areas, 1-corridor, 3-east conference rooms, 2-2nd floor area in case the elevator gains unauthorized access to the 2nd floor
- Twin keypads at both entry points, horn on the 1st floor, panel located in the server room (phone line will be needed)

CCTV Services – installation and training of security camera system:

- Full High Definition security camera system with 1080p resolution and full network system

Any changes to the above installation and termination details must be approved in writing by MCE's Chief Executive Officer. Adjustments will be detailed in the corresponding invoice(s).

Known changes include:

1. MAG lock hardware on the front gate and front door must be replaced due to age and non-functionality.
2. To ensure the front gate hardware is tamper-proof, a security screen should be welded to the existing gate.
3. Local fire code requires that the fire alarm system be tied into the access control system, causing the exterior doors to unlock in the case of an emergency.
4. The request to exit PIR sensor on the front door should be deactivated until a more secure egress method is determined.

Additional changes under consideration include the installation of a lever or push bar for the front gate, the reactivation of the exit PIR sensor on the front door, and the set-up of a timer schedule for the alarm system.

Contractor will complete the full and accurate installation and testing of the above security measures. Contractor will provide detailed instructions to MCE staff on daily use of the equipment and provide follow-up support and troubleshooting as needed, up to the maximum time/fees allowed under this Agreement.

Phase 2 – Maintenance and Alarm Monitoring

Contractor will provide support, troubleshooting, and maintenance on all security devices as needed, up to the maximum time/fees allowed under this Agreement.

Contractor will provide alarm monitoring services. Upon activation of the burglar alarm, Contractor will contact the San Rafael Police Department and up to four MCE staff representatives. Upon activation of other alarms – fire, hold-up, panic, duress, medical, environmental – Contractor will contact the appropriate authority to handle the event on MCE's behalf.

Exhibit B is hereby replaced in its entirety as follows:

**EXHIBIT B
FEES AND PAYMENT SCHEDULE**

For services provided under this agreement, MCE shall pay the Contractor in accordance with the following payment fees/schedule:

Phase 1 - Installation

| | |
|-----------------------|-------------|
| Access Control System | \$9,260.82 |
| Alarm System | \$4,262.03 |
| CCTV Services | \$11,469.97 |

Contractor will bill upon 80% completion and 100% completion of each device.

Change orders will be billed as-needed, after written approval from MCE is received, and will not exceed \$7,000.

Phase 2 – Maintenance and Alarm Monitoring

| | |
|---------------------|--|
| Monthly Maintenance | \$200 per month beginning June 1, 2015 |
| Alarm Monitoring | \$45 per month beginning June 1, 2015 |

Contractor will bill monthly for Phase 2 services.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$34,450** for the term of the agreement.

3. 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 Addendum on the day first written above.

CONTRACTOR:

By: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____



May 21, 2015

TO: Marin Clean Energy Board of Directors

FROM: Sarah Estes-Smith, Internal Operations Coordinator

RE: First Addendum to Second Agreement with PFM Group (Agenda Item #04 – C.5)

ATTACHMENTS:

- A. Second Agreement with The PFM Group
- B. First Addendum to Second Agreement with The PFM Group

Dear Board Members:

SUMMARY:

On April 28, 2015, MCE entered into the Second Agreement with The PFM Group ("Agreement") to serve as MCE's Independent Registered Municipal Advisor (IRMA) and assist MCE with the establishment of a credit rating. The Agreement stated that the maximum cost to MCE would be \$15,000.

MCE staff requests approval of the attached First Addendum to Second Agreement with PFM Group, which would reflect a contract maximum increase of \$35,000 for a total amount not to exceed \$50,000. The increase accounts for a flat fee for the credit rating establishment services, plus approved out-of-pocket expenses that the Contractor may incur.

Recommendation: Approve First Addendum to Second Agreement with The PFM Group.

**MARIN CLEAN ENERGY
STANDARD SHORT FORM CONTRACT**

**SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND THE PFM GROUP**

THIS SECOND AGREEMENT ("Agreement") is made and entered into this day **April 28, 2015** by and between MARIN CLEAN ENERGY, hereinafter referred to as "MCE" and THE PFM GROUP, hereinafter referred to as "Contractor."

RECITALS:

WHEREAS, MCE desires to retain a person or firm to serve as MCE's Independent Registered Municipal Advisor (IRMA) and assist MCE with the establishment of a credit rating;

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 invoice MCE 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 **\$15,000**.

5. TIME OF AGREEMENT:

This Agreement shall commence on **April 28, 2015**, and shall terminate on **March 31, 2016**. 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

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.

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 (5) calendar 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 thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.
- 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 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 Board of Supervisors prohibiting the off-shoring of professional services involving employee/retiree medical and financial data) affecting services covered by this Agreement. Copies of any of the above-referenced local laws and resolutions may be secured from MCE's contact person referenced in paragraph 19.

NOTICES below.

19. NOTICES

This Agreement shall be managed and administered on MCE's behalf by the Contract Manager named below. All invoices shall be submitted and approved by this Agreement Manager and all notices shall be given to MCE at the following location:

| | |
|-------------------|-----------------------------|
| Contract Manager: | Sarah Estes-Smith |
| MCE Address: | 1125 Tamalpais Avenue |
| | San Rafael, CA 94901 |
| Email Address: | invoices@mcecleanenergy.org |
| Telephone No.: | (415) 464-6028 |

Notices shall be given to Contractor at the following address:

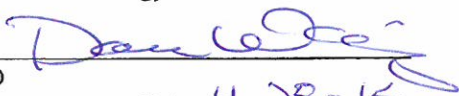
| | |
|----------------|------------------------------------|
| Contractor: | Michael Berwanger |
| Address: | 601 S. Figueroa Street, Suite 4500 |
| | Los Angeles, CA 90017 |
| Email Address: | berwangerm@pfm.com |
| Telephone No.: | (213) 489-4075 |

20. ACKNOWLEDGEMENT OF EXHIBITS

| | | | |
|-------------------|-------------------------------------|----------------------------------|------------------------------|
| | <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 | |
| <u>EXHIBIT C.</u> | <input checked="" type="checkbox"/> | Proposal | |

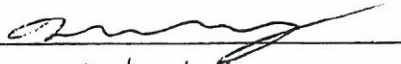
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

APPROVED BY
Marin Clean Energy:

By: 
CEO
Date: 4-28-15

By: N/A
Chairperson
Date: _____

CONTRACTOR:

By: 
Name: Michael Berwanger
Date: 4/28/15

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

MCE Counsel: _____

Date: _____

EXHIBIT A
SCOPE OF SERVICES (required)

As requested and directed by MCE staff, Contractor will serve as MCE's Independent Registered Municipal Advisor (IRMA) and assist MCE with its financial planning efforts and counterparty interactions including, but not limited to, exploring its alternatives for a line of credit. These services will be provided up to the maximum time/fees allowed under this Agreement.

**EXHIBIT B
FEES AND PAYMENT SCHEDULE**

For services provided under this agreement, MCE shall pay the Contractor in accordance with the following payment fees/schedule:

Phase 1 – IRMA

Contractor will bill MCE hourly at the rates listed below with a guaranteed minimum total of \$10,000 during the contract term. Contractor will submit a balance billing to MCE in March 2016 if the minimum of \$10,000 has not yet been reached.

| Position/Title | Hourly Rate |
|----------------------------|--------------------|
| Managing Director | \$350 |
| Director | \$325 |
| Senior Managing Consultant | \$300 |
| Senior Analyst | \$280 |
| Analyst | \$250 |

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$15,000** for the term of the agreement.



The PFM Group

Public Financial Management, Inc.
PFM Asset Management, LLC
PFM Advisors

EXHIBIT C PROPOSAL

Agenda Item #04_C.5_Att. A: 2nd Agrmt with The PFM

601 S. Figueroa Street,
Suite 4500
Los Angeles, CA 90017

213-489-4075
213-489-4085 fax
www.pfm.com

April 10, 2015

Greg Brehm
Marin Energy Authority
781 Lincoln Ave., Suite 320
San Rafael, CA 94901

Dear Greg:

As follow-up to your request, PFM wanted to provide this scope of work and fee proposal for our prospective work with the Marin Energy Authority (MEA). PFM understands that its role would be to serve as MEA's Independent Registered Municipal Advisor (IRMA) and to assist MEA with the establishment of a credit rating. We enjoyed working with you now a couple years ago and look forward to building off of those initial efforts. MEA has clearly continued to grow and prosper and we are excited to be a small part of your continued success.

IRMA: PFM will serve as MEA's Independent Registered Municipal Advisor and assist MEA with its financial planning efforts and counterparty interactions including, but not limited to exploring its alternatives for a line of credit and ultimately assisting in the negotiation of terms and pricing. As part of our transmittal, we have incorporated a description of what being your IRMA means and what the regulations are governing this designation. We would welcome the opportunity to discuss this with you in greater detail so you fully understand our shared responsibilities.

PFM would propose an hourly fee arrangement with an annual guaranteed minimum hourly total of \$10,000 at the hourly rates listed in the table below. PFM would submit a balance billing to MEA in December if the minimum has not yet been reached.

PFM believes it is critical to be involved as part of MEA's team when its dealing with financial counterparties where we are being represented as your IRMA. This fee arrangement is designed to offer MEA transparency on the hours we are working and incentivize MEA to incorporate us into its financial decision making and counterparty interaction. PFM is seeking a minimum to compensate it for the liability assumed by serving as IRMA but we are sensitive to ensuring MEA is getting demonstrated value in return.

| Position/Title | Hourly Rate |
|----------------------------|-------------|
| Managing Director | \$350.00 |
| Director | \$325.00 |
| Senior Managing Consultant | \$300.00 |
| Senior Analyst | \$280.00 |
| Analyst | \$250.00 |

Phase 2 - Credit Presentation: PFM will assist MEA's team in crafting the presentation and information package necessary to approach one of the rating agencies. We recommend doing so through their Rating Assessment Service (RAS) (Note: different names for different agencies). RAS is a confidential private rating service where MEA can receive feedback directly without that feedback being made public. We would expand on our previous work and provide the added detail required to

EXHIBIT C
PROPOSAL

Proposal for Financial Advisor Services

assist the rating agency in their analysis. Broadly, the presentation will address the issues we discuss with MEA as potential areas of criticism and credit weakness during our previous work, but will also discuss MEA's background, financials, customer mix, opt-out history, legal construct, future or current project plans and so forth.

PFM would propose a flat-fee arrangement of \$35,000, plus out-of-pocket expenses (all to be billed as incurred with appropriate documentation). In our discussions, MEA indicated it might ultimately seek financing for a near-term renewable project. Should MEA do so in conjunction with obtaining a rating and retain PFM to assist as its financial advisor in that effort as well, we would offer to credit these fees towards our fee arrangement for the broader work. Our recent and direct experience on similar efforts have been billed at comparable levels. In proposing this fee arrangement, we acknowledge MEA's cost constraints and sensitivities and have tried to craft a fee arrangement we hope you will find mutually acceptable.

We are excited by the opportunity to work with you on this significant step in MEA's history and we assure you will provide the highest quality of service. Please contact us if you have any questions concerning this proposal.

Sincerely,

Public Financial Management, Inc.

A handwritten signature in black ink, appearing to read "Mike Berwanger".

Mike Berwanger
Managing Director
(213) 489-4075 (phone)
berwangerm@pfm.com

A handwritten signature in black ink, appearing to read "Will Frymann".

Will Frymann
Director
(415) 982-5544 (phone)
frymannw@pfm.com

**FIRST ADDENDUM TO SECOND AGREEMENT
BY AND BETWEEN
MARIN CLEAN ENERGY AND THE PFM GROUP**

This FIRST ADDENDUM is made and entered into on May 21, 2015, by and between MARIN CLEAN ENERGY, (hereinafter referred to as "MCE") and THE PFM GROUP (hereinafter referred to as "Contractor").

RECITALS

WHEREAS, MCE and the Contractor entered into an agreement for IRMA and credit rating establishment services dated April 28, 2015 ("Agreement"); and

WHEREAS, Section 4 and Exhibit B to the agreement obligated Contractor to be compensated an amount not to exceed \$15,000 for the IRMA and credit rating establishment services described within the scope therein; and

WHEREAS the parties desire to amend the agreement to increase the contract amount by \$35,000 for a total not to exceed \$50,000 and modify Exhibit B to include payment terms for credit rating establishment services.

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

AGREEMENT

1. 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 **\$50,000**.

2. Exhibit B is hereby replaced in its entirety to read as follows:

**EXHIBIT B
FEES AND PAYMENT SCHEDULE**

For services provided under this agreement, MCE shall pay the Contractor in accordance with the following payment fees/schedule:

Phase 1 – IRMA

Contractor will bill MCE hourly at the rates listed below with a guaranteed minimum total of \$10,000 during the contract term. Contractor will submit a balance billing to MCE in March 2016 if the minimum of \$10,000 has not yet been reached.

| Position/Title | Hourly Rate |
|----------------------------|--------------------|
| Managing Director | \$350 |
| Director | \$325 |
| Senior Managing Consultant | \$300 |
| Senior Analyst | \$280 |
| Analyst | \$250 |

Phase 2 – Credit Presentation

Upon credit presentation to selected rating agency Contractor will bill MCE \$15,000. Upon receipt of Credit opinion/ rating, Contractor will bill MCE \$20,000. Out-of-pocket expenses related to phase 2 will be billed monthly with appropriate documentation.

In no event shall the total cost to MCE for the service provided herein exceed the maximum sum of **\$50,000** for the term of the agreement including out-of-pocket expenses.

3. 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 Addendum on the day first written above.

CONTRACTOR:

By: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Date: _____



May 21, 2015

TO: Marin Clean Energy Board

FROM: Beckie Menten, Energy Efficiency Director

RE: Resolution 2015-03 of the MCE Board to Serve as Regional Liaison for PACE Programs in Marin County (Agenda Item #05)

ATTACHMENTS: A. Resolution 2015-03 PACE
B. Agreement for Collaborative Services for PACE Financing Marketplace
C. PACE Programs Comparison Chart
D. Memo on PACE Programs
E. Resolution 2012-19

Dear Board Members:

Summary

Property Assessed Clean Energy (PACE) financing provides one option for local home and business owners to finance energy efficiency, water conservation, and renewable energy improvements on their properties. The County of Marin (the “County”) and Marin Clean Energy (MCE) have been working to establish an “Open Market PACE Model” which allows any PACE operator to provide services in the region if they execute and comply with the Agreement for Collaborative Services for PACE Financing Marketplace.

Discussion

In 2008, the State of California passed resolution (AB 811) enabling residential and commercial property owners in the state to utilize the existing tax lien structure to finance energy efficiency, water conservation, and renewable energy improvements to real property. This innovative model utilizes existing tax assessment laws, typically used for streetlight or sewer improvements. These laws allow a local governing body, for example a City or County, to establish a ‘special assessment district.’ Once the district is established, residents within the district would then be allowed to opt in to place assessments on their property tax which would be used to finance the improvements to their home or business.

In November of 2012, your Board approved Resolution 2012-19 encouraging local jurisdictions in MCE's service territory to adopt the California FIRST PACE program and offering MCE to serve as a liaison to the program locally.

In December 2012, the Board of Supervisors authorized the County of Marin to join the California Statewide Communities Development Authority (CSCDA) sponsored CaliforniaFIRST program and offer PACE financing opportunities to Marin commercial and residential property owners. Since the program's Marin launch in August 2014, CaliforniaFIRST has received 145 applications and funded 34 projects for a total of \$678,000 of approved financing. Currently, California FIRST is authorized in all but two jurisdictions in the County of Marin. California FIRST is also authorized in each of the MCE member communities outside of Marin.

In addition, to CaliforniaFIRST, there are several PACE financing programs operating in the state.¹ Each program offers financing terms that might be attractive to different property owners. Allowing additional PACE programs to operate in Marin County could provide competition and choice for Marin property owners, particularly if those programs are required to adopt and abide by the same basic set of 'best practices.'

It is for this reason that the County and MCE have worked together to develop the Collaborative Services Agreement for PACE Financing Marketplace ("Agreement"). MCE and County staff have worked together to adapt the Agreement from the one currently in use in Sonoma County, and have worked with each of the PACE providers to consider suggested edits to the Agreement.

Features of the attached Agreement:

- Establishes County and MCE as a 'team' to interface and manage the Provider network in Marin County.
- Designates MCE as the liaison to the Providers locally; MCE would offer lead generation activities such as marketing and outreach and would serve as a local storefront where local residents could ask questions and learn more about the programs.
- Requires all Providers to have clearly visible disclosures regarding the FHFA's policies on residential PACE programs.
- Requires affirmative lender acknowledgment of participation from commercial applicants.
- Limits claims that Providers (or their designated contractors) can make to applicants regarding the tax deductibility of PACE assessments².
- Requires data sharing between the Providers and MCE and the County so MCE and County staff can track participation in the PACE programs locally.
- Requires Providers to accept responsibility for negligence in administering PACE programs (i.e. if a false claim is made on tax liability.)

¹ A matrix comparing the Providers currently requesting inclusion in the Marin PACE marketplace is included in Attachment C.

² Some PACE providers have been reported to claim that 100% of a PACE assessment is deductible on taxes; however County and MCE staff have been unable to verify the accuracy of this claim. Therefore the agreement requires that Providers do not make such a claim, and instead refer applicants to a tax professional to investigate possible deductibility.

The Agreement is currently being vetted by each of the Providers that would like to operate in the County of Marin. County staff intends to bring the Agreement, executed by each of the potential Providers, to the Marin County Board of Supervisors in June. Following that Board Meeting, it is expected that each of the cities in Marin could consider authorizing the Providers to operate in their jurisdictions, and could incorporate the Agreement by reference in their approving document. MCE would continue to provide the same lead generation and customer interface services for each of the member cities.

Recommendation: Approve Resolution 2015-03 to establish Marin Clean Energy as the regional liaison for PACE programs in Marin County. Authorize the CEO of Marin Clean Energy to finalize and execute the Agreement for Collaborative Services for PACE Financing Marketplace.

RESOLUTION NO. 2015-03

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY TO SERVE AS REGIONAL LIASON FOR PROPERTY ASSESSED CLEAN ENERGY PROGRAMS

WHEREAS, Marin Clean Energy 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, Marin Clean Energy members include the following communities: the County of Marin, the City of Belvedere, the City of Benicia, the Town of Corte Madera, the City of El Cerrito, the Town of Fairfax, the City of Larkspur, the City of Mill Valley, the County of Napa, the City of Novato, the Town of San Anselmo, the City of San Pablo, the City of San Rafael, the City of Sausalito, the City of Richmond, the Town of Ross, and the Town of Tiburon; and

WHEREAS, the purpose of the Marin Clean Energy is to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits; and

WHEREAS, It is the intent of MCE to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production at competitive rates for customers; and

WHEREAS, the upfront cost of financing is a major barrier to the installation of energy efficiency and distributed generation improvements; and

WHEREAS, Property Assessed Clean Energy (PACE) financing programs are an innovative means to offering Marin County residents and businesses a source of financing for accomplishing these improvements; and

WHEREAS, MCE is authorized by charter to take actions to represent the member jurisdictions in matters related to energy efficiency and distributed generation; and

WHEREAS, MCE supported the enrollment of the MCE communities in the California FIRST program; and

WHEREAS, MCE and the County of Marin now desire to create an "Open PACE Marketplace" whereby any PACE provider will be authorized to operate in Marin if they sign the PACE Open Market Agreement ("Agreement") developed by the County.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of Marin Clean Energy that MCE will serve as regional liaison, assisting local jurisdictions in evaluating and adopting PACE programs that are compliant with the terms of the Agreement. MCE will also provide marketing and outreach support to further the uptake of PACE related projects in Marin.

PASSED AND ADOPTED at a regular meeting of the Marin Clean Energy Board of Directors on this 21st day of May 2015, by the following vote:

| | AYES | NOES | ABSTAIN | ABSENT |
|----------------------|-------------|-------------|----------------|---------------|
| City of Belvedere | | | | |
| City of Benicia | | | | |
| Town of Corte Madera | | | | |
| City of El Cerrito | | | | |
| Town of Fairfax | | | | |
| City of Larkspur | | | | |
| County of Marin | | | | |
| City of Mill Valley | | | | |
| 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 | | | | |
| Town of Tiburon | | | | |

CHAIR, MARIN CLEAN ENERGY BOARD

Attest:

SECRETARY, MARIN CLEAN ENERGY BOARD

AGREEMENT FOR COLLABORATIVE SERVICES

FOR PROPERTY ASSESSED CLEAN ENERGY FINANCING MARKETPLACE

This agreement ("Agreement"), dated as of _____, 2015 ("Effective Date") is by and between the County of Marin, a political subdivision of the State of California (hereinafter "County"), Marin Clean Energy (hereinafter "MCE"), a California joint powers authority, and _____, (hereinafter "Marketplace Member"), as an entity participating in the Financing Marketplace administering a Property Assessed Clean Energy (PACE) financing program utilizing either the California Assembly Bill 811 and/or California Senate Bill 555 model. [\[Insert marketplace member description here\]](#)

RECITALS

WHEREAS, the County is committed to mitigating and adapting to the causes and impacts of climate change and supporting energy independence from fossil fuels to safeguard the environment, human health and the economy; and

WHEREAS, during Earth Week 2002, the Board of Supervisors adopted a resolution that recognizes both the gravity of global warming and the responsibility for local action; and

WHEREAS, MCE has passed a Resolution 2015-03 stating its support and partnership in implementing and marketing the PACE programs in Marin County; and

WHEREAS, the Community Development Agency's Sustainability Team in partnership with MCE (the "Team") offers programs, technical resources and education for energy upgrades and retrofits; and

WHEREAS, the objective of the Team programs is to help property owners save energy, save money, and live comfortably; and

WHEREAS, the Team seeks to minimize customer confusion, provide access to education and information to property owners and assist with making informed decisions on rebates and incentives, tools and testing equipment, contractor programs, and financing options; and

WHEREAS, the Marketplace Member will meet or exceed the collaboration requirements of the Financing Marketplace as detailed below; and

WHEREAS, the Marketplace Member is willing to participate to support community climate goals and minimize consumer and contractor confusion; and

WHEREAS, the Marketplace Member will provide support and resources to MCE related to education, outreach and development of the energy upgrade industry and trades; and

WHEREAS, the Marketplace Member will support, align and integrate its efforts with the County-wide goals for job creation, resource demand reduction, and renewable energy generation; and

WHEREAS, the Marketplace Member will establish its own interest rates, repayment terms, and fees as state and federal laws and the market defines and allows; and

WHEREAS, the Marketplace Member will share project information and data in an accessible electronic format with the Team on a quarterly basis and upon request within ten (10) business days; and

WHEREAS, the Marketplace Member will arrange for the collection of Property Assessed Clean Energy assessments it has financed directly with the County Tax Collector's Office; and

WHEREAS, this Agreement does not include any financial arrangements between the Marketplace Member and the County, nor does it preclude any separate contracts for services or support; and

WHEREAS, the purpose of this Agreement is to set forth the mutual understandings, terms and conditions related to Marketplace Members participating in the PACE Financing Marketplace in the County of Marin and participating cities/towns.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the parties hereto agree as follows:

AGREEMENT

1 **Definitions.**

- 1.1 **"Eligible improvement"** is a technology, product or tool officially approved by the financing provider. The improvements may include distributed generation renewable energy sources, energy and water efficiency improvements, seismic strengthening improvements and electric vehicle charging infrastructure improvements that will be permanently fixed to real property, and any additional improvements deemed eligible in the future by the California legislature.
- 1.2 **"Financing Marketplace"** is the Marin County model for providing multiple financing options to property owners interested in retrofit and renewable energy improvements to their buildings.
- 1.3 **"Local Contractor"** is defined as the licensed contractor of record with a business address within Marin County or an adjacent county.
- 1.4 **"Marketplace Member"** is an entity participating in the Financing Marketplace administering a program providing Property Assessed Clean Energy (PACE) financing within Marin County.
- 1.5 **"MCE Office"** is the physical storefront location provided for Marin County and will be used as the central location for marketing and outreach efforts.
- 1.6 **"Participating Cities /Towns"** in Marin County are potentially Belvedere, Corte Madera, Fairfax, Larkspur, Mill Valley, Novato, Ross, San Anselmo, San Rafael, Sausalito and Tiburon.
- 1.7 **"Participating Contractor"** is any contractor who has agreed to, and abides, by the terms and conditions of the Marketplace Members' contractor standards.
- 1.8 **"Property Assessed Clean Energy (PACE) Financing"** is a means of financing distributed generation renewable energy sources, energy and water efficiency improvements, seismic strengthening improvements, electric vehicle charging infrastructure and other improvements deemed eligible by the California legislature that will be permanently affixed to real property, whereby the funds provided to pay for the improvements are repaid through contractual assessments, utilizing either California Assembly Bill 811 (Levine, 2008) ("AB 811"), which amended §§5898.10-5899.3 of the California Streets and Highways Code; or California Senate Bill 555 (Hancock, 2011) ("SB 555"), which amended certain portions of §§53311-53368.3 of the California Government Code and each as subsequently amended.
- 1.9 **"Team"** is made up of staff from the County and MCE
- 1.10 **"Work"** as defined throughout this Agreement is the collaborative, non-competitive, effort between the Marketplace Member and the County to

deliver the financing marketplace and support the citizens of Marin County in completing water and energy efficiency upgrades and the installation of renewable energy.

2 Scope of Work / Collaboration.

- 2.1 Marketplace Member's Specified Services. The Marketplace Member will offer and provide Property Assessed Clean Energy Financing under the requirements of AB 811 and/or SB 555 in collaboration with the Team.
- 2.2 Cooperation with County and MCE. Marketplace Member shall cooperate with County, MCE and staff in the performance of all work hereunder.
- 2.3 Performance Standard. Marketplace Member shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by an organization administering a Property Assessed Clean Energy financing program pursuant to California Assembly Bill 811 and/or California Senate Bill 555. County has relied upon the professional ability and expertise of Marketplace Member as a material inducement to enter into this Agreement. Marketplace Member hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Marketplace Member's work by County shall not operate as a waiver or release. If County determines that any of Marketplace Member's work is not in accordance with such level of competency and standard of care, County, in its sole discretion, shall have the right to do any or all of the following: (a) require Marketplace Member to discuss with County to review the quality of the work and resolve matters of concern; (b) terminate this Agreement pursuant to the provisions of Section 5, Termination; or (c) pursue any and all other remedies at law or in equity.
- 2.4 Financing Provision Requirements.
The Marketplace Member will:
- 2.4.1 Advocate for efficiency measures before generation installation (i.e., include energy efficiency information in contractor training materials and on program website).

- 2.4.2 Include a process to receive acknowledgement and confirmation of satisfaction with work completed from the applicant before project payment is disbursed and have a published dispute resolution process available for customers.
- 2.4.3 Provide Truth in Lending Act Disclosure details to the applicant specific to the requested amount of the financing
- 2.4.4 For residential properties, require applicant acknowledgment of the Federal Housing Finance Authority position on PACE on a separate signature acknowledgement page. Residential Disclosure Signature Form must be substantially similar to Attachment 1.
- 2.4.5 For non-residential properties, require written lender affirmative acknowledgement
- 2.4.6 Advocate and promote the use of local contractors (i.e., by identifying where the contractors are based on website), as defined Section 1, Definitions, with all applications for financing, results of which will be reported under Section 2.6.2.i.
- 2.4.7 Provide training to contractors and information to property owners on available rebates (for all utility and generation types), including and not limited to city rebate programs, PG&E programs, the Marin County Energy Watch program, and MCE programs
- 2.4.8 Require that all applicable building permits are obtained and finalized for all improvements
- 2.4.9 Verify that property owners are current on all property taxes for the subject property
- 2.4.10 Ensure all marketing materials and calculation methodologies conforms to all applicable tax laws. Do not provide any calculation options that represent that the full assessment payment may be tax deductible. Recommend that property owners consult with a tax professional prior to claiming any tax deductions associated with the project.
- 2.4.11 Include disclaimer language in application materials alerting property owner that it is their responsibility to understand impact of their project on potential local reassessment provisions.
- 2.4.12 Marketplace Member shall have a consistent plan for removal of assessments at end of repayment term and/or in the event of program closure.

2.5 Financial Policies.

The Marketplace Member will:

- 2.5.1 For programs offering residential financing, be an active participant in the California Alternative Energy and Advanced Transportation Financing Authority (CAEATFA) PACE Loan Loss Reserve Program or comparable loan loss reserve program which includes at minimum the parameters outlined in Attachment 2.
- 2.5.2 Notify the County six months in advance if funding capacity available from the Marketplace Member to prospective PACE customers in the County will fall below the amount dispersed in the previous six months of operation
- 2.5.3 Notify the County of any involuntary recorded legal action regarding any property with a PACE assessment placed in the County

2.6 Documents, Data, and Information Policies.

The Marketplace Member will:

- 2.6.1 Provide electronic access to the name, business name, and California State Contractors license number of participating contractors of the Marketplace Member's program; and the contractors' agreement to abide by the terms and conditions of the contractors' standards as outlined in Section 2.8, Participating Contractor Standards.
- 2.6.2 Retain completed Residential Disclosure Signature forms (hardcopy or electronic) on file for duration of assessment. Furnish to County upon request.
- 2.6.3 Provide either direct real time access to data or quarterly reports in an open electronic file format (such as Microsoft Excel) for data sharing of the following information for each assessment:
 - a. Required data:
 - i. Assessor's Parcel Number (APN) of the property
 - ii. Dollar amount financed (the amount of the assessment)
 - iii. Listing of all energy efficiency and water conservation eligible improvements installed by virtue of the financing, including the unit of measure for the improvement and the quantity installed
 - iv. Listing of all generation improvements installed and the solar STC-DC rating in watts or kilowatts
 - v. Contractor name
 - b. If available:
 - i. Amount of rebate or incentive dollars associated with the project (not financed)

- ii. How the customer heard about PACE financing
- iii. Why the customer selected PACE over other financing instruments available
- iv. Why the customer selected their final PACE Marketplace Member over the other members

The Marketplace Member will:

- 2.6.4 Provide the documents required for participation in the Marketplace Members' PACE Financing program to the County and Participating City and Town officials.
- 2.6.5 Provide support to County and Participating City and Town staff to facilitate adoption of required participation documents.

The County will:

- 2.6.6 Offer staff resources and support to Participating City and Town staff to bring forward to their councils the documents provided by the Marketplace Member required for participation in the Marketplace Member's PACE financing product.

2.7 Branding / Marketing Requirements.

The Parties will:

- 2.7.1 Collaborate on any regional efforts that may impact PACE financing participation to achieve the best possible outcome for property owners
- 2.7.2 Represent the role of the County and MCE as the local neutral third party, not-for-profit, public service agencies supporting the public through the upgrade process, with the following message to consumers: Among the financing products in the marketplace, competition is encouraged to the benefit of the consumer, with the common goal of successful completion of projects
- 2.7.3 Recognize the MCE Office as the physical storefront (office) location for PACE activity in Marin County

The Marketplace Member will:

- 2.7.4 Provide assistance to the Team for: (1) coordinating and implementing the integration of the Marketplace Member into the Financing Marketplace; and (2) support of contractor training.
- 2.7.5 Provide specific training for contractors engaged with local PACE assessments using the marketplace member's financing product,

materials, collateral, tools, and associated software, through training offered either directly from the marketplace member or subcontracted to the Team

- 2.7.6 Provide professional services, template documents, and other services reasonably necessary to staff for integrating the Marketplace Members financing option into the County's and MCE's websites
- 2.7.7 Provide training and resources to the Team as needed to build understanding and support for use of the financing product

The Team will:

- 2.7.8 Present the financing products of the Marketplace Members in all venues with impartiality to the public.
- 2.7.9 Present marketing collateral of all financing products with impartiality in education and outreach materials and events
- 2.7.10 Design and deliver a financing product comparison chart on the County's Sustainability Team and MCE Clean Energy's websites for all marketplace members

2.8 Participating Contractor Standards.

Participating Contractors must agree to and abide by the terms and conditions of the contractors' standards outlined in items 2.8.1 through 2.8.11 below.

Both Parties will:

- 2.8.1 Require that contractors have the appropriate California State License Board license
- 2.8.2 Require that contractors' bonding is in good standing
- 2.8.3 Require that contractors have appropriate Workers' Compensation coverage
- 2.8.4 Require that contractors have a minimum of \$1M of commercial general liability insurance
- 2.8.6 NOT endorse, recommend, or refer any specific contractor other than contractors who have a proven track record of superior customer satisfaction
- 2.8.7 NOT make any representation or warranty regarding the qualifications, licensing, products, or workmanship of any contractor
- 2.8.8 NOT make any warranty regarding the contractor's work or products purchased from contractors provided

- 2.8.9 NOT accept any liability that may be alleged to arise from the work of any listed contractor on a customer project or from any reliance on any claims, statements, or other descriptions regarding a contractor's certifications, licenses, qualifications or products
- 2.8.10 NOT imply through discussions or calculations that the full assessment payment amount may be tax deductible but rather only the interest.

Marketplace Member will:

- 2.8.11 Via trainings and customer compliant system, require that contractors and its representatives, employees, and agents do not represent themselves as agents, representatives, contractors, subcontractors, or employees of the County, or MCE, or claim association or affiliation with the County, or MCE

2.9 Interaction with Tax Collector Processes.

Marketplace Member will: Independently engage the County of Marin Tax Collector for administration of property tax assessments placed through its financing product.

3 Payment. This Agreement does not include any financial arrangements between the Marketplace Member and the County, nor does it preclude any separate contracts for services or support.

4 Term of Agreement. The term of this Agreement shall be from the Effective Date until termination in accordance with the provisions of Section 5, Termination below.

5 Termination.

5.1 Termination without Cause. Notwithstanding any other provision of this Agreement, at any time and without cause, County or Marketplace Member shall have the right, in its sole discretion, to terminate this Agreement by giving 30 days written notice to the other Party of this Agreement.

5.2 Termination for Cause. Notwithstanding any other provision of this Agreement, should the Marketplace Member fail to uphold any of its obligations hereunder, within the time and in the manner herein provided, or otherwise violate any of the terms of this Agreement, County or MCE may immediately terminate this Agreement by giving Marketplace Member written notice of such termination, stating the reason for termination.

5.3 Delivery of Data and Information upon Termination. In the event of termination, Marketplace Member, within 14 days following the date of termination, shall deliver to County all raw data and information in an editable electronic format as outlined in Section 2.6, Document, Data, and Information Policies.

5.4 Authority to Terminate. The Board of Supervisors has the authority to terminate this Agreement on behalf of the County. In addition, the Community Development Agency Director, in consultation with County Counsel, shall have the authority to terminate this Agreement on behalf of the County. The Executive Officer of MCE has the authority to terminate this Agreement on behalf of MCE.

5.5 Effect of Termination. In the event of termination pursuant to this Section 5, the Marketplace Member shall:

5.5.1 Not enter into new assessment contracts as of the date of the termination. The Marketplace Member may continue to collect assessments or special taxes with the County for assessment contracts entered into prior to such date of termination.

5.5.2 Communicate to County Assessor's Office designated tax collector for remaining outstanding assessments.

6 Indemnification and Liability. Marketplace Member agrees to accept all responsibility for loss or damage to any person or entity, including County and MCE, and to indemnify, hold harmless, and release County and MCE, their officers, agents, and employees, from and against any actions, claims, damages, liabilities, disabilities, or expenses, that may be asserted by any person or entity, including Marketplace Member, that arise out of, pertain to, or relate to the negligent actions or willful misconduct of Marketplace Member's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under this Agreement. Marketplace Member agrees to provide a complete defense for any claim or action brought against County or MCE based upon a claim relating to such Marketplace Member's or its agents', employees', contractors', subcontractors', or invitees' the negligent actions or willful misconduct of under this Agreement. Marketplace Member's obligations under this Section apply whether or not there is concurrent negligence on County's and/or MCE's part, but to the extent required by law, excluding liability due to County's and/or MCE's conduct. County shall have the right to select its legal counsel at Marketplace Member's expense, subject to Marketplace Member's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount

or type of damages or compensation payable to or for Marketplace Member or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.

- 7 Prosecution of Work.** The execution of this Agreement shall constitute Marketplace Member's authority to proceed immediately with the performance of this Agreement.

8 Representations of Marketplace Member.

8.1 Standard of Care. County and MCE have relied upon the professional ability and training of Marketplace Member as a material inducement to enter into this Agreement. Marketplace Member hereby agrees that all its work will be performed and that its operations shall be conducted in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance of Marketplace Member's work by County and/or MCE shall not operate as a waiver or release.

8.2 Status of Marketplace Member. The parties intend that Marketplace Member, in performing the services specified herein, shall act as an independent contractor and shall control the work and the manner in which it is performed. Marketplace Member is not to be considered an agent or employee of County or MCE and is not entitled to participate in any pension plan, worker's compensation plan, insurance, bonus, employment protection, or similar benefits County or MCE provides its employees.

8.3 Conflict of Interest. Marketplace Member covenants that it presently has no interest and that it will not acquire any interest, direct or indirect, that represents a financial conflict of interest under state law or that would otherwise conflict in any manner or degree with the performance of its services hereunder. Marketplace Member further covenants that in the performance of this Agreement no person having any such interests shall be employed.

8.4 Statutory Compliance. Marketplace Member agrees to comply with all applicable federal, state and local laws, regulations, statutes and policies applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement.

8.5 Nondiscrimination. Without limiting any other provision hereunder, Marketplace Member shall comply with all applicable federal, state, and local laws, rules, and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, gender identity, marital status, age, medical condition, pregnancy, disability, sexual orientation or other prohibited basis, including without limitation, the County's Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated herein by this reference.

8.6 Assignment of Rights. For the avoidance of doubt, the provisions of this Section 8.6 apply only to copyrights, trademarks, patents and rights to ideas developed solely in connection with this Agreement and do not relate to such property that a Marketplace Member, including without limitation, any of its agents, has developed or may develop for general use within and beyond the Financing Marketplace. Marketplace Member assigns to County and MCE all rights throughout the world in perpetuity in the nature of copyright, trademark, patent, right to ideas, in and to all versions of the plans and specifications, if any, now or later prepared by Marketplace Member in connection with this Agreement. Marketplace Member agrees to take such actions as are necessary to protect the rights assigned to County and MCE in this Agreement, and to refrain from taking any action which would impair those rights. Marketplace Member's responsibilities under this provision include, but are not limited to, placing proper notice of copyright on all versions of the plans and specifications as County or MCE may direct, and refraining from disclosing any versions of the plans and specifications to any third party without first obtaining written permission of County and/or MCE as applicable.

8.7 Authority. The undersigned hereby represents and warrants that he or she has authority to execute and deliver this Agreement on behalf of Marketplace Member.

9 Demand for Assurance. Each party to this Agreement undertakes the obligation that the other's expectation of receiving due performance will not be impaired. When reasonable grounds for insecurity arise with respect to the performance of either party, the other may in writing demand adequate assurance of due performance and until such assurance is received may, if commercially reasonable, suspend any performance for which the agreed return has not been received. "Commercially reasonable" includes not only the conduct of a party with respect to

performance under this Agreement, but also conduct with respect to other agreements with parties to this Agreement or others. After receipt of a justified demand, failure to provide within a reasonable time, but not exceeding thirty (30) days, such assurance of due performance as is adequate under the circumstances of the particular case is a repudiation of this Agreement. Acceptance of any improper delivery, conduct, or service does not prejudice the aggrieved party's right to demand adequate assurance of future performance. Nothing in this Article limits County's right to terminate this Agreement pursuant to Section 5, Termination.

10 Assignment and Delegation. Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented; provided however, that Marketplace Member may assign this Agreement in connection with a merger or the sale of all or substantially all of its assets or equity ownership without the prior written consent of the County provided that the successor expressly assumes all of the obligations, including this Agreement, and confirms all of the representations, warranties and covenants of Marketplace Member hereunder.

11 Method and Place of Giving Notice. All notices shall be made in writing and shall be given by personal delivery or by U.S. Mail or courier service. Notices shall be addressed as follows:

TO: COUNTY:

Community Development Agency Director
County of Marin
3501 Civic Center Drive, Rm 308
San Rafael, CA 94903
Facsimile: 415-473-7880
Email address (opt): _____

TO: MARKETPLACE MEMBER: _____

Facsimile: () -

Email address (opt): _____

When a notice is given by a generally recognized overnight courier service, the notice shall be deemed received on the next business day. When a copy of a notice is sent by

facsimile or email, the notice shall be deemed received upon transmission as long as (1) the original copy of the notice is promptly deposited in the U.S. mail and postmarked on the date of the facsimile or email, (2) the sender has a written confirmation of the facsimile transmission or email, and (3) the facsimile or email is transmitted before 5 p.m. (recipient's time). In all other instances, notices shall be effective upon receipt by the recipient. Changes may be made in the names and addresses of the person to whom notices are to be given by giving notice pursuant to this paragraph.

12 Miscellaneous Provisions.

- 12.1 No Waiver of Breach. The waiver by County or MCE of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or provision or any subsequent breach of the same or any other term or promise contained in this Agreement.
- 12.2 Construction. To the fullest extent allowed by law, the provisions of this Agreement shall be construed and given effect in a manner that avoids any violation of statute, ordinance, regulation, or law. The parties covenant and agree that in the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of the provisions hereof shall remain in full force and effect and shall in no way be affected, impaired, or invalidated thereby. Marketplace Member, County and MCE acknowledge that they have each contributed to the making of this Agreement and that, in the event of a dispute over the interpretation of this Agreement, the language of the Agreement will not be construed against one party in favor of the other. Marketplace Member and County and MCE acknowledge that they have each had an adequate opportunity to consult with counsel in the negotiation and preparation of this Agreement.
- 12.3 Consent. Wherever in this Agreement the consent or approval of one party is required to an act of the other party, such consent or approval shall not be unreasonably withheld or delayed.
- 12.4 No Third Party Beneficiaries. Nothing contained in this Agreement shall be construed to create and the parties do not intend to create any rights in third parties.

- 12.5 Applicable Law and Forum. This Agreement shall be construed and interpreted according to the substantive law of California, regardless of the law of conflicts to the contrary in any jurisdiction. Any action to enforce the terms of this Agreement or for the breach thereof shall be brought and tried in San Rafael or the forum nearest to the city of San Rafael, in the County of Marin.
- 12.6 Captions. The captions in this Agreement are solely for convenience of reference. They are not a part of this Agreement and shall have no effect on its construction or interpretation.
- 12.7 Merger. This writing is intended both as the final expression of the Agreement between the parties hereto with respect to the included terms and as a complete and exclusive statement of the terms of the Agreement, pursuant to Code of Civil Procedure Section 1856. No modification of this Agreement shall be effective unless and until such modification is evidenced by a writing signed by both parties.
- 12.8 Survival of Terms. All express representations, waivers, indemnifications, and limitations of liability included in this Agreement will survive its completion or termination for any reason.
- 12.9 Time of Essence. Time is and shall be of the essence of this Agreement and every provision hereof.

Continued on next page:

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the Effective Date.

MARKETPLACE MEMBER:

COUNTY: COUNTY OF MARIN

CERTIFICATES OF INSURANCE ON
FILE WITH AND APPROVED AS TO
SUBSTANCE FOR COUNTY:

By: _____

Name: _____

Title: _____

Date: _____

By: _____

Name: _____

Title: _____

Date: _____

MARIN CLEAN ENERGY:

By: _____

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM FOR COUNTY:

By: _____

County Counsel

Date: _____

PACE Program Comparative Matrix

| Program Name | CaliforniaFIRST <i>Updated 4/14/15</i> | California HERO <i>(Home Energy Renovation Opportunity)</i> <i>Updated Summer 2014</i> | Ygrene Works <i>Updated 4/30/15</i> | Figtree Energy Resources <i>Updated 4/30/15</i> | Open PACE¹ <i>(currently includes AllianceNRG & CAFEfirst)</i> <i>Updated 4/30/15</i> |
|--|--|---|--|---|---|
| Program Status in Marin | County and 9 cities/towns have passed resolutions authorizing CaliforniaFIRST. | Under consideration | Under consideration | Under consideration | Under consideration |
| Government Sponsor | California Statewide Communities Development Authority (CSCDA) | Western River Council of Governments (WRCOG) | Golden State Finance Authority (formerly known as CA Home Finance Authority) | California Enterprise Development Authority (CEDA) | California Statewide Communities Development Authority (CSCDA) |
| Program Website | www.californiafirst.org | www.heroprogram.com | www.ygreneworks.com | www.figtreefinancing.com | https://www.alliancenerg.com/retail/ |
| Projects Financed | \$37 million in active applications. Marin Data as of 3/31/15: 145 applications received and 34 projects funded; totaling \$678,000 | Approved projects: 23,000 for over \$435 million | Over 3,000 projects totaling over \$160 million of approved financings | \$30 million of approved projects | None at this time. Estimated launch May/June 2015 |
| Cost to Participating Governments | None | None | None | None | None |
| Local Validation Action Required | Complete - The County was part of a multi-jurisdiction judicial validation granted by the Court in April 2014. | Court validation required. Upon filing of Resolution, validation process takes ~ 6 months. Currently, no statewide validation. | Currently, implementing a statewide validation for both SB555 and AB811. Validation will be completed in May 2015. | None - Statewide validation obtained on July 16, 2013 | CSCDA is completing a statewide validation now for Open PACE. Completion expected May 2015. |
| Commercial/ Residential? | Both commercial and residential financing available | Both commercial and residential financing available | Both commercial and residential financing available | Currently, commercial only. Residential program launching in June 2015. | Both commercial and residential financing available |

¹ CSCDA developed qualification criteria to select PACE Program Administrators to be included in the CSCDA OPEN PACE platform. At this time, the program administrators include CaliforniaFIRST and Alliance NRG but more may be added in the future. While each program administrator will have their own financing rules/guidelines regarding financing amounts and terms, the current AllianceNRG guidelines are included here.

PACE Program Comparative Matrix

| Program Name | CaliforniaFIRST <i>Updated 4/14/15</i> | California HERO <i>(Home Energy Renovation Opportunity)</i> <i>Updated Summer 2014</i> | Ygrene Works <i>Updated 4/30/15</i> | Figtree Energy Resources <i>Updated 4/30/15</i> | Open PACE¹ <i>(currently includes AllianceNRG & CAFirst)</i> <i>Updated 4/30/15</i> |
|--|--|--|--|--|--|
| Example Participating Jurisdictions | 200 CA jurisdictions including: 10 Marin jurisdictions; all of Alameda County; San Jose and most of the rest of Santa Clara County; all of San Mateo County; and Sonoma County | 238 communities including San Francisco, Sonoma County, Napa County, Riverside County, San Bernardino County, LA County | 5 counties and 25 cities in CA including Sacramento County, Riverside County, Yolo County | Nearly 200 CA jurisdictions including San Mateo County, City of San Jose, Alameda County, San Diego County, Butte County | San Francisco, Berkeley, Piedmont, El Cerrito, Burlingame, Eureka, Placerville, Humboldt County, Butte County, Monterey County (all for commercial and residential PACE) |
| Termination Process | Pass resolution opting out at any time. Does not impact completed or in process financings but future financings would not be processed. | Program “opt-out” available with 30 days’ notice. Does not impact completed or in process financings but future financings would not be processed. | Pass resolution opting out at any time. Does not impact completed or in process financings, but future financings would not be processed | Pass resolution opting out at any time. Does not impact completed or in process financings, but future financings would not be processed | Pass resolution opting out at any time. Does not impact completed or in process financings, but future financings would not be processed |
| Minimum Financing | \$ 5,000 – Residential \$250,000 – Commercial | \$ 5,000 – Residential \$ 5,000 – Commercial | \$ 2,500 – Residential \$ 2,500 – Commercial | \$ 2,500 - Residential \$ 5,000 - Commercial | \$2,500 for residential; \$10,000 for commercial |

PACE Program Comparative Matrix

| Program Name | CaliforniaFIRST <i>Updated 4/14/15</i> | California HERO <i>(Home Energy Renovation Opportunity)</i> <i>Updated Summer 2014</i> | Ygrene Works <i>Updated 4/30/15</i> | Figtree Energy Resources <i>Updated 4/30/15</i> | Open PACE¹ <i>(currently includes AllianceNRG & CAFirst)</i> <i>Updated 4/30/15</i> |
|---------------------------|--|--|--|---|---|
| Maximum Financing | Residential: The lessor of \$200,000 or 15% of the value of the property. ² The Assessment amount plus the mortgage-related debt must not exceed 100% of the value of the Property. ³ Commercial: Current outstanding debt plus CaliforniaFIRST financing amount must be less than the property value plus the value of the financed projects. | Residential: Mortgage-Related debt plus the financing amount may not exceed 100% of the value of the property and proposed improvements must not exceed 10% of property value. Commercial: Mortgage-Related debt plus the financing amount may not exceed 90% of the value of the property and proposed improvements must not exceed 20% of property value. | Both Residential & Commercial: 15% of property value | Residential: Not to exceed 10% of the Total Property Value Commercial: Not to exceed 20% of the Total Property Value | Both Residential & Commercial: Statutory limit of 15% of property value |
| Interest Rate | Residential: 6.75% - 8.39% Commercial: Depends on source of capital property owner elects to work with. Prevailing market rate is currently 6.0% or less fixed for 20 years. | Residential: 5.95% - 8.95% Commercial: TBD | 5.99% - 7.75% | Residential: 4.63% - 6.99% Commercial: 4.94% - 6.10% | Residential: 5.95% - 8.25% Commercial: 5.25% - 7.00% |
| Loan Term (Length) | 5, 10, 15, 20 or 25 years | 5 - 20 years 25 year terms available for commercial properties | 5 - 20 years; some projects eligible for 30 year term | 5, 10, 15 or 20 years 25 year terms available for residential properties | 5, 10, 15, 20, 25 or 30 years |

² 15% of Property Value is only available for first \$700,000 of property value, then 10% is applied.

³ Program Administrator approval is required for any Assessment Contracts over \$75,000.

PACE Program Comparative Matrix

| Program Name | CaliforniaFIRST <i>Updated 4/14/15</i> | California HERO <i>(Home Energy Renovation Opportunity)</i> <i>Updated Summer 2014</i> | Ygrene Works <i>Updated 4/30/15</i> | Figtree Energy Resources <i>Updated 4/30/15</i> | Open PACE¹ <i>(currently includes AllianceNRG & CAFirst)</i> <i>Updated 4/30/15</i> |
|--|--|---|--|--|--|
| Property Owner Fees/Costs⁴ | Residential: No application fee; Closing fee not to exceed 6.4% of assessed amount. One-time recording fee not to exceed \$100 Annual admin fee: \$30 (varies) Commercial: No application fee; Closing fees dependent on source of capital. Fees generally range from 2.5%-4% of the project cost. Capped at 3% of project cost for projects >\$500,000 Annual County Collection Fee | Residential: No application fee; Closing/Admin fees: 6.95% of principal amount plus \$95 recording fee to be added to assessment amount. Annual County Collection Fee Commercial: Application fee may be required and will not exceed the greater of \$250 or 1% of financing amount; Closing/Admin fees: 5% of principal amount plus title and recording fees. Annual County Collection Fee | Residential: \$700 per completed project (includes \$50 for initial application) Commercial: Fees start at \$700 with additional fees applicable based on overall size of the project plus additional title, escrow and other legal fees, as applicable | Residential: No application fee; Cost of issuance fee: 5.95% of principal amount Annual fees: \$35 Commercial: Application fee of \$695; Cost of issuance fee: 4% of principal amount Annual fees: 3% | Residential: 6.4% Commercial: 3 – 4% |
| Prepayment Penalty | None | No | Yes, but may be waived at the time of signing the financing agreement | Yes, in years 1 - 10 | Residential: None Commercial: TBD |
| Mortgage Lender Consent | Residential: None Commercial: Lender consent or “affirmative acknowledgement” required | Residential: None Commercial: Lender consent or “affirmative acknowledgement” required | Residential: None Commercial: Lender consent or “affirmative acknowledgement” required | Residential: None Commercial: Written consent Required | Residential: None Commercial: Recommend that property owners notify lenders but not required. |

⁴ Exact amounts vary based on project, and not all costs will apply to a particular project. Actual amount will vary with time and jurisdiction and may be added to the principal amount financed. Data is provided as example.

PACE Program Comparative Matrix

| Program Name | CaliforniaFIRST <i>Updated 4/14/15</i> | California HERO <i>(Home Energy Renovation Opportunity)</i> <i>Updated Summer 2014</i> | Ygrene Works <i>Updated 4/30/15</i> | Figtree Energy Resources <i>Updated 4/30/15</i> | Open PACE¹ <i>(currently includes AllianceNRG & CAFirst)</i> <i>Updated 4/30/15</i> |
|--------------------------------|--|---|--|---|---|
| Energy Audit | Residential: Recommended but not required Commercial: Required | Residential: Recommended but not required Commercial: Recommended but not required | Residential: Recommended but not required Commercial: Recommended for all projects; Required for projects over \$250,000 | Residential: Not required Commercial: Not Required ⁵ | Not required |
| Selection of Contractor | Residential: Property owner selects licensed contractor from list of CaliforniaFIRST participating contractors. Commercial: Property owner selects licensed contractor. Not required to be registered with program. | Residential & Commercial: Property owner selects licensed contractor from list of local HERO participating contractors. | Residential & Commercial: Property owner selects contractor from list of local contractors certified by Ygrene Energy Fund. Contractors must be licensed, bonded, insured and in good standing with CSLB. Property owner may select a non-certified contractor but they must become certified prior to the project commencing. | Residential & Commercial: Contractor must be registered with program. Payment to contractor directly made from program. | Residential & Commercial: Property owner selects licensed contractor from list of eligible contractors. |

⁵ Figtree recommends audits for all projects, in order to track energy savings (e.g., to support Community Climate Action Plans)



TO: Marin City/Town Managers and Administrators

FROM: Dana Armanino, County of Marin Sustainability Team
Beckie Menten, MCE Clean Energy

SUBJECT: Residential PACE (Property Assessed Clean Energy) Programs Update

Over the past several years, Marin Clean Energy (MCE) and Marin local governments, including the County of Marin, have been approached by a number of residential Property Assessed Clean Energy (PACE) administrators interested in launching their programs in Marin. MCE and County Sustainability staff have met with some of the administrators and have conducted an initial review of their offerings and the latest developments with regard to the Federal Housing Finance Agency's (FHFA) concerns with residential PACE. This memorandum is intended to update all of the City/Town Managers and Administrators on latest developments of the programs but is not intended to serve as a proxy for a more thorough legal review by your City Counsel.

BACKGROUND

What is PACE?

The Property Assessed Clean Energy (PACE) financing structure was developed in late 2008 as a way for property owners (both residential and commercial) to finance energy efficiency and related retrofits to homes and commercial buildings, through loans that would be paid back over a period of years as an "assessment" on property tax bills.

Importantly, assessments are considered superior to all other encumbrances on the property, and, in the event of a foreclosure, the months of property tax (including PACE assessments) in arrears would be repaid before all other debts and liens on the property, including the mortgage. Local governments, like the County of Marin (County), could issue bonds in the amount of the assessments. The concept was that banks would readily enter into assessments bonded by government agencies. In addition, for commercial property owners, the "assessment" may be reflected on their books as an operational expense, not as additional debt.

Why PACE was waylaid

In early 2010, as the country strained to recover from a subprime melt-down and collapse of the housing market, Fannie Mae and Freddie Mac (who collectively hold a significant portion of the market for secondary mortgages) reversed their earlier support for PACE and filed protests against residential PACE with the FHFA, claiming that PACE assessments were, in fact, regular loans and debts, should not hold a first payback position (in particular, over the mortgage), and were likely to exacerbate the housing crisis.

On July 6, 2010, the FHFA issued an official statement, taking the position that PACE-backed assessments represented a significant alteration to mortgage practices, posed a significant risk to lenders and secondary market entities, and may alter valuations of mortgage-backed securities. FHFA determined that properties with PACE assessments could be declared in default of their mortgages, and opened the door for banks to adjust loan-to-value ratios to reflect the maximum permissible PACE



amount available to borrowers in PACE jurisdictions even if those borrowers were not planning to take on a PACE assessment, (i.e., redlining PACE communities).¹

In July 2010, the State of California and the County of Sonoma each filed federal lawsuits against the FHFA requesting that they follow established federal rulemaking procedures in connection with the prohibition of PACE. A number of other local county, city and township agencies joined the suit because across the country, local governments had launched or were prepared to launch residential and commercial PACE Programs, using funds provided under the American Recovery and Reinvestment Act (ARRA). As a result of the litigation, in 2010 many jurisdictions, including the County, suspended their efforts to implement residential PACE Programs pending the outcome of the federal litigation.

While litigation proceeded at the federal level, a small group of local governments defied the FHFA and deployed successful residential PACE programs.² These programs all borrowed from the Sonoma County PACE model, which bonded and backed the program with its own full faith and credit. In Sonoma's case, \$60 million from the County of Sonoma Treasury is dedicated to guarantee the program. After more than five years, Sonoma's program has a 0% default rate, less than 1% tax delinquency rate, has generated nearly 2,000 residential energy efficiency retrofit projects, and over 60 commercial upgrade projects. Through its own success, however, Sonoma has financed over \$66 million in projects with approximately \$46 million currently extended and it does not expect to be in a position to further dedicate Treasury or other funding for this purpose. In order to continue the program, Sonoma is considering additional PACE financing product options.

In addition, the Home Energy Renovation Opportunity (HERO) Program was launched in February 2012, as a partnership between Renovate America (RA) and the Western Riverside Council of Governments (WRCOG). HERO is backed by private equity investors (including banks), and enrollment is through application to become of an associate member of the WRCOG JPA and judicial validation under the program.

The PACE lawsuits were initially successful in the Federal District Court, but in March 2013, the Ninth Circuit Court of Appeals ruled that the courts have no jurisdiction to review any action taken by the Federal Housing Finance Agency (FHFA) when acting as conservator for Fannie Mae or Freddie Mac. The court dismissed the case against FHFA. Thereafter, on July 24, 2013, the FHFA withdrew its proposed rule on PACE but indicated it was not altering its policy set out in its previous statements. FHFA indicated it would continue to review programs that would support energy retrofits and might be appropriate for purchase by Fannie Mae and Freddie Mac. Ongoing oversight by FHFA is at the core of any risk assessment regarding residential PACE Programs.³ To date, FHFA has not exercised this right in any community with a residential PACE Program.⁴

¹ "Redlining" has additional potential implications, e.g., Fannie, Freddie and all other federal lending banks could refuse to issue mortgages on PACE-assessed properties in a sale transaction, and/or impose different interest rates and lending criteria in marked communities.

² Including Sonoma County (considered the key program nationally), Placer County, the City of Palm Springs, and the Township of Babylon (New York).

³ Staff is not aware of any redlining actions to date, although residential properties that participate in existing residential PACE Programs may be required to pay off their PACE assessments at sale or refinancing.

⁴ Although FHFA has not yet exercised red-lining action anywhere in the United States, this does not equate to a waiver of that power, and the decision by FHFA to act upon this power could result in properties with PACE assessments being declared in default of their mortgages and in banks adjusting loan-to-value ratios to reflect the maximum permissible PACE amount available to borrowers in PACE jurisdictions.

Governor Brown's Loan Loss Reserve Program

On September 23, 2013, Governor Brown reached out to incoming Acting Director of FHFA, Edward DeMarco, to propose a direct agreement between that agency and the State to allow residential PACE Programs to proceed under a written agreement that would remove any and all risk of redlining. As support for this proposition, the Governor and legislature has set aside an initial \$10 million PACE reserve in the 2013-14 budget to be held as a "loan loss reserve" or security against project loan defaults.⁵ First mortgage lenders will be reimbursed for specified losses resulting from the existence of a PACE lien on a property during a foreclosure or forced sale for unpaid property taxes. Additionally, by tracking the performance of PACE portfolios over the next several years, the Program should provide more detailed information on the actual credit risk associated with PACE financing than is currently available. This information will be useful for potential investors in PACE bonds and securities and may allow them to accept lower returns on these investments. On February 18, 2014, the California Alternative Energy and Advanced Transportation Authority (CAEATFA), a unit of the California Treasury, unanimously voted to approve PACE reserve regulations and the reserve became operational in early March. Several PACE programs operating in the state are applying for the reserve fund.

On May 1, 2014, the FHFA issued a formal response to the Governor's offer. In the letter, FHFA Director Melvin Watt thanked the Governor for the offer of the loan loss reserve fund but stated that the FHFA was "not prepared to change its position on California's first-lien PACE program and will continue to prohibit the Enterprises [Freddie Mac and Fannie Mae] from purchasing or refinancing mortgages that are encumbered with first-lien PACE loans." The letter went on to state that the director was concerned that the \$10 million reserve fund was not sufficient to offer full protection to the Enterprises and was not an adequate substitution for the Enterprises giving up their first-lien position. (See Attachment 1)

While this news is disappointing, it does not in effect change anything about the FHFA's current position or the status quo. The major PACE financing providers are still planning to move forward with their residential offerings. The providers are confident that given the extremely low default rate exemplified by the Sonoma County program and the availability of the loan loss reserve funds, the risk of the Freddie/Fannie taking action on a PACE program is very low. However, given this explicit statement by the FHFA, individual cities are encouraged to consider the notifications provided to homeowners and the policies of respective PACE providers in regards to lender consent.

Federal Legislation – HR 4285

New PACE legislation was introduced to Congress with bipartisan support on March 24, 2014. The PACE (Property Assessed Clean Energy) Assessment Protection Act of 2014 or H.R. 4285 would direct the FHFA to rescind its 2010 policy guidance to Fannie Mae and Freddie Mac regarding PACE assessments. To address FHFA's concerns, the bill establishes minimum underwriting standards to ensure that homeowners are able to afford the PACE assessments, thereby protecting Fannie Mae and Freddie Mac from financial risk.

⁵ In addition, the Governor has indicated a willingness to increase this fund as uptake in the program encumbered the full \$10 million (loan loss reserve margins are generally at 10%, so the initial fund would presumably cover \$100 million projects). The initial fund (and likely, any future increases) is being pledged from the State's revenue under the Cap and Trade Protocol.

CaliforniaFIRST - Commercial Program available now

Since the threat of redlining was not an issue for commercial properties, some PACE programs moved forward with commercial only offerings. One of the original PACE programs, the CaliforniaFIRST Program⁶ chose to scale back their offerings in light of the FHFA redlining issue and focused exclusively on the commercial market.

To launch or participate in a PACE program, local governments seek certification through a Resolution adoption and judicial validation process. In late 2013 and early 2014, the County and several cities (San Rafael, Novato and Larkspur) passed resolutions to participate in the CaliforniaFIRST Program. The validation process and certification was completed in early April 2014.

CaliforniaFIRST - Residential Program expected to launch Summer 2014

At this time, given the implementation of the CAEATFA reserve fund, CaliforniaFIRST believes the risks are minimized sufficiently to encourage them to re-launch their residential program offering. The certification process completed in April 2014 for the commercial program includes the ability to launch both residential and commercial PACE programs via CaliforniaFIRST. As a result, jurisdictions that have already passed resolutions to participate in CaliforniaFIRST are eligible to participate in the residential program when it launches this summer.

The program management will mirror their commercial program in that CaliforniaFIRST will manage all aspects of the offering – contractor management, application processing, project validation, bond issuance and repayment. CaliforniaFIRST will also manage all aspects of customer service which means the County, MCE and cities/towns will not be required to interface with property owners or contractors (see Attachment 2 for program details).

Other PACE Program Offerings

CaliforniaFIRST is not the only PACE program offering availability to California jurisdictions and a jurisdiction is not restricted from allowing multiple programs to operate in their areas. Each program requires a separate resolution to participate and each requires a separate court validation to proceed. Additional residential and commercial PACE financing programs, each with their own challenges and opportunities, include:

- A. HERO PACE Program -- While presented as both a commercial and residential PACE Program, the emphasis of the program has been residential. Under the HERO Model, jurisdictions enroll as “associate members” under the Western Riverside Council of Governments (WRCOG) JPA, and take advantage of a program that provides all necessary services (including bonding and equity funding) to members. Similar to CaliforniaFIRST, the HERO program offers a “one-stop” shop program – they provide all of the operational, legal, bonding, tracking, technical, contractor, customer support, and enforcement apparatus necessary to run a PACE Program. More than 100 cities and counties are registered in the program, and Renovate America (the program manager) has approached most local governments in the San Francisco Bay Region to recruit local governments as new members.
- B. Ygrene – Unlike most other PACE programs, the Ygrene program prefers exclusivity within a jurisdiction. However, there have been signs that they are revisiting this position as they expand

⁶ CaliforniaFIRST is administered by California Statewide Communities Development Authority (CSCDA) through its exclusive agent, Renewable Funding.

to new areas. Ygrene initially launched a program with the Sacramento Municipal Utility District (SMUD), which shows present signs of gradual uptake. Like HERO, Ygrene offers a “one-stop” shop program, with large lending institutions furnishing equity financing.

- C. Figtree – The Figtree program offers a commercial PACE program via the the California Enterprise Development Authority (CEDA) a statewide Joint Powers Authority (JPA) chartered by the California Association for Local Economic Development (CALED). Figtree does not require exclusivity and in fact, encourages jurisdictions to offer an open market for PACE programs. The program has also received a statewide judicial validation so this step would not be required if a city/town joined the program.

Scale of Risk

The level of risk (e.g., redlining) associated with enrollment under residential PACE programs requires a more tangible response from FHFA than just the attached letter and, in the absence of a rulemaking process, is difficult if not impossible to predict with certainty. Thus far, the Enterprises have not defaulted any mortgages nor have they adjusted their loan valuation criteria in communities with PACE programs but they have refused to finance a home with a PACE assessment.

In contrast to jurisdictions that have already enrolled in residential PACE programs, a number of jurisdictions have elected a more cautious approach – to postpone a decision regarding participation in a residential program until federal regulations on residential PACE assessments are clarified, and to send a letter to the FHFA urging the Agency to establish federal rulemaking procedures in connection with residential PACE financing and to rescind directives to Fannie Mae and Freddie Mac that threaten the viability of residential PACE programs throughout the nation.

Also, whatever may be estimated as a risk factor attributed to a residential PACE program may be mitigated through an alternative approach – such as making the program eligible only to no-mortgage properties, or homes with non-conforming mortgages that are not purchased by Fannie or Freddie (approximately 46% of the homes in Marin are either owned outright or have non-conforming mortgages), or by requiring consent from the existing mortgage holder prior to subordination of the mortgage.

Municipal Coordination and Local Marketing

MCE Clean Energy has offered to act as the liaison to the CaliforniaFIRST Program for participating jurisdictions. While the CaliforniaFIRST program has a robust customer service and quality assurance program, MCE will be the next point of contact in the County should a participant or jurisdiction have issues or questions.

MCE and County staff will assist in connecting potential project applicants with the CaliforniaFIRST program through their energy efficiency and renewable energy programs. Cities are also encouraged to promote the program offerings to their constituents and marketing resources will be made available when the program is fully launched. For projects for which CaliforniaFIRST financing might not be a viable option, MCE also offers complimentary on-bill repayment financing for residents and small businesses.

Attachments:

1. FHFA Response Letter to Governor Brown’s Loan Loss Offer
2. CaliforniaFIRST Program Summary



FEDERAL HOUSING FINANCE AGENCY
Office of the Director

May 1, 2014

The Honorable Edmund G. Brown Jr.
Governor, State of California
State Capitol
Sacramento, CA 95814

RE: California Property Assessed Clean Energy Program

Dear Governor Brown:

Thank you for your letter of April 28, 2014 about California's Property Assessed Clean Energy (PACE) program. The Federal Housing Finance Agency's (FHFA) General Counsel has been in touch with your staff, and I appreciate the time and materials they have provided concerning California's PACE program and intentions in creating the Reserve Fund.

I am writing to inform you that FHFA is not prepared to change its position on California's first-lien PACE program and will continue to prohibit the Enterprises from purchasing or refinancing mortgages that are encumbered with first-lien PACE loans. California's PACE program would allow local governments to finance energy-related home improvement projects by placing an assessment on a homeowner's property in a first lien position, resulting in the subordination of an existing Enterprise-backed mortgage to a second lien position. The effect of this is to increase the risks and possibility of losses to the Enterprises. Additionally, because these loans run with the land, the ongoing monthly assessments for PACE loans are passed on to any subsequent property owners – including after a foreclosure or other distressed sale – unless fully paid off beforehand.

In making this determination, FHFA has carefully reviewed the Reserve Fund created by the State of California and, while I appreciate that it is intended to mitigate these increased losses, it fails to offer full loss protection to the Enterprises. The Reserve Fund is not an adequate substitute for Enterprise mortgages maintaining a first lien position and FHFA also has concerns about the Reserve Fund's ongoing sustainability.

Should you wish to discuss this matter further, I would be happy to discuss alternatives to first-lien PACE programs with you.

Sincerely,

A handwritten signature in dark ink, appearing to read "Melvin L. Watt", is written over a light blue horizontal line.

Melvin L. Watt

xc: The Honorable Barbara Boxer
The Honorable Zoe Lofgren

Introducing “PACE 2.0”

Marin County

April 10, 2014

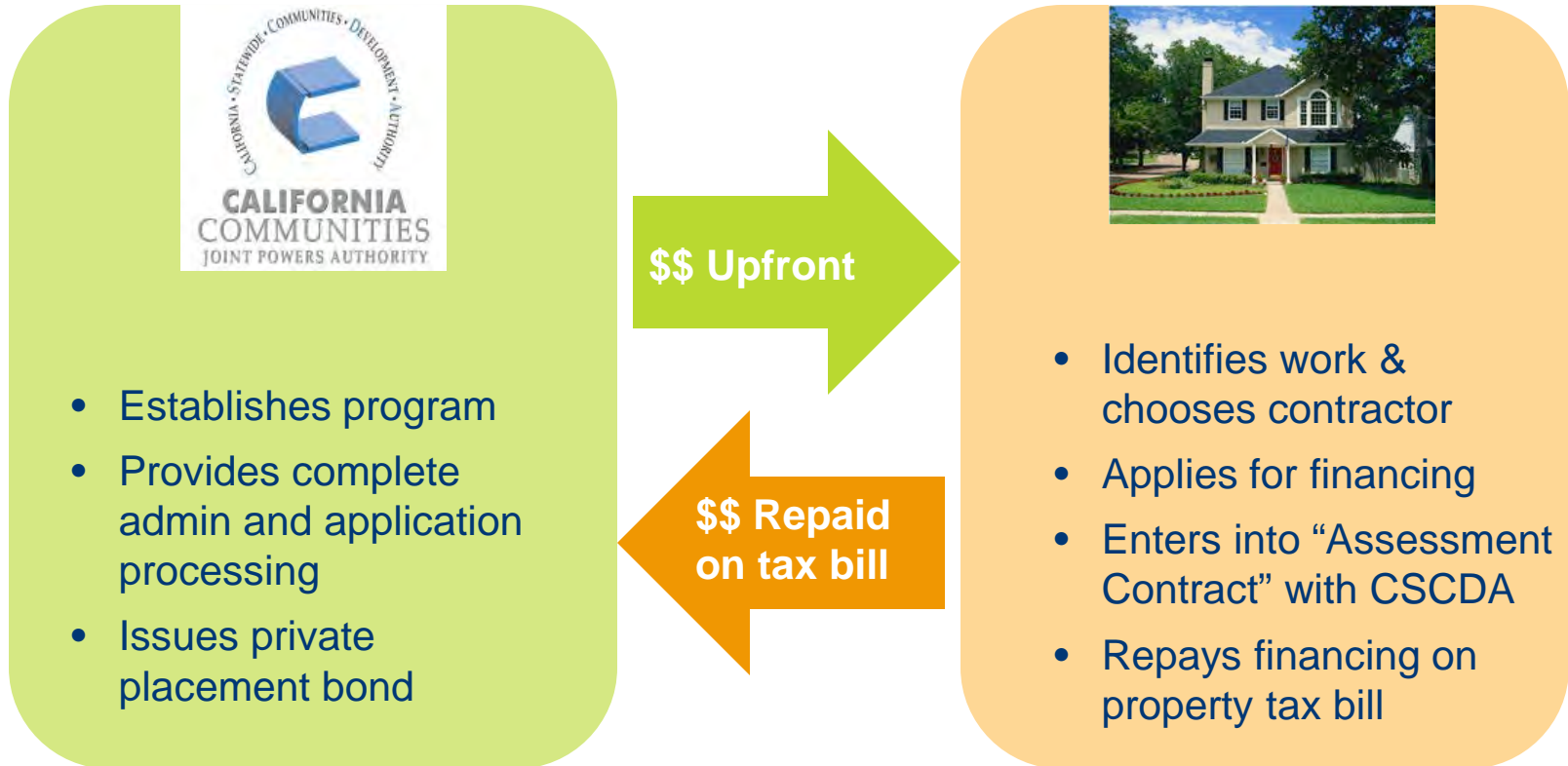
RENEWABLE  FUNDING



CaliforniaFIRST: What is PACE?

Finance vast assortment of energy efficiency, renewable energy, and water conservation measures with no upfront cost

- Senior “tax” lien = better financing terms



CalFIRST Team Responsibilities

Renewable Funding, Program Administrator

- Assembles team, designs program, ensures compliance with AB 811 and other applicable law

RF/EGIA Project Originator

- Creates and maintains system to accept and process applications; registers, supports and monitors contractors; provides customer service to property owners and contractors

Jones Hall Bond Counsel

- Legal oversight on bond issuance and compliance with AB 811

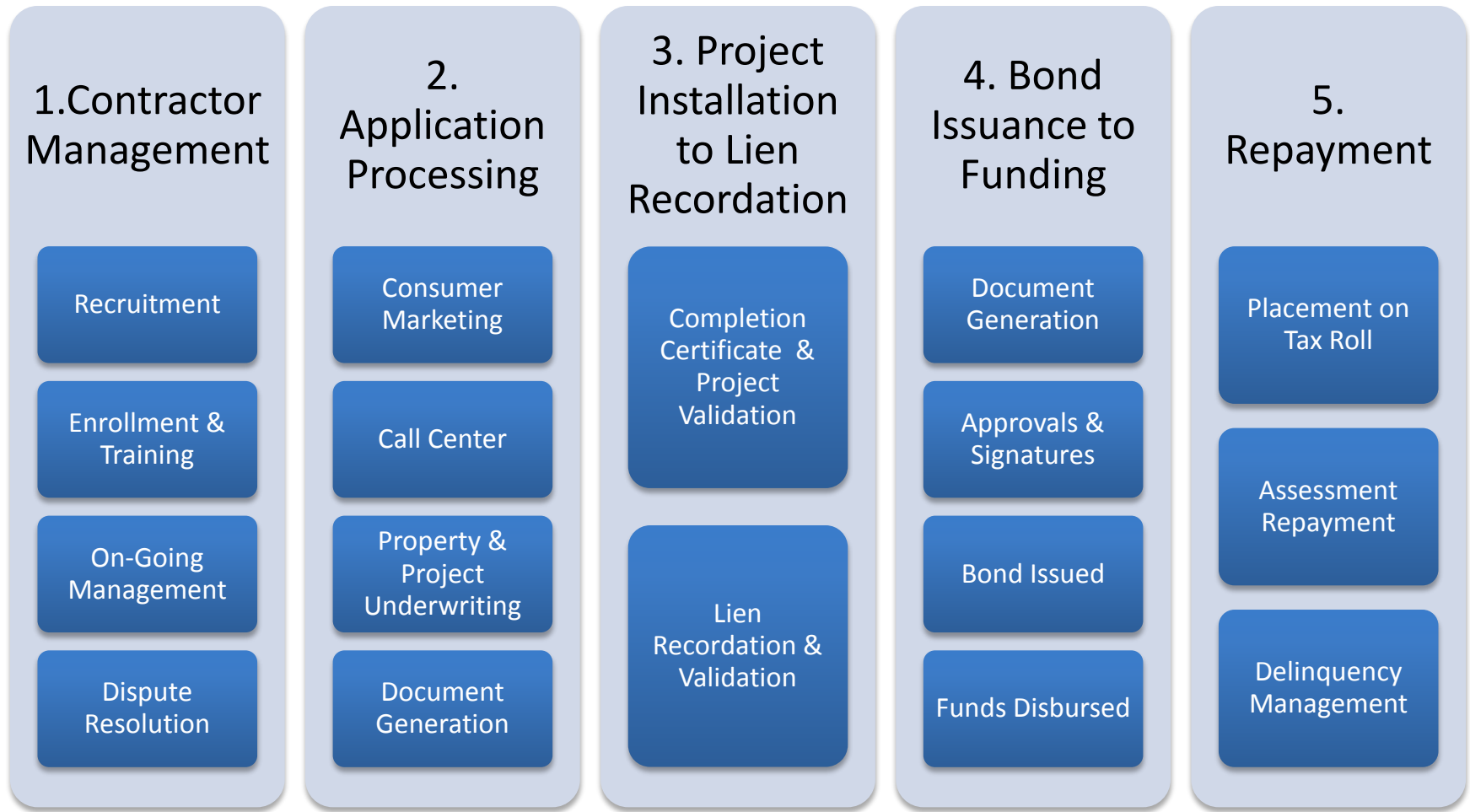
Wilmington Trust Trustee

- Manages flow of funds from disbursement to repayment to all respective payees

Willdan Tax administrator

- Works with participating counties to place liens on participating property and submits annual tax roll

Components of CaliforniaFIRST Operations

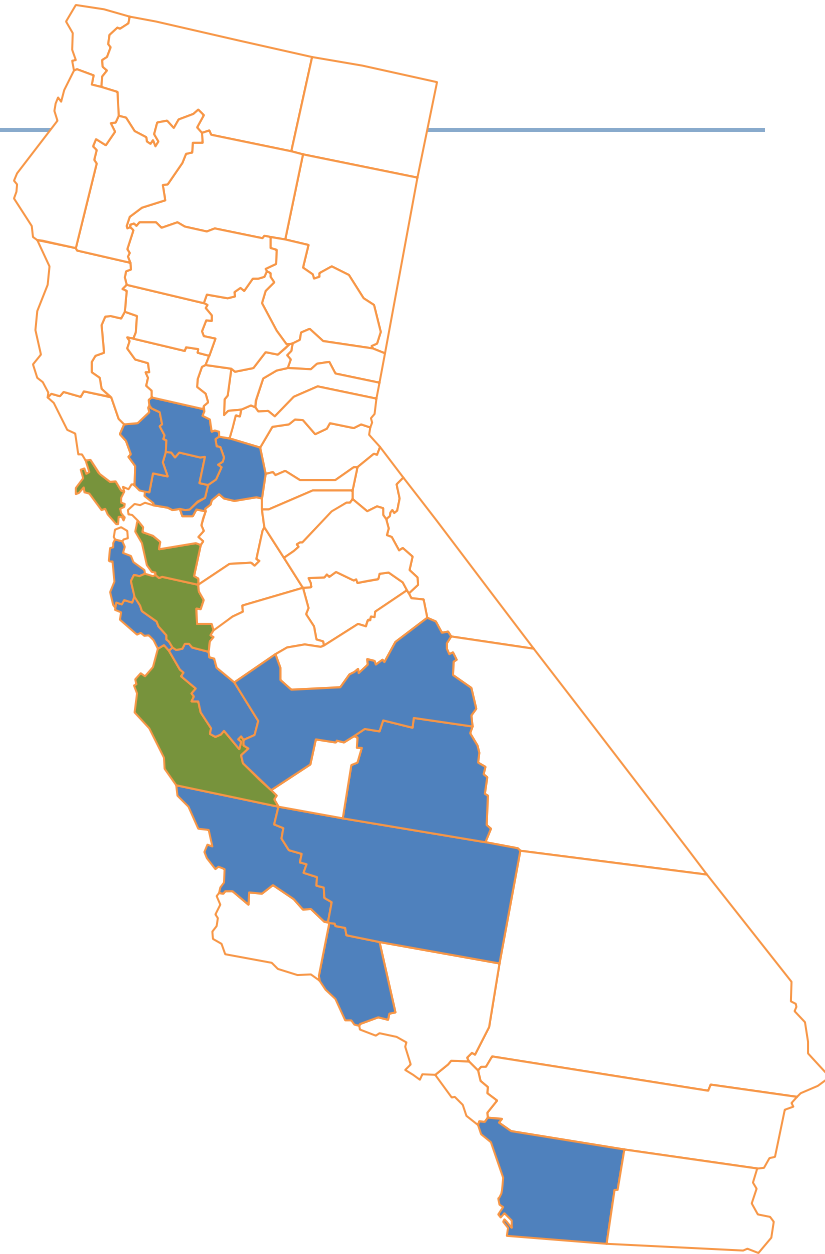


Role of Marin County Government

- CaliforniaFIRST is a program of CSCDA and exclusively administered by Renewable Funding & its team
- Requires nothing of the cities Marin County – beyond passing “opt-in” resolutions to participate in CaliforniaFIRST
- Marin County – business as usual
 - This is just like a conventional assessment: (1) place assessment on tax rolls and (2) collect the taxes
 - All work reimbursed
 - No customer service; no interface with property owners & contractors
- Marin County & cities are invited to help in promotion/marketing
 - CaliforniaFIRST recognizes local government as a partner, not just a client.
 - Job creation
 - Clean energy retrofits & AB 32 reduction goals
 - Associated building permit revenue

Launch Plan

- Mid-June Beta
 - Alameda, Marin, Santa Clara, Monterey
 - Up to 20 Contractors
 - Refine Process and Test Systems
- Early July Full Launch
 - Staged/Rolling Launch through all 17 counties
 - All Contractors



Marketing Plan and Messaging

- Develop and distribute contractor “marketing toolkit,” which includes: customizable brochure; lawn sign; flyer; website branding info; and short video. Present in a series of contractor webinars and trainings.
- Develop and distribute local government “marketing toolkit,” which includes website branding info; sample social media actions; customizable media release; sample material for “telephone town hall”; customizable material for public employees; sample op-ed, etc.

RENEWABLE FUNDING

Simón Bryce | simon@renewfund.com | (510) 451-7906

Cliff Staton | cliff@renewfund.com | (510) 451-7917

CaliforniaFIRST.org | info@californiafirst.org | (510) 652-9995

RESOLUTION NO. 2012-19

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
THE MARIN ENERGY AUTHORITY SUPPORTING THE CITIES AND COUNTY
OF MEA TO ENROLL IN THE CALIFORNIA FIRST PACE FINANCING
PROGRAM AND AUTHORIZING MEA AS REGIONAL LIAISON FOR THE
PROGRAM**

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

WHEREAS, MEA members include the following MEA communities: the County of Marin, the City of Belvedere, the Town of Corte Madera, the Town of Fairfax, the City of Larkspur, the City of Mill Valley, the City of Novato, the City of Richmond, the Town of Ross, the Town of San Anselmo, the City of Sausalito, the City of San Rafael, and the Town of Tiburon; and

WHEREAS, the purpose of the Marin Energy Authority is to address climate change by reducing energy related greenhouse gas emissions and securing energy supply, price stability, energy efficiencies and local economic and workforce benefits;

WHEREAS, It is the intent of MEA to promote the development and use of a wide range of renewable energy sources and energy efficiency programs, including but not limited to solar and wind energy production at competitive rates for customers; and

WHEREAS, the upfront cost of financing is a major barrier to the installation of energy efficiency and distributed generation improvements; and

WHEREAS, PACE financing programs are an innovative means to offering Marin County residents and businesses a source of financing for accomplishing these improvements; and

WHEREAS, the California FIRST program would provide a PACE financing program locally with minimal investment on the part of the participating county and cities; and

WHEREAS, MEA is authorized by charter to take actions to represent the member jurisdictions in matters related to energy efficiency and distributed

generation;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of the Marin Energy Authority

1. The Board hereby encourages the County of Marin and each City and town within the MEA's jurisdiction to opt into the California FIRST program, enabling local residents and businesses to access financing through this program for installation of energy efficiency and distributed generation improvements.

2. The Board hereby authorizes MEA to act as regional liaison for PACE activities as required by participation in this program, including but not limited to preparation of draft Resolution documents for each MEA jurisdiction, research and reporting on proposed changes to California FIRST program design, and marketing, outreach, and lead generation activities to encourage participation in the California FIRST financing program.

PASSED AND ADOPTED at a regular meeting of the Marin Energy Authority Board of Directors on this first day of November by the following vote:

AYES NOES ABSTAIN ABSENT

County of Marin

City of Belvedere

Town of Corte Madera

Town of Fairfax

City of Larkspur

City of Mill Valley

City of Novato

City of Richmond

Town of Ross

Town of San Anselmo

City of San Rafael

City of Sausalito

Town of Tiburon

CHAIR, MARIN ENERGY AUTHORITY BOARD

ATTEST:

SECRETARY, MARIN ENERGY AUTHORITY BOARD



May 21, 2015

TO: Marin Clean Energy Board

FROM: Jennifer Dowdell, MCE Consultant

RE: Proposed Changes to the MCE Retirement Plans (Agenda Item #06).

Dear Board Members:

SUMMARY:

Management is exploring several changes that could improve MCE's retirement plans for employees. The changes could result in: 1) lower-cost investment options for employees; 2) reduced risk to MCE as the plan sponsor; and 3) a fairer allocation of plan costs between MCE and employees.

The potential changes may include:

- Customizing the plans to offer lower cost investment options for employees
- Engaging fiduciary and financial advisory support for MCE as plan sponsor
- Engaging administrative compliance support for MCE as plan sponsor
- Having MCE as plan sponsor pay the administrative costs associated with plan accounting and reporting rather than deducting the costs from employee retirement accounts.

These changes require either: 1) selecting a new set of service providers; or 2) restructuring the arrangements with MCE's current provider, Nationwide Retirement Solutions (Nationwide). Each option has tradeoffs that impact service quality, cost and complexity. However, based on proposals from Nationwide and other providers, the proposed changes are not expected to increase the overall cost of MCE's retirement plan, calculated as the sum of the total of Agency and participant costs. Some scenarios will result in no increase to MCE over MCE's current cost.

BACKGROUND:

Current Plan Overview

MCE's retirement plans were established in August 2012.. Two types of retirement plans are currently offered.

1. A defined contribution, employer-funded 401(a) retirement plan; and
2. An employee-funded 457(b) retirement plan.

The plan assets are approximately \$485,000 in the 401(a) retirement plan and \$368,000 in the 457(b) retirement plan. The 401(a) plan has 27 participants, including past employees who have not rolled their funds into other plans.¹ The 457(b) plan has 11 participants reflecting only half of the currently eligible MCE employees. Plan assets are invested over roughly 40 funds of the 400 funds Nationwide offers in the plans. The average total retirement account across combined 401(a) and 457(b) plans is \$29,000. The average employee contribution to his or her 457(b) plan is \$350 per month.

Both plans are currently managed by Nationwide which keeps account of employee balances and reports asset balances and fund activity monthly. Nationwide also hosts an employee interface portal that facilitates selection of the mutual funds offered by Nationwide and a variety of leading broker dealers such as Oppenheimer, T Rowe Price, American Funds, and PIMCO.

The services Nationwide provides in managing the plan are “administrative” and “non-discretionary.” This means that Nationwide performs accounting for fund activity, reporting to employees of account balances, overall reporting of fund performance, and required compliance filings, but does not take responsibility for plan compliance under IRS or Department of Labor rules. Under the current agreement Nationwide also does not provide “fiduciary services” as part of plan management. Fiduciary services include investment advice such as helping the plan sponsor select the most appropriate funds for its plan and consulting regularly with the plan sponsor regarding best practices and any rule changes.

Active third-party fiduciary partners and to a lesser extent plan compliance support providers are important elements of a good risk management strategy because in most cases plan sponsors are not experts in investments or retirement account regulations. By engaging a fiduciary, the plan sponsors provide evidence of their due diligence and sound decision-making in the case of audit or legal action. Third-party fiduciaries typically maintain records of how decisions were made and stand with the plan sponsor if the plan is challenged or questions arise.

Currently MCE acts as both the plan sponsor and fiduciary for its retirement plans. MCE staff does not view this as a best practice. As indicated previously, Nationwide as a “non-discretionary administrator” does not take responsibility for the regulatory compliance of MCE’s plan. In the event of plan audit, MCE would bear the full compliance risk² under its current contract with Nationwide.

Current Plan Cost:

The cost of the MCE’s current retirement plans is paid through: 1) commission and fees for purchasing the funds (“loads”); and 2) custodial fees charged on the assets under management.

¹ Employees can transfer their 401(a) fund balances to 401(k) plans or individual retirement accounts when they change employers or leave government service but do not have to do so.

² MCE’s plans are not subject to ERISA but still have minimum Dept. of Labor filing requirements which must be met. The plans met all requirements when enacted in 2012, but good practice requires periodic evaluation against current IRS code and legislation to avoid any potential reputational damage to the Agency a minimum.

Fund “loads” generally range from 1%-2%. The administrative fee is 0.8% of the assets in each employee account. This fee is deducted from employee retirement accounts and totals approximately \$2,800-\$3,800 annually per plan. Because it is a percent of assets rather than a flat charge, this fee will increase over time with the growth of plan assets and participants. Nationwide also offers optional paid investment advisory services³ to MCE plan participants at a cost of 1% of account assets.

Under the current retirement plan structure, MCE employees bear all cost of the plans – fiduciary, administrative and mutual fund “loads.” These costs can be significant relative to investments. For example a typical employee’s cost of the 457(b) plan with load and administration is approximately \$600 per year⁴, significantly more than the average employee monthly contribution of \$350.

We estimate that total MCE plan costs are approximately \$15,000 per year. A breakdown of costs and allocation is shown below.

| Service | Rate | Cost Owner | Total Cost |
|---------------------------------------|-------------|-----------------|-----------------|
| Fiduciary | N/A | N/A | \$0 |
| Administration | 0.8% | Employee | \$6,824 |
| Average Fund Load ⁵ | 1% | Employee | \$8,530 |
| Total MCE Retirement Plan Cost | 1.8% | Employee | \$15,354 |

Other Plan Options

A combination MCE’s relatively small size in 2012,⁶ and the limited number of providers who manage both 401(a) and 457(b) plans typical of public agencies, led to the selection of Nationwide who was willing to service a small public agency plan. Under MCE’s current contract Nationwide offers a fairly generic, bundled set of plan services. This choice represented the best available balance of service quality and cost at the time.⁷

With the growth of MCE’s retirement plan and staff, other cost-effective options are available that are better suited to the current needs of the Agency and employees.

Going forward, Management recommends that the retirement plans:

- Be customized to offer lower cost investment options for employees

³ This is a service where Nationwide selects and manages the retirement funds for the employee. Currently no MCE employees are using this service.

⁴ This assumes \$368,000 in assets, 11 employee accounts fund load of 1%, and administrative fee of 0.8%.

⁵ Assumes low end estimate of average 1% load for conservatism. Actual loads range from 0.6%-2.03%

⁶ Most retirement fund managers like Fidelity or Schwab require each plan have assets of \$1 million dollars or more in order to provide service.

⁷ Nationwide is the plan provider for the County of Marin

- Engage fiduciary and financial advisory support for MCE as plan sponsor
- Engage administrative compliance support for MCE as plan sponsor
- Have MCE as plan sponsor pay the administrative costs associated with plan accounting and reporting rather than deducting the costs from employee retirement accounts. This could increase the cost to MCE which currently pays nothing for plan administration.

Management believes these changes will result in: 1) lower-cost investment options for employees; 2) reduced risk to MCE as the plan sponsor; and 3) a fairer allocation of plan costs between MCE and its employees.

To this end, Management has reviewed the offerings of Nationwide and other possible plan providers to develop a greater understanding of the range of service quality and costs. MCE's current options range from upgrade a bundled plan package from its current provider to a customized plan built with a team of specialty providers.

The custom approach involves engaging two separate specialty firms—one for fiduciary services, and another for administration. The bundled and custom options each have tradeoffs with respect to cost, complexity and service quality.

Based on Management's review, the proposed changes will not increase the overall cost of MCE's retirement plan. Although the cost borne by MCE may increase under some scenarios due to the Agency taking on administrative costs for the plan and engaging an investment advisor, other options can achieve the recommended changes with no cost increase to MCE.

The range of options and cost is summarized in the table below

| Plan Services | Total Costs | |
|---------------------------------------|--------------------------|-----------------|
| | Proposed Plan Ranges | Current Plan |
| Fiduciary | \$0-\$10,000 | \$0 |
| Administration | \$0-\$4,500 | \$6,824 |
| Average Fund Load | \$5,000-\$8,500 | \$8,530 |
| Total MCE Retirement Plan Cost | \$9,600- \$19,500 | \$15,354 |

Recommendation:

Management requests that the Board delegate approval authority to Executive Committee and direct staff to provide retirement plan provider options and costs to Executive Committee for selection and approval.



May 21, 2015

TO: Marin Clean Energy Board

FROM: Shalini Swaroop, Regulatory and Legislative Counsel
Rafael Silberblatt, Program Specialist
Alex DiGiorgio, Community Development Manager

RE: San Francisco Foundation Grant (Agenda Item #07)

ATTACHMENTS: A. San Francisco Foundation Grant Letter
B. San Francisco Foundation Grant Contract

Dear Board Members:

In February 2014, MCE launched its Community Power (MCP) initiative. The purpose of MCP is to cultivate a deep and dynamic relationship with ratepayer advocates and community-based organizations that primarily focus on the interests of underrepresented and historically marginalized constituencies to:

1. Expand access to affordable, renewable energy and energy efficiency programs;
2. Advance equitable, local, and sustainable workforce and economic development;
3. Accelerate the transition to a cleaner, more efficient energy economy; and
4. Build and develop equitable and inclusive programs and policies for all MCE communities.

MCP's lead grassroots partners in this initiative are Communities for a Better Environment (CBE), the Asian Pacific Environmental Network (APEN), and the Greenlining Institute. A number of other community-based organizations, advocacy groups, and local government stakeholders have also provided their input at various MCP coalition meetings, including the City of Richmond's sustainability office, the Sierra Club and The Utility Reform Network (TURN).

In early 2015, MCE applied to the San Francisco Foundation for funding to support a part-time community organizer to help further MCP's mission. Potential grant activities are aimed at providing MCE's regulatory, energy efficiency, and procurement teams with community input and support. For example, in support of a recent motion filed jointly by MCE and CBE to eliminate the Power Charge Indifference Adjustment (PCIA) payment for low-income CCA customers, the community organizer will help bolster grassroots efforts (such as a petition drive) that are currently underway.. In support of MCE's energy efficiency programs, the community organizer will solicit feedback from

community stakeholders on marketing and outreach for MCE's innovative low-income energy efficiency pilot that was recently submitted to the CPUC. Similarly, the community organizer will help facilitate further efforts to engage the community in the design of an educational kiosk at the MCE Solar One site.

After receiving and evaluating MCE's grant request the San Francisco Foundation selected MCE as a grant recipient and allocated \$35,000 for the purpose of hiring a community organizer for MCE Community Power to support the types of activities described above, as well as to conduct a low-income needs assessment and briefings for community partners to better engage on CCA policy issues.

Recommendation:

Accept the grant award in the amount of \$35,000 from the San Francisco Foundation.



THE
SAN
FRANCISCO
FOUNDATION

May 5, 2015

Mr. Rafael Silberblatt
Marin Clean Energy
781 Lincoln Ave., Suite 320
San Rafael, CA 94901

RE: Grant Number: **102791**

Dear Mr. Silberblatt:

Congratulations! On behalf of The San Francisco Foundation Board of Trustees, I am pleased to inform you that a grant has been approved in the amount of \$35,000.00 for 12 months to support robust community engagement and environmental justice in Marin Clean Energy's policies, program design and local community initiatives. We are excited to partner with you to expand opportunity in the Bay Area.

The enclosed Grant Agreement forms the contract between Marin Clean Energy and the Foundation. Please read the agreement carefully as it outlines the conditions of the grant, as well as the payment dispersal and reporting schedules. We ask that you, your Board Chair, and fiscal sponsor (if applicable) sign and return one copy. Please keep the second copy for your files. **Payments will begin when the signed Grant Agreement has been returned to TSFF and any special conditions have been met.**

The San Francisco Foundation believes that the strategic use of communications and storytelling is core to achieving success in the work that we do together to expand opportunity in the Bay Area. We encourage you to announce your TSFF grant through online and traditional media coverage, and via social media. **We've created a new set of guidelines to support you in communicating about your grant. Please download our grantee communications guidelines at: sff.org/TSFFcommsguidelines.**

We look forward to working with you, and thank you for all that you do to ensure equity and opportunity in the region so that everyone in the community can thrive.

Please do not hesitate to call me if you have any questions about your grant or the policies of TSFF.

Yours truly,

Francesca Vietor

Program Director, Environment, Public Policy and Civic Engagement



GRANT AGREEMENT

Grant Number: 102791

Please use this number in all correspondence

I. ACCEPTANCE OF GRANT

The conditions set forth below are deemed to be agreed to by the grantee if the grantee accepts any payment. No payments will be released until a signed copy of the Agreement is returned to the Foundation and any special conditions are met.

Contact:

Mr. Rafael Silberblatt

Phone:

(415) 464-6026

Grantee:

Marin Clean Energy
781 Lincoln Ave., Suite 320
San Rafael, CA 94901

Payee:

Marin Clean Energy
781 Lincoln Ave., Suite 320
San Rafael, CA 94901

Grant Amount:

\$35,000.00 for 12 months

Date Approved:

April 30, 2015

Grant Period:

May 1, 2015 -- April 30, 2016

Grant Purpose:

To support robust community engagement and environmental justice in Marin Clean Energy's policies, program design and local community initiatives.

Outcomes:

1. MCE Community Power (MCP) will align MCE's programs with the needs of disadvantaged and marginalized communities in MCE's service territory through research, collaboration with grassroots organizations and development of internal processes and capacity. By sharing lessons learned, MCP will advance sustainable energy development and expanded access to affordable renewable energy beyond its current service territory.
2. Two-way, mutually beneficial knowledge sharing and program development will engage MCE's communities and grassroots partners, while educating MCE on the needs of its marginalized and disadvantaged communities.
3. Partnerships between MCE and community organizations will advance environmental justice by advocating for increased funding opportunities for solar installations in low-income communities, alternative models of community solar programs and reducing excessive exit fees on disadvantaged communities.

Activities:

1. Conduct a low-income needs assessment of disadvantaged and marginalized communities within MCE's service territory. This needs assessment will be written into a report with recommendations for MCE implementation.
2. MCE will design and propose an innovative energy efficiency pilot that serves the needs of hidden and undocumented communities. MCP will provide input on program design and engage in a robust marketing and community education effort to implement the pilot program.
3. Regarding MCE's upcoming 11 MW solar installation at the Chevron Refinery in Richmond (Solar One), MCE will seek input from grassroots and community partners to assist in crafting its educational kiosk on-site, including the development of multi-lingual elements.
4. MCE will market existing and new energy options to marginalized communities, thereby increasing access to greener energy and provide customers with knowledge related to the Community Choice Aggregation energy program. MCE will provide information to communities on their energy consumption and electricity bills.
5. MCE will co-host three workshops to educate and empower community partners on statewide energy policy issues, particularly as they affect low-income CCA customers. MCE will develop educational materials with partners that explain complex regulatory concepts in plain language.

II. SPECIAL CONDITIONS

None.

III. REPORTING REQUIREMENTS AND PAYMENT SCHEDULE

Payments will be made on the schedule below when special conditions described above are met and when narrative and financial reports have been submitted on the dates requested. Report guidelines and forms are available on the Foundation's website. Reminder notices will be sent the month before the report is due. If you need to extend the grant period or request changes in the payment schedule or budget, please request the change in writing, briefly explaining the reason it is needed.

Please note that payments on new grants will not be released until final reports on all prior grants have been received and approved by your Program Officer.

Progress Report Due Dates (if any):

None.

Payment(s):

\$35,000.00 scheduled on May 1, 2015

Final Report:

Standard Final Report due on May 31, 2016

IV. MARKETING AND COMMUNICATIONS

The San Francisco Foundation believes that the strategic use of communications and storytelling is core to achieving success in the work that we do together to expand opportunity in the Bay Area. We encourage you to announce your TSFF grant through online and traditional media coverage, and via social media. We've created a new set of guidelines to support you in communicating about your grant. Please download our grantee communications guidelines at: www.sff.org/TSFFcommguidelines.

V. BUDGET AND USE OF FUNDS

Funds must be used by the grantee strictly in accordance with the final budget on which the grant was based. Any changes must be approved in advance by the Foundation.

VI. REVERSION OF FUNDS

All funds not expended for the purposes agreed to by the grantee and the Foundation must be returned to the Foundation.

VII. AUDIT

The Foundation reserves the right to conduct an audit of any grantee if it appears appropriate and necessary.

VIII. MONITORING AND EVALUATION

In order to assess the effectiveness of our grants, the Foundation may monitor or conduct an evaluation of the program funded by this grant, which may include visits by representatives of the Foundation to observe the grantee's program procedures and operations and to discuss the program with the grantee's personnel.

IX. HOLD HARMLESS

In accepting a grant from the Foundation, the grantee hereby irrevocably and unconditionally agrees, to the fullest extent permitted by law, to defend, indemnify and hold harmless The San Francisco Foundation, its officers, directors, trustees, employees and agents, from and against any and all claims, liabilities, losses and expenses (including reasonable attorneys' fees) directly, indirectly, wholly or partially arising from or in connection with any act or omission of the grantee, its employees or agents, in applying or accepting such grant, in expending or applying the funds furnished pursuant to such grant or in carrying out the program or project to be funded or financed by such grant, except to the extent that such claims, liabilities, losses or expenses arise from or in connection with any act or omission of The San Francisco Foundation, its officers, directors, trustees, employees or agents.

The Board and staff of The San Francisco Foundation are pleased to be able to make this grant (#102791) to your organization. Please sign and return one copy of this Agreement as evidence of your understanding of and agreement with the terms outlined. Please keep a copy for your files.

Return completed document to:

Grants Management
The San Francisco Foundation
One Embarcadero Center, Suite 1400
San Francisco, CA 94111

—

—



The San Francisco Foundation 5-May-15
Date

Chair, Agency Board of Directors or Designee Date

Agency Executive Director Date

Fiscal Sponsor* Date

***Agreement must be signed by Fiscal Sponsor if project agency does not have 501(c)(3) status.**



May 21, 2015

TO: Marin Clean Energy Board

FROM: Greg Brehm, Director of Power Resources

RE: Amended & Restated Power Purchase and Sale Agreements with
Stion MCE Solar One, LLC. (Agenda Item #08)

ATTACHMENT: A. Amended & Restated Power Purchase and Sale Agreement - 2 MW
B. Amended & Restated Power Purchase and Sale Agreement - 8.5 MW
C. Power Purchase and Sale Agreement 10.5 MW – Executed
D. MCE Solar One Update - Presentation

Dear Board Members:

Overview:

On March 5, 2015 your Board approved a Power Purchase & Sale Agreement (PPA) with Stion MCE Solar One, LLC (“Stion”) for the purchase of energy, capacity and renewable attributes from a solar project planned for a brownfield site at the Chevron refinery in Richmond, CA. The solar installation, “MCE Solar One,” or “Project” has a guaranteed capacity of 10.5 MW AC. Because the project will be built in two distinct phases with separate Commercial Operation Dates, Stion requested that the PPA be split into two separate PPAs in order to ensure compliance with financing and tax equity requirements. The two PPAs, attached here, reflect only the changes necessary to split the transaction into two parts, as well as minor language clarifications.

Renewable energy volumes produced by the two facilities will complement MCE’s existing renewable energy supply with output from a local generating project. The timing of deliveries will help replace the planned reduction in renewable energy deliveries under the Shell Energy North America (SENA) agreement.

Location & Project Viability:

The Project area includes three parcels bordered by the Richmond Parkway on the east side and totaling approximately 60 Acres. Currently staff and consultants are drafting an Environmental Impact Report for approximately 49 acres of the site. An additional one acre for a proposed visitor center/ public viewing kiosk is available to be permitted at a later date. The site is located in the City of Richmond and is zoned M-3, Heavy Industrial District, upon which public utilities, both major and minor, are permitted uses.

Portfolio Fit:

MCE’s development of the Project will benefit the public by allowing MCE to provide electricity from local renewable resources to customers in alignment with MCE’s role as a California Joint Powers Authority. The public benefits that will result from MCE’s involvement in the Project are key factors in Chevron’s decision to lease the property to MCE.

Counterparty:

[Stion](#) is a leading U.S. manufacturer of high-efficiency thin-film solar modules based on state-of-the-art materials, device technology and proven production processes. Stion was founded in 2006 and is headquartered in San Jose, CA, with 125 megawatts of annual production capacity at its manufacturing facilities in Hattiesburg, Mississippi.

Stion's financier for MCE Solar One, Sol Systems, was introduced by Stion in order to provide MCE with a buyout option of the Project required in the lease with Chevron. The buyout also reduces the long term levelized price of the energy produced and facilitates MCE's ability to acquire the asset.



Contract Overview:

- The two projects: 2 MW and 8.5 MW of new solar PV– together are capable of supplying the annual electric needs of approximately 3,300 MCE residential customers.
- Project location: City of Richmond- within MCE's service territory.
- Project will utilize technologically proven ground mount single axis solar PV technology
- Guaranteed commercial operation date: September, 2016
- Contract term: 20 years
- Delivery profile: peaking
- Expected annual energy production: approximately 19,800 MWhs
- Energy price: fixed energy price applicable to each year of contract
- No credit/collateral obligations for MCE

Summary:

The Amended & Restated Power Purchase and Sale Agreements serve MCE's resource portfolio needs by facilitating the capture of the tax benefits available to the project developer and financier which results in a lower cost of renewable energy to MCE.

Recommendations:

1. Approve Power Purchase & Sale Agreement with Stion MCE Solar One, LLC for 2 MW local renewable energy supply.
 2. Approve Power Purchase & Sale Agreement with Stion MCE Solar One, LLC for 8.5 MW local renewable energy supply.
-

AMENDED & RESTATED POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Stion MCE Solar One, LLC

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility: A ~2.17 MW DC (~2 MW AC) ballasted fixed tilt ground mounted photovoltaic (PV) system.

Guaranteed Commercial Operation Date: September 30, 2016

Delivery Term: Twenty (20) Contract Years

Contract Price: [REDACTED] dollars (\$[REDACTED].00) per MWh, with no escalation

Product:

Energy

Green Attributes (if Renewable Energy Credit, please check the applicable box below):

☒ Renewable Energy Credit (Bucket 1)

☐ Renewable Energy Credit (Bucket 2)

☐ Renewable Energy Credit (Bucket 3)

Capacity Attributes

Expected Energy for Second Contract Year: 3,607MWh

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security: \$[REDACTED]/kW-AC

Performance Security: \$[REDACTED]/kW-AC

Notice Addresses:

Seller: Stion MCE Solar One, LLC c/o Stion Corporation

6321 San Ignacio Avenue

San Jose, CA 95119

Attention: Jeffrey Cheng

Phone No.: 408-284-8803

Fax No.: 408-574-0160

With a copy to:

Stion Corporation
6321 San Ignacio Avenue
San Jose, CA 95119
Attention: Richard Ogawa
Phone No.: 408-284-8803
Fax No.: 408-574-0160

Scheduling: Marin Clean Energy (c/o 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

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

With a copy to:

Troutman Sanders LLP
805 SW Broadway, Suite 1560
Portland, Oregon 97205
Attention: Stephen Hall
Fax No.: (503) 290-2405
Phone No.: (503) 290-2336
Email: stephen.hall@troutmansanders.com

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

SELLER
Stion MCE Solar One, LLC

By: _____
Name: _____
Title: _____

BUYER
Marin Clean Energy

By: _____
MCE Chairperson

By: _____
MCE Executive Officer

SIGNATURE PAGE TO MCE POWER PURCHASE AND SALE AGREEMENT

TABLE OF CONTENTS

| | Page |
|--|------|
| ARTICLE 1 DEFINITIONS..... | 1 |
| 1.1 Contract Definitions..... | 1 |
| 1.2 Rules of Interpretation | 13 |
| 1.3 Service Contract..... | 14 |
| 1.4 Forward Contract | 15 |
| ARTICLE 2 TERM; CONDITIONS PRECEDENT..... | 15 |
| 2.1 Contract Term | 15 |
| 2.2 Conditions Precedent | 15 |
| 2.3 Progress Reports | 17 |
| ARTICLE 3 PURCHASE AND SALE..... | 17 |
| 3.1 Sale of Product..... | 17 |
| 3.2 Sale of Green Attributes..... | 17 |
| 3.3 Compensation | 17 |
| 3.4 Imbalance Energy | 18 |
| 3.5 Ownership of Renewable Energy Incentives..... | 18 |
| 3.6 Future Environmental Attributes | 18 |
| 3.7 Test Energy | 19 |
| 3.8 Capacity Attributes | 19 |
| 3.9 CEC Certification and Verification | 19 |
| 3.10 Eligibility | 19 |
| 3.11 California Renewables Portfolio Standard..... | 20 |
| ARTICLE 4 OBLIGATIONS AND DELIVERIES..... | 20 |
| 4.1 Delivery..... | 20 |
| 4.2 Title and Risk of Loss | 20 |
| 4.3 Scheduling Coordinator Responsibilities..... | 20 |
| 4.4 Forecasting..... | 22 |
| 4.5 Dispatch Down/Curtailment | 23 |
| 4.6 Reduction in Delivery Obligation..... | 24 |
| 4.7 Expected Energy and Guaranteed Energy Production..... | 24 |
| 4.8 Financial Statements | 25 |
| ARTICLE 5 TAXES..... | 25 |
| 5.1 Allocation of Taxes and Charges..... | 25 |
| 5.2 Cooperation..... | 25 |
| ARTICLE 6 MAINTENANCE OF THE FACILITY | 25 |
| 6.1 Maintenance of the Facility | 25 |
| 6.2 Maintenance of Health and Safety | 25 |

TABLE OF CONTENTS
(continued)

| | | Page |
|------------|---|------|
| ARTICLE 7 | METERING | 26 |
| 7.1 | Metering | 26 |
| 7.2 | Meter Verification..... | 26 |
| ARTICLE 8 | INVOICING AND PAYMENT; CREDIT | 26 |
| 8.1 | Invoicing | 26 |
| 8.2 | Payment..... | 27 |
| 8.3 | Books and Records | 27 |
| 8.4 | Payment Adjustments; Billing Errors | 27 |
| 8.5 | Billing Disputes | 27 |
| 8.6 | Netting of Payments..... | 28 |
| 8.7 | Seller’s Development Security | 28 |
| 8.8 | Seller’s Performance Security..... | 29 |
| ARTICLE 9 | NOTICES..... | 29 |
| 9.1 | Addresses for the Delivery of Notices | 29 |
| 9.2 | Acceptable Means of Delivering Notice..... | 29 |
| ARTICLE 10 | FORCE MAJEURE | 29 |
| 10.1 | Definition | 29 |
| 10.2 | No Liability If a Force Majeure Event Occurs | 30 |
| 10.3 | Notice | 30 |
| 10.4 | Termination Following Force Majeure Event..... | 31 |
| ARTICLE 11 | DEFAULTS; REMEDIES; TERMINATION | 31 |
| 11.1 | Events of Default | 31 |
| 11.2 | Remedies; Declaration of Early Termination Date..... | 33 |
| 11.3 | Termination Payment..... | 34 |
| 11.4 | Notice of Payment of Termination Payment | 34 |
| 11.5 | Disputes With Respect to Termination Payment | 34 |
| 11.6 | Rights And Remedies Are Cumulative..... | 34 |
| 11.7 | Mitigation..... | 34 |
| ARTICLE 12 | LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES | 35 |
| 12.1 | No Consequential Damages | 35 |
| 12.2 | Waiver and Exclusion of Other Damages..... | 35 |
| ARTICLE 13 | REPRESENTATIONS AND WARRANTIES; AUTHORITY | 36 |

TABLE OF CONTENTS (continued)

| | Page |
|---|-------------|
| 13.1 Seller's Representations and Warranties | 36 |
| 13.2 Buyer's Effective Date Representations and Warranties..... | 36 |
| 13.3 General Covenants | 37 |
| ARTICLE 14 ASSIGNMENT..... | 38 |
| 14.1 General Prohibition on Assignments | 38 |
| 14.2 Permitted Assignment; Change of Control of Seller | 38 |
| 14.3 Change of Control of Buyer..... | 38 |
| ARTICLE 15 LENDER ACCOMMODATIONS | 39 |
| 15.1 Granting of Lender Interest..... | 39 |
| 15.2 Rights of Lender | 39 |
| 15.3 Cure Rights of Lender..... | 39 |
| ARTICLE 16 DISPUTE RESOLUTION | 40 |
| 16.1 Governing Law | 40 |
| 16.2 Dispute Resolution..... | 40 |
| 16.3 Attorneys' Fees | 40 |
| ARTICLE 17 INDEMNIFICATION..... | 40 |
| 17.1 Indemnification | 40 |
| 17.2 Claims | 41 |
| ARTICLE 18 INSURANCE..... | 41 |
| 18.1 Insurance | 41 |
| ARTICLE 19 CONFIDENTIAL INFORMATION | 43 |
| 19.1 Definition of Confidential Information..... | 43 |
| 19.2 Duty to Maintain Confidentiality | 43 |
| 19.3 Irreparable Injury; Remedies | 43 |
| 19.4 Disclosure to Lender | 43 |
| ARTICLE 20 MISCELLANEOUS | 43 |
| 20.1 Entire Agreement; Integration; Exhibits | 43 |
| 20.2 Amendments | 44 |
| 20.3 No Waiver | 44 |
| 20.4 No Agency, Partnership, Joint Venture or Lease..... | 44 |
| 20.5 Severability | 44 |
| 20.6 Mobile-Sierra | 44 |
| 20.7 Counterparts | 44 |

TABLE OF CONTENTS
(continued)

| | Page |
|---|-------------|
| 20.8 Facsimile or Electronic Delivery | 45 |
| 20.9 Binding Effect..... | 45 |
| 20.10 No Recourse to Members of Buyer | 45 |

Exhibits:

| | |
|--------------|--|
| Exhibit A | Description of Facility |
| Exhibit B | Facility Construction and Commercial Operation |
| Exhibit C | Contract Price |
| Exhibit D | Emergency Contact Information |
| Exhibit E | Buyout Price |
| Exhibit F | Guaranteed Energy Production Damages Calculation |
| Schedule F-1 | Annual Forecast of Delivered Energy |
| Schedule F-2 | Expected Energy |
| Exhibit G | Buyout Option |
| Exhibit H | Quarterly Milestone Progress Reporting Form |
| Exhibit I-1 | Form of Commercial Operation Date Certificate |
| Exhibit I-2 | Form of Installed Capacity Certificate |
| Exhibit J | Form of Construction Start Certificate |
| Exhibit K | Form of Guaranty |

AMENDED & RESTATED POWER PURCHASE AND SALE AGREEMENT

This Amended & Restated Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of May 21, 2015 (the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”). This Agreement amends and restates the original Power Purchase and Sale Agreement dated as of March 5, 2015 (the “**Original Agreement**”) in its entirety with respect to the Facility (as defined below).

RECITALS

WHEREAS, Seller intends to develop, design, construct, and operate a photovoltaic electric generating facility to be located in Contra Costa County, California at the locations identified in Exhibit A, and having an aggregate Guaranteed Capacity to Buyer of two (2) MW AC (the “**Facility**”);

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 all Capacity Attributes; and

WHEREAS, the Parties now wish to amend and restate the Original Agreement in its entirety with respect to the Facility and to provide for certain other matters pursuant to the terms of this Agreement, which shall supersede and replace the terms and conditions of the Original Agreement in its entirety with respect to the Facility; and

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

ARTICLE 1 DEFINITIONS

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

“**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 (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

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

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

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

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

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

(a) the CAISO provides notice to a Party or Buyer’s SC, 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) no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period as referenced in (a).

“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 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 and/or a Curtailment Period during the same time period.

“Buyout Payment” has the meaning set forth in Exhibit G.

“Buyout Price” has the meaning set forth in Exhibit E.

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

“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 the certification and verification process that the CEC has established to determine whether the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and whether Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

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

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

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

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

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

“Contract Price” has the meaning set forth in Section 3.3(a).

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

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

“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.

“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 Cap” is the yearly quantity per Contract Year, in MWh, equal to the product of twenty-nine (29) hours times the amount of the Installed Capacity.

“Curtailment Order” means any of the following:

a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected;

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

c) a curtailment ordered by the 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.

"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).

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

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

"Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Facility, the Deemed Delivered Energy shall be zero (0).

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

"Delivered Energy" means all Energy produced from the Facility as measured in MWh at the CAISO revenue meter of the Facility based on a power factor of precisely one (1) and net of all Electrical Losses.

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

"Delivery Term" shall mean the period of twenty (20) Contract Years beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

“Development Security” means the collateral in the amount required of Seller, as specified in the Cover Sheet to this Agreement, and referred to in Section 8.7, which may be provided in the form of (i) cash or (ii) a Letter of Credit.

“Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Facility connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the Point of Interconnection, as defined in the applicable Wholesale Distribution Tariff, at the point where the distribution system meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

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

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

“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.

“Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

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

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

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

“Facility” means the facility described more fully in Exhibit A attached hereto.

“Fair Market Value” has the meaning set forth in Exhibit G.

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

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

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

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

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

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility.

“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, Capacity Attributes and Resource Adequacy Benefits.

“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 (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading

program. 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 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 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 two (2) MW AC capacity measured at the Delivery Point, which amount is subject to and will be reduced so as to equal the amount of generation capacity permitted under any final permitting or environmental restrictions imposed by a Governmental Authority, or Interconnection Agreement limitations as required by the Transmission Provider and agreed upon by the Parties.

“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.

“Guarantor” means, with respect to Seller, any person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) executes and delivers a Guaranty for the benefit of Buyer.

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

“Imbalance Energy” means the amount of Energy, in any given settlement period, by which the amount of Delivered 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.

“Installed Capacity” means the sum of the actual generating capacity of the Facility, not to exceed two (2) MW AC.

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

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

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

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

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity 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 reasonably acceptable to Buyer.

“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 and Resource Adequacy Benefits.

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

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

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour.

“Negative LMP” means, in any 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” means, in any Settlement Interval during which Seller delivers Energy amounts in excess of the Installed Capacity and there is a Negative LMP, an amount equal to such Negative LMP times such excess MWh.

“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).

“Output Event of Default” has the meaning set forth in Exhibit F.

“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 & Electric Company.

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

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

“Performance Security” means the collateral in the amount required of Seller, as specified in the Cover Sheet to this Agreement, and referred to in Section 8.8, which may be provided in the form of (i) cash, (ii) a Guaranty, or (iii) a Letter of Credit.

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

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

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

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

“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 guarantor or other credit support) under this Agreement.

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

“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 Credit (Bucket 1)” 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.

“Renewable Energy Credit (Bucket 2)” 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.

“Renewable Energy Credit (Bucket 3)” 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.

“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.

“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.

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

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

“Scheduled Energy” means the Energy that clears under the applicable CAISO market based on the final Schedule 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.

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

“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.

“System Emergency” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or

loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

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

“Termination Payment” has the meaning set forth in Section 11.3.

“Terminated Transaction” has the meaning set forth in Section 11.2.

“Test Energy” means the 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 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 Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

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

“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.

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" when used as a conjunction shall connote "any or all of";

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

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

1.3 **Service Contract.** The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease, and that this

Agreement is and shall be treated as a “service contract” within the meaning of pursuant to Section 7701(e) of the Internal Revenue Code.

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

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

(b) Buyer shall have the right, but not the obligation, to extend the Contract Term for an additional five (5) Contract Years at the then-current Contract Price, but Seller must receive Notice of such extension at least two (2) years before the end of the initial Contract Term.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 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.

(d) Buyer may elect to purchase the Facility during the Delivery Term in accordance with Exhibit G.

2.2 Conditions Precedent.

(a) Either Party may terminate this Agreement upon Notice to the other Party if any of the following events have not occurred by September 30, 2015:

(i) Seller has received a “Notice of Determination” from the applicable Governmental Authority with respect to the necessary environmental permits or approvals that is acceptable to both Parties, as determined by each Party in its sole discretion;

(ii) The PTO has offered Seller a draft Interconnection Agreement

acceptable to both Parties, as determined by each Party in its sole discretion; and

(iii) Buyer has entered into a lease for the Facility site with Chevron Products Company, and obtained any required consents in connection with such lease.

Upon such termination, neither Party shall have any further liability or obligation to the other Party, save and except for those obligations specified in Section 2.1(c).

(b) Subject to Section 3.7, Buyer shall have no obligation whatsoever to purchase the Product produced from the Facility under this Agreement until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

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

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

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

(iv) The Interconnection Facilities of Seller have demonstrated the ability to accept the full-load output of the Facility and final permission to commence Commercial Operation has been granted by the PTO and the CAISO, including completion of all Network Reliability Upgrades (as defined in the CAISO Tariff) and satisfaction of all other requirements of the Interconnection Agreement;

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

(vi) Seller has received documentation from the PTO that Delivery Network Upgrades (as defined in the CAISO Tariff) for the Facility have been completed;

(vii) 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;

(viii) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility,

QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system or have completed any other requirements to enable Buyer to fulfill its RPS requirements; and

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

2.3 **Progress Reports.** Seller shall report to Buyer quarterly on progress of the Milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date. The form of these progress reports are set forth as Exhibit H.

ARTICLE 3 PURCHASE AND SALE

3.1 Sale of Product.

(a) Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. 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.

(b) 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 affecting Buyer's ability to receive the Product (but not its ability to transmit the Product from the Delivery Point), 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.

(c) As of the Effective Date, the Facility shall have a Guaranteed Capacity of two (2) MW AC.

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

3.3 Compensation.

(a) The Contract Price shall be as set forth in Exhibit C (the "**Contract Price**").

(b) Subject to Section 3.3(c), Buyer shall pay Seller the Contract Price for (i) each MWh of Delivered Energy and (ii) each MWh of Deemed Delivered Energy above the

Curtailment Cap.

(c) If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap, if any, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product 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 price at the generator's PNode for each Settlement Interval.

(d) If during any Settlement Interval, Seller delivers Product amounts in excess of the Installed Capacity, 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 Negative LMP Costs.

(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 an Event of Default where Seller is the Defaulting Party or a Force Majeure Event, or (ii) Seller is not able to make Product available due to an Event of Default where Buyer is the Defaulting Party, 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.** Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered 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 and Seller shall take such other commercially reasonable actions requested by Buyer that can be undertaken by Seller without cost or economic detriment to Seller to minimize charges and imbalances associated with Imbalance Energy. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred.

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. 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 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 for such Test Energy, Buyer shall pass through and deliver to Seller any CAISO revenues, credits and other payments for or attributable as a result of such Test Energy, net of any CAISO fees and Scheduling Coordinator service costs.

3.8 **Capacity Attributes.** By no later than the Effective Date, Seller shall have submitted all necessary PG&E interconnection applications.

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

(b) Throughout the Delivery Term, as applicable, Seller shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. As applicable, Seller hereby covenants and agrees to transfer all Resource Adequacy benefits to Buyer.

3.9 **CEC Certification and Verification.** 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, Seventh 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.

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

3.11 **California Renewables Portfolio Standard.** 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.

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 Delivered 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 Delivered Energy from and after 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 Delivered 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. Notwithstanding any of the foregoing to the contrary, Buyer shall assume all liability and reimburse Seller for any and all CAISO charges or penalties incurred by Seller as a result of Buyer's actions or failures to comply with its obligations under this Agreement, including those resulting from a Buyer Curtailment Period. 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 Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) **Energy.** Title to and risk of loss related to the Delivered 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. At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of 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 authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule 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 for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with PIRP whenever PIRP is applicable, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever PIRP is not applicable.

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

(c) CAISO Costs and Revenues. Except as provided below, Buyer shall be responsible for all CAISO costs (including scheduling and forecasting fees, penalties and other charges) and shall be entitled to all CAISO revenues (including Imbalance Energy and other credits and payments) in each case, associated with Delivered Energy, except to the extent (i) such CAISO costs are incurred as a consequence of the Facility not being available, (ii) the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), and (iii) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO, Buyer Curtailment, or Scheduling Coordinator dispatch instructions. The Parties agree that any Availability Incentive Payments under CAISO Tariff Section 40.9 are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity under CAISO Tariff Section 40.9 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, 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 the 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. CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within ten Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Reserved.

(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 expected Delivered Energy forecasts described below. Seller's expected Delivered Energy forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the expected Delivered 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 Expected Delivered Energy. No less than forty-five (45) days before (i) the first day of the Delivery Term and (ii) the beginning of each subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Expected Delivered Energy. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter sixty (60) 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 expected Delivered Energy for each day of the applicable month in a form reasonably acceptable to Buyer.

(c) Planned Outages and Maintenance. Seller shall provide Buyer with at least seven (7) days' notice of any planned outages or maintenance activities that may affect the monthly forecast provided under Section 4.4(b).

(d) Hourly and Sub-Hourly Changes in Schedule. 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) 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. Except for a failure or curtailment resulting from a Force Majeure Event, Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment, the failure of electric transmission service shall not excuse performance with respect to either Party for the delivery or receipt of the Product to be provided under this Agreement; provided that, if Buyer fails to accept Energy due to a failure of transmission service, whether or not excused, Seller will nonetheless be deemed to have fulfilled its obligations hereunder so long as the Facility was available to produce Energy immediately prior to such failure of transmission service and such failure was not the direct or indirect result of the negligence of Seller.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for the amount and for the period set forth in a Buyer Curtailment Order or Buyer Bid Curtailment delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Section 3.3(b). Seller agrees to reduce the Facility's generation by the amount and for the period set forth in the applicable Buyer Curtailment Order.

(c) Seller Curtailment. Buyer and Seller shall use commercially reasonable efforts to develop a protocol to automatically curtail deliveries of Energy from the Facility when Negative LMP prices are below -\$30/MWh. Buyer may adjust such Negative LMP curtailment price on ten (10) days' Notice to Seller. For purposes of compensation to Seller, such curtailments will be deemed a Buyer Curtailment and a Buyer Curtailment Period and Seller will be compensated for such curtailments in accordance with Section 4.5(b).

(d) Failure to Comply. If Seller fails to comply with a Buyer Curtailment

Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered 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, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and (C) is amount of any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

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

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

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

4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Energy that Seller expects to be able to deliver to Buyer during each Contract Year is set forth in Exhibit F, Schedule F-2 ("**Expected Energy**") and is subject to an annual degradation of 0.5% solar irradiance available at the Facility, scheduled maintenance, and is subject to adjustment for Force Majeure Events, Curtailment Periods and Buyer Curtailment Periods that occur during any such Contract Year or Performance Measurement Period. Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Energy, as measured in MWh, equal to eighty percent (80%) of the sum of the Expected Energy for the two Contract Years of the Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period to the extent of any Force Majeure Events, an Event of Default where Buyer is the Defaulting Party, 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 Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, an Event of Default where Buyer is the Defaulting Party, Curtailment Periods, and Buyer Curtailment Periods 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.

4.8 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

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 Product to Buyer, that are imposed on Product prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). Notwithstanding the foregoing, each Party shall be responsible for its own Taxes calculated based on the income or profits generated in connection with the purchase and sale of the Product hereunder. 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 F 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 at the Facility using a commercially available, CAISO revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the 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 no later than fifteen (15) Business Days after the end of the prior monthly billing period.

(b) Each invoice rendered to Buyer shall show the following: (i) 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 Interval during the preceding month, including, without reservation, the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, (ii) the amount of Product in MWh produced by the Facility as read by the CAISO revenue grade meter, (iii) the Contract Price applicable to such Product, (iv) deviations between the quantity of Product produced and the quantity of Product delivered, and (v) the CAISO prices at the Delivery Point for each Settlement

Interval;

(c) Seller shall provide Buyer with access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount as requested by Buyer.

(d) Each invoice shall 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.

(e) 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 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. Upon fifteen (15) days Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or 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.

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 two (2) 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 during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer in the amount set forth in the Cover Sheet to this Agreement within thirty (30) days of the later of: (A) the execution of the Interconnection Agreement or (B) receipt of the "Notice of Determination" from the applicable Governmental Authority regarding all environmental impacts and required mitigation, if any, or exemption from such requirements, under the environmental permits or approvals necessary for the Facility. Seller shall maintain the Development Security in full force and effect until Seller posts the Performance Security pursuant to Section 8.8 below and if Buyer collects or is entitled to collect Daily Delay Damages from Seller for Seller's failure to achieve the Guaranteed Construction Start Date, Seller shall replenish the Development Security by an amount equal to the encumbered Development Security. 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 Exhibit B. 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 three (3) 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 in the applicable amount set forth in the Cover Sheet to this Agreement upon the Commercial Operation Date of the Facility. If the Performance Security is not in the form of cash, it shall be in a form and substance reasonably satisfactory to Buyer. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) 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.

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; 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 than the Contract Price, Buyer’s inability economically to use or resell the Product purchased hereunder, 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; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Period; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to 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 eight (8) month period, then the non-claiming Party may terminate this Agreement upon 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(c).

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 4.3) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

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

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

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

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

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

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

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

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the right (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) Business 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, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 11.3 Termination Payment below; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including injunctive relief to the extent permitted under this Agreement, except to the extent such remedies are expressly limited under this Agreement.

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 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 Termination Payment 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, lost revenues or lost profits; 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 (x) 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, (y) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (z) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

11.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party’s calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 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, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE, BUSINESS INTERRUPTION 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 WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 11.3, 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 CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

13.2 **Buyer's Effective Date 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 Laws.

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

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

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

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

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

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

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

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

ARTICLE 14 ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided below 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 each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided, further*, that in each such case, 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 either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide payment security in an amount and form reasonably acceptable to Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Section 14.2. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.3 Change of Control of Buyer. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b) and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller, in good faith, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer

must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Seller.

ARTICLE 15

LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, 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. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party'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 the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender.** If a Party 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 the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party 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 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 Buyer 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 the granting Party 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 the granting Party hereunder; *provided* that non-granting shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and

such Party 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. The non-granting Party 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 non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

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 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 Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 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 18.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 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. 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.

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.

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.

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 service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

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

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name: MCE Solar One, Richmond, California

APN: 561-100-038

County: Contra Costa

MW AC: 2

P-node/Delivery Point:

Additional Information:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility within sixty (60) days of the later of (i) receipt of final construction permits or (ii) the execution of the Interconnection Agreement (as may be extended by the Development Cure Period (defined below), the “**Guaranteed Construction Start Date**”). Seller shall demonstrate the start of construction through mobilization to site by Seller and/or its designees, and which may include activities such as the physical movement of soil at the Facility, 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 of the Facility (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 for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) all conditions to operate the Facility have been satisfied and complied with in order to produce, sell and transmit Energy, (ii) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement, and (iii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) May 1, 2016 or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by May 1, 2016, as 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 Commercial Operation Date and shall confirm to Buyer in writing when Commercial Operation has been achieved.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Dates, all Daily Delay Damages paid by Seller shall be refunded to

Exhibit B - 1

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. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.
 3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the applicable Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective upon Notice to Seller.
 4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:
 - a. despite the exercise of diligent and commercially reasonable efforts by Seller, any Governmental Authority or the PTO delays the approvals of any material permits, consents, licenses, approvals, or authorizations 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;
 - b. a Force Majeure Event occurs;
 - c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point, including as a result of any delays caused by CAISO and/or the PTO, within sixty days of the Guaranteed Commercial Operation Date; or
 - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date.
- provided, however, that any cumulative extensions granted pursuant to this section shall not exceed one hundred fifty (150) days (the “**Development Cure Period**”).
5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such

that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to One Hundred Thousand Dollars (\$100,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity, and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C
CONTRACT PRICE

The Contract Price of the Product shall be:

| Contract Year | Contract Price |
|--------------------------|-----------------------|
| 1 – 20 | <div></div> MWh |

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

SELLER:

Stion MCE Solar One, LLC

c/o Stion Corporation
6321 San Ignacio Avenue
San Jose, CA 95119
Attention: Jeff Long
Phone No.: (805) 857-5095
Fax No.: 408-574-0160

EXHIBIT E

BUYOUT PRICE

| Contract Year | Buyout Price |
|----------------------|---------------------|
| 7th Contract Year | \$1,511,743 |
| 10th Contract Year | \$1,239,451 |
| 15th Contract Year | \$693,883 |
| 20th Contract Year | \$152,857 |

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) \$50/MWh

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

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

“Lost Output” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of a Force Majeure Event, an Event of Default where Buyer is the Defaulting Party, a Curtailment Period or Buyer Curtailment Period. The additional MWh shall be calculated by assuming that the Facility would have produced an amount of electricity in such periods equal to the average production during the month of such non-production in the preceding two (2) Contract Years.

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 within thirty (30) days of such Notice.

SCHEDULE F-1

ANNUAL FORECAST OF DELIVERED ENERGY

[Average Expected Energy, MWh Per Hour]

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

Agenda Item #08_Att. A: Amd & Restated PPA - 2 MW

| CONTRACT QUANTITY (MWh) Year 2 | | | | | | | | | | | | | | | | | | | | | | | | | Total |
|--------------------------------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | HE 1 | HE 2 | HE 3 | HE 4 | HE 5 | HE 6 | HE 7 | HE 8 | HE 9 | HE 10 | HE 11 | HE 12 | HE 13 | HE 14 | HE 15 | HE 16 | HE 17 | HE 18 | HE 19 | HE 20 | HE 21 | HE 22 | HE 23 | HE 24 | |
| Jan | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.0 | 5.4 | 13.6 | 19.3 | 25.9 | 25.8 | 25.8 | 21.9 | 15.2 | 2.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 154.1 |
| Feb | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 1.8 | 10.9 | 18.1 | 24.8 | 28.4 | 30.1 | 28.7 | 24.9 | 16.3 | 7.5 | 0.7 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 191.3 |
| Mar | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.2 | 8.0 | 19.9 | 29.1 | 39.6 | 44.6 | 43.6 | 41.0 | 38.9 | 26.6 | 16.7 | 3.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 310.4 |
| Apr | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 3.1 | 14.4 | 28.0 | 39.9 | 44.2 | 46.9 | 48.3 | 45.5 | 39.4 | 30.3 | 18.6 | 8.4 | 0.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 366.3 |
| May | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.4 | 6.8 | 18.5 | 30.4 | 40.3 | 49.0 | 55.4 | 56.8 | 52.8 | 45.2 | 37.1 | 23.7 | 11.2 | 1.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 428.0 |
| Jun | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.7 | 6.2 | 16.6 | 28.5 | 40.0 | 48.0 | 54.0 | 54.6 | 51.9 | 45.8 | 36.1 | 24.0 | 13.0 | 3.9 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 422.5 |
| Jul | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.3 | 4.9 | 14.0 | 24.7 | 37.1 | 47.8 | 53.5 | 54.9 | 52.4 | 46.5 | 37.5 | 25.6 | 12.8 | 3.8 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 415.0 |
| Aug | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 3.4 | 13.9 | 26.7 | 38.5 | 48.9 | 54.2 | 55.3 | 52.6 | 46.1 | 36.4 | 23.6 | 10.6 | 0.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 409.6 |
| Sep | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 1.3 | 9.3 | 20.3 | 32.0 | 46.7 | 49.9 | 51.0 | 47.4 | 39.7 | 29.8 | 16.3 | 2.8 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 345.8 |
| Oct | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.0 | 7.0 | 16.5 | 26.2 | 35.3 | 38.5 | 38.9 | 36.2 | 30.4 | 20.2 | 7.0 | 0.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 255.5 |
| Nov | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 2.8 | 12.3 | 19.2 | 26.4 | 30.1 | 30.4 | 27.5 | 20.0 | 12.1 | 0.6 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 180.6 |
| Dec | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.1 | 6.0 | 13.7 | 19.4 | 21.6 | 21.6 | 21.5 | 15.9 | 8.9 | 0.4 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 128.2 |

HOURLY ENDING (MWh)

totals | 3607.4

SCHEDULE F-2
EXPECTED ENERGY

| Contract Year | Expected Energy (in MWh)¹ |
|----------------------|---|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |
| 16 | |

¹ As may be adjusted for each MW that the Guaranteed Capacity exceeds the Installed Capacity as provided in Exhibit B, Section 5.

| Contract Year | Expected Energy (in MWh) |
|---------------|--------------------------|
| 1 | 3,607 |
| 2 | 3,553 |
| 3 | 3,500 |
| 4 | 3,447 |
| 5 | 3,395 |
| 6 | 3,344 |
| 7 | 3,294 |
| 8 | 3,245 |
| 9 | 3,196 |
| 10 | 3,148 |
| 11 | 3,101 |
| 12 | 3,055 |
| 13 | 3,009 |
| 14 | 2,964 |
| 15 | 2,919 |
| 16 | 2,875 |
| 17 | 2,832 |
| 18 | 2,790 |
| 19 | 2,748 |
| 20 | 2,707 |

EXHIBIT G

BUYOUT OPTION

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the seventh (7th) Contract Year of the Delivery Term (ii) the tenth (10th) Contract Year of the Delivery Term, (iii) the fifteenth (15th) Contract Year of the Delivery Term and (iv) the twentieth (20th) Contract Year of the Delivery Term, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility. 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 Buyout Price, as set forth in Exhibit E, or, if greater, the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit G, 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 Delivery Term, (ii) the tenth (10th) Contract Year of the Delivery Term, (iii) the fifteenth (15th) Contract Year of the Delivery Term, or (iv) the twentieth (20th) Contract Year of the Delivery Term, if applicable. Such 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, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of the Facility, and the price of the Product (the “**Fair Market Value**”). On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the 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) 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, subject in any event to receipt of any necessary approvals of applicable Governmental Authorities; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Facility.

EXHIBIT H

QUARTERLY MILESTONE PROGRESS REPORTING FORM

After the Effective Date, Seller shall prepare a written report (this “**Quarterly Milestone Progress Reporting Form**”) at the end of each calendar quarter on its progress on the Milestones and the development construction, testing, start-up, and operation of the Facility.

Within fifteen (15) days of the end of the applicable calendar quarter, Seller must (a) complete this Quarterly Milestone Progress Reporting Form and (b) submit such completed report to Buyer.

Each Milestone 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 quarter.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones.
9. List of issues that could potentially impact 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.

Once the project achieves Commercial Operation, Seller's Quarterly Milestone Progress Reporting Form must include the following items:

1. Executive Summary.
2. Description of any planned outages or maintenance activities.
3. Description of any forced outages.
4. Actual CAISO metered energy production for the previous calendar quarter.
6. Summary of expected activities during the current calendar quarter.
7. List of issues that could potentially impact Seller's delivery obligations under the PPA and Seller's expected mitigation measures.
8. Any changes to the Facility or site.

EXHIBIT I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of the 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 Stion MCE Solar One, LLC 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.

1. Seller has successfully completed an initial performance test under Seller's EPC contract for the Facility which demonstrates peak Facility 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 performance test;
2. Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point and that such equipment is capable of generating energy in accordance with the manufacturer's specifications ("**Initial Mechanical Completion**");
3. The electrical collection system for the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized;
4. The substation for such the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Energy;
5. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
6. The Facility is operational and interconnected with the CAISO Grid, has been approved by CAISO to commence operations, and is capable of delivering Energy through the permanent interconnection facilities.

For purposes of Section 4 above, "**Initial Commissioning Completion**" means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer's specifications.

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 Stion MCE Solar One, LLC 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 performance test under Seller's EPC contract for the Facility demonstrated peak electrical output of __MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

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 STION MCE SOLAR ONE, LLC (“**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 _____.

STION MCE SOLAR ONE, LLC

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF GUARANTY

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

Recitals

- A. Buyer and Stion MCE Solar One LLC, a Delaware limited liability company (“Seller”), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 2015.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages), as and when required pursuant to the terms of the PPA strictly in accordance therewith (collectively, the “Guaranteed Amount”); provided that, other than with respect to the Enforcement Expenses, Guarantor’s aggregate liability hereunder shall in no circumstances exceed **\$180/kW** (the “Guaranty Cap”). This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein. Guarantor further agrees to pay any and all expenses (including the reasonable fees and disbursements of counsel) that may be paid or incurred by Buyer in enforcing any rights with respect to, or collecting, any or all of the Guaranteed Amount and/or enforcing any rights with respect to, or collecting against, Guarantor under this Guaranty (any such expenses, the “Enforcement Expenses”); it being understood and agreed that the amount of any such Enforcement Expenses shall not be included in calculating Guarantor’s liability hereunder for purposes of the Guaranty Cap.

2. Demand Notice. If Seller has not timely paid any Guaranteed Amount as required pursuant to the PPA after written notice of such failure to Seller (the “Demand Notice”) and the expiration of five (5) Business Days after delivery of such Demand Notice, then Guarantor shall, within two (2) Business Days, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until both (i) the Delivery Term under the PPA has expired or terminated early and (ii) all Guaranteed Amounts have been paid in full. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for any reason, including the following:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, attachment, injunction, restraint, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed or asserted by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation in such event, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

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

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

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

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

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

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

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

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, and (f) Guarantor has a tangible net worth greater than \$[_____].

8. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four

business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Attn: Greg Brehm, Director of Power
Resources
Fax: 415.459.8095

If delivered to Guarantor, to it at

[____]
Attn: [____]
Fax: [____]

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

10. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

11. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

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

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

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

[Signature on next page]

AMENDED & RESTATED POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Stion MCE Solar One, LLC

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility: A ~9.15 MW DC (~8.5 MW AC) photovoltaic (PV) system, comprised of (i) a 3.95 MW DC (3.5 MW AC) single-axis (1x) tracking PV system and (ii) a 5.2 MW DC (5 MW AC) ballasted fixed tilt ground mounted PV system.

Guaranteed Commercial Operation Date: September 30, 2016

Delivery Term: Twenty (20) Contract Years

Contract Price: [REDACTED] dollars (\$[REDACTED].00) per MWh, with no escalation

Product:

Energy

Green Attributes (if Renewable Energy Credit, please check the applicable box below):

- ☒ Renewable Energy Credit (Bucket 1)
- ☐ Renewable Energy Credit (Bucket 2)
- ☐ Renewable Energy Credit (Bucket 3)

Capacity Attributes

Expected Energy for Second Contract Year: 16,282 MWh

Scheduling Coordinator: Buyer/Buyer Third Party

Development Security: \$[REDACTED]/kW-AC

Performance Security: \$[REDACTED]/kW-AC

Notice Addresses:

Seller: Stion MCE Solar One, LLC c/o Stion Corporation

6321 San Ignacio Avenue
San Jose, CA 95119

Attention: Jeffrey Cheng
Phone No.: 408-284-8803
Fax No.: 408-574-0160

With a copy to:

Stion Corporation
6321 San Ignacio Avenue
San Jose, CA 95119
Attention: Richard Ogawa
Phone No.: 408-284-8803
Fax No.: 408-574-0160

Scheduling: Marin Clean Energy (c/o 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

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

With a copy to:

Troutman Sanders LLP
805 SW Broadway, Suite 1560
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IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

SELLER
Stion MCE Solar One, LLC

By: _____
Name: _____
Title: _____

BUYER
Marin Clean Energy

By: _____
MCE Chairperson

By: _____
MCE Executive Officer

SIGNATURE PAGE TO MCE POWER PURCHASE AND SALE AGREEMENT

TABLE OF CONTENTS

| | Page |
|--|-------------|
| ARTICLE 1 DEFINITIONS..... | 1 |
| 1.1 Contract Definitions..... | 1 |
| 1.2 Rules of Interpretation | 13 |
| 1.3 Service Contract..... | 14 |
| 1.4 Forward Contract | 15 |
| ARTICLE 2 TERM; CONDITIONS PRECEDENT..... | 15 |
| 2.1 Contract Term | 15 |
| 2.2 Conditions Precedent | 15 |
| 2.3 Progress Reports | 17 |
| ARTICLE 3 PURCHASE AND SALE..... | 17 |
| 3.1 Sale of Product..... | 17 |
| 3.2 Sale of Green Attributes..... | 17 |
| 3.3 Compensation | 17 |
| 3.4 Imbalance Energy | 18 |
| 3.5 Ownership of Renewable Energy Incentives..... | 18 |
| 3.6 Future Environmental Attributes | 18 |
| 3.7 Test Energy | 19 |
| 3.8 Capacity Attributes | 19 |
| 3.9 CEC Certification and Verification | 19 |
| 3.10 Eligibility | 19 |
| 3.11 California Renewables Portfolio Standard..... | 20 |
| ARTICLE 4 OBLIGATIONS AND DELIVERIES..... | 20 |
| 4.1 Delivery..... | 20 |
| 4.2 Title and Risk of Loss | 20 |
| 4.3 Scheduling Coordinator Responsibilities..... | 20 |
| 4.4 Forecasting..... | 22 |
| 4.5 Dispatch Down/Curtailment | 23 |
| 4.6 Reduction in Delivery Obligation..... | 24 |
| 4.7 Expected Energy and Guaranteed Energy Production..... | 24 |
| 4.8 Financial Statements | 25 |
| ARTICLE 5 TAXES..... | 25 |
| 5.1 Allocation of Taxes and Charges..... | 25 |
| 5.2 Cooperation..... | 25 |
| ARTICLE 6 MAINTENANCE OF THE FACILITY | 25 |
| 6.1 Maintenance of the Facility | 25 |
| 6.2 Maintenance of Health and Safety | 25 |

TABLE OF CONTENTS

(continued)

| | | Page |
|------------|---|------|
| ARTICLE 7 | METERING | 26 |
| 7.1 | Metering | 26 |
| 7.2 | Meter Verification..... | 26 |
| ARTICLE 8 | INVOICING AND PAYMENT; CREDIT | 26 |
| 8.1 | Invoicing | 26 |
| 8.2 | Payment..... | 27 |
| 8.3 | Books and Records | 27 |
| 8.4 | Payment Adjustments; Billing Errors | 27 |
| 8.5 | Billing Disputes | 27 |
| 8.6 | Netting of Payments..... | 28 |
| 8.7 | Seller’s Development Security | 28 |
| 8.8 | Seller’s Performance Security..... | 29 |
| ARTICLE 9 | NOTICES..... | 29 |
| 9.1 | Addresses for the Delivery of Notices | 29 |
| 9.2 | Acceptable Means of Delivering Notice..... | 29 |
| ARTICLE 10 | FORCE MAJEURE | 29 |
| 10.1 | Definition | 29 |
| 10.2 | No Liability If a Force Majeure Event Occurs | 30 |
| 10.3 | Notice | 30 |
| 10.4 | Termination Following Force Majeure Event..... | 31 |
| ARTICLE 11 | DEFAULTS; REMEDIES; TERMINATION | 31 |
| 11.1 | Events of Default | 31 |
| 11.2 | Remedies; Declaration of Early Termination Date..... | 33 |
| 11.3 | Termination Payment..... | 33 |
| 11.4 | Notice of Payment of Termination Payment | 34 |
| 11.5 | Disputes With Respect to Termination Payment | 34 |
| 11.6 | Rights And Remedies Are Cumulative..... | 34 |
| 11.7 | Mitigation..... | 34 |
| ARTICLE 12 | LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES | 35 |
| 12.1 | No Consequential Damages | 35 |
| 12.2 | Waiver and Exclusion of Other Damages..... | 35 |
| ARTICLE 13 | REPRESENTATIONS AND WARRANTIES; AUTHORITY | 36 |
| 13.1 | Seller’s Representations and Warranties | 36 |
| 13.2 | Buyer’s Effective Date Representations and Warranties | 36 |

TABLE OF CONTENTS (continued)

| | Page |
|--|-------------|
| 13.3 General Covenants | 37 |
| ARTICLE 14 ASSIGNMENT | 38 |
| 14.1 General Prohibition on Assignments | 38 |
| 14.2 Permitted Assignment; Change of Control of Seller | 38 |
| 14.3 Change of Control of Buyer..... | 38 |
| ARTICLE 15 LENDER ACCOMMODATIONS | 39 |
| 15.1 Granting of Lender Interest..... | 39 |
| 15.2 Rights of Lender | 39 |
| 15.3 Cure Rights of Lender..... | 39 |
| ARTICLE 16 DISPUTE RESOLUTION | 40 |
| 16.1 Governing Law | 40 |
| 16.2 Dispute Resolution..... | 40 |
| 16.3 Attorneys' Fees | 40 |
| ARTICLE 17 INDEMNIFICATION..... | 40 |
| 17.1 Indemnification | 40 |
| 17.2 Claims | 41 |
| ARTICLE 18 INSURANCE..... | 41 |
| 18.1 Insurance | 41 |
| ARTICLE 19 CONFIDENTIAL INFORMATION | 43 |
| 19.1 Definition of Confidential Information..... | 43 |
| 19.2 Duty to Maintain Confidentiality | 43 |
| 19.3 Irreparable Injury; Remedies | 43 |
| 19.4 Disclosure to Lender | 43 |
| ARTICLE 20 MISCELLANEOUS | 43 |
| 20.1 Entire Agreement; Integration; Exhibits..... | 43 |
| 20.2 Amendments | 44 |
| 20.3 No Waiver | 44 |
| 20.4 No Agency, Partnership, Joint Venture or Lease..... | 44 |
| 20.5 Severability | 44 |
| 20.6 Mobile-Sierra | 44 |
| 20.7 Counterparts..... | 44 |
| 20.8 Facsimile or Electronic Delivery | 45 |
| 20.9 Binding Effect..... | 45 |
| 20.10 No Recourse to Members of Buyer | 45 |

Exhibits:

| | |
|--------------|--|
| Exhibit A | Description of Facility |
| Exhibit B | Facility Construction and Commercial Operation |
| Exhibit C | Contract Price |
| Exhibit D | Emergency Contact Information |
| Exhibit E | Buyout Price |
| Exhibit F | Guaranteed Energy Production Damages Calculation |
| Schedule F-1 | Annual Forecast of Delivered Energy |
| Schedule F-2 | Expected Energy |
| Exhibit G | Buyout Option |
| Exhibit H | Quarterly Milestone Progress Reporting Form |
| Exhibit I-1 | Form of Commercial Operation Date Certificate |
| Exhibit I-2 | Form of Installed Capacity Certificate |
| Exhibit J | Form of Construction Start Certificate |
| Exhibit K | Form of Guaranty |

AMENDED & RESTATED POWER PURCHASE AND SALE AGREEMENT

This Amended & Restated Power Purchase and Sale Agreement (“**Agreement**”) is entered into as of May 21, 2015 (the “**Effective Date**”), between Seller and Buyer (each also referred to as a “**Party**” and collectively as the “**Parties**”). This Agreement amends and restates the original Power Purchase and Sale Agreement dated as of March 5, 2015 (the “**Original Agreement**”) in its entirety with respect to the Facility (as defined below).

RECITALS

WHEREAS, Seller intends to develop, design, construct, and operate a photovoltaic electric generating facility to be located in Contra Costa County, California at the locations identified in Exhibit A, and having an aggregate Guaranteed Capacity to Buyer of eight and five tenths (8.5) MW AC (the “**Facility**”);

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 all Capacity Attributes; and

WHEREAS, the Parties now wish to amend and restate the Original Agreement in its entirety with respect to the Facility and to provide for certain other matters pursuant to the terms of this Agreement, which shall supersede and replace the terms and conditions of the Original Agreement in its entirety with respect to the Facility; and

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

ARTICLE 1 DEFINITIONS

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

“**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 (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

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

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

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

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

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

(a) the CAISO provides notice to a Party or Buyer’s SC, 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) no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period as referenced in (a).

“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 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 and/or a Curtailment Period during the same time period.

“Buyout Payment” has the meaning set forth in Exhibit G.

“Buyout Price” has the meaning set forth in Exhibit E.

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

“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 the certification and verification process that the CEC has established to determine whether the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and whether Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

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

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

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

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

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

“Contract Price” has the meaning set forth in Section 3.3(a).

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

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

“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.

“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 Cap” is the yearly quantity per Contract Year, in MWh, equal to the product of twenty-nine (29) hours times the amount of the Installed Capacity.

“Curtailment Order” means any of the following:

(a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected;

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

(c) a curtailment ordered by the 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.

"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).

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

"Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Facility, the Deemed Delivered Energy shall be zero (0).

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

"Delivered Energy" means all Energy produced from the Facility as measured in MWh at the CAISO revenue meter of the Facility based on a power factor of precisely one (1) and net of all Electrical Losses.

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

"Delivery Term" shall mean the period of twenty (20) Contract Years beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

“Development Security” means the collateral in the amount required of Seller, as specified in the Cover Sheet to this Agreement, and referred to in Section 8.7, which may be provided in the form of (i) cash or (ii) a Letter of Credit.

“Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Facility connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the Point of Interconnection, as defined in the applicable Wholesale Distribution Tariff, at the point where the distribution system meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

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

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

“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.

“Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

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

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

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

“Facility” means the facility described more fully in Exhibit A attached hereto.

“Fair Market Value” has the meaning set forth in Exhibit G.

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

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

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

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

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

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility.

“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, Capacity Attributes and Resource Adequacy Benefits.

“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 (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading

program. 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 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 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 eight and five tenths (8.5) MW AC capacity measured at the Delivery Point, which amount is subject to and will be reduced so as to equal the amount of generation capacity permitted under any final permitting or environmental restrictions imposed by a Governmental Authority, or Interconnection Agreement limitations as required by the Transmission Provider and agreed upon by the Parties.

“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.

“Guarantor” means, with respect to Seller, any person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) executes and delivers a Guaranty for the benefit of Buyer.

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

“Imbalance Energy” means the amount of Energy, in any given settlement period, by which the amount of Delivered 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.

“Installed Capacity” means the sum of the actual generating capacity of the Facility, not to exceed eight and five tenths (8.5) MW AC.

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

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

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

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

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity 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 reasonably acceptable to Buyer.

“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 and Resource Adequacy Benefits.

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

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

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour.

“Negative LMP” means, in any 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” means, in any Settlement Interval during which Seller delivers Energy amounts in excess of the Installed Capacity and there is a Negative LMP, an amount equal to such Negative LMP times such excess MWh.

“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).

“Output Event of Default” has the meaning set forth in Exhibit F.

“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 & Electric Company.

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

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

“Performance Security” means the collateral in the amount required of Seller, as specified in the Cover Sheet to this Agreement, and referred to in Section 8.8, which may be provided in the form of (i) cash, (ii) a Guaranty, or (iii) a Letter of Credit.

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

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

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

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

“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 guarantor or other credit support) under this Agreement.

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

“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 Credit (Bucket 1)” 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.

“Renewable Energy Credit (Bucket 2)” 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.

“Renewable Energy Credit (Bucket 3)” 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.

“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.

“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.

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

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

“Scheduled Energy” means the Energy that clears under the applicable CAISO market based on the final Schedule 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.

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

“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.

“System Emergency” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or

loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

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

“Termination Payment” has the meaning set forth in Section 11.3.

“Terminated Transaction” has the meaning set forth in Section 11.2.

“Test Energy” means the 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 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 Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

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

“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.

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" when used as a conjunction shall connote "any or all of";

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

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

1.3 **Service Contract.** The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease, and that this

Agreement is and shall be treated as a “service contract” within the meaning of pursuant to Section 7701(e) of the Internal Revenue Code.

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

ARTICLE 2 TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

(b) Buyer shall have the right, but not the obligation, to extend the Contract Term for an additional five (5) Contract Years at the then-current Contract Price, but Seller must receive Notice of such extension at least two (2) years before the end of the initial Contract Term.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 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.

(d) Buyer may elect to purchase the Facility during the Delivery Term in accordance with Exhibit G.

2.2 Conditions Precedent.

(a) Either Party may terminate this Agreement upon Notice to the other Party if any of the following events have not occurred by September 30, 2015:

(i) Seller has received a “Notice of Determination” from the applicable Governmental Authority with respect to the necessary environmental permits or approvals that is acceptable to both Parties, as determined by each Party in its sole discretion;

(ii) The PTO has offered Seller a draft Interconnection Agreement

acceptable to both Parties, as determined by each Party in its sole discretion; and

(iii) Buyer has entered into a lease for the Facility site with Chevron Products Company, and obtained any required consents in connection with such lease.

Upon such termination, neither Party shall have any further liability or obligation to the other Party, save and except for those obligations specified in Section 2.1(c).

(b) Subject to Section 3.7, Buyer shall have no obligation whatsoever to purchase the Product produced from the Facility under this Agreement until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

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

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

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

(iv) The Interconnection Facilities of Seller have demonstrated the ability to accept the full-load output of the Facility and final permission to commence Commercial Operation has been granted by the PTO and the CAISO, including completion of all Network Reliability Upgrades (as defined in the CAISO Tariff) and satisfaction of all other requirements of the Interconnection Agreement;

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

(vi) Seller has received documentation from the PTO that Delivery Network Upgrades (as defined in the CAISO Tariff) for the Facility have been completed;

(vii) 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;

(viii) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility,

QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system or have completed any other requirements to enable Buyer to fulfill its RPS requirements; and

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

2.3 **Progress Reports.** Seller shall report to Buyer quarterly on progress of the Milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date. The form of these progress reports are set forth as Exhibit H.

ARTICLE 3 PURCHASE AND SALE

3.1 Sale of Product.

(a) Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. 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.

(b) 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 affecting Buyer's ability to receive the Product (but not its ability to transmit the Product from the Delivery Point), 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.

(c) As of the Effective Date, the Facility shall have a Guaranteed Capacity of eight and five tenths (8.5) MW AC.

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

3.3 Compensation.

(a) The Contract Price shall be as set forth in Exhibit C (the "**Contract Price**").

(b) Subject to Section 3.3(c), Buyer shall pay Seller the Contract Price for (i) each MWh of Delivered Energy and (ii) each MWh of Deemed Delivered Energy above the

Curtailment Cap.

(c) If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap, if any, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product 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 price at the generator's PNode for each Settlement Interval.

(d) If during any Settlement Interval, Seller delivers Product amounts in excess of the Installed Capacity, 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 Negative LMP Costs.

(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 an Event of Default where Seller is the Defaulting Party or a Force Majeure Event, or (ii) Seller is not able to make Product available due to an Event of Default where Buyer is the Defaulting Party, 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.** Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered 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 and Seller shall take such other commercially reasonable actions requested by Buyer that can be undertaken by Seller without cost or economic detriment to Seller to minimize charges and imbalances associated with Imbalance Energy. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred.

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. 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 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 for such Test Energy, Buyer shall pass through and deliver to Seller any CAISO revenues, credits and other payments for or attributable as a result of such Test Energy, net of any CAISO fees and Scheduling Coordinator service costs.

3.8 **Capacity Attributes.** By no later than the Effective Date, Seller shall have submitted all necessary PG&E interconnection applications.

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

(b) Throughout the Delivery Term, as applicable, Seller shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. As applicable, Seller hereby covenants and agrees to transfer all Resource Adequacy benefits to Buyer.

3.9 **CEC Certification and Verification.** 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, Seventh 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.

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

3.11 **California Renewables Portfolio Standard.** 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.

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 Delivered 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 Delivered Energy from and after 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 Delivered 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. Notwithstanding any of the foregoing to the contrary, Buyer shall assume all liability and reimburse Seller for any and all CAISO charges or penalties incurred by Seller as a result of Buyer's actions or failures to comply with its obligations under this Agreement, including those resulting from a Buyer Curtailment Period. 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 Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) **Energy.** Title to and risk of loss related to the Delivered 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. At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of 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 authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule 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 for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with PIRP whenever PIRP is applicable, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever PIRP is not applicable.

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

(c) CAISO Costs and Revenues. Except as provided below, Buyer shall be responsible for all CAISO costs (including scheduling and forecasting fees, penalties and other charges) and shall be entitled to all CAISO revenues (including Imbalance Energy and other credits and payments) in each case, associated with Delivered Energy, except to the extent (i) such CAISO costs are incurred as a consequence of the Facility not being available, (ii) the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), and (iii) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO, Buyer Curtailment, or Scheduling Coordinator dispatch instructions. The Parties agree that any Availability Incentive Payments under CAISO Tariff Section 40.9 are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity under CAISO Tariff Section 40.9 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, 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 the 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. CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within ten Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Reserved.

(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 expected Delivered Energy forecasts described below. Seller's expected Delivered Energy forecasts shall include availability and updated status of key equipment for the Facility. Seller shall use commercially reasonable efforts to forecast the expected Delivered 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 Expected Delivered Energy. No less than forty-five (45) days before (i) the first day of the Delivery Term and (ii) the beginning of each subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) Monthly Forecast of Expected Delivered Energy. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter sixty (60) 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 expected Delivered Energy for each day of the applicable month in a form reasonably acceptable to Buyer.

(c) Planned Outages and Maintenance. Seller shall provide Buyer with at least seven (7) days' notice of any planned outages or maintenance activities that may affect the monthly forecast provided under Section 4.4(b).

(d) Hourly and Sub-Hourly Changes in Schedule. 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) 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. Except for a failure or curtailment resulting from a Force Majeure Event, Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment, the failure of electric transmission service shall not excuse performance with respect to either Party for the delivery or receipt of the Product to be provided under this Agreement; provided that, if Buyer fails to accept Energy due to a failure of transmission service, whether or not excused, Seller will nonetheless be deemed to have fulfilled its obligations hereunder so long as the Facility was available to produce Energy immediately prior to such failure of transmission service and such failure was not the direct or indirect result of the negligence of Seller.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for the amount and for the period set forth in a Buyer Curtailment Order or Buyer Bid Curtailment delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Section 3.3(b). Seller agrees to reduce the Facility's generation by the amount and for the period set forth in the applicable Buyer Curtailment Order.

(c) Seller Curtailment. Buyer and Seller shall use commercially reasonable efforts to develop a protocol to automatically curtail deliveries of Energy from the Facility when Negative LMP prices are below -\$30/MWh. Buyer may adjust such Negative LMP curtailment price on ten (10) days' Notice to Seller. For purposes of compensation to Seller, such curtailments will be deemed a Buyer Curtailment and a Buyer Curtailment Period and Seller will be compensated for such curtailments in accordance with Section 4.5(b).

(d) Failure to Comply. If Seller fails to comply with a Buyer Curtailment

Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered 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, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and (C) is amount of any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

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

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

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

4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Energy that Seller expects to be able to deliver to Buyer during each Contract Year is set forth in Exhibit F, Schedule F-2 ("**Expected Energy**") and is subject to an annual degradation of 0.5% solar irradiance available at the Facility, scheduled maintenance, and is subject to adjustment for Force Majeure Events, Curtailment Periods and Buyer Curtailment Periods that occur during any such Contract Year or Performance Measurement Period. Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Energy, as measured in MWh, equal to eighty percent (80%) of the sum of the Expected Energy for the two Contract Years of the Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period to the extent of any Force Majeure Events, an Event of Default where Buyer is the Defaulting Party, 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 Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, an Event of Default where Buyer is the Defaulting Party, Curtailment Periods, and Buyer Curtailment Periods 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.

4.8 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

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 Product to Buyer, that are imposed on Product prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). Notwithstanding the foregoing, each Party shall be responsible for its own Taxes calculated based on the income or profits generated in connection with the purchase and sale of the Product hereunder. 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 F 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 at the Facility using a commercially available, CAISO revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the 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 no later than fifteen (15) Business Days after the end of the prior monthly billing period.

(b) Each invoice rendered to Buyer shall show the following: (i) 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 Interval during the preceding month, including, without reservation, the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, (ii) the amount of Product in MWh produced by the Facility as read by the CAISO revenue grade meter, (iii) the Contract Price applicable to such Product, (iv) deviations between the quantity of Product produced and the quantity of Product delivered, and (v) the CAISO prices at the Delivery Point for each Settlement

Interval;

(c) Seller shall provide Buyer with access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount as requested by Buyer.

(d) Each invoice shall 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.

(e) 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 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. Upon fifteen (15) days Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or 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.

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 two (2) 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 during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer in the amount set forth in the Cover Sheet to this Agreement within thirty (30) days of the later of: (A) the execution of the Interconnection Agreement or (B) receipt of the "Notice of Determination" from the applicable Governmental Authority regarding all environmental impacts and required mitigation, if any, or exemption from such requirements, under the environmental permits or approvals necessary for the Facility. Seller shall maintain the Development Security in full force and effect until Seller posts the Performance Security pursuant to Section 8.8 below and if Buyer collects or is entitled to collect Daily Delay Damages from Seller for Seller's failure to achieve the Guaranteed Construction Start Date, Seller shall replenish the Development Security by an amount equal to the encumbered Development Security. 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 Exhibit B. 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 three (3) 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 in the applicable amount set forth in the Cover Sheet to this Agreement upon the Commercial Operation Date of the Facility. If the Performance Security is not in the form of cash, it shall be in a form and substance reasonably satisfactory to Buyer. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) 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.

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; 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 than the Contract Price, Buyer’s inability economically to use or resell the Product purchased hereunder, 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; (ii) 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; (iii) a Curtailment Period; (iv) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility; (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; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to 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 eight (8) month period, then the non-claiming Party may terminate this Agreement upon 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(c).

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party's obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 4.3) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

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

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

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

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

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

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

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

11.2 **Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“**Non-Defaulting Party**”) shall have the right (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) Business 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, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 11.3 Termination Payment below; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including injunctive relief to the extent permitted under this Agreement, except to the extent such remedies are expressly limited under this Agreement.

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 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 Termination Payment 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, lost revenues or lost profits; 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 (x) 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, (y) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (z) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

11.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 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, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE, BUSINESS INTERRUPTION 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 WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 11.3, 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 CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

13.2 **Buyer's Effective Date 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 Laws.

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

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

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

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

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

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

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

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

ARTICLE 14 ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided below 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 each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided, further*, that in each such case, 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 either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide payment security in an amount and form reasonably acceptable to Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Section 14.2. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.3 Change of Control of Buyer. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b) and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller, in good faith, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer

must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Seller.

ARTICLE 15

LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest.** Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, 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. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party'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 the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender.** If a Party 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 the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party 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 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 Buyer 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 the granting Party 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 the granting Party hereunder; *provided* that non-granting shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and

such Party 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. The non-granting Party 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 non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

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 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 Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 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 18.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 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. 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.

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.

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.

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 service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

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

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name: MCE Solar One, Richmond, California

APN: 561-100-034 & 561-100-037

County: Contra Costa

MW AC: 8.5

P-node/Delivery Point:

Additional Information:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on the Facility within sixty (60) days of the later of (i) receipt of final construction permits or (ii) the execution of the Interconnection Agreement (as may be extended by the Development Cure Period (defined below), the “**Guaranteed Construction Start Date**”). Seller shall demonstrate the start of construction through mobilization to site by Seller and/or its designees, and which may include activities such as the physical movement of soil at the Facility, 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 of the Facility (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 for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B.

2. Commercial Operation of the Facility. “**Commercial Operation**” means the condition existing when (i) all conditions to operate the Facility have been satisfied and complied with in order to produce, sell and transmit Energy, (ii) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement, and (iii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be the later of (x) September 30, 2016 or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by September 30, 2016, as 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 Commercial Operation Date and shall confirm to Buyer in writing when Commercial Operation has been achieved.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Dates, 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. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month.
 3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within sixty (60) days after the applicable Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement, which termination shall be effective upon Notice to Seller.
 4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:
 - a. despite the exercise of diligent and commercially reasonable efforts by Seller, any Governmental Authority or the PTO delays the approvals of any material permits, consents, licenses, approvals, or authorizations 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;
 - b. a Force Majeure Event occurs;
 - c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point, including as a result of any delays caused by CAISO and/or the PTO, within sixty days of the Guaranteed Commercial Operation Date; or
 - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date.
- provided, however, that any cumulative extensions granted pursuant to this section shall not exceed one hundred fifty (150) days (the “**Development Cure Period**”).
5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity**

Damages” to Buyer, in an amount equal to One Hundred Thousand Dollars (\$100,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity, and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Buyer’s Right to Draw on Development Security.** If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C

CONTRACT PRICE

The Contract Price of the Product shall be:

| Contract Year | Contract Price |
|--------------------------|-----------------------|
| 1 – 20 | ██████00/MWh |

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

SELLER:

Stion MCE Solar One, LLC

c/o Stion Corporation

6321 San Ignacio Avenue
San Jose, CA 95119
Attention: Jeff Long
Phone No.: (805) 857-5095
Fax No.: 408-574-0160

EXHIBIT E

BUYOUT PRICE

| Contract Year | Buyout Price |
|----------------------|---------------------|
| 7th Contract Year | \$6,647,569 |
| 10th Contract Year | \$5,450,225 |
| 15th Contract Year | \$3,051,204 |
| 20th Contract Year | \$672,158 |

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) \$50/MWh

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

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

“Lost Output” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of a Force Majeure Event, an Event of Default where Buyer is the Defaulting Party, a Curtailment Period or Buyer Curtailment Period. The additional MWh shall be calculated by assuming that the Facility would have produced an amount of electricity in such periods equal to the average production during the month of such non-production in the preceding two (2) Contract Years.

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 within thirty (30) days of such Notice.

SCHEDULE F-1

ANNUAL FORECAST OF DELIVERED ENERGY

[Average Expected Energy, MWh Per Hour]

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

Agenda Item #08_Att. B: Amd & Restated PPA - 8.5 MW

| CONTRACT QUANTITY (MWh) Year 2 | | | | | | | | | | | | | | | | | | | | | | | | | Total |
|--------------------------------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|---------|
| | HE 1 | HE 2 | HE 3 | HE 4 | HE 5 | HE 6 | HE 7 | HE 8 | HE 9 | HE 10 | HE 11 | HE 12 | HE 13 | HE 14 | HE 15 | HE 16 | HE 17 | HE 18 | HE 19 | HE 20 | HE 21 | HE 22 | HE 23 | HE 24 | |
| Jan | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.2 | 24.8 | 61.6 | 78.8 | 99.6 | 97.4 | 101.0 | 93.2 | 70.7 | 9.1 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 632.2 |
| Feb | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 8.3 | 54.3 | 83.4 | 103.4 | 112.4 | 116.9 | 114.2 | 106.0 | 77.7 | 36.7 | 3.0 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 813.1 |
| Mar | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 2.0 | 45.0 | 104.5 | 133.8 | 167.2 | 179.5 | 173.6 | 167.8 | 169.7 | 128.5 | 88.3 | 15.4 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 1372.0 |
| Apr | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.2 | 23.5 | 87.0 | 145.1 | 183.0 | 188.3 | 192.8 | 197.8 | 190.8 | 175.4 | 149.0 | 106.6 | 51.3 | 0.8 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 1688.6 |
| May | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 4.1 | 50.4 | 112.9 | 154.4 | 184.4 | 210.8 | 231.0 | 236.2 | 225.4 | 204.5 | 185.8 | 137.9 | 75.2 | 6.4 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 2016.8 |
| Jun | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 7.7 | 46.9 | 99.0 | 145.4 | 184.7 | 208.8 | 226.8 | 228.5 | 222.3 | 207.4 | 179.8 | 138.3 | 90.4 | 28.5 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 2011.9 |
| Jul | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 2.6 | 35.4 | 82.8 | 125.0 | 172.0 | 207.9 | 224.5 | 228.5 | 223.2 | 209.0 | 184.9 | 145.6 | 86.9 | 25.6 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 1951.2 |
| Aug | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.2 | 26.2 | 85.5 | 138.7 | 178.3 | 210.3 | 223.4 | 226.1 | 221.2 | 206.3 | 180.8 | 137.0 | 69.0 | 0.9 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 1900.8 |
| Sep | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 8.2 | 50.7 | 101.5 | 144.5 | 195.6 | 200.5 | 204.3 | 197.0 | 177.9 | 150.1 | 91.6 | 15.6 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 1534.2 |
| Oct | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 0.1 | 34.3 | 81.7 | 115.5 | 143.5 | 150.4 | 152.2 | 148.9 | 136.9 | 101.8 | 34.5 | 0.1 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 1096.5 |
| Nov | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 12.8 | 58.6 | 83.6 | 104.9 | 114.2 | 115.8 | 110.8 | 89.1 | 56.4 | 2.4 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 744.9 |
| Dec | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 0.4 | 27.4 | 60.7 | 77.3 | 81.6 | 81.6 | 84.7 | 68.9 | 39.9 | 1.4 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | -0.3 | 520.1 |
| HOUR ENDING (MWh) | | | | | | | | | | | | | | | | | | | | | | | | totals | 16282.3 |

Exhibit G - 2

SCHEDULE F-2
EXPECTED ENERGY

| Contract Year | Expected Energy (in MWh)¹ |
|----------------------|---|
| 1 | |
| 2 | |
| 3 | |
| 4 | |
| 5 | |
| 6 | |
| 7 | |
| 8 | |
| 9 | |
| 10 | |
| 11 | |
| 12 | |
| 13 | |
| 14 | |
| 15 | |
| 16 | |
| 17 | |

¹ As may be adjusted for each MW that the Guaranteed Capacity exceeds the Installed Capacity as provided in Exhibit B, Section 5.

| Contract Year | Expected Energy (in MWh) |
|---------------|--------------------------|
| 1 | 16,282 |
| 2 | 16,038 |
| 3 | 15,797 |
| 4 | 15,560 |
| 5 | 15,327 |
| 6 | 15,097 |
| 7 | 14,870 |
| 8 | 14,647 |
| 9 | 14,428 |
| 10 | 14,211 |
| 11 | 13,998 |
| 12 | 13,788 |
| 13 | 13,581 |
| 14 | 13,378 |
| 15 | 13,177 |
| 16 | 12,979 |
| 17 | 12,785 |
| 18 | 12,593 |
| 19 | 12,404 |
| 20 | 12,218 |

EXHIBIT G

BUYOUT OPTION

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the seventh (7th) Contract Year of the Delivery Term (ii) the tenth (10th) Contract Year of the Delivery Term, (iii) the fifteenth (15th) Contract Year of the Delivery Term and (iv) the twentieth (20th) Contract Year of the Delivery Term, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility. 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 Buyout Price, as set forth in Exhibit E, or, if greater, the Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit G, 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 Delivery Term, (ii) the tenth (10th) Contract Year of the Delivery Term, (iii) the fifteenth (15th) Contract Year of the Delivery Term, or (iv) the twentieth (20th) Contract Year of the Delivery Term, if applicable. Such 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, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of the Facility, and the price of the Product (the “**Fair Market Value**”). On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the 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) 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, subject in any event to receipt of any necessary approvals of applicable Governmental Authorities; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Facility.

EXHIBIT H

QUARTERLY MILESTONE PROGRESS REPORTING FORM

After the Effective Date, Seller shall prepare a written report (this “**Quarterly Milestone Progress Reporting Form**”) at the end of each calendar quarter on its progress on the Milestones and the development construction, testing, start-up, and operation of the Facility.

Within fifteen (15) days of the end of the applicable calendar quarter, Seller must (a) complete this Quarterly Milestone Progress Reporting Form and (b) submit such completed report to Buyer.

Each Milestone 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 quarter.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones.
9. List of issues that could potentially impact 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.

Once the project achieves Commercial Operation, Seller's Quarterly Milestone Progress Reporting Form must include the following items:

1. Executive Summary.
2. Description of any planned outages or maintenance activities.
3. Description of any forced outages.
4. Actual CAISO metered energy production for the previous calendar quarter.
6. Summary of expected activities during the current calendar quarter.
7. List of issues that could potentially impact Seller's delivery obligations under the PPA and Seller's expected mitigation measures.
8. Any changes to the Facility or site.

EXHIBIT I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of the 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 Stion MCE Solar One, LLC 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.

1. Seller has successfully completed an initial performance test under Seller's EPC contract for the Facility which demonstrates peak Facility 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 performance test;
2. Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point and that such equipment is capable of generating energy in accordance with the manufacturer's specifications ("**Initial Mechanical Completion**");
3. The electrical collection system for the Facility comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized;
4. The substation for such the Facility is substantially complete (subject to completion of punch-list items) and capable of delivering the Energy;
5. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
6. The Facility is operational and interconnected with the CAISO Grid, has been approved by CAISO to commence operations, and is capable of delivering Energy through the permanent interconnection facilities.

For purposes of Section 4 above, "**Initial Commissioning Completion**" means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer's specifications.

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 Stion MCE Solar One, LLC 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 performance test under Seller's EPC contract for the Facility demonstrated peak electrical output of __MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

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 STION MCE SOLAR ONE, LLC (“**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 _____.

STION MCE SOLAR ONE, LLC

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF GUARANTY

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

Recitals

- A. Buyer and Stion MCE Solar One LLC, a Delaware limited liability company (“Seller”), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 2015.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages), as and when required pursuant to the terms of the PPA strictly in accordance therewith (collectively, the “Guaranteed Amount”); provided that, other than with respect to the Enforcement Expenses, Guarantor’s aggregate liability hereunder shall in no circumstances exceed **\$180/kW** (the “Guaranty Cap”). This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein. Guarantor further agrees to pay any and all expenses (including the reasonable fees and disbursements of counsel) that may be paid or incurred by Buyer in enforcing any rights with respect to, or collecting, any or all of the Guaranteed Amount and/or enforcing any rights with respect to, or collecting against, Guarantor under this Guaranty (any such expenses, the “Enforcement Expenses”); it being understood and agreed that the amount of any such Enforcement Expenses shall not be included in calculating Guarantor’s liability hereunder for purposes of the Guaranty Cap.

2. Demand Notice. If Seller has not timely paid any Guaranteed Amount as required pursuant to the PPA after written notice of such failure to Seller (the “Demand Notice”) and the expiration of five (5) Business Days after delivery of such Demand Notice, then Guarantor shall, within two (2) Business Days, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until both (i) the Delivery Term under the PPA has expired or terminated early and (ii) all Guaranteed Amounts have been paid in full. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for any reason, including the following:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, attachment, injunction, restraint, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed or asserted by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation in such event, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

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

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

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

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

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

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

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

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, and (f) Guarantor has a tangible net worth greater than \$[_____].

8. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four

business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

Marin Clean Energy
1125 Tamalpais Avnue
San Rafael, CA 94901
Attn: Greg Brehm, Director of Power
Resources
Fax: 415.459.8095

If delivered to Guarantor, to it at

[____]
Attn: [____]
Fax: [____]

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

10. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

11. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

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

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

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

[Signature on next page]

EXECUTION VERSION

POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

Seller: Stion MCE Solar One, LLC

Buyer: Marin Clean Energy, a California joint powers authority

Description of Facility:

A ~11.3 MW DC (~10.5 MW AC) PV System comprised of three (3) phases described below (each, a “**Phase**” and collectively, the “**Phases**”):

- **Site 1 (1X Tracker):** a 3.95 MW DC (3.5 MW AC) single-axis (1x) tracking PV system (the “**1x Tracking**” system”) to be installed during **Phase 2** of the project
- **Site 2 (Ballasted Fixed Tilt):** an initial 2.17 MW DC (2 MW AC) to be installed as **Phase 1** of the project followed by a 5.2 MW DC (5 MW AC) ballasted fixed tilt ground mounted PV system (each a “**Fixed Tilt**” system) to be installed during **Phase 3** of the project

Guaranteed Commercial Operation Date:

- **Phase 1:** Initial 2.17 MW DC Fixed Tilt system operational in May 1, 2016
- **Phase 2:** 3.95 MW DC 1x Tracking system operational in September 30, 2016
- **Phase 3:** 5.2 MW DC Fixed Tilt system operational in September 30, 2016

Delivery Term: Twenty (20) Contract Years.

Contract Price: [REDACTED] dollars (\$[REDACTED].00) per MWh, with no escalation

Product:

Energy

Green Attributes (if Renewable Energy Credit, please check the applicable box below):

- ☐ Renewable Energy Credit (Bucket 1)
- ☐ Renewable Energy Credit (Bucket 2)
- ☐ Renewable Energy Credit (Bucket 3)

Capacity Attributes

Expected Energy for Second Contract Year:

- 3,607 MWh from the Fixed Tilt System installed in Phase 1
- 7,612 MWh from the 1x Tracking System installed in Phase 2
- 8,670 MWh from the Fixed Tilt System installed in Phase 3

Troutman Sanders LLP
805 SW Broadway, Suite 1560
Portland, Oregon 97205
Attention: Stephen Hall
Fax No.: (503) 290-2405
Phone No.: (503) 290-2336
Email: stephen.hall@troutmansanders.com

EXECUTION VERSION

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

SELLER

Stion MCE Solar One, LLC

By: 

Name: Chad A. Fellers

Title: Authorized Person

President & CEO

BUYER

Marin Clean Energy

By: 

MCE Chairperson

By: 

MCE Executive Officer

TABLE OF CONTENTS

| | Page |
|---|-------------|
| ARTICLE 1 | |
| DEFINITIONS..... | 1 |
| 1.1 Contract Definitions..... | 1 |
| 1.2 Rules of Interpretation | 13 |
| ARTICLE 2 | |
| TERM; CONDITIONS PRECEDENT | 14 |
| 2.1 Contract Term | 14 |
| 2.2 Conditions Precedent | 15 |
| 2.3 Progress Reports | 16 |
| ARTICLE 3 | |
| PURCHASE AND SALE | 16 |
| 3.1 Sale of Product..... | 16 |
| 3.2 Sale of Green Attributes..... | 16 |
| 3.3 Compensation | 17 |
| 3.4 Imbalance Energy | 17 |
| 3.5 Ownership of Renewable Energy Incentives..... | 18 |
| 3.6 Future Environmental Attributes | 18 |
| 3.7 Test Energy | 18 |
| 3.8 Capacity Attributes | 19 |
| 3.9 CEC Certification and Verification | 19 |
| 3.10 Eligibility | 19 |
| 3.11 California Renewables Portfolio Standard..... | 19 |
| ARTICLE 4 | |
| OBLIGATIONS AND DELIVERIES | 19 |
| 4.1 Delivery..... | 19 |
| 4.2 Title and Risk of Loss | 20 |
| 4.3 Scheduling Coordinator Responsibilities..... | 20 |
| 4.4 Forecasting..... | 23 |
| 4.5 Dispatch Down/Curtailment | 24 |
| 4.6 Reduction in Delivery Obligation..... | 24 |
| 4.7 Expected Energy and Guaranteed Energy Production..... | 25 |
| ARTICLE 5 | |
| TAXES..... | 25 |
| 5.1 Allocation of Taxes and Charges..... | 25 |
| 5.2 Cooperation..... | 25 |
| ARTICLE 6 | |
| MAINTENANCE OF THE FACILITY | 26 |
| 6.1 Maintenance of the Facility | 26 |
| 6.2 Maintenance of Health and Safety | 26 |
| ARTICLE 7 | |
| METERING..... | 26 |
| 7.1 Metering..... | 26 |

TABLE OF CONTENTS (continued)

| | Page |
|---|-------------|
| 7.2 Meter Verification..... | 26 |
| ARTICLE 8 INVOICING AND PAYMENT; CREDIT | 26 |
| 8.1 Invoicing | 26 |
| 8.2 Payment..... | 27 |
| 8.3 Books and Records | 27 |
| 8.4 Payment Adjustments; Billing Errors | 27 |
| 8.5 Billing Disputes | 27 |
| 8.6 Netting of Payments..... | 28 |
| 8.7 Seller’s Development Security | 28 |
| 8.8 Seller’s Performance Security..... | 28 |
| ARTICLE 9 NOTICES..... | 29 |
| 9.1 Addresses for the Delivery of Notices | 29 |
| 9.2 Acceptable Means of Delivering Notice..... | 29 |
| ARTICLE 10 FORCE MAJEURE | 29 |
| 10.1 Definition | 29 |
| 10.2 No Liability If a Force Majeure Event Occurs | 30 |
| 10.3 Notice..... | 30 |
| 10.4 Termination Following Force Majeure Event..... | 30 |
| ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION | 31 |
| 11.1 Events of Default | 31 |
| 11.2 Remedies; Declaration of Early Termination Date..... | 33 |
| 11.3 Termination Payment..... | 33 |
| 11.4 Notice of Payment of Termination Payment | 34 |
| 11.5 Disputes With Respect to Termination Payment..... | 34 |
| 11.6 Rights And Remedies Are Cumulative..... | 34 |
| 11.7 Mitigation..... | 34 |
| ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES | 34 |
| 12.1 No Consequential Damages..... | 34 |
| 12.2 Waiver and Exclusion of Other Damages..... | 35 |
| ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY | 36 |
| 13.1 Seller’s Representations and Warranties | 36 |
| 13.2 Buyer’s Representations and Warranties | 37 |
| 13.3 General Covenants..... | 38 |

TABLE OF CONTENTS (continued)

| | Page |
|---|-------------|
| ARTICLE 14 ASSIGNMENT..... | 38 |
| 14.1 General Prohibition on Assignments | 38 |
| 14.2 Permitted Assignment; Change of Control of Seller | 38 |
| 14.3 Change of Control of Buyer..... | 39 |
| ARTICLE 15 LENDER ACCOMMODATIONS | 39 |
| 15.1 Granting of Lender Interest..... | 39 |
| 15.2 Rights of Lender | 39 |
| 15.3 Cure Rights of Lender..... | 40 |
| ARTICLE 16 DISPUTE RESOLUTION | 40 |
| 16.1 Governing Law | 40 |
| 16.2 Dispute Resolution..... | 40 |
| 16.3 Attorneys' Fees | 40 |
| ARTICLE 17 INDEMNIFICATION..... | 41 |
| 17.1 Indemnification..... | 41 |
| 17.2 Claims | 41 |
| ARTICLE 18 INSURANCE..... | 41 |
| 18.1 Insurance | 41 |
| ARTICLE 19 CONFIDENTIAL INFORMATION | 43 |
| 19.1 Definition of Confidential Information..... | 43 |
| 19.2 Duty to Maintain Confidentiality..... | 43 |
| 19.3 Irreparable Injury; Remedies | 43 |
| 19.4 Disclosure to Lender..... | 44 |
| ARTICLE 20 MISCELLANEOUS | 44 |
| 20.1 Entire Agreement; Integration; Exhibits..... | 44 |
| 20.2 Amendments | 44 |
| 20.3 No Waiver | 44 |
| 20.4 No Agency, Partnership, Joint Venture or Lease..... | 44 |
| 20.5 Severability | 44 |
| 20.6 Mobile-Sierra | 45 |
| 20.7 Counterparts..... | 45 |
| 20.8 Facsimile or Electronic Delivery | 45 |
| 20.9 Binding Effect..... | 45 |
| 20.10 No Recourse to Members of Buyer | 45 |

Exhibits:

| | |
|--------------|--|
| Exhibit A | Description of Facility |
| Exhibit B | Facility Construction and Commercial Operation |
| Exhibit C | Contract Price |
| Exhibit D | Emergency Contact Information |
| Exhibit E | [RESERVED] |
| Exhibit F | Guaranteed Energy Production Damages Calculation |
| Schedule F-1 | Expected Energy |
| Exhibit G | Buyout Option |
| Exhibit H | Quarterly Milestone Progress Reporting Form |
| Exhibit I-1 | Form of Commercial Operation Date Certificate |
| Exhibit I-2 | Form of Installed Capacity Certificate |
| Exhibit J | Form of Construction Start Certificate |
| Exhibit K | Form of Guaranty |

POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("**Agreement**") is entered into as of March 5, 2015 (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, and operate a photovoltaic electric generating facility to be located in Contra Costa County, California at the locations identified in Exhibit A, and having an aggregate Guaranteed Capacity to Buyer of ten and five tenths (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 all 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:

"**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 (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

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

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

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such

petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

"Buyer" has the meaning set forth on the Cover Sheet.

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

(a) the CAISO provides notice to a Party or Buyer's SC, 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) no other circumstances exist that constitute a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same time period as referenced in (a).

"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 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 and/or a Curtailment Period during the same time period.

"Buyout Payment" has the meaning set forth in Exhibit G.

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

“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 the certification and verification process that the CEC has established to determine whether the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and whether Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

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

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

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

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

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

“Contract Price” has the meaning set forth in Section 3.3(a).

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

“Contract Year” means each calendar year during the Contract Term, commencing on the Commercial Operation Date, *provided* that if the first (1st) and last Contract Years are not full calendar years, the first Contract Year shall mean the period from the Commercial Operation

Date to December 31 of such calendar year, and the last Contract Year shall mean the period from January 1 of the last Contract Year through the last day of the Contract Term.

"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.

"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 Cap" is the yearly quantity per Contract Year, in MWh, equal to the product of twenty-nine (29) hours times the amount of the Installed Capacity.

"Curtailment Order" means any of the following:

a) the CAISO orders, directs, alerts, or provides notice to a Party to curtail Energy deliveries for reasons including, but not limited to, (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO's electric system integrity or the integrity of other systems to which the CAISO is connected;

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

c) a curtailment ordered by the 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.

"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).

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

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

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to (a) the EIRP Forecast, expressed in MWh, applicable to the Buyer Curtailment Period, whether or not Seller is participating in EIRP during the Buyer Curtailment Period, less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period or, (b) if there is no EIRP Forecast available, using relevant Facility availability, weather, historical and other pertinent data for the period of time during the Buyer Curtailment Period less the amount of Delivered Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided that*, if the applicable difference calculated pursuant to (a) or (b) above is negative as compared to the amount of metered Energy at the CAISO revenue meter for the Facility, the Deemed Delivered Energy shall be zero (0).

“Deemed Delivered Energy Price” means the price to be paid by Buyer to Seller for Deemed Delivered Energy, as specified in Section 3.3(b).

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

“Delivered Energy” means all Energy produced from the Facility as measured in MWh at the CAISO revenue meter of the Facility based on a power factor of precisely one (1) and net of all Electrical Losses.

“Delivery Point” means the [Facility PNode] [NP15 Trading Hub as defined by the CAISO [TH_NP15_GEN-APND]].

“Delivery Term” shall mean the period of twenty (20) Contract Years beginning on the Commercial Operation Date of the first Phase to reach Commercial Operation and ending on the twentieth (20th) anniversary of the Commercial Operation Date of the last Phase to achieve Commercial Operation, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

“Development Security” means the collateral in the amount required of Seller, as specified in the Cover Sheet to this Agreement, and referred to in Section 8.7, which may be provided in the form of (i) cash or (ii) a Letter of Credit.

“Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Facility connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the Point of Interconnection, as defined in the applicable Wholesale Distribution Tariff, at the

point where the distribution system meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

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

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

“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.

“Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

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

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

“Expected Energy” has the meaning set forth in Exhibit F, Schedule F-1.

“Facility” means the facility described more fully in Exhibit A attached hereto.

“Fair Market Value” has the meaning set forth in Exhibit G.

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

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

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

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

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

“Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and

allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility.

“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, Capacity Attributes and Resource Adequacy Benefits.

“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 (CO₂), methane (CH₄), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;¹ (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. 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 tax credits associated with the construction or operation of the Facility and other financial incentives in the

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

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 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 ten and five tenths (10.5) MW AC capacity measured at the Delivery Point, which amount is subject to and will be reduced so as to equal the amount of generation capacity permitted under any final permitting or environmental restrictions imposed by a Governmental Authority, or Interconnection Agreement limitations as required by the Transmission Provider and agreed upon by the Parties.

“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.

“Guarantor” means, with respect to Seller, any person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (c) executes and delivers a Guaranty for the benefit of Buyer.

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

“Imbalance Energy” means the amount of Energy, in any given settlement period, by which the amount of Delivered 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.

“Installed Capacity” means the sum of the actual generating capacity of the Facility, not to exceed ten and five tenths (10.5) MW AC.

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

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

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

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

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity 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 reasonably acceptable to Buyer.

“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 and Resource Adequacy Benefits.

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

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

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour.

“Negative LMP” means, in any 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” means, in any Settlement Interval during which Seller delivers Energy amounts in excess of the Installed Capacity and there is a Negative LMP, an amount equal to such Negative LMP times such excess MWh.

“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).

“Output Event of Default” has the meaning set forth in Exhibit F.

“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 & Electric Company.

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

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

“Performance Security” means the collateral in the amount required of Seller, as specified in the Cover Sheet to this Agreement, and referred to in Section 8.8, which may be provided in the form of (i) cash, (ii) a Guaranty, or (iii) a Letter of Credit.

“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.

“Phase” and **“Phases”** has the meaning set forth on the Cover Sheet.

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

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

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

“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 guarantor or other credit support) under this Agreement.

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

“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 Credit (Bucket 1)” 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.

“Renewable Energy Credit (Bucket 2)” 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.

“Renewable Energy Credit (Bucket 3)” 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.

“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.

“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.

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

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

“Scheduled Energy” means the Energy that clears under the applicable CAISO market based on the final Schedule 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.

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

“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.

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

“Tax” or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term,

including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“Termination Payment” has the meaning set forth in Section 11.3.

“Terminated Transaction” has the meaning set forth in Section 11.2.

“Test Energy” means the 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 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 Provider” means any entity or entities transmitting or transporting the Product on behalf of Seller or Buyer to or from the Delivery Point.

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

“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.

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" when used as a conjunction shall connote "any or all of";

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

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

1.3 **Service Contract.** The Parties acknowledge and agree that, for accounting and tax purposes, this Agreement is not and shall not be construed as a capital lease, and that this Agreement is and shall be treated as a "service contract" within the meaning of pursuant to Section 7701(e) of the Internal Revenue Code.

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

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

(b) Buyer shall have the right, but not the obligation, to extend the Contract Term for an additional five (5) Contract Years at the then-current Contract Price, but Seller must receive Notice of such extension at least two (2) years before the end of the initial Contract Term.

(c) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 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.

(d) Buyer may elect to purchase the Facility during the Delivery Term in accordance with Exhibit G.

2.2 Conditions Precedent.

(a) Either Party may terminate this Agreement upon Notice to the other Party if any of the following events have not occurred by September 30, 2015:

(i) Seller has received a "Notice of Determination" from the applicable Governmental Authority with respect to the necessary environmental permits or approvals that is acceptable to both Parties, as determined by each Party in its sole discretion;

(ii) The PTO has offered Seller a draft Interconnection Agreement acceptable to both Parties, as determined by each Party in its sole discretion; and

(iii) Buyer has entered into a lease for the Facility site with Chevron Products Company, and obtained any required consents in connection with such lease.

Upon such termination, neither Party shall have any further liability or obligation to the other Party, save and except for those obligations specified in Section 2.1(c).

(b) Subject to Section 3.7, Buyer shall have no obligation whatsoever to purchase the Product produced by a Phase of the Facility under this Agreement until Seller completes to Buyer's reasonable satisfaction each of the following conditions as to such Phase:

(i) Seller shall have delivered to Buyer completion certificates from an licensed professional engineer substantially in the form of Exhibit I-1 and Exhibit I-1;

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

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

(iv) The Interconnection Facilities of Seller have demonstrated the ability to accept the full-load output of the Facility and final permission to commence Commercial Operation has been granted by the PTO and the CAISO, including completion of all Network Reliability Upgrades (as defined in the CAISO Tariff) and satisfaction of all other requirements of the Interconnection Agreement;

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

(vi) Seller has received documentation from the PTO that Delivery Network Upgrades (as defined in the CAISO Tariff) for the Facility have been completed;

(vii) 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 (or Phase, if applicable) in no more than ninety (90) days from the Commercial Operation Date;

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

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

2.3 Progress Reports. Seller shall report to Buyer quarterly on progress of the Milestones, from the Effective Date until the start of construction, at which point Seller shall report to Buyer monthly, until the Commercial Operation Date. The form of these progress reports are set forth as Exhibit H.

ARTICLE 3 PURCHASE AND SALE

3.1 **Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all of the Product produced by the Facility. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. 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. 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 affecting Buyer's ability to receive the Product (but not its ability to transmit the Product from the Delivery Point), 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.

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

3.3 **Compensation.**

(a) The Contract Price shall be as set forth in Exhibit C (the "**Contract Price**").

(b) Subject to Section 3.3(c), Buyer shall pay Seller the Contract Price for (i) each MWh of Delivered Energy and (ii) each MWh of Deemed Delivered Energy above the Curtailment Cap.

(c) If, at any point in any Contract Year, the amount of Delivered Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap, if any, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Product 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 price for each Settlement Interval.

(d) If during any Settlement Interval, Seller delivers Product amounts in excess of the Installed Capacity, 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 Negative LMP Costs.

(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 an Event of Default where Seller is the Defaulting Party or a Force Majeure Event, or (ii) Seller is not able to make Product available due to an Event of Default where Buyer is the Defaulting Party, 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.** Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy. Buyer and Seller recognize that from time to time the amount of Delivered 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 and Seller shall take such other commercially reasonable actions requested by Buyer that can be undertaken by Seller without cost or economic detriment to Seller to minimize charges and imbalances associated with Imbalance Energy. Seller shall promptly notify Buyer as soon as possible of any material imbalance that is occurring or has occurred.

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. 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 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 for such Test Energy, Buyer shall pass through and deliver to Seller any CAISO revenues, credits and other payments for or attributable as a result of such Test Energy, net of any CAISO fees and Scheduling Coordinator service costs.

3.8 **Capacity Attributes.** By no later than the Effective Date, Seller shall have submitted all necessary PG&E interconnection applications.

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

(b) Throughout the Delivery Term, as applicable, Seller shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. As applicable, Seller hereby covenants and agrees to transfer all Resource Adequacy benefits to Buyer.

3.9 **CEC Certification and Verification.** 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, Seventh 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.

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

3.11 **California Renewables Portfolio Standard.** 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.

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 Delivered 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 Delivered Energy from and after 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 Delivered 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. Notwithstanding any of the foregoing to the contrary, Buyer shall assume all liability and reimburse Seller for any and all CAISO charges or penalties incurred by Seller as a result of Buyer's actions or failures to comply with its obligations under this Agreement, including those resulting from a Buyer Curtailment Period. 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 Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Delivered 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. At least thirty (30) days prior to the initial synchronization of the Facility to the CAISO Grid, Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer as Seller's Scheduling Coordinator for the Facility effective as of 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 authorization to act as Seller's Scheduling Coordinator unless agreed to by Buyer. Buyer (as Seller's SC) shall submit Schedules to the CAISO based on the final Schedule 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 for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Buyer (as Seller's SC) shall submit Schedules and any updates to such Schedules to the CAISO based on the most current forecast of Delivered Energy consistent with PIRP whenever PIRP is applicable, and consistent with Buyers' best estimate based on the information reasonably available to Buyer including Buyer's forecast whenever PIRP is not applicable.

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

(c) CAISO Costs and Revenues. Except as provided below, Buyer shall be responsible for all CAISO costs (including scheduling and forecasting fees, penalties and other charges) and shall be entitled to all CAISO revenues (including Imbalance Energy and other credits and payments) in each case, associated with Delivered Energy, except to the extent (i) such CAISO costs are incurred as a consequence of the Facility not being available, (ii) the Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), and (iii) any other failure by Seller to abide by the CAISO Tariff, this Agreement, or with any CAISO, Buyer Curtailment, or Scheduling Coordinator dispatch instructions. The Parties agree that any Availability Incentive Payments under CAISO Tariff Section 40.9 are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity under CAISO Tariff Section 40.9 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, 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 the 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. CAISO Charges Invoices shall be rendered by Buyer after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer shall reflect any such adjustments on subsequent CAISO Charges Invoices. Seller shall pay the amount of CAISO Charges Invoices within ten Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Reserved.

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

(a) Annual Forecast of Available Capacity. No less than forty-five (45) days before (i) the first day of the Delivery Term and (ii) the beginning of each subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month's average-day expected Delivered Energy, by hour, for the following calendar year in a form 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) Daily Forecast of Available Capacity. 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 PIRP is not available for any reason, the expected Delivered 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 Schedules 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 PIRP is not available for any reason, the expected Delivered 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 of Available Capacity. 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) 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. Except for a failure or curtailment resulting from a Force Majeure Event, Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment, the failure of electric transmission service shall not excuse performance with respect to either Party for the delivery or receipt of the Product to be provided under this Agreement; provided that, if Buyer fails to accept Energy due to a failure of transmission service, whether or not excused, Seller will nonetheless be deemed to have fulfilled its obligations hereunder so long as the Facility was available to produce Energy immediately prior to such failure of transmission service and such failure was not the direct or indirect result of the negligence of Seller.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for the amount and for the period set forth in a Buyer Curtailment Order or Buyer Bid Curtailment delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Section 3.3(b). Seller agrees to reduce the Facility's generation by the amount and for the period set forth in the applicable Buyer Curtailment Order.

(c) Seller Curtailment. Buyer and Seller shall use commercially reasonable efforts to develop a protocol to automatically curtail deliveries of Energy from the Facility when Negative LMP prices are below -\$30/MWh. Buyer may adjust such Negative LMP curtailment price on ten (10) days' Notice to Seller. For purposes of compensation to Seller, such curtailments will be deemed a Buyer Curtailment and a Buyer Curtailment Period and Seller will be compensated for such curtailments in accordance with Section 4.5(b).

(d) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Delivered 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, (B) is the Negative LMP Costs, if any, for the Buyer Curtailment Period or Curtailment Period and (C) is amount of any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment

Order.

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

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

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

4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Energy that Seller expects to be able to deliver to Buyer during each Contract Year is set forth in Exhibit F, Schedule F-1 ("**Expected Energy**") and is subject to an annual degradation of 0.5% solar irradiance available at the Facility, Force Majeure Events, Curtailment Periods and Buyer Curtailment Periods that occur during any such Contract Year or Performance Measurement Period. Throughout the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any twenty-four (24) consecutive calendar month period during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Energy, as measured in MWh, equal to one-hundred sixty percent (160%) of the Expected Energy for such period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period to the extent of any Force Majeure Events, an Event of Default where Buyer is the Defaulting Party, 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 Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, an Event of Default where Buyer is the Defaulting Party, Curtailment Periods, and Buyer Curtailment Periods 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.

4.8 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently

applied.

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 Product to Buyer, that are imposed on Product prior to the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). Notwithstanding the foregoing, each Party shall be responsible for its own Taxes calculated based on the income or profits generated in connection with the purchase and sale of the Product hereunder. 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 F 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 at the Facility using a commercially available, CAISO revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from the 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.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later 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 Interval during the preceding month, including, without reservation, the amount of Product in MWh delivered during the prior billing period as set forth in CAISO T+12 settlement statements, the amount of Product in MWh produced by the facility as read by the CAISO revenue grade meter, the Contract Price applicable to such Product, deviations between the quantity of Product produced and the quantity of Product delivered, and the CAISO prices at the Delivery Point for each Settlement Interval; (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. 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 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. Upon fifteen (15) days Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, or 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.

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 two (2) 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 during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer in the amount set forth in the Cover Sheet to this Agreement for each Phase and within thirty (30) days of the later of: (A) execution of the Interconnection Agreement for such Phase or (B) receipt of the "Notice of Determination" from the applicable Governmental Authority regarding all environmental impacts and required mitigation, if any, or exemption from such requirements, under the environmental permits or approvals necessary for such Phase. Seller shall maintain the Development Security in full force and effect until Seller posts the Performance Security pursuant to Section 8.8 below and if Buyer collects or is entitled to collect Daily Delay Damages from Seller for Seller's failure to achieve the Guaranteed Construction Start Date, Seller shall replenish the Development Security by an amount equal to the encumbered Development Security. 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 Exhibit B. 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 three (3) 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 in the applicable amount set forth in the Cover Sheet to this Agreement upon Commercial Operation Date of each Phase. If the Performance Security is not in the form of cash, it shall be in a form and substance reasonably satisfactory to Buyer. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a letter of credit and the issuer of such letter of credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such letter of credit and such letter of credit expires prior to the end of the Delivery Term, or (iii) fails to honor Buyer's properly documented request to draw on such letter of credit by such issuer, Seller shall have three (3) 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.

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; 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 than the Contract Price, Buyer's inability economically to use or resell the Product purchased hereunder, 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; (ii) 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; (iii) a Curtailment Period; (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility; (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; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2 No Liability If a Force Majeure Event Occurs. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to 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 eight (8) month period, then the non-claiming Party may terminate this Agreement upon 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(c).

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default, and except for such Party’s obligations to Schedule, deliver, or receive the Product, the exclusive remedy for which is provided in Section 4.3) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

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

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

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

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

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

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

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

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the right (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) Business 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, to accelerate all amounts owing between the Parties, and to collect liquidated damages calculated in accordance with Section 11.3 Termination Payment below; (b) to withhold any payments due to the Defaulting Party under this Agreement; (c) to suspend performance; and (d) to exercise any other right or remedy available at law or in equity, including injunctive relief to the extent permitted under this Agreement, except to the extent such remedies are expressly limited under this Agreement.

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 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 Termination Payment 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, lost revenues or lost profits; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination

Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

11.5 **Disputes With Respect to Termination Payment.** If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within five (5) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 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, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE, BUSINESS INTERRUPTION 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 WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL

OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTION 11.3, 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 CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13

REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

13.2 Buyer's Effective Date Representations and Warranties. ²As 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 Laws.

(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.

² Note: these deleted reps and warranties are already stated in Section 3.10, and would only apply during the Delivery Term (not reps and warranties made as of the Effective Date).

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

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

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

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

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

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

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

ARTICLE 14 ASSIGNMENT

14.1 General Prohibition on Assignments. Except as provided below 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 each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided, further*, that in each such case, 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 either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide payment security in an amount and form reasonably acceptable to Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Section 14.2. Any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

14.3 Change of Control of Buyer. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 15.2(b) and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller, in good faith, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Seller.

ARTICLE 15 LENDER ACCOMMODATIONS

15.1 Granting of Lender Interest. Notwithstanding Section 14.2 or Section 14.3, either Party may, without the consent of the other Party, 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. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party'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 the other Party such initial Notice, the granting

Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

15.2 **Rights of Lender.** If a Party 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 the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party 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 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 Buyer 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 the granting Party 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 the granting Party hereunder; *provided* that non-granting shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

15.3 **Cure Rights of Lender.** The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party 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. The non-granting Party 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 non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

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 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 Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided, however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such

consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 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 18.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(h) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 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. 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.

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.

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.

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 service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart

any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

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

EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name: MCE Solar One, Richmond, California

APN:

County: Contra Costa

MW AC: 10.5

P-node/Delivery Point:

Additional Information:

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. Construction of the Facility.

- a. Seller shall cause construction to begin on each Phase of the Facility within sixty (60) days of the later of (i) receipt of final construction permits or (ii) the executed Interconnection Agreement for such Phase, (as may be extended by the Development Cure Period (defined below), the "**Guaranteed Construction Start Date**"). Seller shall demonstrate the start of construction through mobilization to site by Seller and/or its designees, and which may include activities such as the physical movement of soil at the Facility, 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 for each Phase (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 as to any Phase, by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of such Phase or Phases of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B.

2. Commercial Operation of the Facility. "Commercial Operation**" means, with respect to each Phase, the condition existing when (i) all conditions to operate the Phase have been satisfied and complied with in order to produce, sell and transmit Energy, (ii) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement, and (iii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The "**Commercial Operation Date**" shall be the later of (x) May 1, 2016 for Phase 1, September 30, 2016 for Phase 2, and September 30, 2016 for Phase 3, or (y) the date on which Commercial Operation is achieved for each Phase.**

- a. Seller shall cause Commercial Operation for Phase 1 to occur by May 1, 2016 and Commercial Operation for both Phase 2 and Phase 3 to occur by September 30, 2016 (as to each Phase, as each 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 Commercial Operation Date for each Phase and shall confirm to Buyer in writing when Commercial Operation for each Phase has been achieved.

- b. If Seller achieves Commercial Operation for all three Phases by the Guaranteed Commercial Operation Dates, 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 Phase has not been completed and is not ready to produce and deliver Energy to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date is reached for the applicable Phase. 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.
3. **Termination for Failure to Achieve Commercial Operation.** If a Phase has not achieved Commercial Operation within sixty (60) days after the applicable Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement as to such Phase, which termination shall be effective upon Notice to Seller.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall be extended, by a number of days equal to the period of such delay, if:
- a. despite the exercise of diligent and commercially reasonable efforts by Seller, any Governmental Authority or the PTO delays the approvals of any material permits, consents, licenses, approvals, or authorizations 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;
 - b. a Force Majeure Event occurs;
 - c. despite the exercise of diligent and commercially reasonable efforts by Seller, the Interconnection Facilities are not complete and ready for the Facility to connect and sell Energy at the Delivery Point, including as a result of any delays caused by CAISO and/or the PTO, within sixty days of the Guaranteed Commercial Operation Date for each Phase; or
 - d. Buyer has not made all necessary arrangements to receive the Energy at the Delivery Point by the Guaranteed Commercial Operations Date.

provided, however, that any cumulative extensions granted pursuant to this section shall not exceed one hundred fifty (150) days (the “**Development Cure Period**”).

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such

that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to One Hundred Thousand Dollars (\$100,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

6. **Buyer’s Right to Draw on Development Security**. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.

EXHIBIT C

CONTRACT PRICE

The Contract Price of the Product shall be:

| Contract Year | Contract Price |
|--------------------------|-----------------------|
| 1 – 20 | ██████/MWh |

EXHIBIT E

[RESERVED]

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) \$50/MWh

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

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

“Lost Output” means the sum of Energy in MWh that would have been generated and delivered, but was not, on account of a Force Majeure Event, an Event of Default where Buyer is the Defaulting Party, a Curtailment Period or Buyer Curtailment Period. The additional MWh shall be calculated by assuming that the Facility would have produced an amount of electricity in such periods equal to the average production during the month of such non-production in the preceding two (2) Contract Years.

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 within thirty (30) days of such Notice.

SCHEDULE F-1

EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

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

PHASE 3 (5.0 MW) Contract Quantity (Mwh) YEAR 2
SCHEDULE F-1

| CONTRACT QUANTITY (MWh) Year 2 | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--------------------------------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|
| | HE 1 | HE 2 | HE 3 | HE 4 | HE 5 | HE 6 | HE 7 | HE 8 | HE 9 | HE 10 | HE 11 | HE 12 | HE 13 | HE 14 | HE 15 | HE 16 | HE 17 | HE 18 | HE 19 | HE 20 | HE 21 | HE 22 | HE 23 | HE 24 | Total | |
| Jan | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.1 | 13.0 | 32.7 | 46.4 | 62.2 | 61.9 | 62.0 | 52.7 | 36.5 | 5.0 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 370.1 | |
| Feb | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 4.3 | 26.2 | 43.4 | 59.5 | 68.3 | 72.4 | 68.9 | 59.7 | 39.1 | 17.9 | 1.6 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 459.4 | |
| Mar | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 0.5 | 19.2 | 47.7 | 69.9 | 95.1 | 107.3 | 104.9 | 98.5 | 93.5 | 63.8 | 40.0 | 7.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 745.8 | |
| Apr | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 7.4 | 34.6 | 67.3 | 95.8 | 106.3 | 113.2 | 116.9 | 109.5 | 94.6 | 72.7 | 44.7 | 20.2 | 0.0 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 881.5 | |
| May | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 0.9 | 16.2 | 44.5 | 73.1 | 96.9 | 117.7 | 133.7 | 137.2 | 127.0 | 108.7 | 89.0 | 57.0 | 26.8 | 2.3 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 1029.5 |
| Jun | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 1.7 | 14.8 | 39.7 | 68.5 | 96.1 | 115.5 | 129.9 | 131.7 | 124.7 | 110.0 | 86.6 | 57.7 | 31.1 | 9.4 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 1015.9 | |
| Jul | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 0.7 | 11.8 | 33.5 | 59.2 | 89.2 | 114.8 | 128.7 | 132.3 | 125.9 | 111.7 | 90.0 | 61.5 | 30.6 | 9.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 997.6 | |
| Aug | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 8.2 | 33.4 | 64.1 | 92.6 | 117.5 | 130.2 | 133.1 | 126.4 | 110.8 | 87.5 | 56.7 | 25.5 | 0.0 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 984.4 | |
| Sep | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 3.0 | 22.3 | 48.8 | 76.9 | 112.2 | 120.0 | 122.7 | 113.9 | 95.3 | 71.5 | 39.1 | 6.8 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 830.9 | |
| Oct | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 0.0 | 16.7 | 39.6 | 63.0 | 84.7 | 92.6 | 93.5 | 87.1 | 73.0 | 48.6 | 16.8 | 0.0 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 613.8 | |
| Nov | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 6.8 | 29.6 | 46.1 | 63.3 | 72.3 | 73.0 | 65.9 | 48.0 | 29.1 | 1.4 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 433.6 | |
| Dec | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 0.3 | 14.4 | 33.0 | 46.7 | 51.9 | 51.9 | 51.6 | 38.1 | 21.2 | 0.9 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | -0.2 | 307.8 | |

HOUR ENDING (MWh)

totals 8670.1

PHASE 2 (3.5MW) Tracker, Contract Quantity (Mwh) YEAR 2
SCHEDULE F-1

| CONTRACT QUANTITY (MWh) Year 2 | | | | | | | | | | | | | | | | | | | | | | | | | |
|--------------------------------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | HE 1 | HE 2 | HE 3 | HE 4 | HE 5 | HE 6 | HE 7 | HE 8 | HE 9 | HE 10 | HE 11 | HE 12 | HE 13 | HE 14 | HE 15 | HE 16 | HE 17 | HE 18 | HE 19 | HE 20 | HE 21 | HE 22 | HE 23 | HE 24 | Total |
| Jan | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 11.8 | 28.9 | 32.4 | 37.4 | 35.5 | 39.0 | 40.5 | 34.2 | 4.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 262.1 |
| Feb | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 4.0 | 28.0 | 40.1 | 43.9 | 44.1 | 44.6 | 45.3 | 46.3 | 38.6 | 18.8 | 1.4 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 353.7 |
| Mar | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 1.5 | 25.8 | 56.7 | 64.0 | 72.1 | 72.2 | 68.7 | 69.3 | 76.2 | 64.6 | 48.3 | 8.3 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 626.3 |
| Apr | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 16.1 | 52.5 | 77.9 | 87.2 | 82.0 | 79.6 | 80.9 | 81.3 | 80.7 | 76.3 | 61.9 | 31.1 | 0.8 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 807.1 |
| May | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 3.2 | 34.2 | 68.4 | 81.3 | 87.5 | 93.0 | 97.4 | 99.0 | 98.4 | 95.9 | 96.7 | 81.0 | 48.4 | 4.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 987.3 |
| Jun | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 6.0 | 32.1 | 59.2 | 76.9 | 88.6 | 93.3 | 96.9 | 96.8 | 97.7 | 97.4 | 93.2 | 80.6 | 59.4 | 19.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 996.1 |
| Jul | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 2.0 | 23.6 | 49.3 | 65.7 | 82.8 | 93.1 | 95.8 | 96.2 | 97.3 | 97.3 | 95.0 | 84.1 | 56.3 | 16.4 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 953.6 |
| Aug | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.0 | 18.0 | 52.1 | 74.6 | 85.7 | 92.8 | 93.1 | 93.0 | 94.8 | 95.4 | 93.3 | 80.4 | 43.5 | 1.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 916.4 |
| Sep | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 5.2 | 28.4 | 52.7 | 67.5 | 83.5 | 80.4 | 81.5 | 83.1 | 82.6 | 78.5 | 52.4 | 8.8 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 703.3 |
| Oct | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.1 | 17.6 | 42.0 | 52.5 | 58.7 | 57.8 | 58.8 | 61.8 | 63.8 | 53.2 | 17.7 | 0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 482.7 |
| Nov | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 6.0 | 29.0 | 37.5 | 41.6 | 41.8 | 42.8 | 44.9 | 41.1 | 27.3 | 1.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 311.3 |
| Dec | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.1 | 13.0 | 27.8 | 30.6 | 29.6 | 29.7 | 33.1 | 30.8 | 18.7 | 0.5 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 212.3 |

HOURLY ENDING (MWh)

totals | 7612.2

PHASE 1 (2MW) Contract Quantity (Mwh) YEAR 2
SCHEDULE F-1

| CONTRACT QUANTITY (MWh) Year 2 | | | | | | | | | | | | | | | | | | | | | | | | | Total |
|--------------------------------|------|------|------|------|------|------|------|------|------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|
| | HE 1 | HE 2 | HE 3 | HE 4 | HE 5 | HE 6 | HE 7 | HE 8 | HE 9 | HE 10 | HE 11 | HE 12 | HE 13 | HE 14 | HE 15 | HE 16 | HE 17 | HE 18 | HE 19 | HE 20 | HE 21 | HE 22 | HE 23 | HE 24 | |
| Jan | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.0 | 5.4 | 13.6 | 19.3 | 25.9 | 25.8 | 25.8 | 21.9 | 15.2 | 2.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 154.1 |
| Feb | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 1.8 | 10.9 | 18.1 | 24.8 | 28.4 | 30.1 | 28.7 | 24.9 | 16.3 | 7.5 | 0.7 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 191.3 |
| Mar | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.2 | 8.0 | 19.9 | 29.1 | 39.6 | 44.6 | 43.6 | 41.0 | 38.9 | 26.6 | 16.7 | 3.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 310.4 |
| Apr | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 3.1 | 14.4 | 28.0 | 39.9 | 44.2 | 46.9 | 48.3 | 45.5 | 39.4 | 30.3 | 18.6 | 8.4 | 0.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 366.3 |
| May | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.4 | 6.8 | 18.5 | 30.4 | 40.3 | 49.0 | 55.4 | 56.8 | 52.8 | 45.2 | 37.1 | 23.7 | 11.2 | 1.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 428.0 |
| Jun | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.7 | 6.2 | 16.6 | 28.5 | 40.0 | 48.0 | 54.0 | 54.6 | 51.9 | 45.8 | 36.1 | 24.0 | 13.0 | 3.9 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 422.5 |
| Jul | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.3 | 4.9 | 14.0 | 24.7 | 37.1 | 47.8 | 53.5 | 54.9 | 52.4 | 46.5 | 37.5 | 25.6 | 12.8 | 3.8 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 415.0 |
| Aug | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 3.4 | 13.9 | 26.7 | 38.5 | 48.9 | 54.2 | 55.3 | 52.6 | 46.1 | 36.4 | 23.6 | 10.6 | 0.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 409.6 |
| Sep | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 1.3 | 9.3 | 20.3 | 32.0 | 46.7 | 49.9 | 51.0 | 47.4 | 39.7 | 29.8 | 16.3 | 2.8 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 345.8 |
| Oct | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.0 | 7.0 | 16.5 | 26.2 | 35.3 | 38.5 | 38.9 | 36.2 | 30.4 | 20.2 | 7.0 | 0.0 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 255.5 |
| Nov | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 2.8 | 12.3 | 19.2 | 26.4 | 30.1 | 30.4 | 27.5 | 20.0 | 12.1 | 0.6 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 180.6 |
| Dec | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 0.1 | 6.0 | 13.7 | 19.4 | 21.6 | 21.6 | 21.5 | 15.9 | 8.9 | 0.4 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | -0.1 | 128.2 |

HOURLY ENDING (MWh)

totals 3607.4

EXHIBIT G

BUYOUT OPTION

(1) Buyout Option. No later than ninety (90) days prior to the last day of each of (i) the seventh (7th) Contract Year of the Delivery Term (ii) the tenth (10th) Contract Year of the Delivery Term, (iii) the fifteenth (15th) Contract Year of the Delivery Term and (iv) the twentieth (20th) Contract Year of the Delivery Term, Buyer may deliver Notice to Seller indicating whether it elects to purchase the Facility. 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 Fair Market Value of the Facility as of such date, as determined pursuant to clause (2) below.

(2) Calculation of Fair Market Value. If Buyer provides Notice to Seller that it is contemplating exercising its rights under this Exhibit G, 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 Delivery Term, (ii) the tenth (10th) Contract Year of the Delivery Term, (iii) the fifteenth (15th) Contract Year of the Delivery Term, or (iv) the twentieth (20th) Contract Year of the Delivery Term, if applicable. Such 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, taking into account such items as deemed appropriate by the appraiser, which may include the resale value of the Facility, and the price of the Product (the “**Fair Market Value**”). On or prior to the date that is thirty (30) days prior to the last day of such Contract Year, the 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) 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, subject in any event to receipt of any necessary approvals of applicable Governmental Authorities; *provided, however*, that Seller shall remove any encumbrances held by Seller with respect to the Facility.

EXHIBIT H

QUARTERLY MILESTONE PROGRESS REPORTING FORM

After the Effective Date, Seller shall prepare a written report (this “**Quarterly Milestone Progress Reporting Form**”) at the end of each calendar quarter on its progress on the Milestones and the development construction, testing, start-up, and operation of the Facility.

Within fifteen (15) days of the end of the applicable calendar quarter, Seller must (a) complete this Quarterly Milestone Progress Reporting Form and (b) submit such completed report to Buyer.

Each Milestone 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 quarter.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones.
9. List of issues that could potentially impact 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.

Once the project achieves Commercial Operation, Seller's Quarterly Milestone Progress Reporting Form must include the following items:

1. Executive Summary.
2. Description of any planned outages or maintenance activities.
3. Description of any forced outages.
4. Actual CAISO metered energy production for the previous calendar quarter.
6. Summary of expected activities during the current calendar quarter.
7. List of issues that could potentially impact Seller's delivery obligations under the PPA and Seller's expected mitigation measures.
8. Any changes to the Facility or site.

EXHIBIT I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of the 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 Stion MCE Solar One, LLC 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.

1. Seller has successfully completed an initial Phase performance test under Seller's EPC contract for the Phase which demonstrates peak Phase electrical output of no less than ninety percent (90%) of the Guaranteed Capacity for such Phase at the Delivery Point, as adjusted for ambient conditions on the date of the performance test;
2. Seller has installed equipment with a nameplate capacity of no less than ninety percent (90%) of the Guaranteed Capacity at the Delivery Point for such Phase and that such equipment is capable of generating energy in accordance with the manufacturer's specifications ("**Initial Mechanical Completion**");
3. The electrical collection system for such Phase comprising the total installed power capacity referenced in (1) above is substantially complete (subject to completion of punch-list items), functional, and energized for such Phase;
4. The substation for such Phase is substantially complete (subject to completion of punch-list items) and capable of delivering the Energy;
5. The Initial Commissioning Completion (defined below) has been achieved for the equipment that has achieved Initial Mechanical Completion; and
6. The Phase is operational and interconnected with the CAISO Grid, has been approved by CAISO to commence operations, and is capable of delivering Energy through the permanent interconnection facilities for the Phase.

For purposes of Section 4 above, "**Initial Commissioning Completion**" means that the electrical and control systems have been energized and tested in accordance with the equipment manufacturer's specifications.

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 Stion MCE Solar One, LLC 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 Phase performance test under Seller's EPC contract for the Phase 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 STION MCE SOLAR ONE, LLC ("**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 (or Phase, if applicable) was executed on _____;
2. the Limited Notice to Proceed with the construction of the Facility (or Phase, if applicable) was issued on _____ (attached);
3. the Construction Start Date has occurred;
4. the precise Site on which the Phase 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 _____.

STION MCE SOLAR ONE, LLC

By: _____

Its: _____

Date: _____

EXHIBIT K

FORM OF GUARANTY

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

Recitals

- A. Buyer and Stion MCE Solar One LLC, a Delaware limited liability company ("Seller"), entered into that certain Power Purchase and Sale Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [], 2015.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages), as and when required pursuant to the terms of the PPA strictly in accordance therewith (collectively, the "Guaranteed Amount"); provided that, other than with respect to the Enforcement Expenses, Guarantor's aggregate liability hereunder shall in no circumstances exceed \$180/kW (the "Guaranty Cap"). This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein. Guarantor further agrees to pay any and all expenses (including the reasonable fees and disbursements of counsel) that may be paid or incurred by Buyer in enforcing any rights with respect to, or collecting, any or all of the Guaranteed Amount and/or enforcing any rights with respect to, or collecting against, Guarantor under this Guaranty (any such expenses, the "Enforcement Expenses"); it being understood and agreed that the amount of any such Enforcement Expenses shall not be included in calculating Guarantor's liability hereunder for purposes of the Guaranty Cap.

2. Demand Notice. If Seller has not timely paid any Guaranteed Amount as required

pursuant to the PPA after written notice of such failure to Seller (the “Demand Notice”) and the expiration of five (5) Business Days after delivery of such Demand Notice, then Guarantor shall, within two (2) Business Days, pay the Guaranteed Amount to Buyer.

3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until both (i) the Delivery Term under the PPA has expired or terminated early and (ii) all Guaranteed Amounts have been paid in full. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for any reason, including the following:

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, attachment, injunction, restraint, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed or asserted by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation in such event, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
- (ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

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

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the notice

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

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

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

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

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

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

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty, and (f) Guarantor has a tangible net worth greater than \$[_____].

8. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of

transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

Marin Clean Energy
781 Lincoln Avenue, Suite 320
San Rafael, CA 94901
Attn: Greg Brehm, Director of Power
Resources
Fax: 415.459.8095

If delivered to Guarantor, to it at

[]
Attn: []
Fax: []

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

10. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

11. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY

(WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

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

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

[Signature on next page]



MCE Solar One Update

Greg Brehm

Director of Power resources | Marin Clean Energy

May 21, 2015



MCE Solar One Update

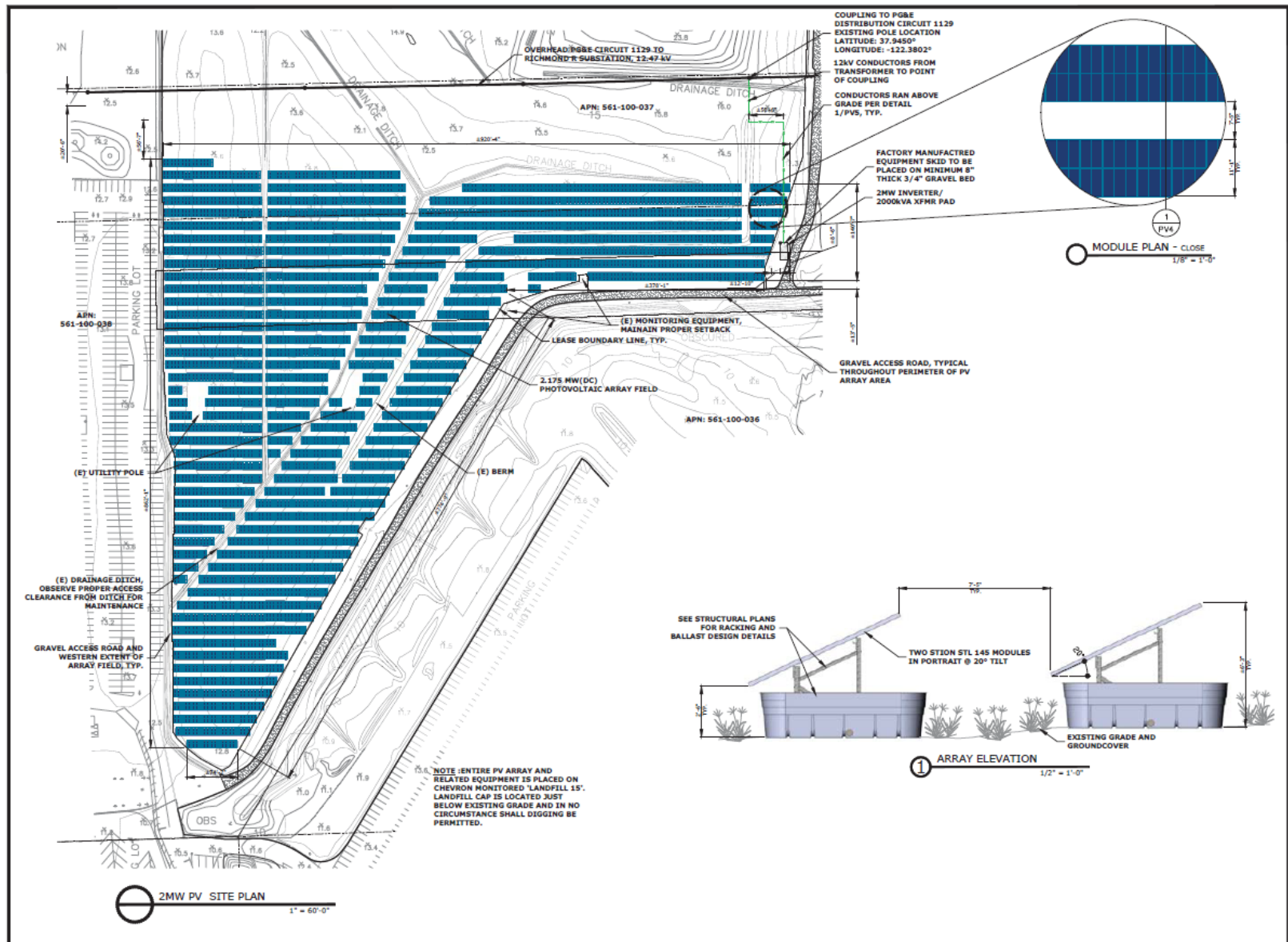
2.0 MW Phase 1

- 2 Phased development requires the executed PPA be split in two
- Interconnection nearing finalization
- Draft EIR (for full project) in preparation, NOP filed, EIR not required for phase 1
- Site boundary and development plan & design also near final approval
- Exercise of Site option and execution of Site lease expected early June
- Ground breaking planned for mid-July

8.5 MW Phase 2

- 2 Phased development requires the executed PPA be split in two
- System Impact study request executed May 12
SIS results due within 60 Business days
- Draft EIR in preparation, public comment period closed May 11
- Site boundary and development plan & design also near final approval
- Exercise of Site option and execution of Site lease expected early June
- Final dedication planned for Sept 2016

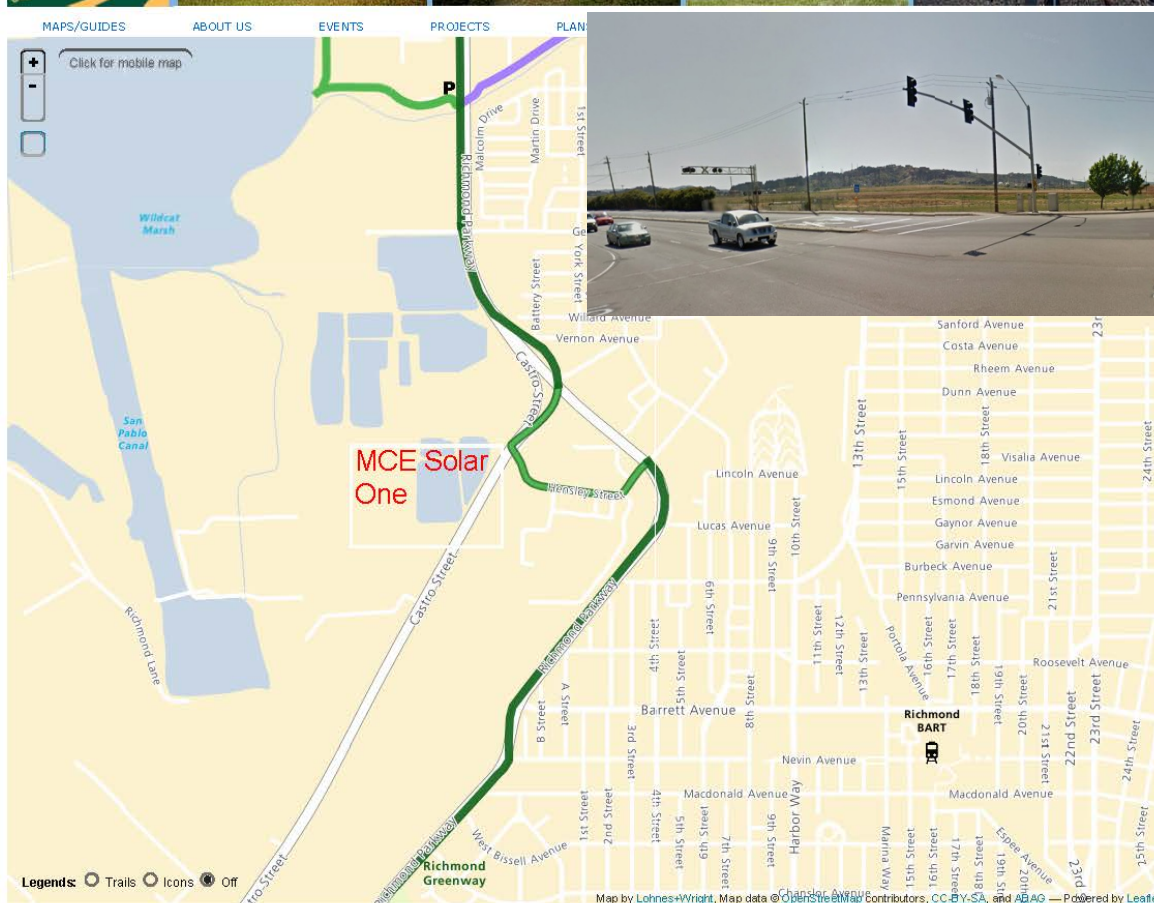
MCE Solar One – Phase 1



MCE Solar One Site

Bay Trail Map

Page 1 of 1



Questions
Ideas
Comments

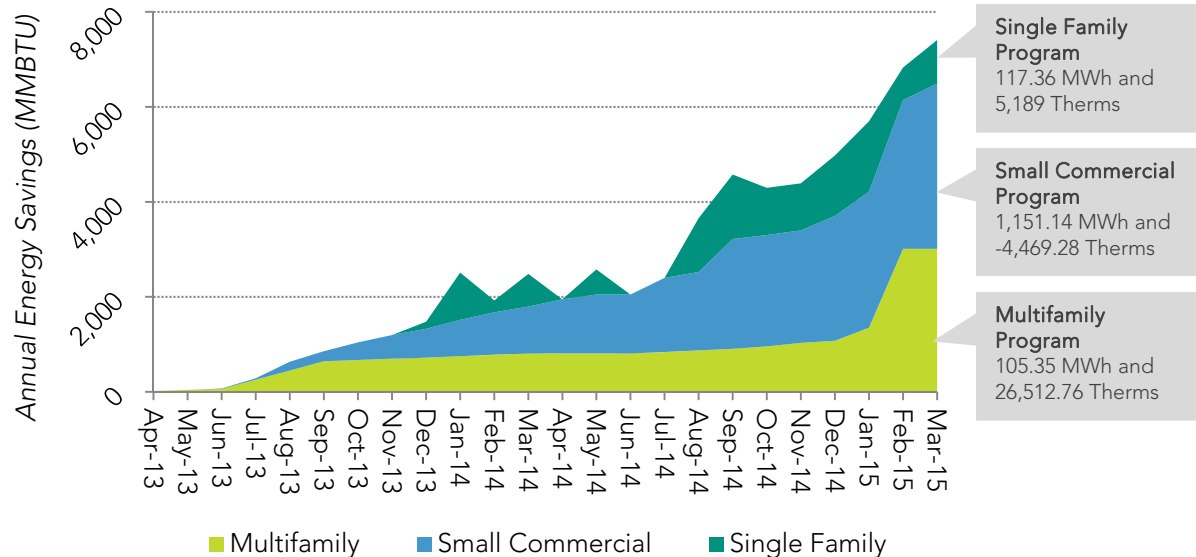


Energy Efficiency Mission Statement

MCE's Energy Efficiency program increases the efficiency of energy and water systems within existing and new buildings to reduce environmental impacts and improve health, comfort and safety.

The program empowers communities through local workforce development, and access to educational tools and financial incentives.

MCE Energy Efficiency Programs Monthly Update



Program Achievements – January 2013 to Present

Small Commercial

Small Businesses Audited
2,440*

Total Rebates Distributed
\$184,233.36

Number of Completed Projects
169

* Split between MCE, Marin Energy Watch and East Bay Energy Watch

Single Family

Number of My Energy Tool Accounts Created
2,228

Number of Action Plans Created
1,573

Total Number of Home Utility Reports Delivered
186,651

Multifamily

Multifamily Properties Audited
52

Total Rebates Distributed
\$181,521.00

Number of Units Provided with Free Energy Saving Equipment
919

Carbon Reductions

Annual Greenhouse Gas Emissions from:
229 cars



CO₂ Emissions from:
150 Homes Annual Electricity Use





May 21, 2015

TO: Marin Clean Energy Board
FROM: Jeremy Waen, Senior Regulatory Analyst
RE: Regulatory Update for May 2015

Dear Board Members:

Executive Summary of Regulatory Affairs for May 2015

Below is a summary of the key activities at the California Public Utilities Commission (CPUC) for May 2015 impacting community choice aggregation and MCE.

1. MCE Proposes an Energy Efficiency Program to Serve Low-Income Customers (A.14-11-007 et al.)

On April 27 MCE submitted Testimony presenting a Low-Income Pilot Program proposal that seeks to better serve low-income members of 'hidden communities' in both multi-family and single-family living arrangements that historically shy away from participating in Energy Efficiency programs. MCE's proposal includes leveraging extra incentives, different application processes, savings matching programs and innovative financing mechanisms to better serve these customer segments. Rebuttal Testimony to this proposal and other matters within the proceeding is due May 22.

2. MCE Presents Data and Policy Recommendations in the California Energy Commission (CEC)'s Integrated Energy Policy Report (IEPR) 2015 Process

Electricity Resource Plans (15-IEPR-02)

On April 24 MCE provided the CEC with MCE's supply resource data response. This data response is a necessary first step towards having MCE's supply resources portfolio accurately reflected and recognized in statewide energy long-term planning processes. Such information should help to alleviate the application of Cost-Allocation Mechanism (CAM) –related costs onto MCE's customers.

Electricity and Natural Gas Demand Forecast (15-IEPR-03)

On April 13 MCE provided the CEC with MCE's demand forecast data response. This data response is a necessary first step towards having MCE's customer load and demand accurately reflected and recognized in statewide energy long-term planning

processes. Such information should help to alleviate the over-procurement of electricity by PG&E that results in Power Charge Indifferent Adjustment (PCIA) –related cost burdens for MCE’s customers.

Energy Efficiency (15-IEPR-05)

On April 22 MCE provided Comments on the Draft version of the California’s Existing Buildings Energy Efficiency Action Plan, which the CEC is implementing as part of its 2015 IEPR process pursuant to Assembly Bill 758.

3. MCE Responds to PG&E, SCE & SDG&E’s Proposals to Build-Out Electric Vehicle (EV) Charging Infrastructure and Charging Stations (R.13-11-007, A.14-04-014, A.14-10-014 & A15-02-009)

Building upon the Motion for Consolidation filed jointly by MCE on March 2nd, MCE co-authored and co-filed with eight other supportive parties a Joint Motion to Amend the Scope (on April 13) in the EV Rulemaking in order to address fundamental policy issues that should be explored prior to authorizing full deployment of IOU-led ratepayer-fund EV infrastructure deployment. Concurrently the Office of Ratepayer Advocates (ORA) filed a separate Motion to Consolidate the EV proceedings, which also asks for the Commission to direct the IOUs suspend their Application requests and propose smaller scale Pilot Programs to deploy and study EV infrastructure under IOU-led effort to inform possible larger-scale deployment.

MCE filed Comments (on April 23) supporting ORA’s Motion. On May 5 Commissioner Peterman held an All-Party Meeting to gather recommendations from parties on how to respond to these various motions while continuing to deploy EV infrastructure at a significant rate. MCE staff participated and expressed their concerns and recommendations. A response from the Commissioner’s office regarding the three motions is expected shortly.

For SDG&E’s specific EV Application, Evidentiary Hearings were held from April 28 through May 4 to explore the factual basis supporting SDG&E’s proposal. MCE participated in these hearings in a limited fashion by crossing one key SDG&E witness whose expertise are in evaluating competitive markets. Briefing on this proposal will follow later this month.

4. MCE Advocates for Proper PCIA Vintaging in PG&E 2015 Energy Resource Recovery Account (ERRA) – Phase 2 (A.14-05-024)

On April 30 MCE and the City of Lancaster co-authored and co-field Comments responding to the workshop report authored by PG&E on March 27. This workshop report relates to the March 12 workshop that MCE staff participated in relating to PCIA customer vintaging. In the April 30 filing MCE and Lancaster presented strong arguments for why customer vintages under the PCIA should be based on the launch of service to a new community by a CCA, rather than the timing of an individual ratepayer’s choice to opt into taking CCA service. Reply Comments are due May 15. MCE and Lancaster plan to co-file their reply comments as well.

On May 7, the Administrative Law Judge (ALJ) denied the Motion to Amend the Scope to address whether the PCIA should be collected from California Alternate Rates for Energy (CARE) -eligible customers. MCE co-authored and co-filed this motion

alongside Communities for a Better Environment (CBE) on March 6. MCE and CBE continue to believe this is topic is timely and significant and plan to explore other venues where this matter could be addressed.

5. MCE Works to Ensure Ratepayer and Marketing Protections in PG&E's Green Tariff Shared Renewables (GTSR) and Enhanced Community Renewables (ECR) (A.12-01-008 et al.)

From April 20 to 23, PG&E and the other IOUs hosted webinars and workshops to discuss their upcoming Advice Letter filings that are necessary to implement their GTSR and ECR programs. MCE staff participated in both the webinar on the Joint Procurement Implementation Advice Letter, and PG&E's webinar on Customer-Side and Marketing Implementation Advice Letters. MCE provided comments to PG&E explaining MCE's concerns regarding how GTSR and ECR program costs and credits would be presented on participants' electricity bills. PG&E had proposed to consolidate all of the program charges into a single line item, including PCIA charges. MCE will maintain a close watch on the implementation of PG&E's GTSR and ECR programs to ensure that competitive neutrality and the CCA-specific protections within Senate Bill 790 are observed.



May 21, 2015

TO: Marin Clean Energy Board

FROM: Shalini Swaroop, Regulatory and Legislative Counsel

RE: MCE Legislative Executive Summary

Dear Board Members:

In the past month, many proposed bills have had their first hearing in the appropriate policy committee of their house. Most of the bills MCE has been monitoring have been heard either in the Assembly Utilities & Commerce Committee or at the Senate Energy, Utilities, and Communications Committee. As indicated previously, this particular legislative session has an abundance of energy policy bills due to the Governor's State of the State address and his ambitious energy goals to raise California's renewable portfolio standard, reduce petroleum use in vehicles, and increase energy efficiency in buildings.

Through the Committee process, some bills received amendments in order to move forward. Below please find the current status of all of MCE's high priority legislative items.

I. Key Bills Broadly Addressing the Governor's Energy Policy Goals

1) SB 350 (De León and Leno) – Implementing the Governor's 50-50-50 Benchmarks

SB 350 implements the Governor's "50-50-50" benchmarks by raising California's Renewables Portfolio Standard (RPS) from 33% to 50%, striving for a 50% reduction in petroleum use, and increasing energy efficiency in buildings by 50% by the year 2030.

Renewables Portfolio Standard (RPS):

The 50% renewable energy standard will be implemented by the California Public Utilities Commission (CPUC) for the private utilities and by the California Energy Commission (CEC) for municipal utilities, as per current law. Unlike previous law, there will be no rulemaking at the CPUC to determine how CCAs should comply. Rather, CCAs are mandated to comply and are subject to the same terms and conditions as the IOUs. The CPUC and the CEC are responsible for tracking Renewable Energy Certificates (RECs) in the system to ensure no double-counting.

The RPS standard is proposed to be modified as follows: 33% in 2020, 40% in 2024, 45% in 2027, and 50% in 2030.

Importantly, the bill as currently written applies the Cost Allocation Mechanism (CAM) to net capacity costs of renewable resources. This would result in higher fees for CCA customers for redundant procurement mechanisms administered by IOUs.

Vehicles:

The 50% reduction in petroleum use also will be implemented using existing laws and financial resources. Under current law, the state air board must reduce pollution in order to achieve state and federal ambient air standards. Current law (Health and Safety Code Section 42013) requires the board to adopt standards for vehicles and fuels to achieve clean air.

MCE is currently taking an active role in electric vehicle proceedings at the California Public Utilities Commission.

Energy Efficiency (EE):

Finally, the 50% increase in energy efficiency in buildings will be done through the use of existing energy efficiency retrofit funding and regulatory tools already available to state energy agencies under existing law. The measure mandates on or before January 1, 2017 (and every three years thereafter), the CPUC shall update the EE program to double the efficiency of buildings. This implicates a three year cycle within the rolling portfolio proceeding currently underway at the CPUC (R.13-11-005).

MCE is currently offering energy efficiency programs to customers within MCE's service territory. MCE will be increasing those offerings dramatically in the next year.

MCE is engaging on this bill to ensure protection of CCA ratepayers and to ensure fair treatment of CCAs in the adjustment to RPS and EE standards. MCE is also engaging to ensure CCAs have access to energy efficiency funding.

2) AB 645 (Williams and Rendon) – Implementing a 50% Renewable Portfolio Standard by 2030

This is another of the bills aiming to achieve the Governor's goal of a 50% Renewable Portfolio Standard (RPS) for all retail electricity sellers (including CCAs) in 2030. The RPS standard will be modified as follows: 33% in 2020, 38% in 2023, 44% in 2026, and 50% in 2030.

MCE is monitoring this bill to ensure fair treatment of CCAs in the adjustment to the RPS standards.

3) AB 802 (Williams) – Expanding Energy Efficiency (EE) Measures Eligible for Ratepayer-Funded Programs

Current state policy requires ratepayer-funded EE incentives and programs are cost-effective. Cost effectiveness of these programs is currently measured against the standards built into the current Building Code. With the recent enactment of the ambitious Title 24 Building Code, many existing buildings no longer meet the baseline of energy efficiency standards in the code. This has significantly limited opportunities to implement EE programs throughout the state, including in MCE's service territory, because the baseline has been raised to a level that is well above most building standards. AB 802 aims to address this gap by requiring the CPUC to consider the cost-effectiveness of EE measures by using the actual energy savings achieved for a property instead of the Title 24 Building Code. This will allow all EE program administrators in the state to expand their offerings and better achieve the Governor's EE goals.

MCE submitted a letter in support of this bill on May 5, 2015.

4) AB 1330 (Bloom) – Energy Efficiency (EE) Resource Standard

AB 1330 sets EE goals for investor-owned utilities (IOUs), municipal utilities, CCAs, and other electric service providers. The bill sets EE goals of 1.5% of total system consumption by 2020 and at least 2% by 2025. The bill also indicates the CPUC will set annual demand response requirements for each retail seller of electricity. Gas savings targets are set at .75% by 2020 and at least 1% by 2025. The bill mandates that the energy savings shall first come from disadvantaged communities. An annual energy savings report is also to be filed with the California Energy Commission. The California Energy Commission is also responsible for adopting a cost limitation for each retail seller to achieve these goals.

While MCE is supportive of this bill, in its current state the bill does not reflect current law regarding oversight of CCA procurement by its governing board. MCE is working with the bill sponsor to alleviate these concerns.

5) AB 793 (Quirk) – Home Energy Management Systems

Low-income weatherization programs are already administered by the IOUs at the direction of the CPUC. This bill would require weatherization to include home energy management technology. However, this bill requires that these incentives are administered primarily by the IOU. MCE, as a local government agency, would be able to apply to PG&E for these incentives.

Allowing the use of home energy management systems for low-income customers would potentially increase the use of energy efficiency measures in low-income housing. Additionally, MCE's current proposed low-income energy efficiency pilot could benefit from the use of these funds.

The bill places particular emphasis on investor-owned utilities, possibly to the detriment of CCAs. MCE is currently evaluating the anti-competitive impacts of this bill.

II. Bills Affecting CCAs and CCA Customers

1) AB 674 (Mullin) – Reduces Non-bypassable Charges (NBCs) for IOU Customers who Install Clean Distributed Energy Resources

AB 674 requires the CPUC to limit non-bypassable charges (NBCs) to customers that have installed clean Distributed Energy Resources (DERs) based only on the metered consumption of electricity. Clean DERs would be defined to include renewable resources as well as combined heat and power facilities under 20 MW. The bill also requires the IOU to calculate a reservation capacity for standby service.

MCE is monitoring this bill to track its development. MCE may oppose this bill and seek amendments to ensure (1) that no additional costs are shifted onto CCA customers and (2) that low-income and energy efficiency programs receive sufficient funding.

2) SB 180 (Jackson) – Electricity: Emission of Greenhouse Gases

All load serving entities (LSEs) must adhere to emissions performance standards (EPS) in their baseload generation procurement. This bill adjusts existing standards by eliminating the EPS for baseload generation. It creates two new categories of generation now subject to the EPS: 1) nonpeaking generation and 2) peaking generation.

The bill requires an EPS at the lowest level that is technically feasible while considering reliability and cost impacts. The bill requires the establishment of the new EPS by June 30, 2017; with updates every five years based on new technology; and coordination between the CPUC, CEC, CARB, and CAISO to consider reliability and cost impacts. The CPUC is required to establish the EPS for load serving entities through a rulemaking that will implicate CCA regulatory resources.

MCE is monitoring this bill for its potential impact on CCAs and their procurement autonomy.

3) SB 286 (Hertzberg) – Raising the Cap on Direct Access Electricity Services

This bill proposes lifting the cap on direct access service providers to 8,000 gigawatt hours above the current cap. The CPUC would be required to adopt and implement a reopening schedule by July 1, 2016.

This bill potentially has various impacts on CCAs. In terms of business revenue, an increase of the direct access market may have effects on CCA revenue for large customers within existing and potential CCA service territories.

However, if passed, eliminating the cap would also lead to a stronger competitive market to protect against cost-shifting and anti-competitive issues. Earlier concerns about the renewable content of the energy used have been addressed with a new amendment that at least 51% of the electricity should be from renewable energy resources. Additionally, a re-opening of direct access would likely draw more attention to regulatory efforts at the CPUC to limit exit fees for departing customers. This could lead to a larger consideration of competitive market issues through the California regulatory agencies, including the CPUC.

MCE has taken no public stance on this bill due to compelling arguments on each side. However, MCE will monitor this bill closely and likely discuss potential CCA impacts with bill sponsors and legislative staff.

III. Bill Promoting Electric Vehicles

1) AB 1005 (Gordon) – Promoting A Competitive Market to Spur Electric Vehicle Adoption

AB 1005 encourages and supports the widespread deployment of Electric Vehicles (EVs) through protecting competitive markets for electric vehicle charging equipment and supporting consumer choice in electric vehicle charging equipment and network charging services. The bill indicates that the electricity supplied to EV chargers is not limited to corporate utility-owned generation, allowing CCAs to participate in and contribute to innovation in the California EV market. The bill also ensures that investor-owned utilities (IOUs) do not unfairly compete with other entities, such as CCAs, and that the IOUs will not limit customer choice for EV service equipment or electricity source.

MCE is supportive of this bill because it ensures consumer choice in the EV market to encourage growth, innovation, and competitive opportunities for everyone, not just the IOUs.

MCE submitted a letter of support for this bill on April 22, 2015.

IV. Bills Addressing Reform at the California Public Utilities Commission

There are a variety of bills that address reforms to the California Public Utilities Commission. These include SB 48 (Hill), SB 215, and AB 825 (Rendon). However, all three bills address some aspect of the rules regarding *ex parte* communications or Balgey-Keene communications between the Commissioners, given recent information concerning such communications.

MCE is monitoring all three of these bills and has not taken any action.



Kathrin Sears, Chair
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1 (888) 632-3674
mceCleanEnergy.org

May 5, 2015

Assembly Member Williams
State Capitol
Sacramento, CA 95814

RE: AB 802, as amended May 1, 2015,

SUPPORT

Dear Assembly Member Williams:

On behalf of Marin Clean Energy (MCE), I am writing to express support for AB 802, as amended on May 1, 2015.

MCE is a local government agency that administers the first community choice aggregation (CCA) program in the State of California. By the end of May, MCE will serve approximately 165,000 customer accounts in Marin County, unincorporated Napa County, and the cities of Richmond, San Pablo, El Cerrito, and Benicia. MCE's goal is to address climate change by reducing energy related greenhouse gas emissions. Energy Efficiency (EE) is a core component of MCE's mission statement and MCE has been approved to administer \$5 million of EE programs by the California Public Utilities Commission (CPUC) since 2012.

To effectively combat climate change, cost-effective EE programs must be able to provide building owners with an incentive that reflects the full savings of upgrading the building from its existing condition. AB 802 enables measurement of actual energy savings achieved for a property. MCE strongly supports AB 802 to support the current progress made by the CPUC in this vital area and to expand opportunities for all EE program administrators, including CCAs, to achieve the Governor's ambitious EE goals.

Thank you for your leadership on this issue.

Sincerely,

A handwritten signature in black ink that reads 'Shalini Swaroop'.

Shalini Swaroop
Regulatory & Legislative Counsel
Marin Clean Energy



Dawn Weisz
Executive Officer

Damon Connolly
Chair
City of San Rafael

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April 22, 2015

Assembly Member Gordon
State Capitol
Sacramento, CA 95814

RE: AB 1005, as amended March 26, 2015,

SUPPORT

Dear Assembly Member Gordon:

On behalf of Marin Clean Energy (MCE), I am writing to express support for AB 1005, as amended on March 26, 2015.

MCE is a local government agency that administers the first community choice aggregation (CCA) program in the State of California. MCE provides competitive generation services to PG&E customers within its service territory. MCE currently serves approximately 137,000 customers in Marin County, the City of Richmond, and unincorporated Napa County. MCE will also begin offering service in May 2015 to San Pablo, El Cerrito, and Benicia. MCE's goal is to address climate change by reducing energy related greenhouse gas emissions.

MCE supports robust and wide-reaching adoption of Electric Vehicles (EVs). MCE also wants to protect against a monopoly in this market to encourage growth, innovation, and competitive opportunities for everyone, not just the utilities, to participate. This bill not only spurs the development of EVs, but also ensures appropriate protections to protect against a monopoly that may ultimately stifle sector growth.

Thank you for your leadership on this issue.

Sincerely,

Shalini Swaroop
Regulatory & Legislative Counsel
Marin Clean Energy



KEY LEGISLATION, GLOSSARY OF TERMINOLOGY AND KEY ACRONYMS

Key Legislation:

AB 32 – Assembly Bill 32, the Global Warming Solutions Act of 2006

AB 32 is an environmental law in California that establishes a timetable to bring California into near compliance with the provisions of the Kyoto Protocol.

AB 117 – Assembly Bill 117, Community Choice Aggregation Enabling Legislation

AB 117 is the California legislation passed in 2002 that enabled community choice aggregation, authored by then Assemblywoman Carole Migden.

SB 790 – SB 790, Charles McGlashan Community Choice Aggregation Act

SB 790, authored by state Senator Mark Leno, was passed in 2012. This bill institutes a code of conduct, associated rules, and enforcement procedures for IOUs' regarding how they interact with CCA. This bill also clarified a CCA's equal right to participating in ratepayer-funded energy efficiency programs.

SB (1X) 2 – Senate Bill 2 (1st Extd. Session) California Renewable Energy Resources Act

SB (1X) 2 was approved in April of 2011 to expand upon previous RPS legislation. It raised the statewide RPS procurement target to 33% by 2020 and also includes interim procurement targets, new RPS content categories, and limitations. All IOUs, CCAs, ESPs, and POUs are all required to meet these procurement goals (with certain exceptions). The CPUC is addressing the implementation of SB (1X) 2 through its rulemaking process (R.11-05-005).

Terminology:

Bundled Customers receive both their electricity generation and distribution services from the same entity, typically the resident IOU.

Unbundled Customers receive their electricity generation and distribution services from separate entities. Customers of MEA are considered unbundled customers because they purchase their electricity generation for MEA and their electricity distribution from PG&E.

Key Acronyms:

CAISO – California Independent System Operator

The CAISO maintains reliability and accessibility to the California transmission grid. The CAISO manages, but does not own, the transmission system and oversees grid maintenance.

CAM – Cost Allocation Mechanism

CAM is a mechanism for passing through RA-related procurement costs within an IOU's service territory. In cases where there is a system or local reliability need, the Commission may authorize an IOU to procure RA on behalf of other LSEs and to recover the related capacity costs through a NBC.

CARB – California Air Resources Board

CARB was established by California's Legislature in 1967 to: 1) attain and maintain healthy air quality; 2) conduct research to determine the causes of and solutions to air pollution; and 3) address the issue of motor vehicles emissions.

CCA – Community Choice Aggregation

CCA allows cities and counties to aggregate the buying power of individual customers within a defined jurisdiction in order to secure alternative energy supply. MEA is the only operational CCA in California.

CEC – California Energy Commission

The CEC is California's primary energy policy and planning agency. It has responsibility for activities that include forecasting future energy needs, promoting energy efficiency through appliance and building standards, and supporting renewable energy technologies.

CHP – Combined Heat and Power

CHP (also referred to as Cogeneration) is the use of a heat engine or a power station to convert waste heat (usually steam) into additional electricity. Not necessarily considered renewable energy, CHP is still encouraged by state policy and regulations because it is more energy efficient than conventional power generation systems.

CIA – Conservation Incentive Adjustment

The CIA is a NBC unrelated to generation, transmission or distribution. This rate design will be implemented in the PG&E service territory in July 2012 and will result in flat generation and distribution rates, and a tiered CIA charge.

CPUC – California Public Utilities Commission

The CPUC, also simply called the Commission, is the entity that regulates privately-owned utilities in the state of California, including electric power, telecommunications, natural gas and water companies. The CPUC has limited jurisdiction over CCAs.

DA – Direct Access

DA is an option that allows eligible customers to purchase their electricity directly from competitive ESPs. There are legislatively mandated caps on DA that have gradually increased since the energy crisis. Large energy users in particular seek the cost certainty associated with being on DA service.

DG – Distributed Generation

DG refers to small, modular power sources sited at the point of power consumption. One example of residential distributed generation is an array of solar panels installed on a home's roof.

EE – Energy Efficiency

EE is a way of managing and restraining the growth in energy consumption. It refers to using less energy to provide the same service. For example: In the summer, efficient windows keep the heat out so that the air conditioner runs less often which helps save electricity.

ESP – Electricity Service Provider

ESPs are non-utility entities that offer DA electric service to customers within the service territory of an electric utility. ESPs share various regulatory interests with CCAs because the customers of both types of entities face departing load charges through the PCIA and other non-bypassable charges.

FIT – Feed-In Tariff

FITs are long-term, standard-offer, must-take contracts offered by electricity retailers to small-scale renewable developers for the procurement of DG renewable energy. MCE currently offers a FIT.

GHG – Greenhouse Gas

GHGs are gases in Earth's atmosphere that prevent heat from escaping into space. The burning of fossil fuels, such as coal and oil, and deforestation has caused the concentrations of **GHGs** to increase significantly in the Earth's atmosphere.

HUR – Home Utility Report

A HUR is a document that provides customers with a detailed analysis of their individual usage data, comparisons to other similar customers, and tips on how to reduce energy usage. HURs are delivered through the mail on a regular schedule to a subset of MCE customers as part of MCE's Single Family Energy Efficiency Program. Customers are selected to receive the HUR based on historic energy usage.

IOU – Investor Owned Utility

IOU refers to an electric utility provider that is a private company, owned by shareholders. The three largest IOUs in California are Pacific Gas and Electric (PG&E), Southern California Edison (SCE) and San Diego Gas and Electric (SDG&E).

LSE – Load Serving Entity

LSEs are a categorization term that refers to IOUs, ESPs, CCAs, and any other entity serving electricity load to end-use or wholesale customers. POUs are excluded from this categorization.

NBC – Non-Bypassable Charge

NBCs are line item charges that all distribution customers (both Bundled and Unbundled) must pay. Types of NBCs include transmission access charges and nuclear power plant decommissioning costs.

NEM – Net Energy Metering

NEM allows a customer to be credited when their renewable generation system generates more power than is used on site. The customer continues to pay for electricity when more power is used on site than the system produces.

OBF – On Bill Financing

OBR is a financing mechanism in which repayment is integrated into a customer's utility bill.

OBR – On Bill Repayment

OBR is a mechanism for loan repayment in which the loan payments are integrated into a customer's utility bill.

PAC – Program Administrator Cost

The PAC is one of two tests of energy efficiency program costs effectiveness used by the CPUC. The test measures the net benefits and costs that accrue to the program administrator (usually a utility) as a result of energy efficiency program activities. The PAC compares the benefits, which are the avoided cost of generating electricity and supplying natural gas, with the total costs, which include program administration costs. The PAC includes the cost of incentives, but excludes any participant costs or tax credits.

PACE – Property Assessed Clean Energy

PACE is a way of financing energy efficiency upgrades or renewable energy installations for buildings. In areas with PACE legislation in place municipal governments offer a specific bond to investors and then loan the money to consumers and businesses to put towards an energy retrofit. The loans are repaid over the assigned terms (typically 15 to 20 years) via an annual assessment on their property tax bill. One of the most notable characteristics of PACE programs is that the loan is attached to the property rather than an individual.

PCIA – Power Charge Indifference Adjustment

The PCIA is an “exit fee” imposed on departing load that is intended to protect bundled utility customers. When customers leave bundled service to purchase electricity from an alternative supplier, such as MEA, the IOU, who had previously contracted for generation to serve these customers on a going-forward basis, is able to charge these departing customers the above market costs of that power.

POU – Publicly Owned Utility

POUs are locally publically owned electric utilities that are administered by a board of publically appointed representatives (similar to a CCA). POU are not within the jurisdiction of the CPUC, and are thus subject to different regulation and enforcement than IOUs, CCAs, and ESPs.

PV – Photovoltaic

PV is solar electric generation by conversion of light into electrons. The most commonly known form of solar electric power is roof panels on homes.

RA – Resource Adequacy

RA refers to a statewide mandate for all LSEs to procure a certain quantity of electricity resources that will ensure the safe and reliable operation of the grid in real time. RA also provides incentives for the siting and construction of new resources needed for reliability in the future.

RPS – Renewable Portfolio Standard

The RPS was created in 2002 under Senate Bill 1078 was most recently modified by SB (1X) 2 (2011). RPS requires that electricity providers meet certain minimum RPS requirements over time, and no less than 33% RPS by 2020.

SPOC – Single Point of Contact

The SPOC is a facilitator and participant guide to MCE program offerings, helping to guide the customer through the participation process from initial contact to project completion.

TRC – Total Resource Cost

The TRC is one of two tests of energy efficiency program cost effectiveness used by the CPUC. The test measures the net benefits and costs that accrue to society, which is defined as a program administrator (usually a utility) and all of its customers, as a result of energy efficiency program activities. The TRC compares the benefits, which are the avoided cost of generating electricity and supplying natural gas, with the total costs, which include program administration and customer costs. The TRC does not include the costs of incentives.

ZNE – Zero Net Energy

A building is ZNE if the amount of energy provided by on-site renewable energy sources is equal to the amount of energy used by the building.