

Board of Directors Meeting
Thursday, December 15, 2022
7:30 P.M.

This Meeting will be conducted via teleconference pursuant to the requirements of [Assembly Bill No. 361](#). By using teleconference for this meeting, MCE continues to promote social distancing measures recommended by local officials.

Members of the public who wish to observe the Meeting and/or offer public comment may do so telephonically via the following teleconference call-in number and meeting ID:

For Viewing Access Join Zoom Meeting:

<https://us02web.zoom.us/j/82085254745?pwd=dWs0b1NTbWNYbjRJbVZLMVZzZjZrUT09>

Dial: (669) 900-9128
Webinar ID: 820 8525 4745
Meeting Passcode: 205749

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1. Roll Call/Quorum
2. Board Announcements (Discussion)
3. Public Open Time (Discussion)
4. Resolution No. 2022-16 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code 54953(e) (Discussion/Action)
5. Consent Calendar (Discussion/Action)
 - C.1 Approval of 11.17.22 Meeting Minutes
 - C.2 Approved Contracts For Energy Update
6. Western Systems Power Pool Confirmation with Geysers Power Company LLC (Discussion/Action)

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7. Power Purchase Agreement with Geysers Power Company LLC (Discussion/Action)
8. Report from Chief Executive Officer (Discussion)
9. MCE Rate Adjustment Effective January 1, 2023 (Discussion/Action)
10. Resolution No. 2022-17 Increasing Purchasing Agent's Authority (Discussion/Action)
11. Review of Member Community Needs & Priorities (Discussion)
12. Resolution 2022-18 Honoring Chair Tom Butt (Discussion/Action)
13. Resolution 2022-19 Honoring Director Denise Athas (Discussion/Action)
14. Resolution 2022-20 Honoring Director Ford Greene (Discussion/Action)
15. Resolution 2022-21 Honoring Director Brad Wagenknecht (Discussion/Action)
16. Election of Officers and Additions to Committee Membership (Discussion/Action)
17. Board Matters & Staff Matters (Discussion)
18. Adjourn

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

DISABLED ACCOMMODATION: If you are a person with a disability which requires an accommodation or an alternative format, please call MCE at 1 (888) 632-3674 at least 72 hours before the meeting start time to ensure arrangements for accommodation.



December 15, 2022

TO: MCE Board of Directors

FROM: Catalina Murphy, Associate General Counsel

RE: Resolution No. 2022-16 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e) (Agenda Item #4)

ATTACHMENT: Proposed Resolution No. 2022-16 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e)

Dear MCE Board of Directors:

Summary:

Assembly Bill (AB) No. 361 (Rivas), signed by Governor Gavin Newsom on September 16, 2021, amends the Brown Act¹ to allow a local agency to continue using teleconferencing during a state-proclaimed state of emergency without meeting certain Brown Act teleconference requirements.

On November 17, 2022, the MCE Board of Directors, by Resolution 2022-13, made a continued finding that the Governor's designated state of emergency directly impacts the ability of Board Members to meet safely in person. This finding allowed for meetings to continue to be held via teleconference. This finding should be reconsidered every 30 days, pursuant to AB 361.

To continue holding teleconference meetings for the next 30 days, the MCE Board of Directors must make the following findings by majority vote:

1. The Board of Directors has reconsidered the circumstances of the state of emergency, as designated by the Governor.

¹ Gov. Code, §§ 54950 et seq.

2. The Board of Directors finds that one or both of the following circumstances still exists:
 - a. The state of emergency continues to directly impact the ability of members to meet safely in person; or
 - b. State or local officials continue to impose or recommend measures to promote social distancing.

Staff recommends adopting proposed Resolution No. 2022-16 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e), which makes the required AB 361 findings for continuing remote teleconference meetings for the next 30 days.

Fiscal Impacts: None.

Recommendation:

Adopt proposed Resolution No. 2022-16 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e).

RESOLUTION NO. 2022-16

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY AUTHORIZING CONTINUED REMOTE TELECONFERENCE MEETINGS FOR THE BOARD OF DIRECTORS AND EVERY COMMITTEE OF THE BOARD OF DIRECTORS PURSUANT TO GOVERNMENT CODE SECTION 54953(e)

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

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

WHEREAS, MCE is subject to various provisions of the California Government Code; and

WHEREAS, Government Code section 54953, as amended by Assembly Bill No. 361, allows legislative bodies to hold open meetings by teleconference without reference to otherwise applicable requirements in Government Code section 54953(b)(3), so long as the legislative body complies with certain requirements set forth in Government Code section 54953(e), finding there exists a declared state of emergency, and one of the following circumstances is met:

1. State or local officials have imposed or recommended measures to promote social distancing.
2. The legislative body is holding the meeting for the purpose of determining, by majority vote, whether as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.
3. The legislative body has determined, by majority vote, pursuant to option 2, that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

WHEREAS, the Governor of California proclaimed a state of emergency pursuant to Government Code section 8625 on March 4, 2020; and

WHEREAS, the MCE Board of Directors previously adopted Resolution No. 2022-13 finding that the requisite conditions continue to exist for the MCE Board of Directors, MCE Executive Committee, and MCE Technical Committee to conduct teleconference meetings under California Government Code section 54953(e); and

WHEREAS, Government Code section 54953(e)(3) requires the legislative body adopt certain findings every 30 days by majority vote to continue holding open meetings by teleconference without reference to otherwise applicable requirements in Government Code section 54953(b)(3); and

WHEREAS, the MCE Board of Directors desires to continue to hold the MCE Board of Directors, MCE Executive Committee, and MCE Technical Committee public meetings by teleconference consistent with Government Code section 54953(e).

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors:

- A. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.
- B. The MCE Board of Directors hereby finds and declares the following, as required by Government Code section 54953(e)(3):
 1. The Governor of California proclaimed a state of emergency on March 4, 2020, pursuant to Government Code section 8625, which remains in effect.
 2. State or local officials have imposed or recommended measures to promote social distancing.
 3. The legislative body has determined that, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of December 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				

City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of Richmond				
Town of Ross				
City of St. Helena				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of San Ramon				
City of Sausalito				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

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MCE BOARD MEETING MINUTES
Thursday, November 17, 2022
7:00 P.M.

This Meeting was conducted pursuant to the requirements of [Assembly Bill No. 361](#) (September 16, 2021) which allows a public agency to use teleconferencing during a Governor-proclaimed state of emergency without meeting usual [Ralph M. Brown Act](#) teleconference requirements. Committee Members, staff and members of the public were able to participate in the Committee Meeting via teleconference.

Present: Edi Birsan, City of Concord
Tom Butt, City of Richmond, Chair
Barbara Coler, Town of Fairfax
Cindy Darling, City of Walnut Creek
Gina Dawson, City of Lafayette
David Fong, Town of Danville
Ford Greene, Town of San Anselmo
Kevin Haroff, City of Larkspur
Janelle Kellman, City of Sausalito
C. William Kircher, Town of Ross
Aaron Meadows, City of Oakley
Katy Miessner, City of Vallejo
Devin Murphy, City of Pinole
Teresa Onoda, Town of Moraga
Doriss Panduro, City of Fairfield
Scott Perkins, City of San Ramon
Max Perrey, City of Mill Valley
Patricia Ponce, City of San Pablo
Gabriel Quinto, City of El Cerrito
Matt Rinn, City of Pleasant Hill
Shanelle Scales-Preston, City of Pittsburg
Holli Thier, Town of Tiburon
Brad Wagenknecht, County of Napa and All Five Napa Cities
Brianne Zorn, City of Martinez

Absent: Denise Athas, City of Novato
Eli Beckman, Town of Corte Madera
John Gioia, Contra Costa County
Maika Llorens Gulati, City of San Rafael
Katie Rice, County of Marin
Christina Strawbridge, City of Benicia
John Vasquez, County of Solano
Sally Wilkinson, City of Belvedere

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Staff

& Others:

Jesica Brooks, Assistant Board Clerk
Sebastian Conn, Community Development Manager
Vicken Kasarjian, Chief Operating Officer
Justin Kudo, Senior Strategic Analysis and Rates Manager
Catalina Murphy, Associate General Counsel
David Potovsky, Principal Power Procurement Manager
Evelyn Reyes, Internal Operations Coordinator
Garth Salisbury, Chief Financial Officer & Treasurer
Daniel Settlemyer, Internal Operations Coordinator
Jamie Tuckey, Chief of Staff

1. Roll Call

Chair Butt called the regular meeting to order at 7:01 p.m. with quorum established by roll call.

2. Board Announcements (Discussion)

There were no comments.

3. Public Open Time (Discussion)

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

4. Resolution No. 2022-13 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e) (Discussion/Action)

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

Action: It was M/S/C (Quinto/Birsan) adopt proposed Resolution No. 2022-09 Authorizing Continued Remote Teleconference Meetings for the Board of Directors and Every Committee of the Board of Directors Pursuant to Government Code Section 54953(e). Motion carried by unanimous roll call vote. (Absent: Directors: Athas, Beckman, Gioia, Gulati, Rice, Strawbridge, Vasquez, Wilkinson).

5. Report from Chief Executive Officer (Discussion)

COO Vicken Kasarjian, reported the following:

- MCE has received "Climate Bond" certification for the prepayment transaction we completed in 2021. That means our transaction is officially designated a "Green Bond" and is "Climate Certified". This is the official designation that renders the bonds eligible for ongoing investment by "green" investment funds and other investor groups and categories that

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only make investments in companies and entities that are fighting climate change.

- The Cost of Living Adjustment for the new year has been released and it came in at 6%. MCE calculates COLA using the US Bureau of Labor Statistics CPI index for the San Francisco Bay Area and is either October's 12-month CPI percent change (6%) or the average of January – April – July – October, (5.74%) whichever is higher.
- Save the Date for a Virtual Holiday party set for the evening of December 9th starting at 6:30 pm.
- Introduced JB Ackemann, MCE's new Director of Public Affairs. She joined us in October and comes to us with deep experience in the public sector and more than twenty years in communications. Before joining MCE, JB led Communications, Marketing, Research, Government Relations, and Community Outreach teams for San Jose Water, Santa Cruz Metro, Caltrain, the San Mateo County Transit District, and Santa Clara Valley Transportation Authority. JB also serves in an elected role as Vice President of the San Lorenzo Valley Water District Board of Directors and as a member of the Santa Margarita Groundwater Agency Board of Directors in North Santa Cruz County. We're very happy to have her join us and I know she looks forward to engaging with your Board and communities as well.
- We plan to hold our regularly scheduled board meeting on December 15th.

6. Consent Calendar (Discussion/Action)

- C.1 Approval of 10.20.22 Meeting Minutes
- C.2 Approved Contracts For Energy Update
- C.3 Extension of Existing Revolving Credit Facility Agreement with JPMorgan Chase Bank

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

Action: It was M/S/C (Greene/Perkins) to **approve Consent Calendar items C.1, C.2 and C.3**. Motion carried by roll call vote. (Absent: Directors: Athas, Beckman, Gioia, Gulati, Rice, Strawbridge, Vasquez, Wilkinson).

7. Electrification Reach Code Adoption Model (Discussion)

Sebastian Conn, Community Development Manager introduced this item, and guest, Brian Reyes, Sustainability Planner with County of Marin presented this item and addressed questions from Board members.

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

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Action: No action required.

8. Proposed MCE Rate Adjustment Effective January 1st, 2023
(Discussion/Action)

Garth Salisbury, Chief Financial Officer & Treasurer, and Justin Kudo, Senior Strategic Analysis and Rates Manager, introduced this item and addressed questions from Board members.

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

Action: It was M/S/C (Haroff/Perrey) that the Board of Directors introduce a proposed increase to system average rates of \$0.04/kWh, for final approval at the next meeting of the Board of Directors, to take effect on January 1, 2023. Motion carried by unanimous roll call vote. (Absent: Athas, Beckman, Birsan, Gioia, Gulati, Rice, Strawbridge, Vasquez, Wilkinson).

9. Resolution 2022-14 Amending MCE's Conflict of Interest Code
(Discussion/Action)

Catalina Murphy, Associate General Counsel introduced this item and addressed questions from Board members.

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

Action: It was M/S/C (Darling/Panduro) to adopt Resolution 2022-14 Amending MCE's Conflict of Interest Code. Motion carried by unanimous roll call vote. (Absent: Athas, Beckman, Birsan, Gioia, Gulati, Rice, Strawbridge, Vasquez, Wilkinson).

10. Power Purchase Agreement with Humboldt House Geothermal LLC
(Discussion/Action)

David Potovsky, Principal Power Procurement Manager introduced this item and addressed questions from Board members.

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

Action: It was M/S/C (Coler/Quinto) authorize execution of the Power Purchase Agreement with Humboldt House LLC for supply of bundled renewable energy and resource adequacy. Motion carried by unanimous roll call vote. (Absent: Athas, Beckman, Birsan, Gioia, Gulati, Rice, Strawbridge, Vasquez, Wilkinson).

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11. Board Matters & Staff Matters (Discussion)

There were comments made by Directors: Butt, Greene, Miessner, Coler, Murphy, Perkins, Quinto, Haroff, Thier, Scales-Preston, and Wagenknecht.

12. Adjournment

Chair Butt adjourned the meeting at 8:56 p.m. to the next scheduled Board Meeting on December 15, 2022.

Tom Butt, Chair

Attest:

Dawn Weisz, Secretary



December 15, 2022

TO: MCE Board of Directors

FROM: Bill Pascoe, Senior Power Procurement Manager

RE: Approved Contracts for Energy Update (Agenda Item # 05 C.2)

Dear Board Members:

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

Review of Procurement Authorities

In March 2018, your Board adopted Resolution 2018-03 which included the following provisions:

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

The CEO is authorized to approve and execute contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board of Directors.

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

<i>Item Number</i>	<i>Month of Execution</i>	<i>Purpose</i>	<i>Average Annual Contract Amount</i>	<i>Contract Term</i>
1	October, 2022	Purchase of System Energy (Hedge)	\$2,014,207	Under 1 Year
2	November, 2022	Purchase of Renewable Energy	\$2,978,500	Over 5 Years
3	November, 2022	Purchase of Resource Adequacy	\$4,000	Under 1 Year
4	November, 2022	Purchase of Renewable Energy	\$232,000	Under 1 Year
5	November, 2022	Purchase of System Energy (Hedge)	\$17,836,044	1-5 Years
6	November, 2022	Purchase of Renewable Energy	\$11,927,490	Over 5 Years
7	November, 2022	Purchase of System Energy (Hedge)	\$12,262,891	1-5 Years
8	November, 2022	Sale of Resource Adequacy	\$320,000	Under 1 Year
9	November, 2022	Purchase of System Energy (Hedge)	\$3,466,017	1-5 Years
10	November, 2022	Purchase of System Energy (Hedge)	\$6,166,241	1-5 Years
11	November, 2022	Purchase of Renewable Energy	\$307,500	Under 1 Year
12	December, 2022	Purchase of Renewable Energy	\$2,400,000	Under 1 Year
13	December, 2022	Purchase of Renewable Energy	\$327,500	Under 1 Year

Contract Approval Process: Energy procurement is governed by MCE's Energy Risk Management Policy as well as Board Resolutions 2018-03, 2018-04, and 2018-08. The Energy Risk Management Policy (Policy) has been developed to help ensure that MCE achieves its mission and adheres to its procurement policies established by the MCE Board of Directors (Board), power supply and related contract commitments, good utility practice, and all applicable laws and regulations. The Board Resolutions direct the CEO to sign energy contracts up to and including 12 months in length.

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

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

<i>Review Owner</i>	<i>Review Category</i>
Lindsay Saxby (MCE, Director of Power Resources)	Procurement/Commercial
John Dalessi (Pacific Energy Advisors)	Technical Review
Steve Hall (Hall Energy Law)	Legal
Nathaniel Malcolm (MCE, Senior Policy Counsel)	Legal/CPUC Compliance
Garth Salisbury (MCE, Chief Financial Officer & Treasurer)	Credit/Financial
Vicken Kasarjian (MCE, Chief Operating Officer)	Executive

Fiscal Impacts: Expenses and revenue associated with these Contracts and Agreements that are expected to occur during FY 2022/23 are within the FY 2022/23 Operating Fund Budget. Expenses and revenue associated with future years will be incorporated into budget planning as appropriate.

Recommendation: Information only. No action required.



December 15, 2022

TO: MCE Board of Directors

FROM: Lindsay Saxby, Director of Power Resources

RE: Western Systems Power Pool Confirmation with Geysers Power Company LLC (Agenda Item #06)

ATTACHMENT: Western Systems Power Pool Confirmation with Geysers Power Company LLC

Dear Board Members:

Background:

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

1. To meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage
2. Adding Resource Adequacy (RA) supply to MCE's portfolio
3. Adding resources that would fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decision D.21-06-035.

As a result of the solicitation, staff received an offer from Geysers Power Company LLC (The Geysers) for a 100 megawatt (MW) portion of an existing 725 MW project. The bundled renewable energy and RA would make a valuable contribution to MCE's energy and RA portfolio.

Summary:

The Geysers is an existing geothermal energy facility located on 45 square miles of land in Lake and Sonoma Counties. Parent company Calpine has built the world's largest complex of power plants at The Geysers, with a total generating capacity of

725 megawatts (MW). Staff negotiated the attached draft Western Systems Power Pool (WSPP) Confirmation for the purchase of bundled renewable energy and RA capacity from the project. The agreement outlines the terms for the guaranteed delivery of 100 megawatts (MW) from the installation.

Rationale:

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

- Energy and RA capacity produced by the facility would complement MCE's existing portfolio of resources
- The existing project is being operated by an experienced team, which is currently supplying bundled energy and RA to load serving entities including Sonoma Clean Power, Clean Power SF, Pioneer Community Energy, PG&E and SCE.

Additional Information:

Calpine

- Headquartered in Houston, Texas with 2,256 full-time employees
- Founded in 1984, Calpine is the largest generator of electricity from natural gas and geothermal resources in the United States
- Calpine owns and operates 76 facilities in 22 states, Canada and Mexico with an aggregate capacity of 26,000 MW (enough to power approximately 20 million homes)
- Calpine Corporation is owned by a consortium of investors that is led by Energy Capital Partners (ECP) and includes Access Industries and the Canada Pension Plan Investment Board

Contract Overview

- Project: 100 MW of an existing 725 MW geothermal generation facility
- Contracted resources: Bundled renewable energy and RA
- Price: Fixed with no escalation for the Delivery Term
- Project location: Lake and Sonoma Counties, California
- Guaranteed commercial operation date: June 1, 2027
- Contract term: 10 contract years
- Credit: No credit or collateral obligations for MCE
- Community Benefit Package: Seller pledges to contribute Fifty Thousand Dollars (\$50,000) to community benefit initiatives that directly benefit stakeholders in communities adjacent to the project location. MCE and Seller will identify initiatives that are of mutual interest such as workforce training, environmental stewardship/habitat improvement, education and renewable energy projects.

Fiscal Impacts:

There would be no impact on the Fiscal Year 2022/23 budget. Incremental costs will be accounted for starting in FY 2026/27.

Recommendation:

Authorize execution of the Western Systems Power Pool Confirmation with Geysers Power Company LLC for supply of bundled renewable energy and RA.

Approval Version

**WESTERN SYSTEMS POWER POOL AGREEMENT
CONFIRMATION LETTER
BETWEEN
GEYSERS POWER COMPANY, LLC
AND
MARIN CLEAN ENERGY**

This confirmation (“Confirmation”) sets forth the agreement between Geysers Power Company, LLC (“Seller”) and Marin Clean Energy, a California joint powers authority (“Purchaser”), and each individually a “Party” and together the “Parties”, dated as of [Month, Date], 2022 (the “Effective Date”), by which Seller agrees to sell and deliver, and Purchaser agrees to purchase and receive, the Product (the “Transaction”). This Transaction is governed by the WSPP Agreement dated August 26, 2022 (the “WSPP Agreement”). The WSPP Agreement, including WSPP Service Schedule R, this Confirmation, and any applicable appendices, exhibits or amendments hereto, shall be collectively referred to herein as the “Agreement” and will constitute a single agreement between the Parties with respect to the Transaction. Terms capitalized but not defined herein shall have the meaning as set forth in the WSPP Agreement, WSPP Service Schedule R or the CAISO Tariff.

ARTICLE 1 GENERAL TERMS AND CONDITIONS

1.1 Product

“Product” means (a) Delivered Energy which meets the criteria for Section 399.16(b)(1)(A) of the California Public Utilities Code, comprised of: (i) Unit Commitment Service as described in WSPP Service Schedule B, (ii) the associated Renewable Energy Credits generated by the Project and transferred by Seller through a WREGIS Certificate to Purchaser under this Confirmation, and (iii) all Green Attributes associated with the renewable energy delivered to Purchaser as part of this Confirmation, and (b) Resource Adequacy Product.

1.2 Delivery Term

The “Delivery Term” shall be a ten (10) year period commencing on June 1, 2027. Notwithstanding the foregoing, for the sole purpose of matching delivery of RECs with Delivered Energy from the Project, such period will extend through the date that all RECs associated with such energy have been delivered from Seller to Purchaser in accordance with this Confirmation.

1.3 Project

The term “Project” means one or more of the geothermal power plants owned or controlled by Seller and located in Lake and Sonoma Counties, California. Exhibit B identifies each of these plants as of the Effective Date. Following the Effective Date, Seller may add or remove generating facilities to Exhibit B with prior written notice to Purchaser, provided that each facility added is certified by the CEC as an ERR and meets the RPS compliance requirements for Category 1 as set forth in California Public Utilities Code Section 399.16(b)(1)(A) and CPUC Decision 11-12-052.

1.4 Meter Data

To provide evidence of Delivered Energy in connection with submission of its monthly invoice, upon the request of Purchaser, Seller shall provide to Purchaser records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation

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and delivery of the Delivered Energy associated with the Contract Quantity to the Delivery Point and, upon Purchaser's reasonable request, access to any records, including invoices or settlement data from the CAISO, necessary to verify the invoice.

1.5 **Payment**

As full compensation for the Product (including the RA Product), during the Delivery Term, Purchaser shall pay Seller the Contract Price.

"Contract Price" means the sum of:

- (a) [REDACTED] scheduled and delivered in accordance with this Confirmation, not to exceed the Contract Quantity; and
- (b) [REDACTED] delivered in accordance with this Confirmation, not to exceed the Contract Quantity.

"Contract Quantity" means 100 MW, and with regard to the Delivered Energy, means 100 MW delivered on a 7x24 schedule.

1.6 **Renewable Energy Credit Certificates**

To provide evidence of Green Attributes associated with the Product, Seller shall transfer to Purchaser the RECs to Purchaser's WREGIS account(s) within fifteen (15) Business Days after WREGIS creates certificates from each month's meter data in accordance with the WREGIS Timelines (approximately four months after renewable energy production and delivery under current WREGIS operating conditions and WREGIS Timelines). REC deliveries will be made by transfer of WREGIS Certificates to Purchaser's WREGIS account pursuant to WREGIS Operating Rules. Seller shall, at its option, transfer the WREGIS Certificates using forward certificated transfer or any other transfer permitted under the WREGIS Operating Rules. Because WREGIS Certificates will only be created for whole MWh amounts of renewable energy generated, any fractional MWh amounts will be carried forward during the Delivery Term until sufficient renewable generation is accumulated for the creation of a WREGIS Certificate to be transferred to Purchaser. In the event WREGIS changes the WREGIS Operating Rules, or applies the WREGIS Operating Rules in a manner inconsistent with this Confirmation, the Parties will negotiate in good faith using commercially reasonable efforts to revise or amend this Confirmation to the extent possible to preserve the intended economic benefits of this Transaction for both Parties, and so cause and enable Seller to transfer to Purchaser's WREGIS account the RECs sold to Purchaser hereunder.

1.7 **Scheduling and CAISO Revenues**

Seller shall provide (or cause to be provided) all Scheduling Coordinator services for the Project (and all units constituting the Project) and for delivery of Product to the Delivery Point. Purchaser shall provide (or cause to be provided) all Scheduling Coordinator services for Product at and from the Delivery Point. The Parties will purchase and sell the Contract Quantity of Product through Inter-SC Trades scheduled on a Day-Ahead basis at the NP15 EZ Gen Hub in compliance with the CAISO Tariff. As between Purchaser and Seller, Seller shall be responsible for all CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and payments) associated with the Project and the delivery of Product to the Delivery Point.

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1.8 **Delivery Point**

“Delivery Point” means (a) for Delivered Energy, NP15 EZ Gen Hub and (b) for RA Product, the CAISO Control Area, and if applicable, the LAR region in which the Unit is electrically interconnected.

ARTICLE 2 RESOURCE ADEQUACY

2.1 **Unit Information**

Unit information is set forth in Exhibit B.

2.2 **Resource Adequacy Capacity Product**

During the Delivery Term, Seller shall provide to Purchaser, pursuant to the terms of this Confirmation, the Contract Quantity of (i) RAR Attributes and, if applicable, LAR Attributes, and (ii) FCR Attributes, if Flexible RA Product is specified by checking the title box in Section 2.2(b), and the Contract Quantity shall be a Contingent Firm RA Product, as specified in Section 2.2(c) (“Resource Adequacy Product” or “RA Product”). The RA Product does not confer to Purchaser any right to the electrical output from the Unit, other than the right to include the Contract Quantity of RA Product in RAR Showings, LAR Showings, and FCR Showings, as applicable, and any other capacity or resource adequacy markets or proceedings as specified in this Confirmation. Specifically, no energy or ancillary services associated with any Unit is required to be made available to Purchaser as part of this Transaction and Purchaser shall not be responsible for compensating Seller for Seller's commitments to the CAISO required by this Confirmation. Seller retains the right to sell pursuant to the CAISO Tariff any RA Capacity from a Unit that is in excess of that Unit's Contract Quantity of RA Product and any RAR Attributes, LAR Attributes or FCR Attributes not otherwise transferred, conveyed, or sold to Purchaser under this Confirmation.

(a) RAR and LAR Attributes

Seller shall provide Purchaser with the Contract Quantity of RAR Attributes and, if applicable, LAR Attributes from each Unit, as measured in MW, in accordance with the terms and conditions of this Confirmation.

(b) ☐ Flexible RA Product

Seller shall provide Purchaser with the Contract Quantity of FCR Attributes from the Unit in an amount calculated for each Monthly Delivery Term as follows: (Contract Quantity / Unit NQC) x Unit EFC.

(c) Contingent Firm RA Product

Seller shall provide Purchaser with RA Product from the Units in the amount of the applicable Contract Quantity; provided, however, that if (i) the Units are not available to provide the full amount of the Contract Quantity due to Force Majeure, any Planned Outage or any reduction of the RA Capacity of any Unit and (ii) Seller has given Purchaser timely notice pursuant to Section 2.4, then Seller may either reduce the Contract Quantity or provide Purchaser with RA Product from one or more Replacement Units pursuant to Section 2.4 hereof. If Seller fails to provide Purchaser with any portion of the RA Product (x) for a reason other than Force Majeure, Planned

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Outage or reduction of the RA Capacity of any Unit or (y) Seller failed to give Purchaser timely notice pursuant to Section 2.4(a), then Seller shall be liable for damages and/or be required to indemnify Purchaser for penalties or fines pursuant to the terms of Sections 2.6 and 2.7 hereof. Seller shall retain any and all revenues received from the CAISO with respect to the Transaction contemplated by this Confirmation or with respect to any other capacity, energy, ancillary services or other products provided by or from the Unit.

2.3 Adjustments to Contract Quantity

- (a) Planned Outages: Seller's obligation to deliver the Contract Quantity for any Showing Month may be reduced at Seller's option if any portion of the Unit is scheduled for a Planned Outage during the applicable Showing Month; provided, Seller notifies Purchaser, no later than the Notification Deadline, of the amount of Product from the Unit Purchaser is permitted to include in Purchaser's RAR Showings, LAR Showings, and/or FCR Showings applicable to that month as a result of such Planned Outage. If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of a Planned Outage of a Unit, Seller has the option, but not the obligation, to provide Product for such Showing Month from Replacement Units, provided, Seller provides and identifies such Replacement Units in accordance with Section 2.4. If Seller chooses not to provide Product from Replacement Units and a Unit is on a Planned Outage for the applicable Showing Month, then, the Contract Quantity shall be revised in accordance with any applicable adjustments stipulated by the CPUC Filing Guide or CAISO Tariff in effect for the applicable Showing Month in which the Planned Outage occurs.
- (b) Reductions in Unit NQC: If Product is both (i) Generic RA Product, and (ii) Contingent Firm RA Product specified under Section 2.2, then Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced if the Unit experiences a reduction in Unit NQC as determined by the CAISO. Seller's potential reduction in Contract Quantity for each remaining Showing Month shall equal the product of (a) the applicable Showing Month Contract Quantity and (b) the total amount (in MW) that the Unit NQC was reduced since the Confirmation Effective Date, divided by (c) Unit NQC as of the Confirmation Effective Date. If the Unit experiences such a reduction in Unit NQC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 2.4.
- (c) Reductions in Unit EFC: If Product is both (i) Flexible RA Product specified under Section 2.2, and (ii) Contingent Firm RA Product specified under Section 2.2, then Seller's obligation to deliver the applicable Contract Quantity of Flexible RA Product for any Showing Month may also be reduced or adjusted by Seller if the CPUC, CAISO, or other Governmental Body changes or eliminates the FCR, such that Flexible Capacity Attributes are no longer required for compliance or results in changes to how the Units are counted towards such requirements. To the extent any such changes occur during the Delivery Period, Seller may reduce the amount of Flexible RA Product provided to Purchaser from the Unit on a pro rata basis based on the overall size (in MWs) of the Unit. The Parties acknowledge and agree that any such change to the Unit EFC shall not (i) entitle Purchaser to a change in the Contract Price or a change in the amounts payable under Article 2, (ii) result in any change to the Contract Quantity, (iii) give either Party

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the right to terminate this Agreement, or (iv) allow for the severability of any provisions of this Confirmation pursuant to the Master Agreement. If the Unit experiences such a reduction in Unit EFC, then Seller has the option, but not the obligation, to provide the applicable Contract Quantity for such Showing Month from (i) the same Unit, provided the Unit has sufficient remaining and available Product and/or (ii) from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 2.4.

- (d) UCAP: If during the Delivery Period the CAISO or the CPUC either replaces Unit NQC as the value utilized to measure the qualifying capacity of a Unit with a successor value such as unforced capacity ("UCAP") or utilizes such successor value as a supplemental means of measuring the qualifying capacity of a Unit together with Unit NQC, then the Parties shall negotiate an amendment to this Confirmation so that from and after such replacement Seller shall convey to Purchaser an amount of qualifying capacity of such Unit, to be determined by Seller, of (i) no less than the amount obtained by calculating the Purchaser's share of such qualifying capacity on a pro rata basis but (ii) no more than the Contract Quantity (i.e., following such replacement, Seller's delivery obligation will be obtained by calculating the product of (A) the Contract Quantity divided by the Unit NQC, multiplied by (B) the Unit's overall qualifying capacity (in MW) as measured by such new method of measuring a Unit's qualifying capacity). Any such change will not result in a change in obligations or payments made pursuant to this Transaction.
- (e) Force Majeure: Seller's obligation to deliver the applicable Contract Quantity for any Showing Month may also be reduced at Seller's option if the Unit or transmission to the Delivery Point is affected by Force Majeure. If Seller is unable to provide the applicable Contract Quantity for a Showing Month because of Force Majeure, Seller has the option, but not the obligation, to provide Alternate Capacity for such Showing Month from Replacement Units, provided, that in each case Seller provides and identifies such Replacement Units in accordance with Section 2.4.
- (f) Invoice Adjustment: In the event that the Contract Quantity is reduced due to an adjustment to Contract Quantity pursuant to Section 2.4, and Seller does not elect to provide Alternate Capacity pursuant to Section 2.4 and Section 2.5, then the invoice for the applicable Showing Month, calculated pursuant to Section 9.4, shall be adjusted to reflect the reduced amount of Contract Quantity provided from Seller to Buyer in the applicable Showing Month.

2.4 Alternate Capacity and Replacement Units

- (a) If Seller is unable to provide the full Contract Quantity of RA Product for any Showing Month for any reason, including, without limitation, due to one of the reasons specified in Section 2.3, or Seller desires to provide the Contract Quantity for any Showing Month from a different generating unit other than the Unit, then Seller may, at no cost to Purchaser, provide Purchaser with Alternate Capacity from one or more Replacement Units, with the total amount of Product provided to Purchaser from the Unit and Replacement Units up to an amount equal to the Contract Quantity of RA Product for the applicable Showing Month; provided that in each case, Seller shall notify Purchaser of its intent (i) not to provide or (ii) to provide Alternate Capacity and identify Replacement Units meeting the above requirements no later than the Notification Deadline. If Seller notifies Purchaser in writing as to the particular Replacement Units and such Units meet the requirements of this Section 2.4, then such Replacement Units shall be automatically

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deemed a Unit for purposes of this Confirmation for that Showing Month and Seller shall not be liable for damages and/or required to indemnify Buyer for CAISO costs, penalties or fines pursuant to the terms of Section 2.6 and 2.7 hereof if the total amount of Product provided to Buyer from the Unit and/or Replacement Units is equal to the Contract Quantity for the applicable Showing Month.

- (b) Seller shall not be liable for damages and/or required to indemnify Purchaser for penalties or fines pursuant to the terms of Sections 2.6 and 2.7 hereof if the failure to deliver the full Contract Quantity of RA Product is due to Force Majeure.

2.5 Delivery of Product

Subject to Article 2 and Sections 2.3 and 2.4, Seller shall provide Purchaser with the Contract Quantity of RA Product for each Showing Month consistent with the following:

- (a) Seller shall, on a timely basis, submit, or cause the Unit's SC to submit, Supply Plans to identify and confirm the Contract Quantity of RA Product provided to Purchaser for each Showing Month so that the total amount of Contract Quantity of RA Product identified and confirmed for such Showing Month equals the Contract Quantity of RA Product, unless specifically requested not to do so by the Purchaser.
- (b) If CAISO rejects either the annual Supply Plan, monthly Supply Plan or Resource Adequacy Plan with respect to any part of the Contract Quantity of RA Product during the Delivery Term, Buyer and Seller will confer, make such corrections as are necessary for acceptance and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline.
- (c) Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments necessary to enable Buyer to use the Contract Quantity of RA Product pursuant to this Agreement.
- (d) Seller shall cause the Unit's Scheduling Coordinator to submit written notification to Purchaser, no later than the Notification Deadline, that Purchaser will be credited with the Contract Quantity of RA Product for such Showing Month in the Unit's Scheduling Coordinator Supply Plan so that the Contract Quantity of RA Product credited equals the Contract Quantity of RA Product for such Showing Month.

2.6 Damages for Failure to Provide Contract Quantity

Subject to Sections 2.3 and 2.4, if Seller fails to provide Purchaser with the Contract Quantity of RA Product for any Showing Month then the following shall apply:

- (a) Purchaser may, but shall not be required to, replace any portion of the Contract Quantity of RA Product not provided by Seller with capacity having equivalent RAR Attributes, LAR Attributes and/or FCR Attributes as the Contract Quantity of RA Product not provided by Seller, provided, that, if any portion of the Contract Quantity of RA Product that Purchaser is seeking to replace is Contract Quantity of RA Product having RAR Attributes and no LAR Attributes (such capacity shall also include FCR Attributes if this is a Flexible Capacity Product) and no such RAR capacity is available, then Purchaser may replace such portion of the Contract Quantity of RA Product with other capacity

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having RAR Attributes and LAR Attributes (as well as FCR Attributes if this is a Flexible Capacity Product) (“Replacement Capacity”). Such Replacement Capacity may be provided by CAISO to Purchaser pursuant to the CAISO Tariff. Purchaser may enter into purchase transactions with one or more parties to replace any portion of Contract Quantity of RA Product not provided by Seller. Additionally, Purchaser may enter into one or more arrangements to repurchase its obligation to sell and deliver capacity to another party and, to the extent such transactions are done at prevailing market prices, such arrangements shall be considered equivalent to the procurement of Replacement Capacity. Purchaser shall use commercially reasonable efforts to minimize damages when procuring any Replacement Capacity. For greater clarity, Purchaser’s right to buy Replacement Capacity as set forth in this Section 2.6(a) shall not apply to any reductions to the Contract Quantity solely as the result of the implementation of Effective Load Carrying Capability (“ELCC”), UCAP, or any similar regulatory adjustments.

- (b) Seller shall pay to Purchaser at the time set forth in Section 21.3 of the WSPP Agreement, the following damages in lieu of damages specified in Section 21.3 of the WSPP Agreement: an amount equal to the positive difference, if any, between (i) the sum of (A) the actual cost paid by Purchaser for any Replacement Capacity, plus (B) the Replacement Price times the amount of the Contract Quantity of RA Product neither provided by Seller nor purchased by Purchaser pursuant to Section 2.6(a). If Seller fails to pay these damages, then Purchaser may offset those damages owed it against any future amounts it may owe to Seller under this Confirmation.

2.7 Indemnities for Failure to Deliver Contract Quantity of RA Product

Seller agrees to indemnify, defend and hold harmless Purchaser from any penalties, fines or costs assessed against Purchaser by the CPUC or the CAISO resulting from any of the following:

- (a) Seller’s failure to provide any portion of the Contract Quantity of RA Product, when such failure is not excused under the terms of the Agreement and Seller has failed to provide Replacement Capacity;
- (b) A Unit Scheduling Coordinator’s failure to timely submit Supply Plans that identify Purchaser’s right to the Contract Quantity of RA Product purchased hereunder; and
- (c) A Unit Scheduling Coordinator’s failure to submit accurate Supply Plans that identify Purchaser’s right to the Contract Quantity of RA Product purchased hereunder.

With respect to the foregoing, the Parties shall use commercially reasonable efforts to minimize such penalties, fines and costs; provided, that in no event shall Purchaser be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties and fines. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Purchaser for those penalties, fines or costs, then Purchaser may offset those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation.

2.8 Allocation of Other Payments and Costs

Seller may retain any revenues it may receive from the CAISO or any other third party with respect to any Unit for (a) start-up, shut-down, and minimum load costs, (b) capacity revenue for ancillary services, (c) energy sales, (d) any revenues for black start or reactive power services, or (e) the sale of the unit-contingent call rights on the generation capacity of the Unit to provide

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energy to a third party, so long as such rights do not confer on such third party the right to claim any portion of the RA Capacity sold hereunder in order to make an RAR Showing, LAR Showing, FCR Showing, or any similar capacity or resource adequacy showing with the CAISO or CPUC. Purchaser acknowledges and agrees that all Availability Incentive Payments are for the benefit of Seller and for Seller's account, and that Seller shall receive, retain, or be entitled to receive all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards. The Parties acknowledge and agree that any Non-Availability Charges are the responsibility of Seller, and for Seller's account and Seller shall be responsible for all fees, charges, or penalties, if any, resulting from Seller failing to achieve Availability Standards.

2.9 **CAISO Offer Requirements**

During the Delivery Term, except to the extent any Unit is in an Outage, or is affected (or its transmission path is affected) by an event of Force Majeure that results in a partial or full Outage of that Unit, or as otherwise provided in Section 2.3, Seller shall either schedule or cause the Unit's Scheduling Coordinator to schedule with, or make available to, the CAISO each Unit's Contract Quantity in compliance with the CAISO Tariff, and shall perform all, or cause the Unit's Scheduling Coordinator, owner, or operator, as applicable, to perform all obligations under the CAISO Tariff that are associated with the sale of the Contract Quantity of RA Product hereunder. Purchaser shall have no liability for the failure of Seller or the failure of any Unit's Scheduling Coordinator, owner, or operator to comply with such CAISO Tariff provisions, including any penalties or fines imposed on Seller or the Unit's Scheduling Coordinator, owner, or operator for such noncompliance.

2.10 **Other Purchaser and Seller Covenants Regarding RA Product**

Purchaser and Seller shall, throughout the Delivery Term, take all commercially reasonable actions and execute any and all documents or instruments reasonably necessary to ensure Purchaser's right to the use of the Contract Quantity of RA Product for the sole benefit of Purchaser's RAR, LAR and/or FCR, as applicable. Such commercially reasonable actions (where neither Party shall be required to spend more than [REDACTED] in total under the Agreement in support of such actions) shall include, without limitation:

- (a) Cooperating with and providing, and in the case of Seller causing each Unit's Scheduling Coordinator, owner or operator to cooperate with and provide requested supporting documentation to the CAISO, the CPUC or any other Governmental Body responsible for administering RAR, LAR and/or FCR under Applicable Laws, to certify or qualify the Contract Quantity as RA Capacity. Such actions shall include, without limitation, providing information requested by the CAISO, the CPUC or by an LRA having jurisdiction to demonstrate for each month of the Delivery Term the ability to deliver the Contract Quantity of RA Product from each Unit to the CAISO Controlled Grid for the minimum hours required to qualify as RA Capacity, and providing information requested by the CPUC, the CAISO or other Governmental Body having jurisdiction to administer RAR, LAR or FCR to demonstrate that the Contract Quantity of RA Product can be delivered to the CAISO Controlled Grid, pursuant to "deliverability" standards established by the CAISO, or other Governmental Body having jurisdiction to administer RAR, LAR and/or FCR; and
- (b) Negotiating in good faith to make necessary amendments, if any, to this Confirmation to conform this Transaction to subsequent clarifications, revisions or decisions rendered by the CPUC, CAISO, FERC or other Governmental Body having jurisdiction to administer

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RAR, LAR and FCR, so as to maintain the benefits of the bargain struck by the Parties on the Effective Date.

2.11 Seller Representations Regarding RA Product

Seller represents, warrants and covenants to Purchaser that, throughout the Delivery Term:

- (a) Seller owns or has the exclusive right to the RA Capacity sold under this Confirmation from each Unit, and shall furnish Purchaser, CAISO, CPUC or other jurisdictional LRA, or other Governmental Body with such evidence as may reasonably be requested to demonstrate such ownership or exclusive right;
- (b) No portion of the Contract Quantity of RA Product has been committed by Seller to any third party in order to satisfy RAR, LAR, FCR or such analogous capacity obligations in CAISO markets, other than pursuant to an RMR Agreement between the CAISO and either Seller or the Unit's owner or operator;
- (c) No portion of the Contract Quantity of RA Product has been committed by Seller in order to satisfy RAR, LAR, FCR or analogous capacity obligations in any non-CAISO market;
- (d) Each Unit is connected to the CAISO Controlled Grid, is within the CAISO Control Area or is under the control of CAISO;
- (e) The owner or operator of each Unit is obligated to comply with Applicable Laws, including the CAISO Tariff, relating to RA Capacity and, as applicable, RAR, LAR and/or FCR;
- (f) If Seller is the owner of any Unit, the respective cumulative sums of LAR Attributes, RAR Attributes and FCR Attributes that Seller has sold, assigned or transferred for any Unit does not exceed that Unit's RA Capacity;
- (g) With respect to the RA Capacity provided under this Confirmation, Seller shall, and each Unit's SC is obligated to, comply with Applicable Laws, including the CAISO Tariff, relating to RA Capacity, and RAR, LAR and FCR;
- (h) Seller has notified the SC of each Unit that Seller has transferred the Contract Quantity of RA Product to Purchaser, and the SC is obligated to deliver the Supply Plans in accordance with the CAISO Tariff; and
- (i) Seller has notified the SC of each Unit that Seller is obligated to cause each Unit's SC to provide to the Purchaser, no later than the Notification Deadline, the Contract Quantity of RA Product for each Unit that is to be submitted in the Supply Plan associated with this Agreement for the applicable period.

2.12 Purchaser's Re-Sale of Resource Adequacy Product

- (a) Purchaser may re-sell all or a portion of the Contract Quantity of RA Product hereunder; provided, however that such re-sale shall not increase Seller's obligations or liabilities other than as set forth in this Section 2.12(a). Seller will, or will cause the Unit's SC, to follow Purchaser's instructions with respect to providing such resold RA Product to Subsequent Purchasers, to the extent such instructions are consistent with Seller's

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obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Purchasers to use such resold RA Product in a manner consistent with Purchaser's rights under this Confirmation. If Purchaser incurs any liability to a Subsequent Purchaser due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Purchaser for the same amounts Seller would have owed Purchaser under this Confirmation if Purchaser had not resold the RA Product.

- (b) Purchaser will notify Seller in writing of any resale of RA Product and the Subsequent Purchaser no later than two (2) Business Days before the Compliance Showing Deadline for the Showing Month. Purchaser will notify Seller of any subsequent changes or further resales no later than one (1) Business Day before the Compliance Showing Deadline for the Showing Month.
- (c) If CAISO or CPUC develops a centralized capacity market, Purchaser will have exclusive rights to offer, bid, or otherwise submit the applicable Contract Quantity of RA Product for each day during the Delivery Term provided to Purchaser pursuant to this Confirmation for re-sale in such market, and to retain and receive all revenues from such re-sale. Seller agrees to take all commercially reasonable actions to assist Purchaser with such re-sale, provided that Seller's obligation to assist shall not require modification of any of the commercial terms of this Confirmation.

ARTICLE 3 RESERVED

ARTICLE 4 OTHER PURCHASER AND SELLER COVENANTS

4.1 Seller Representations and Warranties

- (a) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6]
- (b) Seller shall agree to reasonably assist Purchaser with Purchaser's California Renewables Portfolio Standard Program compliance filings as reasonably requested by Purchaser. In connection with the foregoing, neither Seller nor its affiliates shall be required to (i) expend or incur any legal costs (either internal or external) in providing such assistance or (ii) prepare or defend a filing or otherwise advocate on behalf of Purchaser.
- (c) This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]

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- (d) Seller shall, at its sole cost and expense, take all actions and execute all documents or instruments necessary to ensure that the RECs sold hereunder can be transferred to Purchaser utilizing WREGIS. Seller shall comply with all laws, including, without limitation, the WREGIS Operating Rules effective as of the date of this Confirmation regarding the certification and transfer of RECs sold hereunder to Purchaser. During the Delivery Term, Seller shall have in-place, or shall submit documentation to establish, an account with WREGIS. Seller shall transfer RECs to Purchaser in accordance with WREGIS reporting protocols and WREGIS Operating Rules. Seller shall be responsible for all customary expenses associated with WREGIS Certificate issuance fees and utilizing WREGIS to transfer the RECs to Purchaser, or its designee, except for any costs incurred by Purchaser with respect to Purchaser's registration with WREGIS and Purchaser's WREGIS account.
- (e) Seller hereby provides and conveys all Green Attributes associated with the electricity generation from the Project delivered to Purchaser as part of the Product. Seller represents and warrants that Seller holds the rights to all such Green Attributes, and Seller agrees to convey and hereby conveys all such Green Attributes to Purchaser as included in the delivery of the Product from the Project.
- (f) Because WREGIS Certificates will only be created for whole MWh amounts of output generated, any fractional MWh amounts will be carried forward during the Delivery Term until sufficient generation is accumulated for the creation of a WREGIS Certificate.
- (g) Seller shall be responsible, at its sole expense, for validating, adjusting and disputing data with WREGIS so that the data from the Project's meter(s) corresponds with the quantity of RECs conveyed hereunder. Upon request, Seller shall provide Purchaser with copies of all correspondence or documentation to or from WREGIS with respect to any such validation, adjustment or dispute. Without limiting Seller's obligations, if a WREGIS Certificate deficit is caused solely by an error or omission of WREGIS or the CAISO, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
- (h) Without limiting Seller's obligations, if a WREGIS Certificate deficit is caused solely by an error or omission of WREGIS or the California Independent System Operator, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission. If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Confirmation, the Parties promptly shall modify this Agreement as reasonably required to preserve the intended economic benefits of this transaction for both Parties, and so cause and enable Seller to transfer to Purchaser's WREGIS Account the RECs sold to Purchaser hereunder.
- (i) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC 1]
- (j) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred

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to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC 2]

- (k) Notwithstanding anything else in this Confirmation, and subject to Seller's obligations under this Confirmation, Purchaser acknowledges and agrees that the sale of energy and RECs by Seller from the Project is nonexclusive.
- (l) Seller will deliver to Purchaser all Energy and related Products generated by the Project in compliance with the California Long Term Contracting Requirements.

ARTICLE 5 ADDITIONAL WSPP AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 WSPP Agreement Amendments

For purposes of this Transaction, the WSPP Agreement shall be amended as follows:

- (a) Section 9.4 is deleted in its entirety and replaced with the following:

“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, with notice of the objection given to the other Party. 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 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 unless the other Party is notified in writing within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. If an invoice is not rendered within twelve (12) months after the close of the month during which performance of a Transaction occurred, the right to payment for such performance is waived.”
- (b) Section 22.1 is modified by inserting the following new text at the end thereof:
 - “(f) the failure of the Defaulting Party to pay its debts generally as they become due or the Defaulting Party's admission in a writing that is unable to generally pay its debts as they become due;
 - (g) the institution, by the Defaulting Party, of a general assignment for the benefit of its creditors;
 - (h) the application for, consent to, or acquiescence to, by the Defaulting Party, the appointment of a receiver, custodian, trustee, liquidator, or similar official for all or a substantial portion of its assets;
 - (i) the failure of Seller to satisfy the collateral requirements agreed to pursuant to Section 5.3 below, if such failure is not remedied within three (3) Business Days after written notice; or,

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

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;

the issuer of such Letter of Credit becomes Bankrupt;

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;

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

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;

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

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."

(c) Section 22.2(b) is amended by inserting "and is continuing" after "Event of Default occurs" in the first sentence thereof and deleting the second sentence therein in its entirety.

(d) Section 22.3(c) is amended by deleting the third sentence thereof and replacing it with the following:

"If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement or a Confirmation, the Termination Payment for all such Terminated Transactions shall be zero, notwithstanding any provision in this Section or Agreement to the contrary."

(e) In Section 22.3(e), delete the entire provision (including subsections) and replace it with the following: "[Intentionally omitted]"

(f) In Section 22.3(f), delete the entire provision and replace it with the following:

"If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, and provided that the Defaulting Party has paid the undisputed part of the Termination Payment to the Non-Defaulting Party as provided under Section 22.3(c), and that any amounts disputed by the Defaulting

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Party are disputed in good faith, then the Defaulting Party may submit the calculation issue to Dispute Resolution pursuant to Section 34.”

- (g) Section 28.1 is applicable and the Parties shall net monthly payments in accordance with Exhibit A of the WSPP. Both Parties intend for the netting provisions of Exhibit A to the WSPP Agreement to be effective on the Effective Date.
- (h) Section 30.1 is amended by inserting “or requested” after the word “required” in Section 30.1(4) and by adding the following at the end of the first sentence: “; or (8) to the Party’s and such Party’s affiliates’ lenders, counsel, accountants, advisors and agents who have a need to know such information and have agreed to keep such terms confidential”.
- (i) Subsections 34.1 and 34.2 are deleted and replaced with the following:

“34.1 INFORMAL DISPUTE RESOLUTION

IN THE EVENT OF ANY DISPUTE ARISING UNDER THIS TRANSACTION, WITHIN TEN (10) DAYS FOLLOWING THE RECEIPT OF A WRITTEN NOTICE FROM EITHER PARTY IDENTIFYING SUCH DISPUTE, THE PARTIES SHALL MEET, NEGOTIATE AND ATTEMPT, IN GOOD FAITH, TO RESOLVE THE DISPUTE QUICKLY, INFORMALLY AND INEXPENSIVELY. IF THE PARTIES ARE UNABLE TO RESOLVE A DISPUTE ARISING HEREUNDER WITHIN THIRTY (30) DAYS AFTER RECEIPT OF SUCH NOTICE, THEN EITHER PARTY MAY SEEK ANY AND ALL REMEDIES AVAILABLE TO IT AT LAW OR IN EQUITY, SUBJECT TO THE LIMITATIONS SET FORTH IN THIS TRANSACTION.”

“34.2 EXCLUSIVE JURISDICTION

EACH PARTY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE OR FEDERAL COURTS LOCATED IN SAN FRANCISCO, CALIFORNIA, FOR ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY TRANSACTION, AND EXPRESSLY WAIVES ANY OBJECTION IT MAY HAVE TO SUCH JURISDICTION OR THE CONVENIENCE OF SUCH FORUM.”

- (j) In Section 34.4, delete the phrase “arbitration or” from the first line.
- (k) The following shall be inserted as a new Section 34.5:

“34.5 LIMITATION OF DAMAGES.

EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, FOR BREACH OF ANY PROVISION OF THIS CONFIRMATION AGREEMENT FOR WHICH AN EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED, THE EXPRESS REMEDY OR MEASURE OF DAMAGES PROVIDED IS THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH, LIABILITY FOR THE BREACH IS LIMITED AS SET FORTH IN THE PROVISION AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, IF NO EXPRESS REMEDY OR MEASURE OF DAMAGES IS PROVIDED IN THIS AGREEMENT FOR A PARTICULAR BREACH, LIABILITY FOR THE BREACH IS

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LIMITED TO DIRECT DAMAGES ONLY, THE DIRECT DAMAGES ARE THE SOLE AND EXCLUSIVE REMEDY UNDER THIS AGREEMENT FOR THE BREACH AND ALL OTHER REMEDIES FOR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. EXCEPT AS OTHERWISE SPECIFIED IN ANY CONFIRMATION, NEITHER PARTY IS LIABLE FOR ANY OTHER TYPE OF DAMAGE, INCLUDING INCIDENTAL, PUNITIVE, EXEMPLARY, CONSEQUENTIAL, SPECIAL OR INDIRECT DAMAGES OF ANY NATURE (INCLUDING DAMAGES ASSOCIATED WITH LOST PROFITS, BUSINESS INTERRUPTION AND LOSS OF GOODWILL) ARISING AT ANY TIME, WHETHER IN TORT (INCLUDING THE SOLE OR CONTRIBUTORY NEGLIGENCE OF EITHER PARTY OR ANY RELATED PERSON), WARRANTY, STRICT LIABILITY, CONTRACT OR STATUTE, UNDER ANY INDEMNITY PROVISION, OR OTHERWISE.”

- (l) Section 37 is amended by inserting the following in the beginning of the section: “On the date of entering into this Confirmation,”.
- (m) Section 41 “Witness” shall become Section 42 and the following “Standard of Review” Section shall be substituted in its place:

“The Parties agree as follows:

From the date of entering into a Transaction under this Agreement and throughout the term of such Transaction, the Parties each warrant and covenant as follows:

- (i) Absent the agreement of all Parties to the proposed change, the standard of review for changes to any section of this Agreement (including all Transactions and/or Confirmations) specifying the rate(s) or other material economic terms and conditions agreed to by the Parties herein, whether proposed by a Party, a non-party or 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) (the “Mobile-Sierra” doctrine) and clarified in *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 (2008) and *NRG Power Marketing LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010).
- (ii) The Parties, for themselves and their successors and assigns, (i) agree that this “public interest” standard shall apply to any proposed changes in any other documents, instruments or other agreements executed or entered into by the Parties in connection with this Agreement and (ii) hereby expressly and irrevocably waive any rights they can or may have to the application of any other standard of review, including the “just and reasonable” standard.”

5.2 **Confidentiality**

Seller acknowledges that Purchaser is a public agency subject to the requirements of the California Public Records Act (Cal. Gov. Code section 6250 et seq.) and that Purchaser may be required to make public this Confirmation (which may be partially redacted by Purchaser) in connection with the process of seeking approval from its board of directors for the execution of this Confirmation. Seller may submit information to Purchaser that Seller considers confidential, proprietary, or trade secret information pursuant the Uniform Trade Secrets Act (Cal. Civ. Code

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section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Government Code sections 6254 and 6255). Seller acknowledges that Purchaser may submit to Seller information that Purchaser considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Confirmation ("Requestor") pursuant to the California Public Records Act for production, inspection and/or copying of this Confirmation or any information designated by a disclosing Party as confidential, the receiving Party as soon as practical shall notify the disclosing Party that such request has been made, by telephone call and letter sent via electronic mail, and/or by overnight carrier. Such notice shall provide a copy of the request and describe the specific information that has been requested. The disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be confidential information and to prevent release of information to the Requestor by the receiving Party. If the disclosing Party takes no such action within ten (10) days, after receiving the foregoing notice from the receiving Party, the receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it. If Purchaser discloses any such confidential information pursuant to the Act, Purchaser will promptly provide notice of such disclosure (and the contents thereof) to Seller, and from and after such disclosure, such disclosed confidential information shall no longer be treated as confidential pursuant to the WSPP Agreement or this Confirmation.

Notwithstanding Section 30 of the WSPP Agreement, the Parties agree that Purchaser may disclose information regarding this Agreement to any Governmental Body, the CPUC, the CAISO or any LRA having jurisdiction as necessary to support its LAR Showings, RAR Showings and/or FCR Showings, as applicable, and Seller may disclose information regarding this Transaction to the SC of each Unit as necessary for such SC to timely submit accurate Supply Plans.

5.3 **Collateral Requirements.**

- (a) Within ten (10) Business Days of the Effective Date, Seller shall deliver Performance Security to Purchaser to secure its obligations under this Confirmation. "Performance Security" means a Letter of Credit in substantially the same form as Exhibit E. The amount and timing for delivery of the Performance Security shall be set forth in Exhibit G. 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 Seller then due and payable under this Agreement are paid in full. Following the occurrence of both events, Purchaser shall promptly return to Seller the unused portion of the Performance Security.
- (b) Subject to Seller's obligation to provide Performance Security, and notwithstanding any provision in the WSPP Agreement to the contrary, including Section 27, neither Party shall be required to post collateral or other security for this Transaction. In addition, the Performance Security provided under this Confirmation shall be disregarded for purposes of calculating the exposure of either Party or the exposure of Seller's affiliates under any other agreements (including any power purchase agreements, or transactions for any product under the EEI Master Agreement or the WSPP Agreement).

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5.4 Assignment

- (a) Limited Assignment Buyer Right: Notwithstanding Section 14 of the Master Agreement, Purchaser may from time to time assign the right to receive all or a portion of the Product that would otherwise be delivered to Purchaser hereunder. In connection with any such assignment, Purchaser and Seller agree to execute the limited assignment agreement attached hereto as Exhibit D. For the avoidance of doubt, Purchaser will remain responsible for all its obligations under this Confirmation related to such assigned Product, including (i) the obligation to pay for such Product to the extent the assignee thereof does not do so and (ii) any damages associated with such assignee's failure to take any such Product.
- (b) Seller Collateral Assignment: Notwithstanding Section 14 of the Master Agreement, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Project. In connection with any financing or refinancing of the Project by Seller, Buyer shall in good faith work with Seller and its lender to execute a consent to collateral assignment of this Confirmation substantially in the form attached hereto as Exhibit F.

5.5 Change in Law

Seller shall make commercially reasonable efforts to comply with changes in law in the California RPS and/or California Long Term Contracting Requirements, provided that Seller shall not be required to incur costs greater than an aggregate amount of [REDACTED] during the entire Delivery Term (the "Capped Amount"). The Parties acknowledge and agree that any such change in law shall not (i) entitle Purchaser to a change in the Contract Price or Payment terms, (ii) result in any change to the Contract Quantity, (iii) give either Party the right to terminate this Agreement, or (iv) allow for the severability of any provisions of this Confirmation pursuant to the WSPP Agreement. This provision shall not apply to any Product that was delivered prior to any change in law if such Product complies with the California RPS and/or California Long Term Contracting Requirements that existed when it was delivered.

5.6 No Recourse to Members of Purchaser

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

5.7 Counterparts

This Confirmation may be signed in any number of counterparts with the same effect as if the signatures to the counterparts were upon a single instrument. Delivery of an executed signature page of this Confirmation as a PDF attachment to an email shall be the same as delivery of a manually executed signature page.

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5.8 Entire Agreement; No Oral Agreements or Modifications

This Confirmation sets forth the terms of the Transaction into which the Parties have entered and shall constitute the entire Agreement between the Parties relating to the contemplated purchase and sale of the Product. Notwithstanding any other provision of the Agreement, this Confirmation may be entered into only by a Documentary Writing executed by both Parties, and no amendment or modification to this Confirmation shall be enforceable except through a Documentary Writing executed by both Parties.

[Signatures appear on the following page.]

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ACKNOWLEDGED AND AGREED TO AS OF THE EFFECTIVE DATE:

GEYSERS POWER COMPANY, LLC

By: _____

Name: _____

Title: _____

MARIN CLEAN ENERGY

By: _____

Name: _____

Title: _____

MARIN CLEAN ENERGY

By: _____

Name: _____

Title: _____

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EXHIBIT A

DEFINED TERMS

“Agreement” has the meaning specified in the introductory paragraph hereof.

“Alternate Capacity” means any replacement Product which Seller has elected to provide to Purchaser in accordance with the terms of Section 2.4.

“Applicable Laws” means any law, rule, regulation, order, decision, judgment, or other legal or regulatory determination by any Governmental Body having jurisdiction over one or both Parties or this Transaction, including without limitation, the CAISO Tariff.

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

“Availability Standards” shall mean Availability Standards as defined in Section 40.9 of the CAISO Tariff or otherwise applicable to CAISO.

“Bankrupt” means with respect to any entity, such entity (i) 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, or has any such petition filed or commenced against it, (ii) makes an assignment or any general arrangement for the benefit of creditors, (iii) otherwise becomes bankrupt or insolvent (however evidenced), or (iv) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets.

“Buyer” shall have the same meaning as “Purchaser” under the WSPP Agreement.

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

“CAISO Grid” means the system of transmission lines and associated facilities of the Participating Transmission Owner that have been placed under the CAISO’s operational control.

“CAISO Tariff” means the CAISO Operating Agreement and Tariff, including the rules, protocols, procedures and standards attached thereto, as it may be amended, modified, supplemented or replaced (in whole or in part) from time to time.

“California Long Term Contracting Requirements” means the long-term contracting requirement set forth in the Clean Energy and Pollution Reduction Act of 2015, California Public Utilities Code section 399.13(b), and CPUC Decision 17-06-026, as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation.

“California Renewables Portfolio Standard” or “RPS” means the renewables portfolio standard program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the CPUC as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.10-03-021, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038, D.13-11-042, D.14-12-023, D.17-06-026, and D.19-02-007, and as

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may be modified by subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“CEC” means the California Energy Commission, or any successor entity.

“Compliance Showing Deadline” means, for each Showing Month, the Compliance Showing plan submission due date for each RAR Showing, LAR Showing and/or FCR Showing, as applicable. For illustrative purposes only, as of the Effective Date, the applicable Compliance Showing plan submission due dates are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan. Such dates may be modified by the CAISO from time to time throughout the Delivery Term.

“Compliance Showing” means the applicable LSE’s compliance with the resource adequacy requirements for the RAR Showings, LAR Showings and/or FCR Showings, as applicable.

“Contract Price” has the meaning specified in Section 1.5 hereof.

“Contract Quantity” has the meaning specified in Section 1.5 hereof.

“Contract Quantity of RA Product” means 100 MW of RA Product for each Showing Month of the Delivery Term.

“Control Area” has the meaning set forth in the CAISO Tariff.

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

“CPUC Filing Guide” means the annual document issued by the CPUC which sets forth the guidelines, requirements and instructions for LSE’s to demonstrate compliance with the CPUC’s resource adequacy program.

“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.

“Delivered Energy” means energy generated and metered from the Project with associated Green Attributes that is scheduled in accordance with this Confirmation.

“Effective Flexible Capacity” means the flexible capacity of a resource that can be counted towards an LSE’s FCR obligation, as identified from time to time by the CAISO Tariff, the CPUC Decisions, LRA, or other Governmental Body having jurisdiction.

“FCR Attributes” means, with respect to a Unit, any and all FCR attributes that can be counted toward an LSE’s FCR, as they are identified from time to time by the CPUC Decisions, the CAISO Tariff, an LRA, or other Governmental Body having jurisdiction that can be counted toward FCR and are consistent with the operational limitations and physical characteristics of such Unit.

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“FCR Showings” means the FCR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions and the CAISO Tariff, or to an LRA having jurisdiction over the LSE.

“Firm RA Product” has the meaning specified in the Section 2.2(c) hereof.

“Flexible Capacity Requirements” or “FCR” means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, or by an LRA or other Governmental Body having jurisdiction.

“Flexible RA Product” has the meaning specified in the Section 2.2(b) hereof.

“Force Majeure” has the same meaning as “Uncontrollable Forces” under the WSPP Agreement.

“Generic RA Product” means Product consisting of RAR Attributes and, if applicable, LAR Attributes, which does not include FCR Attributes.

“Governmental Body” means (i) any federal, state, local, municipal or other government; (ii) any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and (iii) any court or governmental tribunal.

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emission 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 Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the project 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 Project for compliance with local, state, or federal operating and/or air quality permits.

“Green Tag Purchaser” means Purchaser.

“LAR” means local area reliability, which is any program of localized resource adequacy requirements established for jurisdictional LSEs by the CPUC pursuant to the CPUC Decisions, or by another LRA

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having jurisdiction over the LSE, as implemented in the CAISO Tariff. LAR may also be known as local resource adequacy, local RAR, or local capacity requirement in other regulatory proceedings or legislative actions.

“LAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes (or other locational attributes related to system reliability), as they are identified as of the Confirmation Effective Date by the CPUC Decisions, the CAISO, LRA, or other Governmental Body having jurisdiction, associated with the physical location or point of electrical interconnection of the Unit within the CAISO Control Area, that can be counted toward LAR and are consistent with the operational limitations and physical characteristics of such Unit, but exclusive of any RAR Attributes which are not associated with where in the CAISO Control Area the Unit is physically located or electrically interconnected. For clarity, it should be understood that if the CAISO, LRA, or other Governmental Body, defines new or re-defines existing local areas, then such change will not result in a change in obligations or payments made pursuant to this Transaction.

“LAR Showings” means the LAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the CPUC Decisions, or to an LRA having jurisdiction over the LSE.

“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 (a) having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s or (b) being reasonably acceptable to Purchaser, in a form substantially similar to the letter of credit set forth in Exhibit E.

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

“LSE” means load-serving entity. LSEs may be an investor-owned utility, an electric service provider, a community aggregator or community choice aggregator, or a municipality serving load in the CAISO Control Area (excluding exports).

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

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

“Notification Deadline” means fifteen (15) Business Days before the Compliance Showing Deadline.

“NP15 EZ Gen Hub” has the meaning specified in the CAISO Tariff.

“Outage” means disconnection, separation, or reduction in the capacity of any Unit that relieves all or part of the offer obligations of the Unit consistent with the CAISO Tariff. For the avoidance of doubt, Outage shall be deemed to include Planned Outage.

“Participating Transmission Owner” means Pacific Gas and Electric Company in its capacity as the owner of certain transmission facilities placed under the operational control of the CAISO pursuant to the terms of the CAISO Tariff.

“Planned Outage” means, subject to and as further described in the CPUC Decisions and the CAISO Tariff (Planned Outage referred to as “Approved Maintenance Outage” under the CAISO Tariff), a CAISO-approved planned or scheduled disconnection, separation or reduction in capacity of the Unit that

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is conducted for the purposes of carrying out routine repair or maintenance of such Unit, or for the purposes of new construction work for such Unit.

“RA Capacity” means the qualifying and deliverable capacity of the Unit for RAR, LAR and FCR purposes for the Delivery Term, as determined by the CAISO, or other Governmental Body authorized to make such determination under Applicable Laws. RA Capacity encompasses the RAR Attributes, LAR Attributes and FCR Attributes of the capacity provided by a Unit, as applicable pursuant to this Confirmation.

“RA Product” or “Resource Adequacy Product” has the meaning set forth in Section 2.2.

“RAR” or “Resource Adequacy Requirements” means the resource adequacy requirements, exclusive of LAR and FCR, established for LSEs by the CPUC pursuant to the CPUC Decisions, by the CAISO under the CAISO Tariff, or by an LRA or other Governmental Body having jurisdiction.

“RAR Attributes” means, with respect to a Unit, any and all resource adequacy attributes, as they are identified as of the Confirmation Effective Date by the CAISO Tariff, the CPUC Decisions, LRA, or any Governmental Body having jurisdiction, that can be counted toward RAR and are consistent with the operational limitations and physical characteristics of such Unit, exclusive of any LAR Attributes or FCR Attributes.

“RAR Showings” means the RAR compliance showings (or similar or successor showings) an LSE is required to make to the CPUC (and/or, to the extent authorized by the CPUC, to the CAISO), pursuant to the CAISO Tariff or CPUC Decisions, or to an LRA having jurisdiction.

“Renewable Energy Credit” or “REC” has the meaning set forth in the California Public Utilities Code Section 399.12 and CPUC Decision 08-08-028, as may be amended or supplemented from time to time.

“Replacement Capacity” has the meaning specified in Section 2.6 hereof.

“Replacement Price” has the meaning as set forth in the WSPP Agreement.

“Replacement Unit” means a generating unit having the same capacity attributes as the Unit(s) originally identified in Exhibit B, including the same Resource Category, RAR Attributes, and, as applicable, LAR Attributes, FCR Attributes, and Flexible Capacity Category, and otherwise meeting the requirements specified Section 2.4 hereof. A Replacement Unit shall not utilize coal or coal materials as a source of fuel, must be a specific resource that is connected directly to the CAISO controlled grid, or be under the operational control of CAISO, and may not be an unspecified import.

“Resource Adequacy Plan” has the meaning set forth in the CAISO Tariff

“Resource Category” shall be as described in the CPUC Filing Guide, as such may be modified, amended, supplemented or updated from time to time.

“Scheduling Coordinator” means an entity certified by 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.

“Showing Month” shall be the calendar month during the Delivery Term that is the subject of the RAR Showing, LAR Showing, and/or FCR Showing, as applicable, as set forth in the CPUC Decisions. For

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illustrative purposes only, pursuant to the CPUC Decisions in effect as of the Confirmation Effective Date, the monthly RAR Showing made in June is for the Showing Month of August.

“Subsequent Purchaser” means the purchaser of Product from Purchaser in a re-sale of Product by Purchaser.

“Supply Plan” means the supply plans, or similar or successor filings, that each Scheduling Coordinator representing RA Capacity submits to the CAISO, LRA, or other Governmental Body, pursuant to Applicable Laws, in order for that RA Capacity to count for its RAR Attributes, LAR Attributes and/or FCR Attributes.

“Unit” or “Units” shall mean the generation assets described in Exhibit B hereof (including any Replacement Units), from which RA Capacity is provided by Seller to Purchaser.

“Unit EFC” means the Effective Flexible Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Effective Flexible Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit EFC shall be deemed the lesser of (i) the Unit EFC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Effective Flexible Capacity. To the extent the CAISO creates new categories of flexible capacity during the term of this Transaction and a Unit can count toward such new categories of flexible capacity while operating consistent with the operational limitation and physical characteristics of such Unit, any and all such new categories of flexible capacity shall be deemed to be part of the Effective Flexible Capacity of that Unit.

“Unit NQC” means the Net Qualifying Capacity set by the CAISO for the applicable Unit. If the CAISO adjusts the Net Qualifying Capacity of a Unit after the Confirmation Effective Date, then for the period in which the adjustment is effective, the Unit NQC shall be deemed the lesser of (i) the Unit NQC as of the Confirmation Effective Date, and (ii) the CAISO-adjusted Net Qualifying Capacity.

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

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

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

“WREGIS Timelines” means the timeline for WREGIS Certificates creation by WREGIS in accordance with WREGIS Operating Rules as applied by WREGIS.

“WSPP Agreement” has the meaning specified in the introductory paragraph hereof.

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EXHIBIT B**PROJECT INFORMATION**

Name of Facility	Single Line Facility Name	CAISO Resource ID	CEC RPS ID	WREGIS GU ID
Aidlin Power Plant	AIDLIN P.P. (CPN-1)	ADLIN_1_UNITS	60115A	W484
Sonoma Power Plant	SONOMA P.P. (CPN-3)	SMUDGO_7_UNIT 1	60010A	W127
Geysers Units 5&6	MC CABE P.P. (CPN 5&6)	GYS5X6_7_UNITS	60002A	W117
Geysers Units 7&8	RIDGE LINE P.P. (CPN 7&8)	GYS7X8_7_UNITS	60003A	W118
Geysers Unit 11	EAGLE ROCK (CPN-11)	GEYS11_7_UNIT11	60025B	W119
Geysers Unit 12	COBB CREEK PP (CPN-12)	GEYS12_7_UNIT12	60004A	W120
Geysers Unit 13	BIG GEYSERS PP (CPN-13)	GEYS13_7_UNIT13	60005A	W121
Geysers Unit 14	SULPHUR SPRINGS PP (CPN-14)	GEYS14_7_UNIT14	60026B	W122
Geysers Unit 16	QUICKSILVER PP (CPN-16)	GEYS16_7_UNIT16	60006A	W123
Geysers Unit 17	LAKE VIEW P.P. (CPN-17)	GEYS17_7_UNIT17	60007A	W124
Geysers Unit 18	SOCRATES P.P. (CPN-18)	GEYS18_7_UNIT18	60008A	W125
Calistoga Power Plant	CALISTOGA P.P. (CPN-19)	SANTFG_7_UNITS	60117A	W486
Geysers Unit 20	GRANT P.P. (CPN-20)	GEYS20_7_UNIT20	60009A	W126

Unit Information

Name:	[GEYSERS]
Location:	
CAISO Resource ID:	
Resource Type:	
Resource Category (1, 2, 3 or 4):	4 (available all 24 hours)
Point of interconnection with the CAISO Controlled Grid	

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("Substation"):	
Path 26 (North, South or None):	North
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment:	None
Run Hour Restrictions:	None
LAR Attributes (Yes/No):	Yes
If yes, Local Capacity Area (as of the Effective Date):	NCNB
Product Type (Flexible/Generic):	Generic
If Generic: Unit NQC (as of the Effective Date):	100 MW
If Flexible: Unit EFC (as of the Effective Date):	N/A
Flexible Capacity Category (Base/Peak/Super-peak) (as of the Effective Date):	N/A

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EXHIBIT C**NOTICE INFORMATION**

Geysers Power Company, LLC	Marin Clean Energy
<p>All Notices:</p> <p>Delivery Address: Street: 717 Texas Avenue, Suite 11.043C City: Houston, TX 77002</p> <p>Mail Address: Street: 717 Texas Avenue, Suite 11.043C City: Houston, TX 77002 Attn: Contract Administration Phone: (713) 830-8845 Facsimile: (713) 830-8751 Email: CommodityContracts@Calpine.com</p> <p>With a copy to:</p> <p>Geysers Power Company, LLC 10350 Socrates Mine Road Middletown, CA 95461 Attn: Vice President, Regional Operations, Geyser Management</p> <p>With a copy to:</p> <p>Geysers Power Company, LLC 3003 Oak Road, Suite 400 Walnut Creek, CA 94597 Attn: Vice President, Origination</p> <p>With a copy to:</p> <p>Geysers Power Company, LLC 717 Texas Avenue, Suite 11.043C Houston, TX 77002 Attn: Chief Legal Officer</p> <p>With a copy to:</p> <p>Geysers Power Company, LLC 3003 Oak Road, Suite 400 Walnut Creek, CA 94597 Attn: Deputy General Counsel</p>	<p>All Notices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mcccleanenergy.org</p>
<p>Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>	<p>Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]</p>

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Geysers Power Company, LLC	Marin Clean Energy
Invoices: Attn: Power Accounting Phone: (713) 830-2000	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcccleanenergy.org
Scheduling: Attn: Power Accounting Phone: (713) 830-2000	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zglobal.biz
Confirmations: Attn: Power Accounting Phone: (713) 830-2000	Confirmations: Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcccleanenergy.org
Payments: Attn: Power Accounting Phone: (713) 830-2000	Payments: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcccleanenergy.org
Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]
With additional Notices of an Event of Default to: Attn: Deputy General Counsel Phone: (925) 557-2283 Email: WROLegal@calpine.com	With additional Notices of an Event of Default to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com
Emergency Contact: Attn: Phone: Email:	Emergency Contact: Attn: Phone: E-mail:

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EXHIBIT D
FORM OF ASSIGNMENT SCHEDULE
GEYSERS

Assigned Product:

Assigned Delivery Point:

Assigned Prepay Quantity: As set forth in Appendix 2; provided that (i) all Assigned Products shall be delivered pursuant to the Limited Assignment Agreement during the Assignment Period as provided in Appendix 1 and (ii) the Assigned Prepay Quantity is defined for the convenience of PPA Buyer and J. Aron and shall have no impact on the obligations of the Parties under the Limited Assignment Agreement.

APC Contract Price: \$/MWh

Assignment Period:

Other Provisions:

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FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [____], 2022 by and among Geysers Power Company, LLC (“**PPA Seller**”), Marin Clean Energy, a California joint powers authority (“**PPA Buyer**”), and J. Aron & Company LLC, a New York limited liability company (“**J. Aron**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA. To the extent there is any inconsistency between this Assignment Agreement and the PPA, the terms of the PPA shall prevail.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and J. Aron (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. Limited Assignment and Delegation.

- (a) PPA Buyer hereby assigns, transfers and conveys to J. Aron all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “**Assigned Product Rights**”). All Assigned Products shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer.
- (b) PPA Buyer hereby delegates to J. Aron the obligation to pay for all Assigned Products that are actually delivered to J. Aron pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer, PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products and PPA Buyer agrees that it will remain jointly and severally responsible as primary obligor (and not as surety) for the payment of all Delivered Product Payment Obligation; and (ii) the Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to J. Aron consistent with Section 1(d) hereof). To the extent J. Aron fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it remains responsible for such payment and that it will be an Event of Default pursuant to Section [] if PPA Buyer does not make such payment within five (5) Business Days (as defined in the PPA) of such due date. In addition, for the avoidance of doubt, PPA Buyer agrees that, PPA Buyer’s obligations in clause (b) of this paragraph 1 arising from the failure of J. Aron to make any payment in respect of Delivered Product Payment Obligation as and when due under the PPA shall disregard the effects of any stay, if any, or other suspension rights, including without limitation under sections 362 or 365 of the Bankruptcy Code or similar laws.
- (c) J. Aron hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

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- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass from PPA Seller to J. Aron upon delivery by PPA Seller of Assigned Product in accordance with the PPA; (ii) PPA Buyer will provide copies to J. Aron of any Notice (as defined in the PPA) of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iii) PPA Seller will provide copies to J. Aron of all invoices and supporting data provided to PPA Buyer pursuant to Section [], provided that any payment adjustments or subsequent reconciliations occurring after the date that is ten (10) days prior to the payment due date for a monthly invoice, including pursuant to Section [], will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to J. Aron; and (iv) PPA Buyer will provide copies to J. Aron of any other information reasonably requested by J. Aron relating to Assigned Products; provided, that in the case of clause (iv), any failure to provide such information shall not excuse the performance of any other Party hereunder.
- (e) PPA Seller acknowledges that (i) J. Aron intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) J. Aron has the right to purchase receivables due from PPA Buyer for any such Assigned Products. To the extent J. Aron purchases any valid, lien-free receivables due from PPA Buyer for Assigned Products, J. Aron may transfer good, marketable and lien-free title to such receivables to PPA Seller and, so long as PPA Buyer does not have any defense in respect of such receivables other than a defense that would have arisen under the PPA if this Assignment Agreement were not in effect apply the face amount thereof as a reduction to any Delivered Product Payment Obligation owed by J. Aron to PPA Seller; provided that no such transfer or application shall reduce or limit PPA Buyer's obligations under Section 1(b) above.
- (f) On or before the commencement of the Assignment Period, The Goldman Sachs Group ("**Guarantor**"), Inc. will issue, in favor of PPA Seller, a guaranty of J. Aron's payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto ("**Guaranty**"). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts not timely paid as set forth herein.
- (g) Without in any way affecting the joint and severally liability of PPA Buyer as primary obligor, or the other obligations of PPA Buyer, as specified herein or under the PPA, in the event the PPA or the Assigned Product Rights are rejected, disaffirmed, repudiated or terminated (or any in combination), in or as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting J. Aron, PPA Buyer shall, at the option of PPA Seller exercised within thirty (30) days after such rejection, disaffirmation, repudiation or termination, enter into a new agreement with PPA Seller having identical terms as the PPA described on Appendix 1 (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that the term under such new agreement shall be no longer than the remaining balance of the term specified in the PPA described on Appendix 1.
- (h) Nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer

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and PPA Seller under the PPA with respect to CAISO revenues and costs.

2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
 - (1) delivery of a written notice of termination by either J. Aron or PPA Buyer to each of the other Parties hereto;
 - (2) delivery of a written notice of termination by PPA Seller to each of J. Aron and PPA Buyer following J. Aron's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one business day following receipt by J. Aron of written notice thereof;
 - (3) delivery of a written notice by PPA Seller if any of the events described in Section [] [Bankruptcy] of the PPA occurs with respect to J. Aron; or
 - (4) delivery of a written notice by J. Aron if any of the events described in Section [] [Bankruptcy] of the PPA occurs with respect to PPA Seller.
- (b) The Assignment Period will end at the end of the last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the early termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.
- (c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the expiration of or early termination of the PPA, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.
- (d) The Assignment Period will automatically terminate upon delivery by Guarantor of a notice of termination of the Guaranty. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

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3. **Representations and Warranties.** The PPA Seller and the PPA Buyer represent and warrant to J. Aron, each with respect to itself only, that as of the date hereof (a) the PPA is in full force and effect; (b) to the best of its knowledge, no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the date hereof have been fulfilled.

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

J. Aron & Company LLC
 200 West Street
 New York, New York 10282-2198
 Email: gs-prepay-notices@gs.com

5. **Miscellaneous.** Sections [] (Buyer's Representations and Warranties), [] (Confidential Information), [] (Severability), [] (Amendments), [] (No Agency), [] (Mobile-Sierra), [] (Counterparts), [] (Facsimile or Electronic Delivery), [] (Binding Effect) and [] (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, mutatis mutandis, as if fully set forth herein.

6. **U.S. Resolution Stay Provisions.**
 - (a) In the event that J. Aron becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a "U.S. Special Resolution Regime") the transfer from [Assignee] of this Agreement, and any interest and obligation in or under, and any property securing, this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any interest and obligation in or under, and any property securing, this Agreement were governed by the laws of the United States or a state of the United States.

 - (b) In the event that J. Aron or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable ("Default Right")) under this Agreement that may be exercised against J. Aron are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.
 - (1) Limitation on Exercise of Certain Default Rights Related to an Affiliate's Entry Into Insolvency Proceedings. Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that:
 - i. PPA Buyer and PPA Seller shall not be permitted to exercise any Default Right with respect to this Agreement or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of J. Aron becoming subject to

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receivership, insolvency, liquidation, resolution, or similar proceeding (an “Insolvency Proceeding”), except to the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and

- ii. Nothing in this Agreement shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of J. Aron becoming subject to an Insolvency Proceeding, unless the transfer would result in PPA Buyer or PPA Seller being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to PPA Buyer or PPA Seller, as applicable.

- (2) U.S. Protocol. To the extent that PPA Buyer and PPA Seller each adhere to the ISDA 2018 U.S. Resolution Stay Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “**ISDA U.S. Protocol**”), after the date of this Agreement, the terms of the ISDA U.S. Protocol will supersede and replace the terms of this Section 6.

- (3) For purposes of this Section 6:

“**Affiliate**” is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Credit Enhancement**” means any credit enhancement or credit support arrangement in support of the obligations of J. Aron under or with respect to this Agreement, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

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

- (a) **Governing Law.** This Assignment Agreement and the rights and duties of the Parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of California, without reference to any conflicts of law provisions that would direct the application of another jurisdiction’s laws.
- (b) **Jurisdiction.** Each Party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Northern District of California sitting in the city and county of San Francisco; provided, that if the federal courts do not have jurisdiction over such dispute, the Parties agree that such dispute shall be brought in the courts of the State of California, sitting in the city and county of San Francisco, and each Party submits to the jurisdiction of such courts of the State of California.
- (c) **Waiver of Right to Trial by Jury.** Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Assignment Agreement.

[Remainder of Page Intentionally Blank]

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

GEYSERS POWER COMPANY, LLC

By: _____

Name: _____

Title: _____

MARIN CLEAN ENERGY

By: _____

Name: _____

Title: _____

J. ARON & COMPANY LLC

By: _____

Name: _____

Title: _____

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

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____

Name: _____

Title: _____

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Appendix 1

Assigned Rights and Obligations

PPA: “PPA” means that certain [Confirmation] dated [____], by and between Marin Clean Energy and Geysers Power Company, LLC, as amended from time to time.

“Assignment Period” means the period beginning on [_____] and extending until [_____] , provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

Assigned Product: “Assigned Products” includes all (i) Facility Energy and (ii) Green Attributes (PCC1) produced by the Facility.

Further Information: PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy under the PPA pursuant to Section [____] of the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both J. Aron and Marin Clean Energy upon twenty (20) Business Days’ notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. All Assigned Product delivered by PPA Seller to J. Aron shall be a sale made at wholesale, with J. Aron reselling all such Assigned Product.

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Appendix 2

Assigned Prepay Quantity

[NOTE: To be set forth in a monthly volume schedule.]

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Appendix 3

Form of GSG Guaranty

, 2022

NAME

ADDRESS

Attention:

Ladies and Gentlemen:

For value received, The Goldman Sachs Group, Inc. (the “Guarantor”), a corporation duly organized under the laws of the State of Delaware, hereby unconditionally guarantees the prompt and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of J. Aron & Company LLC, a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of New York (the “Company”), to **COUNTERPARTY NAME** (the “Counterparty”) arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and Marin Clean Energy dated as of [], 2022. This Guaranty is one of payment and not of collection.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Counterparty against, and any other notice to, the Company, the Guarantor or others.

Counterparty may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Counterparty, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Counterparty, (3) exercise or refrain from exercising any rights against the Company or others, or (4) compromise or subordinate any obligation or liability of the Company to Counterparty including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall continue in full force and effect until the opening of business on the fifth business day after Counterparty receives written notice of termination from the Guarantor. It is understood and agreed, however, that notwithstanding any such termination this Guaranty shall continue in full force and effect with respect to the obligations and liabilities set forth above which shall have been incurred prior to such termination.

The Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in

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part, without prior written consent of the Counterparty, and any purported assignment or delegation absent such consent is void, except for (i) an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, and (ii) the Guarantor may transfer this Guaranty or any interest or obligation of the Guarantor in or under this Guaranty, or any property securing this Guaranty, to another entity as transferee as part of the resolution, restructuring or reorganization of the Guarantor upon or following the Guarantor becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding. Upon any such delegation and assumption or transfer of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption or transfer.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.

In the event the Guarantor becomes subject to a proceeding under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together, the "U.S. Special Resolution Regimes"), the transfer of this Guaranty, and any interest and obligation in or under, and any property securing, this Guaranty, from the Guarantor will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if this Guaranty, and any interest and obligation in or under this Guaranty, were governed by the laws of the United States or a state of the United States. In the event the Company or the Guarantor, or any of their affiliates, becomes subject to a U.S. Special Resolution Regime, default rights against the Company or the Guarantor with respect to this Guaranty are permitted to be exercised to no greater extent than such default rights could be exercised under such U.S. Special Resolution Regime if this Guaranty was governed by the laws of the United States or a state of the United States.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: _____

Authorized Officer

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EXHIBIT E

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: _____

Bank Ref.: _____

Amount: US\$ _____

Expiration Date: _____

Beneficiary:

Marin Clean Energy
Attn: Director of Finance
1125 Tamalpais Avenue
San Rafael, CA 94901

To Whom It May Concern:

By the order of [redacted] ("Applicant"), we, [insert bank name and address] ("Issuer") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the "Letter of Credit") in favor of Marin Clean Energy, a California joint powers authority ("Beneficiary"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain WSPP Resource Adequacy Confirmation Letter dated as of [insert date] between Applicant and Beneficiary, which is governed by the WSPP Agreement effective as of August 26, 2022, including any applicable appendices, exhibits or amendments thereto, and as amended from time to time (collectively, the "Agreement"). This Letter of Credit shall become effective immediately and shall expire on [insert date] which is [insert time period] after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the "Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by Beneficiary's duly authorized representative, in the form attached hereto as Exhibit A, referencing our Letter of Credit No. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an email to [bank email address] or (c) facsimile to [bank fax number]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

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

All payments made under this Letter of Credit shall be made with Issuer's own immediately available

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funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate.

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

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

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

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, Attn: Director of Finance, 1125 Tamalpais Avenue, San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

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Exhibit A

Drawing Certificate

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

To Whom It May Concern:

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

1. Applicant and Beneficiary are each a party to that certain WSPP Resource Adequacy Confirmation Letter dated as of *[insert date]*, which is governed by the WSPP Agreement effective as of August 26, 2022, including any applicable appendices, exhibits or amendments thereto, and as amended from time to time (collectively, the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because an Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

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

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

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

[specify account information]

Marin Clean Energy

[name and title of authorized representative]

Date _____

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EXHIBIT F
FORM OF CONSENT TO COLLATERAL ASSIGNMENT

CONSENT AND AGREEMENT

among

MARIN CLEAN ENERGY,
a California joint powers authority
(Contracting Party)

and

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company
(Assignor)

and

MUFG UNION BANK, N.A.,
(First Lien Collateral Agent)

Dated as of []

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This CONSENT AND AGREEMENT, dated as of [____], 20[___] (this “Consent”), is entered into by and among MARIN CLEAN ENERGY, a California joint powers authority (together with its permitted successors and assigns, “Contracting Party”), MUFG UNION BANK, N.A., in its capacity as collateral agent for the First Lien Secured Parties referred to below (together with its successors, designees and assigns in such capacity, “First Lien Collateral Agent”), and GEYSERS POWER COMPANY, LLC, a limited liability company formed and existing under the laws of the State of Delaware (together with its permitted successors and assigns, “Assignor”).

RECITALS

A. Assignor owns the following geothermal electric generating facilities located in the Geysers area of Northern California (Sonoma and Lake Counties) (collectively, the “Projects”):

- (1) The Aidlin project, an approximately 18 megawatt geothermal facility located in Sonoma County, CA.
- (2) The Sonoma project, an approximately 53 megawatt geothermal facility located in Sonoma County, CA.
- (3) The two-unit McCabe project, an approximately 84 megawatt geothermal facility located in Sonoma County, CA.
- (4) The two-unit Ridge Line project, an approximately 76 megawatt geothermal facility located in Sonoma County, CA.
- (5) The Eagle Rock project, an approximately 68 megawatt geothermal facility located in Sonoma County, CA.
- (6) The Cobb Creek project, an approximately 51 megawatt geothermal facility located in Sonoma County, CA.
- (7) The Big Geysers project, an approximately 61 megawatt geothermal facility located in Lake County, CA.
- (8) The Sulphur Springs project, an approximately 47 megawatt geothermal facility located in Sonoma County, CA.
- (9) The Quicksilver project, an approximately 53 megawatt geothermal facility located in Lake County, CA.
- (10) The Lake View project, an approximately 54 megawatt geothermal facility located in Sonoma County, CA.
- (11) The Socrates project, an approximately 50 megawatt geothermal facility located in Sonoma County, CA.
- (12) The two-unit Calistoga project, an approximately 69 megawatt geothermal facility located in Lake County, CA.
- (13) The Grant project, an approximately 41 megawatt geothermal facility located in Sonoma County, CA.

B. In order to finance the operation and maintenance of the Projects, Assignor has entered into that certain Credit Agreement, dated as of June 9, 2020 (as amended, amended and restated,

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supplemented or otherwise modified from time to time, the “Credit Agreement”), with GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings (“Holdings”), GEYSERS COMPANY, LLC, a Delaware limited liability company (“Geysers Company”), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company (“Wild Horse”) and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company (“Calistoga,” and, together with Holdings, Geysers Company and Wild Horse, each a “Guarantor” and together, the “Guarantors”), MUFG BANK, LTD., as administrative agent for the Lenders, MUFG UNION BANK, N.A., as collateral agent for the First Lien Secured Parties, and the financial institutions from time to time parties thereto in such other capacities as described therein (collectively, the “Lenders”).

C. Contracting Party and Assignor have entered into that certain [*Insert description of relevant Major Project Contract(s)*], dated as of [_____] [____], [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

D. As security for Assignor’s obligations under the Credit Agreement and related financing documents with respect to the Loans and related obligations, Assignor has granted, pursuant to a security agreement executed by Assignor and First Lien Collateral Agent (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), to the First Lien Collateral Agent, for the benefit of the First Lien Secured Parties, a first priority lien on all of Assignor’s right, title and interest in the Projects and other rights and interests relating thereto, whenever arising, including, without limitation, the Assigned Agreement and all of Assignor’s right, title and interest under (but not any of Assignor’s obligations, liabilities or duties with respect thereto) the Assigned Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything in the Assigned Agreement to the contrary, as follows:

1. Assignment and Agreement.

1.1 Consent to Assignment. Contracting Party (a) is hereby notified and acknowledges that the Lenders have entered into the Credit Agreement and made the extensions of credit contemplated thereby in reliance upon the execution and delivery by Contracting Party of the Assigned Agreement and this Consent, (b) consents to the collateral assignment under the Security Agreement of all of Assignor’s right, title and interest in, to and under the Assigned Agreement, including, without limitation, all of Assignor’s rights to receive payment and all payments due and to become due to Assignor under or with respect to the Assigned Agreement (collectively, the “Assigned Interests”) and (c) acknowledges the right of First Lien Collateral Agent or a Subsequent Owner (as defined below), upon written notice to Contracting Party (“Step-in Notice”), to make all demands, give all notices, take all actions and exercise all rights of Assignor under the Assigned Agreement. Assignor agrees that (a) Contracting Party may rely, without investigation, on the Step-in Notice being fully authorized and consented to by Assignor with respect to all matters set forth therein, and (b) upon Contracting Party’s receipt of such Step-In Notice, Contracting Party shall deal exclusively with of First Lien Collateral Agent with respect to all matters set forth therein.

1.2 Subsequent Owner. Contracting Party agrees that, if First Lien Collateral Agent notifies Contracting Party in writing that, pursuant to the Security Agreement, it has assigned, foreclosed or sold the Assigned Interests or any portion thereof, then (i) First Lien Collateral Agent or, subject to Article 14 of the Assigned Agreement, its successor, assignee designee, or any purchaser of the Assigned Interests (a “Subsequent Owner”) shall be substituted for Assignor under the Assigned Agreement and (ii)

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Contracting Party shall (1) recognize First Lien Collateral Agent or the Subsequent Owner, as the case may be, as its counterparty under the Assigned Agreement and (2) continue to perform its obligations under the Assigned Agreement in favor of First Lien Collateral Agent or the Subsequent Owner, as the case may be; provided that First Lien Collateral Agent or such Subsequent Owner, as the case may be, has assumed in writing all of Assignor's rights and obligations (including, without limitation, the obligation to cure any then-existing payment and performance defaults, but excluding any obligation to cure any then-existing defaults which by their nature are incapable of being cured) under the Assigned Agreement. Notwithstanding the foregoing, such assignment of rights and interests under this Section 1.2 may be made only to an entity that satisfies the requirements set forth in the definition of Permitted Transferee in the Assigned Agreement.

1.3 Right to Cure. If Assignor defaults in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Contracting Party to terminate or suspend its performance under the Assigned Agreement (each hereinafter a "default"), First Lien Collateral Agent will have the right to cure a default on behalf of Assignor if First Lien Collateral Agent sends a written notice to Contracting Party before the later of (a) the expiration of any cure period, and (b) five (5) Business Days after First Lien Collateral Agent's receipt of notice of such default from Contracting Party, indicating First Lien Collateral Agent's intention to cure. Contracting Party shall not terminate or suspend its performance under the Assigned Agreement until it first gives written notice of such default to First Lien Collateral Agent and, subject to First Lien Collateral Agent having provided the notice set forth in subsection (b) above, affords First Lien Collateral Agent a period of at least thirty (30) days (or if such default is a nonmonetary default, such longer period (not to exceed sixty (60) days) as may be required so long as First Lien Collateral Agent has commenced and is diligently pursuing appropriate action to cure such default) from receipt of such notice to cure such default; provided, however, that (i) if possession of the Projects is necessary to cure such nonmonetary default and First Lien Collateral Agent has commenced foreclosure proceedings, First Lien Collateral Agent shall be allowed a reasonable time to complete such proceedings and effect such cure not to exceed one hundred eighty (180) days without the written consent of Contracting Party, which consent shall not be unreasonably withheld, and (ii) if First Lien Collateral Agent is prohibited from curing any such nonmonetary default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Assignor, then the time periods specified herein for curing a default shall be extended for the period of such prohibition.

Following a default by Assignor under the Assigned Agreement, Contracting Party may require Assignor (or First Lien Collateral Agent, if First Lien Collateral Agent has provided the notice set forth in subsection (b) above) to provide to Contracting Party a report concerning:

- A. The status of efforts by Assignor or First Lien Collateral Agent to develop a plan to cure the default;
- B. Impediments to the cure plan or its development;
- C. If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- D. Any other information which Contracting Party may reasonably require related to the development, implementation and timetable of the cure plan.

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Assignor or First Lien Collateral Agent must provide the report to Contracting Party within fifteen (15) Business Days after written notice from Contracting Party requesting the report. Contracting Party will have no further right to require the report with respect to a particular default after that default has been cured.

1.4 No Amendments.

(a) Except to the extent Assignor is permitted under the Credit Agreement to enter into amendments of the Assigned Agreement, as to which First Lien Collateral Agent agrees Contracting Party may rely solely on Assignor's representation without investigation, Contracting Party agrees that it shall not, without the prior written consent of First Lien Collateral Agent, which consent shall not be unreasonably withheld, enter into any novation, material amendment or other material modification of the Assigned Agreement, (except as contemplated pursuant to Article 14 of the Assigned Agreement).

(b) Contracting Party agrees that it shall not, without the prior written consent of First Lien Collateral Agent, (i) sell, assign or otherwise transfer any of its rights under the Assigned Agreement (except as contemplated pursuant to Article 14 of the Assigned Agreement), (ii) terminate, cancel or suspend its performance under the Assigned Agreement (unless it has given First Lien Collateral Agent notice and an opportunity to cure in accordance with Section 1.3 hereof), (iii) consent to any assignment or other transfer by Assignor of its rights under the Assigned Agreement, or (iv) consent to any voluntary termination, cancellation or suspension of performance by Assignor under the Assigned Agreement.

1.5 Replacement Agreements. In the event the Assigned Agreement is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Assignor, (a) Contracting Party shall, at the option of First Lien Collateral Agent exercised within forty five (45) days after such rejection or termination, enter into a new agreement with First Lien Collateral Agent having identical terms as the Assigned Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that (i) the term under such new agreement shall be no longer than the remaining balance of the term specified in the Assigned Agreement, and (ii) upon execution of such new agreement, First Lien Collateral Agent cures any outstanding payment and performance defaults under the Assigned Agreement, excluding any performance defaults which by their nature are incapable of being cured and (b) if First Lien Collateral Agent or its designee, directly or indirectly, takes possession of, or title to, the Project after any such rejection or termination of the Assigned Agreement, promptly after Contracting Party's written request, First Lien Collateral Agent must itself or must cause its designee to promptly enter into a new agreement with Contracting Party having substantially the same terms as the Assigned Agreement for the remaining term thereof, provided that in the event a designee of First Lien Collateral Agent, directly or indirectly, takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), if such designee is not an entity that meets the definition of Permitted Transferee then such designee shall be subject to the prior written approval of Contracting Party, such approval not to be unreasonably withheld.

1.6 Limitations on Liability. First Lien Collateral Agent and Assignor hereby acknowledge and agree that Contracting Party is authorized to act in accordance with First Lien Collateral Agent's instructions with respect to this Consent and the Assigned Agreement, and that Contracting Party shall bear no liability to First Lien Collateral Agent, Assignor or any other person under this Consent or the Assigned Agreement for acting in accordance with this Consent or with First Lien Collateral Agent's instructions with respect to this Consent and the Assigned Agreement. Contracting Party acknowledges and agrees that First Lien Collateral Agent shall not have any liability or obligation to Contracting Party under the Assigned Agreement as a result of this Consent or otherwise, nor shall First Lien Collateral

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Agent be obligated or required to (a) perform any of Assignor's obligations under the Assigned Agreement, except during any period in which First Lien Collateral Agent has assumed Assignor's rights and obligations under the Assigned Agreement pursuant to Section 1.2 above, or (b) take any action to collect or enforce any claim for payment assigned under the Security Agreement. If First Lien Collateral Agent has assumed Assignor's rights and obligations under the Assigned Agreement pursuant to Section 1.2 above or has entered into a new agreement pursuant to Section 1.5 above, First Lien Collateral Agent's liability to Contracting Party under the Assigned Agreement or such new agreement, and the sole recourse of Contracting Party in seeking enforcement of the obligations under such agreements, shall be limited to the interest of First Lien Collateral Agent in the Project.

1.7 Delivery of Notices. Contracting Party shall deliver to First Lien Collateral Agent, concurrently with the delivery thereof to Assignor, a copy of each notice, request or demand given by Contracting Party to Assignor pursuant to the Assigned Agreement relating to (a) a default by Assignor under the Assigned Agreement, and (b) any matter that would require the consent of First Lien Collateral Agent pursuant to Section 1.4 above.

1.8 Transfer. First Lien Collateral Agent shall have the right to assign all of its interest in the Assigned Agreement or a new agreement entered into pursuant to the terms of this Consent and Article 14 of the Assigned Agreement; provided that such transferee (a) fully assumes in writing the obligations of Assignor or First Lien Collateral Agent, as applicable, under the Assigned Agreement or such new agreement and (b) satisfies the requirements of a Subsequent Owner set forth in Section 1.2 hereof. Upon such assignment, First Lien Collateral Agent shall be released from any further liability under the Assigned Agreement or such new agreement to the extent of the interest assigned.

1.9 Refinancing. [Contracting Party hereby acknowledges that Assignor may, from time to time during the term of the Assigned Agreement, refinance the indebtedness incurred under the Credit Agreement pursuant to another bank financing, an institutional financing, a capital markets financing, a lease financing or any other combination thereof or other form of financing. In connection with any such refinancing, Contracting Party hereby consents to any collateral assignment or other assignment of the Assigned Agreement in connection therewith and agrees that the terms and provisions of this Consent shall apply with respect to such assignment and shall inure to the benefit of the parties providing such refinancing. In furtherance of the foregoing, Contracting Party agrees that (i)(1) references in this Consent to the "First Lien Collateral Agent" and the "First Lien Secured Parties" shall be deemed to be references to the applicable financing parties providing such refinancing, and (2) references in this Consent to the "Credit Agreement" and the "Security Agreement" shall be deemed to be references to the corresponding agreements entered into in connection with such refinancing, and (ii) if requested by Assignor, it shall enter into a new consent, substantially in the form of this Consent, in favor of the parties providing such refinancing.]¹

2. Payments under the Assigned Agreement.

2.1 Payments. Contracting Party shall pay all amounts (if any) payable by it under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly into the account specified on Exhibit A hereto, or to such other person, entity or account as shall be specified from time to time by First Lien Collateral Agent to Contracting Party in writing. Notwithstanding the foregoing, if any entity or person has become a Subsequent Owner pursuant to the terms hereof, then Contracting Party shall pay all such amounts directly to such Subsequent Owner or an account designated by Subsequent Owner.

2.2 No Offset, Etc. All payments required to be made by Contracting Party under the

¹ This Section 1.9 to be included at Borrower's election and with such changes as Borrower may reasonably request.

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Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than those allowed by the terms of the Assigned Agreement.

3. Representations and Warranties of Contracting Party. Contracting Party hereby represents and warrants, in favor of First Lien Collateral Agent, as of the date hereof, that:

(a) Contracting Party (i) is a joint powers authority and community choice aggregator, duly organized and validly existing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under the Assigned Agreement and this Consent, and (iii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance by Contracting Party of this Consent and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of Contracting Party and do not require any approvals, filings with, or consents of any entity or person which have not previously been obtained or made;

(c) each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of Contracting Party by the appropriate officers of Contracting Party, and constitutes the legal, valid and binding obligation of Contracting Party, enforceable against Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(d) there is no litigation, action, suit, proceeding or investigation pending or (to Contracting Party's actual knowledge) threatened against Contracting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by Contracting Party of its obligations hereunder or under the Assigned Agreement, or which could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made, (ii) could have a material adverse effect on the condition (financial or otherwise), business or operations of Contracting Party, or (iii) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby;

(e) the execution, delivery and performance by Contracting Party of this Consent and the Assigned Agreement, and the consummation of the transactions contemplated hereby and thereby, will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, injunction, order, law, rule or regulation applicable to it, other than any such violation, breach or default which could not reasonably be expected to have a material adverse effect on Contracting Party's ability to perform its obligations under the Assigned Agreement;

(f) neither Contracting Party nor, to Contracting Party's actual knowledge without investigation, any other party to the Assigned Agreement, is in default of any of its obligations thereunder;

(g) to Contracting Party's actual knowledge, and without investigation with respect to matters pertaining to Assignor, (i) no event of force majeure exists under, and as defined in, the

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Assigned Agreement, and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Contracting Party or Assignor to terminate or suspend its obligations under the Assigned Agreement; and

(h) the Assigned Agreement and this Consent are the only agreements between Assignor and Contracting Party with respect to the Project.

Each of the representations and warranties set forth in this Section 3 shall survive the execution and delivery of this Consent and the Assigned Agreement for a period of one year from the date hereof.

4. Miscellaneous.

4.1 Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Assignor:

Geysers Power Company, LLC,
717 Texas Avenue, Suite 11.043C
Houston, Texas 77002
Telephone: (832) 325-1581
Facsimile: (832) 325-1582
Attn: Chief Legal Officer

If to Contracting Party:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Attn: Contract Administration
Phone: (415) 464-6010
Email: Procurement@mcccleanenergy.org

If to First Lien Collateral Agent:

MUFG Union Bank, N.A.,
350 California Street, 17th Floor
San Francisco, CA 94104
Attention: Corporate Trust
Email: SFCT@unionbank.com,
Cc: sonia.flores@unionbank.com

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, DHL and other similar overnight delivery services), (c) in the event overnight delivery services are not readily available, if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by prepaid telegram or by facsimile or (e) if sent by other electronic means (including electronic mail) confirmed by any means in which a notice or other communications may be provided hereunder (including electronic mail). Any party may change its address for notice hereunder by giving of thirty (30) days' notice to the other parties in the manner set forth hereinabove.

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4.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

(b) Any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California located in San Francisco or the courts of the United States of America for the Northern District of California located in San Francisco, and, by execution and delivery of this Consent, Contracting Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Contracting Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart to this Consent by facsimile or "pdf" transmission shall be as effective as delivery of a manually signed original.

4.4 Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

4.5 Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

4.6 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Contracting Party and First Lien Collateral Agent.

4.7 Successors and Assigns. This Consent shall bind and benefit Contracting Party, First Lien Collateral Agent, and their respective successors and assigns.

4.8 Third Party Beneficiaries. Contracting Party and First Lien Collateral Agent hereby acknowledge and agree that the First Lien Secured Parties are intended third party beneficiaries of this Consent.

4.9 WAIVER OF TRIAL BY JURY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTING PARTY, ASSIGNOR AND COLLATERAL AGENT HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER.

4.10 Entire Agreement. This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings between the parties hereto in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this

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Consent and any such agreement, document or instrument (including, without limitation, the Assigned Agreement), the terms, conditions and provisions of this Consent shall prevail.

4.11 Termination of Consent. This Consent shall terminate upon the earliest to occur of (a) the termination or cancellation of the Assigned Agreement in accordance with its terms and in accordance with the terms of this Consent (it being understood that this Consent shall not terminate but shall remain in effect in the circumstances described in Section 1.5 above in respect of any new agreement entered into in accordance with such Section), (b) the expiration of the term of the Assigned Agreement and (c) the termination of the Security Agreement in accordance with its terms.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

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IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Consent and Agreement to be duly executed and delivered as of the date first above written.

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company,
as Assignor

By: _____
Name:
Title:

Marin Clean Energy
a California joint powers authority,
as Contracting Party

By: _____
Name:
Title:

Accepted and Agreed to:

MUFG UNION BANK, N.A.,
solely in its capacity as First Lien Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

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EXHIBIT A to
Consent and Agreement
PAYMENT INSTRUCTIONS

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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EXHIBIT G

PERFORMANCE SECURITY AMOUNT

Timing for Posting	Security Amount
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

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EXHIBIT H

COMMUNITY BENEFIT

Seller commits to spend [REDACTED] to improve the communities located around the Geysers geothermal facilities in Lake and Sonoma Counties. In consultation with the MCE program team, Seller will select local organization(s) to which the [REDACTED] will be allocated. The primary focus of this funding will be community improvement, through the funding of third party organization(s) that are located in and around the Geysers community or doing work that impacts neighboring communities. Seller and Buyer will work collaboratively to develop a specific plan, timeline, and public announcement in connection with this funding.



December 15, 2022

TO: MCE Board of Directors

FROM: Lindsay Saxby, Director of Power Resources

RE: Power Purchase Agreement with Geysers Power Company LLC
(Agenda Item #07)

ATTACHMENT: Power Purchase Agreement with Geysers Power Company LLC

Dear Board Members:

Background:

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

1. To meet Integrated Resource Planning (IRP) targets for renewable energy and energy storage
2. Adding Resource Adequacy (RA) supply to MCE's portfolio
3. Adding resources that would fulfill the Mid Term Reliability (MTR) obligations as outlined in the California Public Utilities Commission (CPUC) decision D.21-06-035.

As a result of the solicitation, staff received an offer from Geysers Power Company LLC (The Geysers) for bundled renewable energy and RA from an existing geothermal energy plant that will be adding new capacity in 2025. The proposed facility would satisfy the remaining open position of MCE's MTR procurement obligation.

Summary:

The Geysers is an existing geothermal energy facility located on 45 square miles of land in Lake and Sonoma counties. The parent company, Calpine, has built the world's largest complex of power plants at The Geysers, with a total generating capacity of 725 megawatts (MW). As a result of drilling additional wells and building a

new collection system on adjacent land, the generating capacity of the existing facility will be increased by 25 MW. A 7MW portion of this new incremental capacity would fill the remaining open position required for MCE's MTR compliance.

Staff negotiated the attached draft Power Purchase Agreement (PPA) for the purchase of bundled renewable energy and RA capacity from the project. The agreement outlines the terms for the guaranteed delivery of 7 megawatts (MW) from the installation. In addition to contributing to MCE's MTR compliance obligation, the contract would make a valuable addition to MCE's energy and RA portfolio.

Rationale:

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

- Energy and RA capacity produced by the facility would complement MCE's existing portfolio of resources
- The project type, size, specifications, and commercial operation date fit the requirements detailed in the CPUC MTR mandated procurement order
- The additional capacity is being developed and will be operated by an experienced team, which is currently supplying bundled energy and RA to load serving entities including Sonoma Clean Power, Clean Power SF, Pioneer Community Energy, PG&E and SCE.

Additional Information:

Calpine

- Headquartered in Houston, Texas with 2,256 full-time employees
- Founded in 1984, Calpine is the largest generator of electricity from natural gas and geothermal resources in the United States
- Calpine owns and operates 76 facilities in 22 states, Canada and Mexico with an aggregate capacity of 26,000 MW (enough to power approximately 20 million homes)
- Calpine Corporation is owned by a consortium of investors that is led by Energy Capital Partners (ECP) and includes Access Industries and the Canada Pension Plan Investment Board

Contract Overview

- Project: 7 MW of a 725 MW geothermal generation facility
- Contracted resources: Bundled renewable energy and RA
- Price: Fixed with no escalation for the Delivery Term
- Project location: Lake and Sonoma Counties, California
- Guaranteed commercial operation date: June 1, 2025
- Contract term: 20 contract years
- Credit: No credit or collateral obligations for MCE

- Union labor requirement: Union contractors are required for all on-site construction trades
- Community Benefit Package: Seller pledges to contribute Fifty Thousand Dollars (\$50,000) to community benefit initiatives that directly benefit stakeholders in communities adjacent to the project location. MCE and Seller will identify initiatives that are of mutual interest such as workforce training, environmental stewardship/habitat improvement, education, and renewable energy projects.

Fiscal Impacts:

There would be no impact on the Fiscal Year 2022/23 budget. Incremental costs will be accounted for starting in FY 2025/26.

Recommendation:

Authorize execution of the Power Purchase Agreement with Geysers Power Company LLC for supply of bundled renewable energy and RA.

Approval Version

RENEWABLE POWER PURCHASE AGREEMENT COVER SHEET

Seller: Geysers Power Company, LLC (“**Seller**”)

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


Description of Facility: 7 MW of guaranteed capacity from a 25 MW expansion of the existing Geysers geothermal electricity generating facilities located in Sonoma County and Lake County, California, as further described in Exhibit A.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	N/A
CEC Pre-Certification Obtained	Completed
Documentation of Conditional Use Permit if required: [] CEQA, [] Cat Ex, [] Neg Dec, [X] Mitigated Neg Dec, [] EIR	Completed
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	Completed
Executed Interconnection Agreement	Completed
Expected Drilling Start Date	June 1, 2024
Full Capacity Deliverability Status	Completed
Initial Synchronization	N/A
Network Upgrades Completed	N/A
Expected Commercial Operation Date	June 1, 2025

Delivery Term: Twenty (20) Contract Years.

Expected Energy:

Contract Years	Expected Energy
1 - 20	

Guaranteed Capacity: 7 MW_{AC}

Contract Price: The Contract Price for the Facility Energy and Green Attributes of the Product shall be:

Contract Years	Contract Price
1 - 20	

Product:

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1) associated with Facility Energy
- ☒ Capacity Attributes

RA Rate:

Contract Year	RA Rate (\$/kW-mo.)
1 – 20	

Monthly RA Payment: RA Rate x Guaranteed Capacity x 1,000 =

Scheduling Coordinator: Seller/Seller Agent

Development Security and Performance Security:

Development Security:

Performance Security:

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of _____, 2022 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.11.

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

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

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

“**Available Generating Capacity**” means the capacity of the Facility, expressed in whole MWs, that is mechanically available to generate Energy as set forth in Exhibit F-2.

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), or (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.

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

“Buyer” means Marin Clean Energy, a California joint powers authority.

“Buyer Default” means an Event of Default of Buyer.

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

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

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

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

“CAISO Operating Order” means the “operating order” defined in Section 37.2.1.1 of the CAISO Tariff.

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

“California Renewables Portfolio Standard” or **“RPS”** means the renewables portfolio standard program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and 100 (2018) as codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.31 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time, and as administered by the CEC as set forth in the CEC RPS Eligibility Guidebook (9th Ed.), as may be subsequently modified by the CEC, and the CPUC as set forth in CPUC Decision (“D”) 08-08-028, D.08-04-009, D.10-03-021, D.11-01-025, D.11-12-020, D.11-12-052, D.12-06-038, D.13-11-042, D.14-12-023, D.17-06-026, and D.19-02-007, and as may be modified by

subsequent decision of the CPUC or by subsequent legislation, and regulations promulgated with respect thereto.

“Capacity Attribute” means any defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the Delivery Point at a particular moment and that can be purchased and sold or conveyed under the CAISO Tariff and the Resource Adequacy Rulings, including Resource Adequacy Benefits. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, and any Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.8 that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

“CEQA” means the California Environmental Quality Act.

“Change in Law” means the occurrence, after the Effective Date, of any of the following: (a) the adoption or taking effect of any Law; (b) any change in any Law or in the administration, interpretation or application thereof by any Governmental Authority; or (c) the making or issuance of any request, guideline or directive (whether or not having the force of law) by any Governmental Authority. For greater clarity, a Change in Law shall include (i) any change to a Resource Adequacy Ruling, (ii) any order, decision, resolution, rule, regulation, guidance document, or other determination of the CPUC, (iii) any change in the CAISO Tariff or any document included in the definition thereof whether or not approved by FERC, and (iv) any state or federal order issued by a Governmental Authority that impacts Seller’s construction or operation of the Facility.

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

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent’s ownership interest in

Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity or entities; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity and tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

“Claim” has the meaning set forth in Section 16.2.

“COD Certificate” has the meaning set forth in Exhibit B.

“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 [REDACTED]

“Compliance Actions” has the meaning set forth in Section 3.11.

“Compliance Costs” has the meaning set forth in Section 3.11.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.11.

“Confidential Information” has the meaning set forth in Section 18.1.

“Contract Price” has the meaning set forth on the Cover Sheet, as the same may be reduced pursuant to Section 3.4.

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

“Contract Year” means a period of twelve (12) consecutive months beginning on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, commercially reasonable and documented 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, including if Buyer is the Non-Defaulting Party, with respect to Buyer’s procurement requirements under CPUC D.21-06-035; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“CPM Soft Offer Cap” has the meaning set forth in the CAISO Tariff.

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

“CPUC Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings” or **“CPUC Filing Guide”** means the document issued annually by the CPUC that sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program as set forth in the Resource Adequacy Rulings.

“CPUC System RA Penalty” has the meaning set forth in the Resource Adequacy Rulings.

“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.

“Curtailement Order” means any of the following:

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

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

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

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

“Curtailement Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailement Order; provided that the Curtailement Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Damage Payment” means [REDACTED]

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

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

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

“Delay Damages” means Commercial Operation Delay Damages.

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

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

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

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

“Disclosing Party” has the meaning set forth in Section 18.2.

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

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

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Facility Energy to the Delivery Point.

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

“Energy” means alternating current electrical energy measured in MWh.

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

“Excess Energy” has the meaning set forth in Exhibit C.

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

“Expected Energy” means the quantity of Energy that Seller expects to be able to deliver from the Facility during each Contract Year in the quantity specified on the Cover Sheet.

“**Facility**” means a 7 MW portion of a 25 MW expansion of the generating capacity of the existing Geysers geothermal electricity generating facilities located in Sonoma County and Lake County, California, as further described in Exhibit A.

“**Facility Energy**” means for each hour the as-available electric energy generated by and metered from the Facility, which is net of Electrical Losses and Station Use and delivered to the Delivery Point on Buyer’s behalf, as measured by the Facility Meters, and not to exceed (a) 7 MWh in any hour or (b) the amount of Energy specified in the IST for the applicable Settlement Period.

“**Facility Meter(s)**” means the CAISO Approved Meters that will measure all electric energy generated by the Facility, including Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meters may be located at the low voltage or the high voltage side of the main step up transformer, and Facility Energy will be subject to adjustment in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

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

“**Firm Clean Resource**” means a resource that meets the requirements of CPUC D.21-06-035, Ordering Paragraphs 2(b) and 5, and any other applicable requirements of CPUC D.21-06-035 as such decision has been interpreted by the CPUC in public guidance documents or other public communications issued prior to the Effective Date, including that such resource (i) is able to deliver firm power with a capacity factor of at least eighty percent (80%), (ii) is not subject to use limitations or weather dependent, (iii) is a generating resource, not storage, able to generate when needed, for as long as needed, (iv) has zero on-site emissions or otherwise qualifies under the California Renewables Portfolio Standard (RPS) program eligibility rules as a PCC-1 resource, (v) is incremental to the CPUC’s baseline generator list, and (vi) is a Resource Adequacy Resource that is eligible to provide RA Capacity as set forth in the Resource Adequacy Rulings issued prior to the Effective Date.

“**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 that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event or a System Emergency.

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

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

“**Future Environmental Attributes**” shall mean any and all emissions, air quality or other environmental attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements,

reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) investment tax credits or production tax credits associated with the construction or operation of the Facility, (iii) tax benefits, credits or offsets associated with the development of a federal carbon tax or (iv) other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to 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 include the value of Green Attributes and Capacity Attributes.

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

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

“Guaranteed Capacity” is set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 3 of Exhibit B.

“Guaranteed Commercial Operation Date” means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period pursuant to Section 2 of Exhibit B.

“Guaranteed Energy Production” means [REDACTED] of the total Expected Energy, measured in MWh, for the applicable Performance Measurement Period.

“Guaranteed RA Amount” is equal to [REDACTED]

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

“Indemnifiable Loss(es)” has the meaning set forth in Section 16.1(a).

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

“Installed Capacity” means the actual generating capacity of the Facility, as measured in MW(AC) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto, as such capacity may be adjusted.

“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 (or

Participating Transmission Owner's distribution system, as applicable) in accordance with the Interconnection Agreement.

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

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

"ITC" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

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

"Joint Powers Agreement" means that certain Joint Powers Agreement dated December 19, 2008, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"Law" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, permit or any interpretation thereof, promulgated or issued by a Governmental Authority, and includes the CAISO Tariff.

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

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

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

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

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

"Losses" means, with respect to 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., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

“Lost Output” has the meaning set forth in Section 4.7.

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

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

“MW” means megawatts in alternating current, unless expressly stated in terms of direct current.

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

“Monthly RA Payment” is set forth on the Cover Sheet, as the same may be reduced pursuant to Section 3.4.

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

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

“New Facility Incentives” has the meaning set forth in Section 3.4.

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

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

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

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

“Notice of Claim” has the meaning set forth in Section 16.2.

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

“**Operating Restrictions**” means those rules, requirements, and procedures set forth on Exhibit O.

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

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

“**Performance Measurement Period**” means each Contract Year during the Delivery Term; provided, that the Performance Measurement Period shall begin on the first 12-month Contract Year, and if the last Contract Year is less than 12 months, Guaranteed Energy Production shall be determined on a pro-rated basis.

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

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

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

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

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

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

“**PMAX**” means the applicable CAISO-certified maximum operating level of the Facility.

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

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

“**Portfolio Content Category 1**” or “**PCC1**” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1)

and California Public Utilities Commission Decision 11-12-052, as may be amended from time to time or as further defined or supplemented by Law.

“Pre-COD Product” means, during the time period between the Drilling Start Date and the Commercial Operation Date, incremental bundled geothermal energy made available from the Facility as the result of the construction of new steam field wells which includes (a) Facility Energy, (b) all associated Green Attributes, and (c) all associated Capacity Attributes.

“Pre-COD Product Rate” has the meaning set forth on the Cover Sheet.

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

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

“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale geothermal generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgement in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale geothermal generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, and applicable safety and reliability criteria.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

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

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

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

“RA Guarantee Date” means the Commercial Operation Date.

“RA Rate” is set forth on the Cover Sheet, as the same may be reduced pursuant to Section 3.4.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8, any Showing Month during which there is an RA Shortfall.

“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) and CPUC D.08-08-028, as may be amended or supplemented from time to time or as further defined or supplemented by Law, is evidenced by a WREGIS Certificate, and is equivalent to one (1) MWh of energy from the Facility which shall be qualified and certified as an ERR.

“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; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which an RA Deficiency Amount is due to Buyer, including compliance with all applicable requirements of CPUC D.21-06-035, and from a resource located within NP 15 or SP 15 and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, located within the same Local Capacity Area as the Facility.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility and associated with the Guaranteed Capacity that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes.

“Resource Adequacy Requirements” or **“RAR”** means the resource adequacy requirements applicable to a load serving entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, 15-06-063, 16-06-045, 17-06-027, 19-02-022, 19-06-026, 19-10-021, 20-06-002, 20-06-028, 20-06-31, 20-12-006, 21-06-035, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide for System, Local and Flexible Resource Adequacy (RA) Compliance Filings, in each case as may be amended from time to time by the CPUC, and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

“Station Use” means:

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

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

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

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

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

"Tax Credit Percentage" means the tax credit percentage, applicable to property eligible under Inflation Reduction Act of 2022 (or any similar successor legislation) for which Seller, as the owner of the Facility, is eligible.

"Technology Factor" means the then-applicable monthly percentage published by the CPUC and used to establish Qualifying Capacity for non-dispatchable geothermal resources that have less than three (3) years of historical production and bidding data. The Parties acknowledge and agree that the Technology Factors vary from year to year and month to month.

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

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

"Transmission Provider" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer on the Transmission System.

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

"Ultimate Parent" means [REDACTED]

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

"WREGIS Certificate Deficit" has the meaning set forth in Section 4.8(e).

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

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

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

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

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

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

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

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

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

(g) the terms “include” and “including” means “include or including without limitation” (as applicable) and any list of examples following such term shall in no way restrict or limit the generality of the word 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.

ARTICLE 2

TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

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

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes each of the following conditions, provided, that Buyer may waive any condition precedent in writing and in its sole discretion:

(a) Seller has delivered to Buyer (i) a completion certificate from an officer of Seller substantially in the form of Exhibit H and (ii) a certificate from an officer of Seller substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of such agreements delivered to any Governmental Authority that has specifically requested a copy;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of such agreement delivered to any Governmental Authority that has specifically requested a copy;

(d) All required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and shall be in full force and effect, and all material conditions thereof that are required to be satisfied as of the Commercial Operation Date have been satisfied;

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

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(g) Seller has provided Buyer with a copy of written notice from CAISO supporting Commercial Operation, if any, and Seller has obtained all necessary approvals from CAISO to operate the Facility in accordance with the CAISO Tariff;

(h) Seller has obtained Full Capacity Deliverability Status for the Guaranteed Capacity;

(i) Seller shall have the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility;

(j) Seller (or its Affiliate, if a sharing arrangement permitted by this Agreement is in effect) has obtained all real property rights, including Site Control, required for the operation of the Facility during the Delivery Term, and Seller has provided evidence of such rights to Buyer;

(k) Insurance requirements for the Facility pursuant to Article 17 have been met;

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

(m) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Commercial Operation Delay Damages, in each case, if any and to the extent owed.

2.3 **Progress Reports.** Following the Effective Date, within fifteen (15) days after the close of each calendar month from the first calendar month following the Expected Construction Start Date until the Commercial Operation Date, Seller shall provide a Progress Report to Buyer until the Commercial Operation Date. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10)

Business Days of receipt of such request by Seller. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

ARTICLE 3 PURCHASE AND SALE

3.1 Purchase and Sale of Product.

(a) Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all the Product produced by or associated with the Guaranteed Capacity at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Guaranteed Capacity (net of applicable losses). Subject to the Operating Restrictions, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall increase Seller's obligations or relieve Buyer of any obligations hereunder. During the Delivery Term, subject to and without limiting Seller's right to retain CAISO revenues as described in Exhibit D, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, purchased hereunder from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

(b) During the Delivery Term, Buyer shall make the Monthly RA Payment to Seller, in arrears, after the applicable Showing Month, in accordance with Article 8; *provided*, any RA Deficiency Amount for the applicable Showing Month owed pursuant to Section 3.8 shall be applied as a credit to Buyer against the Monthly RA Payment otherwise owing.

(c) Prior to the Commercial Operation Date, Seller shall notify Buyer of the availability of the Pre-COD Product. If and to the extent the Facility generates Pre-COD Product prior to the Commercial Operation Date, Seller may sell and Buyer shall purchase from Seller all Pre-COD Product on an as-available basis. As compensation for such Pre-COD Product, Buyer shall pay Seller the Pre-COD Product Rate. The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.1; provided that all Capacity Attributes associated with the Pre-COD Product must meet the requirements of Section 3.7 and all Green Attributes associated with the Pre-COD Product must meet the requirements of Sections 3.9 and 3.10.

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

3.3 Imbalance Energy. For the avoidance of doubt, any payments or charges related to such Imbalance Energy shall be for the account of Seller.

3.4 Ownership of Renewable Energy Incentives. Seller shall have all right, title and

interest in and to all Renewable Energy Incentives; provided, the *Inflation Reduction Act of 2022* (or any similar successor legislation) provides additional financial incentives for which the Facility is eligible (“**New Facility Incentives**”), then Seller shall use commercially reasonable efforts to cause the New Facility Incentives to be available for Seller’s capital expenditures associated with the construction of new steam field wells and a gathering system for the Guaranteed Capacity, and if Seller realizes any economic or monetary benefit from the New Facility Incentives with respect to the Facility in the form of a Tax Credit Percentage of [REDACTED] or more on Seller’s capital expenditures associated with the construction of new steam field wells and a gathering system for the Guaranteed Capacity (“**Economic Benefit**”), upon Seller’s realization of any such Economic Benefit, the Contract Price [REDACTED]

(a) with immediate effect, if the Economic Benefit is realized on or before the Delivery Term Start Date; or

(b) effective as of the first day of the first full month after realization, if the Economic Benefit is realized after the Delivery Term Start Date.

For purposes of determining when an Economic Benefit is realized under this Section 3.4, realization will have been deemed to have occurred upon the earliest occurrence of any of the following: (i) the closing of any Tax Equity Financing by Seller, Seller’s Ultimate Parent or any Seller’s Affiliate, (ii) the transfer of any income tax credits generated as a result of the *Inflation Reduction Act of 2022* (or any similar successor legislation), (iii) the claiming of any income tax credits on the federal income tax return (on the date such return is filed) of Seller, or (iv) the date upon which Seller realizes an Economic Benefit not otherwise listed in this Section 3.4.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Any such Future Environmental Attributes shall be limited to only those environmental attributes relating to the Guaranteed Capacity that Buyer will receive under this Agreement. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.11, in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation or reduction.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.11); *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement. Seller shall not have any obligation to secure or transfer such Future Environmental Benefits until such matters have been agreed.

3.6 **Change in Market Structure.** If a change in market structure renders the Agreement or any provisions thereof incapable of being performed or administered, then either Party may request that the other Party enter into negotiations with the requesting party to make the minimum changes to the Agreement necessary to make the Agreement capable of being performed and administered, while attempting to preserve, to the maximum extent possible, the benefits, burdens, and obligations set forth in the Agreement as of the Effective Date, provided that to the extent the CPUC modifies or eliminates the CPUC Mid-Term Reliability Requirements, Buyer shall not have any right to terminate this Agreement and there shall be no changes to the pricing under this Agreement.

3.7 **Capacity Attributes.**

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

(b) Seller hereby covenants and agrees to transfer all of the Resource Adequacy Benefits and other Capacity Attributes of the Facility to Buyer.

(c) During each month of the Delivery Term, Seller shall deliver the Capacity Attributes to Buyer by submitting a Monthly Supply Plan to CAISO identifying and confirming the Resource Adequacy Capacity associated with the Capacity Attributes to Buyer (or Buyer's designee).

(d) If CAISO rejects either the Annual Supply Plan, Monthly Supply Plan or Resource Adequacy Plan with respect to any part of the Capacity Attributes during the Delivery Term, Buyer and Seller will confer, make such corrections as are necessary for acceptance and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline.

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

3.8 **Resource Adequacy Failure.**

(a) **RA Deficiency Determination.** For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in

each case, as a remedy for the Capacity Attributes Seller failed to convey to Buyer; provided that Seller shall not owe liquidated damages and there shall be no change to the payments owed by Buyer for any reductions to the Capacity Attributes solely as the result of the implementation of Effective Load Carrying Capability (“ELCC”), unforced capacity (“UCAP”), or any similar regulatory adjustments.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the sum of (i) the CPUC System RA Penalty for such month actually incurred by Buyer (which, for the avoidance of doubt, shall be zero (0) if Buyer does not incur any CPUC System RA Penalty), plus (ii) the product of (x) the RA Shortfall Amount multiplied by (y) the CPM Soft Offer Cap; provided that, if Buyer procures replacement for the Product not provided by Seller, Buyer may recover, in lieu of such damages, the cost of replacement for the Product not provided by Seller and procured by Buyer. The RA Shortfall Amount is the difference, expressed in kW of (A) the then-applicable Guaranteed RA Amount for such month, minus (B) the then-applicable Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual RA Plan to the CAISO and CPUC and counted as System Resource Adequacy Benefits and, if applicable, Local Resource Adequacy (the “**RA Shortfall Amount**”); *provided* that Seller may, as an alternative to paying RA Deficiency Amounts, deliver Replacement RA to Buyer in an amount equal to all or a portion of the RA Shortfall Amount, provided that (1) any Replacement RA that Seller provides from a facility that is not part of the Geysers geothermal facilities must be communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least twenty (20) Business Days before the compliance showing deadline for the applicable CPUC Showing Month, and (2) any Replacement RA that Seller provides from a Geysers geothermal facility must be communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least ten (10) Business Days before the compliance showing deadline for the applicable CPUC Showing Month.

(c) 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 current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, which deadline will be extended on a day-for-day basis if there is a delay in CEC Certification and Verification and that delay is caused by any reason other than an act or omission of Seller, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

3.9 CPUC Mid-Term Reliability Requirements.

(a) Seller acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental capacity pursuant to CPUC D.21-06-035.

Seller represents and warrants to Buyer that commencing on the Commercial Operation Date and continuing throughout the Contract Term:

(i) The Product includes the exclusive right to claim the Guaranteed Capacity of the Facility as an incremental resource for purposes of CPUC D.21-06-035;

(ii) Seller has not and will not sell, assign or transfer the right to claim the output of the Facility as an incremental resource for purposes of CPUC D.21-06-035 to any other person or entity; and

(iii) Seller will reasonably cooperate with Buyer to ensure Buyer can use the Product to meet the procurement mandates set forth in CPUC D.21-06-035.

(b) Seller further acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental Firm Clean Resource capacity pursuant to CPUC D.21-06-035, Ordering Paragraphs 2(b) and 5. In accordance with such requirements, and any other applicable requirements of CPUC D.21-06-035 as of the Effective Date, Seller represents that the Facility shall meet the following requirements, subject to the terms of this Agreement as of the Commercial Operation Date:

(i) The Facility shall be incremental to the CPUC's baseline generator list;

(ii) The Facility shall have zero on-site emissions or otherwise be eligible under the Renewables Portfolio Standard Program as a PCC1 resource;

(iii) The Facility shall have a capacity factor of at least [REDACTED];

(iv) The Facility shall be designed to be capable of delivery every day, year-round;

(v) The Facility shall not be use-limited;

(vi) The Facility shall not be weather dependent;

(vii) The Facility is a generating resource, not storage, able to generate when needed, for as long as needed; and

(viii) The Facility shall be eligible to provide RA capacity as set forth in the Resource Adequacy Rulings issued prior to the Effective Date.

(c) In furtherance of Buyer's compliance and reporting obligations related to the foregoing, and without limiting Seller's obligations under any other provision of this Agreement, Seller agrees to provide documentation reasonably requested by Buyer in connection with such compliance obligations (subject to redaction of commercially sensitive information), including but not limited to the following:

(i) Evidence of interconnection, site control, notice to proceed with construction, and other evidence of progress towards Commercial Operation; and

(ii) Any other engineering assessments, contractual support, or relevant information required or requested by the CPUC pursuant to CPUC D.21-06-035.

3.10 **Non-Modifiable Standard Terms and Conditions.**

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

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

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

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

3.11 **Compliance Expenditure Cap.**

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and Capacity Attributes to meet various compliance requirements, and that this Agreement is being used by Buyer to comply with mandatory procurement obligations of the CPUC including but not limited to CPUC D.21-06-035, and that Governmental Authorities, including the CEC, CPUC, CAISO and WREGIS, may undertake actions from time to time to implement a Change in Law. Seller agrees to use commercially reasonable efforts to cooperate with Buyer with respect to any subsequently requested changes, modifications, or amendments to

this Agreement needed to satisfy requirements of Governmental Authorities associated with Changes in Law, including changes, modifications, or amendments to this Agreement to: (i) amend the Agreement to reflect any mandatory contractual language required by Governmental Authorities, including changes to the definition of Green Attributes and Capacity Attributes, or as may be required pursuant to CPUC D.21-06-035; (ii) require submission of any reports, data, or other information required by Governmental Authorities; (iii) provide additional documentation or information to respond to data requests from the CPUC or other Governmental Authorities; (iv) satisfy new compliance requirements of Governmental Authorities; or (v) take any other commercially reasonable actions that may be requested by Buyer to assure that the Generating Facility is an Eligible Renewable Energy Resource under the California Renewables Portfolio Standard, that the Facility is eligible for and can provide Capacity Attributes to Buyer and that the Facility is intended to qualify under the Mid-Term Reliability Requirements; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller's rights, benefits, risks and/or obligations under this Agreement.

(b) If a Change in Law occurring after the Effective Date has increased Seller's known or reasonably expected costs and expenses to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product (any action required to be taken by Seller to comply with such change in Law, a "**Compliance Action**"), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all such Compliance Actions shall be capped at [REDACTED] (the "**Compliance Expenditure Cap**"). Seller's internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.

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

(d) Buyer will have forty-five (45) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap, as applicable (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.11 within forty-five (45) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, the Compliance Actions that are the subject of the Notice for the remainder of the Term.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the

Compliance Actions, not to exceed the Accepted Compliance Costs, within thirty (30) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with all applicable CAISO requirements. Seller retains all rights to the Facility and to use and dispose of Product before and after the Delivery Term. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility's operations. Buyer will be responsible for paying or satisfying any such costs or charges imposed in connection with Facility Energy at and after the Delivery Point. The Facility Energy will be scheduled to the CAISO by Seller (or Seller's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to and purchased by Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Facility Energy and has not sold the Green Attributes to any other person or entity, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

4.2 **Title and Risk of Loss.**

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

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

4.3 **Forecasting.** Seller shall comply with all forecasting obligations under the CAISO Tariff that may be applicable to the Facility (if any), including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Scheduling of Energy.** The amount of Energy scheduled with Buyer in accordance with this Section 4.4 shall be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator) to Buyer on a Day-Ahead basis using an Inter-SC Trade, as set forth in Exhibit D.

4.5 **Station Use.** Buyer has no responsibility for payment of any amounts associated with Station Use.

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

(a) **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.

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

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

(d) **Buyer Default.** Seller shall be permitted to reduce deliveries of Product during any period in which there is Buyer Default.

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

Notwithstanding anything in this Section 4.6 to the contrary, any reduction in delivery of Product pursuant to this Section 4.6 shall be applied equally across each of the 24 hours in the applicable Settlement Period, and shall not reduce the delivery of Facility Energy by more than Buyer's pro rata share.

4.7 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each 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, System Emergency, Buyer's Default or other failure to perform, and Curtailment Periods occurring during such Performance Measurement Period (the "**Lost Output**"). Solely for purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to the Facility Energy, Seller shall be deemed to have delivered to Buyer the Lost Output. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; *provided*, Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at NP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

4.8 **WREGIS.** Seller shall, at its sole cost and expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes

of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS reporting protocols and the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied its warranty under Section 3.10(c) to the extent Seller fulfills its obligations under Section 4.8(a) through (f). In addition:

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

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

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

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

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy invoiced by Seller to Buyer for the same calendar month (taking into account the timing of WREGIS' issuance of WREGIS Certificates in the normal course) ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any error or omission by Seller, then the amount of Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Product (as defined in Exhibit G) delivered to NP

15 EZ Gen Hub as Scheduled Energy within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

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

4.9 **Reserved.**

4.10 **Interconnection Capacity.** Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System. Seller shall ensure that throughout the Delivery Term that (a) the Facility will have and maintain interconnection capacity available or allocable to the Facility under the Interconnection Agreement that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under the Interconnection Agreement to interconnect the Facility with the CAISO Grid and to allow Buyer to dispatch the Facility in accordance with the CAISO Tariff and as contemplated under this Agreement, including with respect to Resource Adequacy. Buyer shall be entitled to all rights and benefits associated with the Dedicated Interconnection Capacity, including any associated deliverability rights. Seller shall hold Buyer harmless from any reasonable and documented costs incurred by Buyer from CAISO or under the Agreement resulting from Seller's inability to provide interconnection capacity in the amount of the Guaranteed Capacity.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to the Delivery Point at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to the Delivery Point and purchase by Buyer of Product that are imposed on Product at and after delivery to the Delivery Point at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the Effective Date or Seller's request, as the case may be. 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 commercially reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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 actions required by applicable Law and Prudent Electrical Practices to prevent such damage or injury. If such circumstance could materially impact Seller's obligations to deliver Product pursuant to this Agreement, Seller shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to Buyer.

ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meters. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meters shall be programmed to adjust for Electrical Losses from the Facility to the Delivery Point. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer.

7.2 **Meter Verification.** If Seller has reason to believe there may be a meter malfunction, Seller shall test the meter. In addition, upon Buyer's reasonable request, Seller shall test the meter on an annual basis. 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 by more than one percent (1%), 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 so long as such adjustments are accepted by CAISO and

WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than ten (10) days after the end of the prior monthly delivery period. Each invoice shall reflect records of metered data, including CAISO metering and transaction data, to the extent available, sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Facility Energy produced by the Facility as read by the Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Facility Energy, Pre-COD Product, Lost Output, Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C (such amounts, the “**Monthly Product Payments**”). Seller shall provide reasonable access to any records, including invoices or settlement data from the CAISO, and any additional information reasonably required to verify the accuracy of any amount associated with the Monthly Product Payments.

8.2 **Payment.** Buyer shall make payment to Seller of Monthly Product Payments for Product (and any other amounts) by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; provided, however, that changes to invoice, payment, wire transfer and other banking information in the Agreement must be made in writing and delivered via certified mail and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes to the Agreement. Buyer shall pay undisputed invoice amounts within twenty (20) Business Days after Buyer’s receipt of Seller’s invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the annualized 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 the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds [REDACTED].

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

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

8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date under this Agreement through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibit B, 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 prior to the Commercial Operation Date, Seller shall deliver the Development Security to Buyer within [REDACTED] days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Except to the extent Seller elects to apply the Development Security to the Performance Security, upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) [REDACTED] days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect, until the following have occurred (the "**Performance Security End Date**"): (a) the Delivery Term has expired or terminated early under this Agreement; and (b) all payment obligations of the Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, specific indemnification payments or other specific damages, in each case of a determined amount, are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of the Performance Security End Date, Buyer shall promptly return to Seller the unused portion of the Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Performance Security for another permitted form (i.e., cash or Letter of Credit, as applicable).

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof, provided that the foregoing requirements shall not apply to any Letter of Credit posted by Seller in favor of Buyer pursuant to Sections 8.7 or 8.8.

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

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

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

ARTICLE 9 NOTICES

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

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled 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 or other electronic means), at the time indicated by the time stamp upon delivery, and, if after 5:00 p.m. Pacific Prevailing Time, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

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 willful misconduct or gross 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 otherwise satisfy the requirements of a Force Majeure Event as defined above, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; public safety power shutoff; fire; volcanic eruption; flood; epidemic or pandemic, including in connection with efforts occurring after the Effective Date to combat the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof (**“COVID-19”**); landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events or natural catastrophes; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance or disobedience; actions or inactions by a Governmental Authority (including a change in applicable Law, but excluding Seller’s compliance obligations as set forth in 10.01(c) below); 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 an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy or any other Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Period, unless such Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; 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 or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2.

10.3 Notice. Within fourteen (14) days of knowledge of the date on which the claiming Party knew or reasonably should have known of the commencement of a Force Majeure Event, the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice as described in the preceding sentence constitutes a waiver of a Force Majeure claim for all periods of time prior to delivery of such notice; *provided*, a Party’s failure to give Notice as described above shall not constitute a waiver or otherwise 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. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure.

10.4 Termination Following Force Majeure Event. If either (a) a Force Majeure Event occurs at the Geysers prior to the Guaranteed Commercial Operation Date and Seller reasonably expects that it cannot cause the Facility to achieve Commercial Operation by the date that is six (6) months after the Guaranteed Commercial Operation Date due to such Force Majeure Event, or (b) a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its material obligations hereunder,

and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8 and (B) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as applicable; 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 during the Delivery Term, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated by the Facility, except for Replacement Product;

(ii) the failure by Seller to achieve Commercial Operation within [REDACTED] days after the Guaranteed Commercial Operation Date as such date may be extended by a Development Cure Period pursuant to Section 2 of Exhibit B;

(iii) if, in any consecutive six (6) month period after the Commercial Operation Date, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least [REDACTED] of the Expected Energy amount for such period, and Seller fails to deliver to Buyer within fifteen (15) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the [REDACTED] and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of an officer of Seller that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed [REDACTED] days;

(iv) if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least [REDACTED] of the total Expected Energy amount for such Contract Year;

(v) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least [REDACTED] of the total Expected Energy amount for such period;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer;

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days (or fifteen (15) Business Days in the case of clause (A) below) 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 following rights:

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

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

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

(d) to suspend performance; and

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

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

11.3 **Damage Payment; Termination Payment.**

(a) For an Early Termination Date designated as a result of a Seller Event of Default prior to the Commercial Operation Date under Section 11.1(b)(ii), Buyer shall be entitled to the Damage Payment pursuant to Section 11.2(b)(i), and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer shall be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default under Section 11.1(b)(ii) would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(b) For all other Events of Default, the termination payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect the Damage Payment or Termination Payment (as applicable) 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, but in no event later than [REDACTED] days after the Early Termination Date (or such longer additional period, not to exceed an [REDACTED] days, if the Non-Defaulting Party is unable to calculate the Termination Payment within such initial [REDACTED] day period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Damage Payment or Termination Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

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

ARTICLE 12

LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 16 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER

USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.7, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS AND (UNLESS EXPRESSLY STATED TO THE CONTRARY), AN EXCLUSIVE REMEDY. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

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

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

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions

of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

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

(e) The Facility will be located in the State of California.

(f) As between Buyer and Seller, Seller will be responsible for obtaining all permits necessary to construct and operate the Facility, including to the extent applicable, Seller or an Affiliate will be the applicant on any CEQA documents.

(g) Seller shall maintain site control of the Facility throughout the Delivery Term.

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

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

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

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

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

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

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

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

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals, and permits 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 in material compliance with any Law.

13.4 **Workforce Requirements.** With respect to any initial construction work prior to the Commercial Operation Date, Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including employment discrimination laws and prevailing wage laws, if applicable. Additionally, Seller shall use commercially reasonable efforts to cause the majority of the steam gathering line construction work, to the extent feasible in light of Seller's deadlines set forth herein, to be conducted under a Project Labor Agreement (the "**Workforce Requirements**"). As a condition precedent to commencement of the Delivery Term, Seller must

certify that it complied with the Workforce Requirements, and be able to demonstrate, upon request, compliance with this requirement by providing documentation reasonably requested by Buyer.

13.5 **Diversity Reporting.** Seller agrees to complete Buyer's Supplier Diversity and Labor Practices questionnaire, which can be found at <https://forms.gle/4VahoVD3h7pvE4dF6>, or a similar questionnaire, at the reasonable request of Buyer and to comply with similar regular reporting requirements related to diversity and labor practices from time to time.

ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed; provided, Buyer's consent shall not be required for any assignment of this Agreement by Seller (a) to its Affiliate; (b) as collateral for any financing or refinancing of the Facility; or (c) to any Person succeeding to any of the equity or assets of Seller (whether voluntary or by operation of law). Any such assignment or delegation made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lenders to agree upon a consent to collateral assignment of this Agreement substantially in the form attached hereto as Exhibit R ("**Collateral Assignment Agreement**").

14.3 **Buyer Limited Assignment.** Buyer may from time to time assign the right to receive all or a portion of the Product that would otherwise be delivered to Buyer hereunder. In connection with any such assignment, Buyer and Seller agree to execute the limited assignment agreement attached hereto as Exhibit S. For the avoidance of doubt, Buyer will remain responsible for all its obligations under this Agreement related to such assigned Product, including (i) the obligation to pay for such Product to the extent the assignee thereof does not do so and (ii) any damages associated with such assignee's failure to take any such Product.

ARTICLE 15 DISPUTE RESOLUTION

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

15.2 **Dispute Resolution.** In the event of any claim, controversy or dispute arising between the Parties under this Agreement, within thirty (30) days following the receipt of a written

Notice from either Party identifying such dispute and a detailed description of the underlying circumstances of 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 forty-five (45) days of initiating such discussions, or within sixty (60) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law or in equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE 16 INDEMNIFICATION

16.1 **Indemnity.** Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, "**Indemnifiable Losses**"). Nothing in this Section 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 negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy.

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

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

deliver timely a Notice of Claim.

16.4 Defense of Claims. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith. Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, that Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

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

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

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained, at Seller's sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in an amount of One Million Dollars (\$1,000,000) per occurrence, and an annual aggregate of Two Million Dollars (\$2,000,000), and which shall include contractual liability insurance. Defense costs may be included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. Buyer shall be included as an additional insured.

(b) Employer's Liability Insurance. Seller, if it has employees, shall maintain Employers' Liability insurance with a limit of One Million Dollars (\$1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar (\$1,000,000) policy limit will apply to each employee.

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

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including, if any, attached trailers or semi-trailers in the performance of the Agreement.

(e) Reserved.

(f) Contractor's Pollution Liability. Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, pollution liability coverage in the amount of Two Million Dollars (\$2,000,000) per occurrence and in the aggregate.

(g) Umbrella Liability Insurance. Seller may choose any combination of primary, excess or umbrella liability policies to meet the insurance requirements under Sections 17.1(a), (b) and (d) above.

(h) Contractor Insurance. Seller shall require all of its contractors/subcontractors to maintain coverages and limits that are appropriate for the work being performed. Such insurance must be procured and fully in place before commencement of any work by such contractor/subcontractor.

(i) Evidence of Insurance and Other Insurance Requirements. Within ten (10) days of the Effective Date and upon annual renewal thereafter (except insurance required in Section 17.1(h)), Seller shall deliver to Buyer certificates of Seller's insurance evidencing such 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. The insurance requirements of this Article 17 do not affect, cap or limit Seller's obligations or liability to Buyer as provided under other provisions of this Agreement or applicable law, including any and all of Seller's indemnification obligations under the Agreement.

ARTICLE 18 CONFIDENTIAL INFORMATION

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

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the "**Receiving Party**") if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator request or rule) to disclose any Confidential Information of the disclosing Party (the "**Disclosing Party**"), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination of this Agreement.

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of

Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth in this Article 18. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Article 18 or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of its agents or Affiliates, and Seller's actual or potential agents, consultants, contractors, or trustees, or by Buyer to any actual or potential Limited Assignee, so long as the Person to whom Confidential Information is disclosed either is bound by similarly restrictive confidentiality obligations as those contained in this Agreement, or agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

ARTICLE 19 MISCELLANEOUS

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

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

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

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity

and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender and/or Indemnified Party).

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

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

19.7 **Counterparts; Electronic Signatures**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic and scanned signatures as originals. Delivery of an executed signature page of this Agreement by a PDF attachment to an email shall be the same as delivery of an original executed signature page.

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

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

19.10 **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.

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

[Signatures on following page]

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

GEYSERS POWER COMPANY, LLC

By: _____
Name: _____
Title: _____

**MARIN CLEAN ENERGY, a California
joint powers authority**

By: _____
Name: _____
Title: _____

**MARIN CLEAN ENERGY, a California
joint powers authority**

By: _____
Name: _____
Title: _____

EXHIBIT A

FACILITY DESCRIPTION

Site Name: The Incremental Geysers project, located in Lake and Sonoma Counties, in the State of California, and which includes the North Geysers geothermal reservoir expected to produce additional steam that will be converted to electrical energy and piped to Geysers' existing steam turbine generators

Site includes all or some of the following APNs:

County: Lake County and Sonoma County

CEQA Lead Agency:

Type of Facility: Geothermal

Guaranteed Capacity: 7 MW

Delivery Point: NP 15

Participating Transmission Owner: Pacific Gas & Electric Company

Interconnection Point: The Facility shall interconnect to GYS5X6_7_UNITS, GYS7X8_7_UNITS, GEYS11_7_UNIT11, GEYS12_7_UNIT12, GEYS13_7_UNIT13, GEYS14_7_UNIT14, GEYS16_7_UNIT16, GEYS17_7_UNIT17, GEYS18_7_UNIT18, GEYS20_7_UNIT20, ADLIN_1_UNITS, SANTFG_7_UNITS, SMUDGO_7_UNIT1.

Further Description:

1. Existing Generating Facility Description.

The power plants in The Geysers Known Geothermal Resource Area ("KGRA") have been generating electricity for California since 1960. Geysers Power Company, LLC ("GPC"), a Calpine Corporation ("Calpine") affiliate, has more than 35 years of experience at The Geysers, and manages the largest operations there with thirteen operating power plants, more than 350 steam wells and some 60 condensate and water injection wells connected by 80 miles of pipeline producing 725 MW of renewable energy.

Each power plant consists of a low-pressure steam turbine or turbines, a generator(s), condenser, cooling tower, air pollution abatement system, pumps and other auxiliary equipment, transformers and circuit breakers to connect the facilities to the CAISO controlled grid. Each Geysers power plant is connected to one of three PG&E owned transmission lines: Geysers-Eagle Rock 115 kV, Geysers-Fulton 230 kV, or Geysers-Lakeville 230 kV transmission.

The steam field consists of more than 400 wells and over 80 miles of steam pipelines which deliver the geothermal steam to the power plants. This extensive pipeline network allows the condensed steam (condensate) and supplemental water from within the Geysers, and from treated effluent pipelines from Santa Rosa and from Lake County, to be injected throughout the steam field to

maintain and enhance steam production.

2. Description of Incremental Geothermal Capacity.



3. Site Description.

The Geysers KGRA is a forty square mile area of Sonoma and Lake Counties, approximately seventy miles north of San Francisco. The land in the Geysers KGRA is zoned for geothermal development and has had geothermal development within it for more than 50 years. GPC manages more than 29,000 acres under more than 150 public and private mineral and land leases in the Geysers KGRA as part of its extensive geothermal operations. Those leases provide for the continued control of site access and the steam resource beneath the ground by GPC for as long as commercial production of steam occurs.

Township numbers for The Geysers are: T.12.N R.9.W, T.12.N R.8.W, T.11.N R.9.W, T.11.N R.8.W, T.10.N R.9.W, and T.10.N R.8.W.

Note that because of its rural location, individual Geysers power plants do not have their own street or mailing address. The mailing address for the Geysers Power Plant is:

10350 Socrates Mine Road
Middletown, CA 95461

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice from an officer of Seller to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The “**Commercial Operation Date**” shall be the later of (x) June 1, 2025, or (y) the date on which Commercial Operation is achieved.
 - a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
 - b. 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 after the Guaranteed Commercial Operation Date until the Commercial Operation Date. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.2(b)(ii) and receive a Damage Payment upon exercise of Buyer’s rights pursuant to Section 11.2; *provided* that, prior to Commercial Operation, Seller’s overall financial liability to Buyer under this Agreement, including for any Commercial Operation Delay Damages, Termination Payment, or indemnity obligations, shall in no event be [REDACTED].
2. **Extension of the Guaranteed Dates.** The Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis for the duration of any and all delays arising out of the following circumstances:
 - a. a Force Majeure Event occurs; or
 - b. the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller.

Day-for-day extensions under subsections (a) and (b) above shall not [REDACTED] days on a cumulative basis. All of the day-for-day extensions allowed under subsections (a) and (b) above, collectively, are the “**Development Cure Period**”. Notwithstanding anything to the contrary, no extension shall be given under the

Development Cure Period if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) for extensions for a Force Majeure Event under subsection (a) above, if the delay does not otherwise satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3, or (iii) for delays that are not claimed as a Force Majeure Event, Seller failed to provide written notice as required in the next sentence. For delays that are not claimed as a Force Majeure Event, Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above, including from Force Majeure Events, did not result from Seller's actions or failure to take commercially reasonable actions.

3. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have [REDACTED] days after the Commercial Operation Date to install additional capacity such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, or Seller at any point in its sole discretion determines that it will not construct the Guaranteed Capacity, Seller shall pay "**Capacity Damages**" to Buyer, in an amount equal to [REDACTED] 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 and the Expected Energy shall be reduced to an amount equal to the product of (a) the amount of Expected Energy in effect prior to such adjustment, multiplied by (b) the ratio of the Installed Capacity as of such date to the Guaranteed Capacity.

EXHIBIT C

COMPENSATION

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

(a) Contract Price. Buyer shall pay Seller the Contract Price for each MWh of Facility Energy up to [REDACTED] of the Expected Energy for each Contract Year.

(b) Pre-COD Product. Pre-COD Product is compensated in accordance with Section 3.1(c).

(c) Monthly RA Payment. Buyer shall pay Seller the Monthly RA Payment in accordance with Section 3.1(b).

(d) Annual Excess Energy Deliveries.

(i) If, at any point in any Contract Year, the amount of Facility Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real-Time Market for the applicable Settlement Interval or (b) [REDACTED] of the Contract Price, but not less than \$0.00/MWh.

(ii) If, at any point in any Contract Year, the amount of Facility Energy exceeds [REDACTED] of the Expected Energy for such Contract Year, no payment shall be owed by Buyer for any additional Facility Energy.

EXHIBIT D**SCHEDULING COORDINATOR RESPONSIBILITIES**

(a) Seller as Scheduling Coordinator for the Facility. Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement. The Facility Energy will be scheduled with the CAISO by Seller (or Seller's designated Scheduling Coordinator) to Buyer on a Day-Ahead basis using an Inter-SC Trade, as described in paragraph (b) below.

(b) Physical Trades. Before the deadline for submission of IST in the Day-Ahead Market, Seller and Buyer shall submit and match or cause their SCs to submit and match, a Physical Trade "from" Seller's Scheduling Coordinator "to" Buyer's Scheduling Coordinator at the Delivery Point. Such Physical Trade shall specify the MW amounts for the time periods as set forth in the Day-Ahead Schedule submitted by Seller to the CAISO in the Day-Ahead Market, which shall be based upon the Facility's Available Generating Capacity. Such Physical Trades shall be entered in the Day-Ahead Market. With regard to such Physical Trades, Buyer shall perform (or cause to be performed) such actions as necessary to submit and validate a Physical Trade by the "to" Scheduling Coordinator, and Seller shall perform (or cause to be performed) such actions as necessary to match and validate a Physical Trade by the "from" Scheduling Coordinator in a Physical Trade.

(c) CAISO Costs and Revenues. As Scheduling Coordinator for the Facility, Seller shall be responsible for all CAISO costs, including without limitation, all penalties, Imbalance Energy charges, and other charges, and shall be entitled to all CAISO revenues, including without limitation, credits, Imbalance Energy payments, and revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of 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, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be the Seller's responsibility.

(d) CAISO Settlements. Seller (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility.

(e) Customer Market Results Interface Access. Seller shall provide to Buyer read-only access to Seller's (or its SC's) Customer Market Results Interface for the Facility.

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

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

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Description of any material planned changes to the Facility or the Site.
3. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
4. Forecast of major activities scheduled for the current calendar quarter.
5. Written description about Seller's progress towards achieving the Milestones, including whether Seller has met or is on target to meet the Milestones, identification of any missed Milestones, including the cause of delay, and a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date.
6. List of issues (if any) that are likely to potentially affect Seller's Milestones.
7. A status report of start-up activities including a forecast of activities ongoing and after start-up.
8. Prevailing wage reports as required by Law (if any).
9. Progress and schedule of all material agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
10. Pictures, if available, 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.
11. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
12. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1**FORM OF AVERAGE EXPECTED ENERGY REPORT**

Average Expected Energy (in MWh)

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

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

EXHIBIT F-2**FORM OF MONTHLY AVAILABLE CAPACITY FORECAST**Available Generating Capacity (in MWh) – *[Insert Month]*

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

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

EXHIBIT G**GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION**

In accordance with Section 4.7, 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 = Price for Replacement Product for the Contract Year, in \$/MWh, which shall be calculated by Buyer in a commercially reasonable manner. Buyer is not required to enter into a replacement transaction in order to determine this amount.

D = the Contract Price for the Contract Year, in \$/MWh

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Buyer will send Seller Notice of the amount of damages owing, if any, and such amount shall be payable to Buyer within thirty (30) days from the date of such Notice.

As used above:

“Adjusted Energy Production” shall mean the sum of the following: Facility Energy + Lost Output + Replacement Product.

“Lost Output” has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated pursuant to an industry-standard methodology agreed to by Buyer and Seller.

“Replacement Energy” means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided, and that is scheduled as an Inter-SC Trade to Buyer and delivered to a delivery point and upon a schedule that is reasonably acceptable to Buyer.

“Replacement Green Attributes” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the

Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided.

“Replacement Product” means (a) Replacement Energy and (b) Replacement Green Attributes.

EXHIBIT H**FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification ("**Certification**") of Commercial Operation is delivered by [*Officer of Seller*] ("**Officer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*date*] ("**Agreement**") by and between Geysers Power Company, LLC ("**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.

As of [*date*], Officer hereby certifies and represents to Buyer the following:

1. Seller has installed equipment for the Facility with a capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
2. The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW*].
3. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
4. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications,
5. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, and
6. The CAISO has provided notification supporting operation of the Facility in accordance with the CAISO Tariff.

EXECUTED by [*Officer of Seller*]

this _____ day of _____, 20____.

[*OFFICER OF SELLER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*Officer of Seller*] ("**Officer**") to Marin Clean Energy, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*date*] ("**Agreement**") by and between Geysers Power Company, LLC ("**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.

I hereby certify that the performance test for the Facility demonstrated peak electrical output of [] MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [*Officer of Seller*]

this [] day of [], 20 [].

[*OFFICER OF SELLER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J
RESERVED

EXHIBIT K
FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: _____
Bank Ref.: _____
Amount: US\$ _____
Expiration Date: _____

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Attn: Director of Finance

Ladies and Gentlemen:

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

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

The Drawing Certificate may be presented by (a) physical delivery, (b) email to [bank email address], or (c) facsimile to [bank fax number] [optional if bank needs fax confirmation], confirmed by [email to [bank email address]] [telephone confirmation to the Issuer at [phone number]]. Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that documents presented under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

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

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

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

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Marin Clean Energy, 1125 Tamalpais Avenue, San Rafael, CA 94901. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the Letter of Credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$ _____, which equals the full available amount under the Letter of Credit, because Applicant is required to maintain the Letter of Credit in force and effect beyond the Expiration Date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within forty-five (45) days prior to such Expiration Date.

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

You are hereby directed to make payment of the requested amount to Marin Clean Energy, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Marin Clean Energy

Name and Title of Authorized Representative

Date _____

EXHIBIT L

RESERVED

EXHIBIT M**FORM OF REPLACEMENT RA NOTICE**

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

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information¹

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

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

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

[REDACTED]

By: _____

Printed Name: _____

Title: _____

EXHIBIT N**NOTICES**

Geysers Power Company, LLC (“Seller”)	Marin Clean Energy (“Buyer”)
<p>All Notices:</p> <p>Delivery Address: Street: 717 Texas Avenue, Suite 11.043C City: Houston, TX 77002</p> <p>Mail Address: Street: 717 Texas Avenue, Suite 11.043C City: Houston, TX 77002 Attn: Contract Administration Phone: (713) 830-8845 Facsimile: (713) 830-8751 Email: CommodityContracts@Calpine.com</p> <p>With a copy to:</p> <p>Geysers Power Company, LLC 10350 Socrates Mine Road Middletown, CA 95461 Attn: Vice President, Regional Operations, Geyser Management</p> <p>With a copy to:</p> <p>Geysers Power Company, LLC 3003 Oak Road, Suite 400 Walnut Creek, CA 94597 Attn: Vice President, Origination</p> <p>With a copy to:</p> <p>Geysers Power Company, LLC 717 Texas Avenue, Suite 11.043C Houston, TX 77002 Attn: Chief Legal Officer</p> <p>With a copy to:</p> <p>Geysers Power Company, LLC 3003 Oak Road, Suite 400 Walnut Creek, CA 94597 Attn: Deputy General Counsel</p>	<p>All Notices: Marin Clean Energy 1125 Tamalpais Avenue San Rafael, CA 94901 Attn: Contract Administration Phone: (415) 464-6010 Email: Procurement@mcecleanenergy.org</p>

Geysers Power Company, LLC (“Seller”)	Marin Clean Energy (“Buyer”)
Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	Reference Numbers: Duns: [REDACTED] Federal Tax ID Number: [REDACTED]
Invoices: Attn: Power Accounting Phone: (713) 830-2000	Invoices: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Scheduling: Attn: Power Accounting Phone: (713) 830-2000	Scheduling: Attn: ZGlobal Phone: (916) 458-4080 Email: dascheduler@zgloab.biz
Confirmations: Attn: Power Accounting Phone: (713) 830-2000	Confirmations: Attn: Director of Power Resources Phone: (415) 464-6685 Email: Procurement@mcecleanenergy.org
Payments: Attn: Power Accounting Phone: (713) 830-2000	Payments: Attn: Power Settlements and Analytics Phone: (415) 464-6683 Email: Settlements@mcecleanenergy.org
Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	Wire Transfer: BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]
With additional Notices of an Event of Default to: Attn: Deputy General Counsel Phone: (925) 557-2283 Email: WROLegal@calpine.com	With additional Notices of an Event of Default to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com
Emergency Contact: Attn: Phone: Email:	Emergency Contact: Attn: Phone: Email:

EXHIBIT O
OPERATING RESTRICTIONS

N/A

EXHIBIT P
RESERVED

EXHIBIT Q

COMMUNITY BENEFIT

Seller commits to spend [REDACTED] to improve the communities located around the Geysers geothermal facilities in Lake and Sonoma Counties. In consultation with the MCE program team, Seller will select local organization(s) to which the [REDACTED] will be allocated. The primary focus of this funding will be community improvement, through the funding of third party organization(s) that are located in and around the Geysers community or doing work that impacts neighboring communities. Seller and Buyer will work collaboratively to develop a specific plan, timeline, and public announcement in connection with this funding.

EXHIBIT R
FORM OF COLLATERAL ASSIGNMENT AGREEMENT

CONSENT AND AGREEMENT

among

MARIN CLEAN ENERGY,
a California joint powers authority
(Contracting Party)

and

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company
(Assignor)

and

MUFG UNION BANK, N.A.,
(First Lien Collateral Agent)

Dated as of []

This CONSENT AND AGREEMENT, dated as of [____], 20[___] (this “Consent”), is entered into by and among MARIN CLEAN ENERGY, a California joint powers authority (together with its permitted successors and assigns, “Contracting Party”), MUFG UNION BANK, N.A., in its capacity as collateral agent for the First Lien Secured Parties referred to below (together with its successors, designees and assigns in such capacity, “First Lien Collateral Agent”), and GEYSERS POWER COMPANY, LLC, a limited liability company formed and existing under the laws of the State of Delaware (together with its permitted successors and assigns, “Assignor”).

RECITALS

A. Assignor owns the following geothermal electric generating facilities located in the Geysers area of Northern California (Sonoma and Lake Counties) (collectively, the “Projects”):

- (1) The Aidlin project, an approximately 18 megawatt geothermal facility located in Sonoma County, CA.
- (2) The Sonoma project, an approximately 53 megawatt geothermal facility located in Sonoma County, CA.
- (3) The two-unit McCabe project, an approximately 84 megawatt geothermal facility located in Sonoma County, CA.
- (4) The two-unit Ridge Line project, an approximately 76 megawatt geothermal facility located in Sonoma County, CA.
- (5) The Eagle Rock project, an approximately 68 megawatt geothermal facility located in Sonoma County, CA.
- (6) The Cobb Creek project, an approximately 51 megawatt geothermal facility located in Sonoma County, CA.
- (7) The Big Geysers project, an approximately 61 megawatt geothermal facility located in Lake County, CA.
- (8) The Sulphur Springs project, an approximately 47 megawatt geothermal facility located in Sonoma County, CA.
- (9) The Quicksilver project, an approximately 53 megawatt geothermal facility located in Lake County, CA.
- (10) The Lake View project, an approximately 54 megawatt geothermal facility located in Sonoma County, CA.
- (11) The Socrates project, an approximately 50 megawatt geothermal facility located in Sonoma County, CA.
- (12) The two-unit Calistoga project, an approximately 69 megawatt geothermal facility located in Lake County, CA.
- (13) The Grant project, an approximately 41 megawatt geothermal facility located in Sonoma County, CA.

B. In order to finance the operation and maintenance of the Projects, Assignor has entered into that certain Credit Agreement, dated as of June 9, 2020 (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Credit Agreement”), with GEYSERS INTERMEDIATE HOLDINGS LLC, a Delaware limited liability company, as Holdings (“Holdings”), GEYSERS COMPANY, LLC, a Delaware limited liability company (“Geysers Company”), WILD HORSE GEOTHERMAL, LLC, a Delaware limited liability company (“Wild Horse”) and CALISTOGA HOLDINGS, LLC, a Delaware limited liability company (“Calistoga,” and, together with Holdings, Geysers Company and Wild Horse, each a “Guarantor” and together, the “Guarantors”), MUFG BANK, LTD., as administrative agent for the Lenders, MUFG UNION BANK, N.A., as collateral agent for the First Lien Secured Parties, and the financial institutions from time to time parties thereto in such other capacities as described therein (collectively, the “Lenders”).

C. Contracting Party and Assignor have entered into that certain [***Insert description of relevant Major Project Contract(s)***], dated as of [_____] [____], [_____] (as amended, amended and restated, supplemented or otherwise modified from time to time in accordance with the terms thereof and hereof, the “Assigned Agreement”).

D. As security for Assignor’s obligations under the Credit Agreement and related financing documents with respect to the Loans and related obligations, Assignor has granted, pursuant to a security agreement executed by Assignor and First Lien Collateral Agent (as amended, amended and restated, supplemented or otherwise modified from time to time, the “Security Agreement”), to the First Lien Collateral Agent, for the benefit of the First Lien Secured Parties, a first priority lien on all of Assignor’s right, title and interest in the Projects and other rights and interests relating thereto, whenever arising, including, without limitation, the Assigned Agreement and all of Assignor’s right, title and interest under (but not any of Assignor’s obligations, liabilities or duties with respect thereto) the Assigned Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, and intending to be legally bound, the parties hereto hereby agree, notwithstanding anything in the Assigned Agreement to the contrary, as follows:

1. Assignment and Agreement.

1.1 Consent to Assignment. Contracting Party (a) is hereby notified and acknowledges that the Lenders have entered into the Credit Agreement and made the extensions of credit contemplated thereby in reliance upon the execution and delivery by Contracting Party of the Assigned Agreement and this Consent, (b) consents to the collateral assignment under the Security Agreement of all of Assignor’s right, title and interest in, to and under the Assigned Agreement, including, without limitation, all of Assignor’s rights to receive payment and all payments due and to become due to Assignor under or with respect to the Assigned Agreement (collectively, the “Assigned Interests”) and (c) acknowledges the right of First Lien Collateral Agent or a Subsequent Owner (as defined below), upon written notice to Contracting Party (“Step-in Notice”), to make all demands, give all notices, take all actions and exercise all rights of Assignor under the Assigned Agreement. Assignor agrees that (a) Contracting Party may rely, without investigation, on the Step-in Notice being fully authorized and consented to by Assignor

with respect to all matters set forth therein, and (b) upon Contracting Party's receipt of such Step-In Notice, Contracting Party shall deal exclusively with of First Lien Collateral Agent with respect to all matters set forth therein.

1.2 Subsequent Owner. Contracting Party agrees that, if First Lien Collateral Agent notifies Contracting Party in writing that, pursuant to the Security Agreement, it has assigned, foreclosed or sold the Assigned Interests or any portion thereof, then (i) First Lien Collateral Agent or, subject to Section 14.3 of the Assigned Agreement, its successor, assignee designee, or any purchaser of the Assigned Interests (a "Subsequent Owner") shall be substituted for Assignor under the Assigned Agreement and (ii) Contracting Party shall (1) recognize First Lien Collateral Agent or the Subsequent Owner, as the case may be, as its counterparty under the Assigned Agreement and (2) continue to perform its obligations under the Assigned Agreement in favor of First Lien Collateral Agent or the Subsequent Owner, as the case may be; provided that First Lien Collateral Agent or such Subsequent Owner, as the case may be, has assumed in writing all of Assignor's rights and obligations (including, without limitation, the obligation to cure any then-existing payment and performance defaults, but excluding any obligation to cure any then-existing defaults which by their nature are incapable of being cured) under the Assigned Agreement. Notwithstanding the foregoing, such assignment of rights and interests under this Section 1.2 may be made only to an entity that satisfies the requirements set forth in the definition of Permitted Transferee in the Assigned Agreement.

1.3 Right to Cure. If Assignor defaults in the performance of any of its obligations under the Assigned Agreement, or upon the occurrence or non-occurrence of any event or condition under the Assigned Agreement which would immediately or with the passage of any applicable grace period or the giving of notice, or both, enable Contracting Party to terminate or suspend its performance under the Assigned Agreement (each hereinafter a "default"), First Lien Collateral Agent will have the right to cure a default on behalf of Assignor if First Lien Collateral Agent sends a written notice to Contracting Party before the later of (a) the expiration of any cure period, and (b) five (5) Business Days after First Lien Collateral Agent's receipt of notice of such default from Contracting Party, indicating First Lien Collateral Agent's intention to cure. Contracting Party shall not terminate or suspend its performance under the Assigned Agreement until it first gives written notice of such default to First Lien Collateral Agent and, subject to First Lien Collateral Agent having provided the notice set forth in subsection (b) above, affords First Lien Collateral Agent a period of at least thirty (30) days (or if such default is a nonmonetary default, such longer period (not to exceed sixty (60) days) as may be required so long as First Lien Collateral Agent has commenced and is diligently pursuing appropriate action to cure such default) from receipt of such notice to cure such default; provided, however, that (i) if possession of the Projects is necessary to cure such nonmonetary default and First Lien Collateral Agent has commenced foreclosure proceedings, First Lien Collateral Agent shall be allowed a reasonable time to complete such proceedings and effect such cure not to exceed one hundred eighty (180) days without the written consent of Contracting Party, which consent shall not be unreasonably withheld, and (ii) if First Lien Collateral Agent is prohibited from curing any such nonmonetary default by any process, stay or injunction issued by any governmental authority or pursuant to any bankruptcy or insolvency proceeding or other similar proceeding involving Assignor, then the time periods specified herein for curing a default shall be extended for the period of such prohibition.

Following a default by Assignor under the Assigned Agreement, Contracting Party may require

Assignor (or First Lien Collateral Agent, if First Lien Collateral Agent has provided the notice set forth in subsection (b) above) to provide to Contracting Party a report concerning:

- A. The status of efforts by Assignor or First Lien Collateral Agent to develop a plan to cure the default;
- B. Impediments to the cure plan or its development;
- C. If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- D. Any other information which Contracting Party may reasonably require related to the development, implementation and timetable of the cure plan.

Assignor or First Lien Collateral Agent must provide the report to Contracting Party within fifteen (15) Business Days after written notice from Contracting Party requesting the report. Contracting Party will have no further right to require the report with respect to a particular default after that default has been cured.

1.4 No Amendments.

(a) Except to the extent Assignor is permitted under the Credit Agreement to enter into amendments of the Assigned Agreement, as to which First Lien Collateral Agent agrees Contracting Party may rely solely on Assignor's representation without investigation, Contracting Party agrees that it shall not, without the prior written consent of First Lien Collateral Agent, which consent shall not be unreasonably withheld, enter into any novation, material amendment or other material modification of the Assigned Agreement, (except as contemplated pursuant to Section 14.3 (Contracting Party Limited Assignment) of the Assigned Agreement).

(b) Contracting Party agrees that it shall not, without the prior written consent of First Lien Collateral Agent, (i) sell, assign or otherwise transfer any of its rights under the Assigned Agreement (except as contemplated pursuant to Section 14.3 (Contracting Party Limited Assignment) of the Assigned Agreement), (ii) terminate, cancel or suspend its performance under the Assigned Agreement (unless it has given First Lien Collateral Agent notice and an opportunity to cure in accordance with Section 1.3 hereof), (iii) consent to any assignment or other transfer by Assignor of its rights under the Assigned Agreement, or (iv) consent to any voluntary termination, cancellation or suspension of performance by Assignor under the Assigned Agreement.

1.5 Replacement Agreements. In the event the Assigned Agreement is rejected or terminated as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting Assignor, (a) Contracting Party shall, at the option of First Lien Collateral Agent exercised within forty five (45) days after such rejection or termination, enter into a new agreement with First Lien Collateral Agent having identical terms as the Assigned Agreement (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that (i) the term under such new agreement shall be no longer than

the remaining balance of the term specified in the Assigned Agreement, and (ii) upon execution of such new agreement, First Lien Collateral Agent cures any outstanding payment and performance defaults under the Assigned Agreement, excluding any performance defaults which by their nature are incapable of being cured and (b) if First Lien Collateral Agent or its designee, directly or indirectly, takes possession of, or title to, the Project after any such rejection or termination of the Assigned Agreement, promptly after Contracting Party's written request, First Lien Collateral Agent must itself or must cause its designee to promptly enter into a new agreement with Contracting Party having substantially the same terms as the Assigned Agreement for the remaining term thereof, provided that in the event a designee of First Lien Collateral Agent, directly or indirectly, takes possession of, or title to, the Project (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), if such designee is not an entity that meets the definition of Permitted Transferee then such designee shall be subject to the prior written approval of Contracting Party, such approval not to be unreasonably withheld.

1.6 Limitations on Liability. First Lien Collateral Agent and Assignor hereby acknowledge and agree that Contracting Party is authorized to act in accordance with First Lien Collateral Agent's instructions with respect to this Consent and the Assigned Agreement, and that Contracting Party shall bear no liability to First Lien Collateral Agent, Assignor or any other person under this Consent or the Assigned Agreement for acting in accordance with this Consent or with First Lien Collateral Agent's instructions with respect to this Consent and the Assigned Agreement. Contracting Party acknowledges and agrees that First Lien Collateral Agent shall not have any liability or obligation to Contracting Party under the Assigned Agreement as a result of this Consent or otherwise, nor shall First Lien Collateral Agent be obligated or required to (a) perform any of Assignor's obligations under the Assigned Agreement, except during any period in which First Lien Collateral Agent has assumed Assignor's rights and obligations under the Assigned Agreement pursuant to Section 1.2 above, or (b) take any action to collect or enforce any claim for payment assigned under the Security Agreement. If First Lien Collateral Agent has assumed Assignor's rights and obligations under the Assigned Agreement pursuant to Section 1.2 above or has entered into a new agreement pursuant to Section 1.5 above, First Lien Collateral Agent's liability to Contracting Party under the Assigned Agreement or such new agreement, and the sole recourse of Contracting Party in seeking enforcement of the obligations under such agreements, shall be limited to the interest of First Lien Collateral Agent in the Project.

1.7 Delivery of Notices. Contracting Party shall deliver to First Lien Collateral Agent, concurrently with the delivery thereof to Assignor, a copy of each notice, request or demand given by Contracting Party to Assignor pursuant to the Assigned Agreement relating to (a) a default by Assignor under the Assigned Agreement, and (b) any matter that would require the consent of First Lien Collateral Agent pursuant to Section 1.4 above.

1.8 Transfer. First Lien Collateral Agent shall have the right to assign all of its interest in the Assigned Agreement or a new agreement entered into pursuant to the terms of this Consent and Section 14.3 of the Assigned Agreement; provided that such transferee (a) fully assumes in writing the obligations of Assignor or First Lien Collateral Agent, as applicable, under the Assigned Agreement or such new agreement and (b) satisfies the requirements of a Subsequent Owner set forth in Section 1.2 hereof. Upon such assignment, First Lien Collateral Agent shall be released from any further liability under the Assigned Agreement or such new agreement to the extent of the interest assigned.

1.9 Refinancing. [Contracting Party hereby acknowledges that Assignor may, from time to time during the term of the Assigned Agreement, refinance the indebtedness incurred under the Credit Agreement pursuant to another bank financing, an institutional financing, a capital markets financing, a lease financing or any other combination thereof or other form of financing. In connection with any such refinancing, Contracting Party hereby consents to any collateral assignment or other assignment of the Assigned Agreement in connection therewith and agrees that the terms and provisions of this Consent shall apply with respect to such assignment and shall inure to the benefit of the parties providing such refinancing. In furtherance of the foregoing, Contracting Party agrees that (i)(1) references in this Consent to the “First Lien Collateral Agent” and the “First Lien Secured Parties” shall be deemed to be references to the applicable financing parties providing such refinancing, and (2) references in this Consent to the “Credit Agreement” and the “Security Agreement” shall be deemed to be references to the corresponding agreements entered into in connection with such refinancing, and (ii) if requested by Assignor, it shall enter into a new consent, substantially in the form of this Consent, in favor of the parties providing such refinancing.]¹

2. Payments under the Assigned Agreement.

2.1 Payments. Contracting Party shall pay all amounts (if any) payable by it under the Assigned Agreement in the manner and as and when required by the Assigned Agreement directly into the account specified on Exhibit A hereto, or to such other person, entity or account as shall be specified from time to time by First Lien Collateral Agent to Contracting Party in writing. Notwithstanding the foregoing, if any entity or person has become a Subsequent Owner pursuant to the terms hereof, then Contracting Party shall pay all such amounts directly to such Subsequent Owner or an account designated by Subsequent Owner.

2.2 No Offset, Etc. All payments required to be made by Contracting Party under the Assigned Agreement shall be made without any offset, recoupment, abatement, withholding, reduction or defense whatsoever, other than those allowed by the terms of the Assigned Agreement.

3. Representations and Warranties of Contracting Party. Contracting Party hereby represents and warrants, in favor of First Lien Collateral Agent, as of the date hereof, that:

(a) Contracting Party (i) is a joint powers authority and community choice aggregator, duly organized and validly existing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, (ii) is duly qualified, authorized to do business and in good standing in every jurisdiction necessary to perform its obligations under the Assigned Agreement and this Consent, and (iii) has all requisite power and authority to enter into and to perform its obligations hereunder and under the Assigned Agreement, and to carry out the terms hereof and thereof and the transactions contemplated hereby and thereby;

(b) the execution, delivery and performance by Contracting Party of this Consent and the Assigned Agreement have been duly authorized by all necessary corporate or other action on the part of Contracting Party and do not require any approvals, filings with, or

¹ This Section 1.9 to be included at Borrower’s election and with such changes as Borrower may reasonably request.

consents of any entity or person which have not previously been obtained or made;

(c) each of this Consent and the Assigned Agreement is in full force and effect, has been duly executed and delivered on behalf of Contracting Party by the appropriate officers of Contracting Party, and constitutes the legal, valid and binding obligation of Contracting Party, enforceable against Contracting Party in accordance with its terms, except as the enforceability thereof may be limited by (i) bankruptcy, insolvency, reorganization or other similar laws affecting the enforcement of creditors' rights generally, and (ii) general equitable principles (whether considered in a proceeding in equity or at law);

(d) there is no litigation, action, suit, proceeding or investigation pending or (to Contracting Party's actual knowledge) threatened against Contracting Party before or by any court, administrative agency, arbitrator or governmental authority, body or agency which, if adversely determined, individually or in the aggregate, (i) could adversely affect the performance by Contracting Party of its obligations hereunder or under the Assigned Agreement, or which could modify or otherwise adversely affect any required approvals, filings or consents which have previously been obtained or made, (ii) could have a material adverse effect on the condition (financial or otherwise), business or operations of Contracting Party, or (iii) questions the validity, binding effect or enforceability hereof or of the Assigned Agreement, any action taken or to be taken pursuant hereto or thereto or any of the transactions contemplated hereby or thereby;

(e) the execution, delivery and performance by Contracting Party of this Consent and the Assigned Agreement, and the consummation of the transactions contemplated hereby and thereby, will not result in any violation of, breach of or default under any term of its formation or governance documents, or of any contract or agreement to which it is a party or by which it or its property is bound, or of any license, permit, franchise, judgment, injunction, order, law, rule or regulation applicable to it, other than any such violation, breach or default which could not reasonably be expected to have a material adverse effect on Contracting Party's ability to perform its obligations under the Assigned Agreement;

(f) neither Contracting Party nor, to Contracting Party's actual knowledge without investigation, any other party to the Assigned Agreement, is in default of any of its obligations thereunder;

(g) to Contracting Party's actual knowledge, and without investigation with respect to matters pertaining to Assignor, (i) no event of force majeure exists under, and as defined in, the Assigned Agreement, and (ii) no event or condition exists which would either immediately or with the passage of any applicable grace period or giving of notice, or both, enable either Contracting Party or Assignor to terminate or suspend its obligations under the Assigned Agreement; and

(h) the Assigned Agreement and this Consent are the only agreements between Assignor and Contracting Party with respect to the Project.

Each of the representations and warranties set forth in this Section 3 shall survive the execution and delivery of this Consent and the Assigned Agreement for a period of one year from the date hereof.

4. Miscellaneous.

4.1 Notices. Any communications between the parties hereto or notices provided herein to be given may be given to the following addresses:

If to Assignor:

Geysers Power Company, LLC,
717 Texas Avenue, Suite 11.043C
Houston, Texas 77002
Telephone: (832) 325-1581
Facsimile: (832) 325-1582
Attn: Chief Legal Officer

If to Contracting Party:

Marin Clean Energy
1125 Tamalpais Avenue
San Rafael, CA 94901
Attn: Contract Administration
Phone: (415) 464-6010
Email: Procurement@mcccleanenergy.org

If to First Lien Collateral Agent:

MUFG Union Bank, N.A.,
350 California Street, 17th Floor
San Francisco, CA 94104
Attention: Corporate Trust
Email: SFCT@unionbank.com,
Cc: sonia.flores@unionbank.com

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service (including Federal Express, UPS, DHL and other similar overnight delivery services), (c) in the event overnight delivery services are not readily available, if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, (d) if sent by prepaid telegram or by facsimile or (e) if sent by other electronic means (including electronic mail) confirmed by any means in which a notice or other communications may be provided hereunder (including electronic mail). Any party may change its address for notice hereunder by giving of thirty (30) days' notice to the other parties in the manner set forth hereinabove.

4.2 Governing Law; Submission to Jurisdiction.

(a) THIS CONSENT AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER SHALL BE CONSTRUED IN ACCORDANCE WITH, AND BE GOVERNED BY, THE LAWS OF THE STATE OF CALIFORNIA (WITHOUT GIVING EFFECT TO THE PRINCIPLES THEREOF RELATING TO CONFLICTS OF LAW).

(b) Any legal action or proceeding with respect to this Consent and any action for enforcement of any judgment in respect thereof may be brought in the courts of the State of California located in San Francisco or the courts of the United States of America for the Northern District of California located in San Francisco, and, by execution and delivery of this Consent, Contracting Party hereby accepts for itself and in respect of its property, generally and unconditionally, the non-exclusive jurisdiction of the aforesaid courts and appellate courts from any appeal thereof. Contracting Party hereby irrevocably waives any objection which it may now or hereafter have to the laying of venue of any of the aforesaid actions or proceedings arising out of or in connection with this Consent brought in the courts referred to above and hereby further irrevocably waives and agrees not to plead or claim in any such court that any such action or proceeding brought in any such court has been brought in an inconvenient forum.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different parties hereto on separate counterparts, each of which when so executed and delivered shall be an original, but all of which shall together constitute one and the same instrument. Delivery of an executed counterpart to this Consent by facsimile or “pdf” transmission shall be as effective as delivery of a manually signed original.

4.4 Headings Descriptive. The headings of the several sections and subsections of this Consent are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Consent.

4.5 Severability. In case any provision in or obligation under this Consent shall be invalid, illegal or unenforceable in any jurisdiction, the validity, legality and enforceability of the remaining provisions or obligations, or of such provision or obligation in any other jurisdiction, shall not in any way be affected or impaired thereby.

4.6 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Contracting Party and First Lien Collateral Agent.

4.7 Successors and Assigns. This Consent shall bind and benefit Contracting Party, First Lien Collateral Agent, and their respective successors and assigns.

4.8 Third Party Beneficiaries. Contracting Party and First Lien Collateral Agent hereby acknowledge and agree that the First Lien Secured Parties are intended third party beneficiaries of this Consent.

4.9 **WAIVER OF TRIAL BY JURY. TO THE EXTENT PERMITTED BY APPLICABLE LAW, CONTRACTING PARTY, ASSIGNOR AND COLLATERAL AGENT HEREBY IRREVOCABLY WAIVE ALL RIGHT OF TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR IN CONNECTION WITH THIS CONSENT OR ANY MATTER ARISING HEREUNDER.**

4.10 Entire Agreement. This Consent and any agreement, document or instrument attached hereto or referred to herein integrate all the terms and conditions mentioned herein or incidental hereto and supersede all oral negotiations and prior writings between the parties hereto in respect of the subject matter hereof. In the event of any conflict between the terms, conditions and provisions of this Consent and any such agreement, document or instrument

(including, without limitation, the Assigned Agreement), the terms, conditions and provisions of this Consent shall prevail.

4.11 Termination of Consent. This Consent shall terminate upon the earliest to occur of (a) the termination or cancellation of the Assigned Agreement in accordance with its terms and in accordance with the terms of this Consent (it being understood that this Consent shall not terminate but shall remain in effect in the circumstances described in Section 1.5 above in respect of any new agreement entered into in accordance with such Section), (b) the expiration of the term of the Assigned Agreement and (c) the termination of the Security Agreement in accordance with its terms.

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IN WITNESS WHEREOF, the parties hereto, by their officers duly authorized, intending to be legally bound, have caused this Consent and Agreement to be duly executed and delivered as of the date first above written.

GEYSERS POWER COMPANY, LLC,
a Delaware limited liability company,
as Assignor

By: _____
Name:
Title:

Marin Clean Energy
a California joint powers authority,
as Contracting Party

By: _____
Name:
Title:

Accepted and Agreed to:

MUFG UNION BANK, N.A.,
solely in its capacity as First Lien Collateral Agent

By: _____
Name:
Title:

By: _____
Name:
Title:

EXHIBIT A to
Consent and Agreement
PAYMENT INSTRUCTIONS

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

EXHIBIT S

FORM OF LIMITED ASSIGNMENT AGREEMENT

This Limited Assignment Agreement (this “**Assignment Agreement**” or “**Agreement**”) is entered into as of [____], 2022 by and among Geysers Power Company, LLC (“**PPA Seller**”), Marin Clean Energy, a California joint powers authority (“**PPA Buyer**”), and J. Aron & Company LLC, a New York limited liability company (“**J. Aron**”), and relates to that certain power purchase agreement (the “**PPA**”) between PPA Buyer and PPA Seller as described on Appendix 1. Unless the context otherwise specifies or requires, capitalized terms used but not defined in this Agreement have the meanings set forth in the PPA. To the extent there is any inconsistency between this Assignment Agreement and the PPA, the terms of the PPA shall prevail.

In consideration of the premises above and the mutual covenants and agreements herein set forth, PPA Seller, PPA Buyer and J. Aron (the “**Parties**” hereto; each is a “**Party**”) agree as follows:

1. **Limited Assignment and Delegation.**

- (a) PPA Buyer hereby assigns, transfers and conveys to J. Aron all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “**Assigned Products**”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “**Further Information**” section on Appendix 1 (the “**Assigned Product Rights**”). All Assigned Products shall be delivered pursuant to the terms and conditions of this Agreement during the Assignment Period as provided in Appendix 1. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer.
- (b) PPA Buyer hereby delegates to J. Aron the obligation to pay for all Assigned Products that are actually delivered to J. Aron pursuant to the Assigned Product Rights during the Assignment Period (the “**Delivered Product Payment Obligation**” and together with the Assigned Product Rights, collectively the “**Assigned Rights and Obligations**”); provided that (i) all other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer, PPA Buyer shall be solely responsible for any amounts due to PPA Seller that are not directly related to Assigned Products and PPA Buyer agrees that it will remain jointly and severally responsible as primary obligor (and not as surety) for the payment of all Delivered Product Payment Obligation; and (ii) the Parties acknowledge and agree that PPA Seller will only be obligated to deliver a single consolidated invoice during the Assignment Period (with a copy to J. Aron consistent with Section 1(d) hereof). To the extent J. Aron fails to pay the Delivered Product Payment Obligation by the due date for payment set forth in the PPA, notwithstanding anything in this Agreement to the contrary, PPA Buyer agrees that it remains responsible for such payment and that it will be an Event of Default pursuant to Section [____] if PPA Buyer does not make such payment within five (5) Business Days (as defined in the PPA) of such due date. In addition, for the avoidance of doubt, PPA Buyer agrees that, PPA Buyer’s obligations in clause (b) of this paragraph 1 arising from the failure of J. Aron to make any payment in respect of Delivered Product Payment Obligation as and when due under the PPA shall disregard the effects of any stay, if any, or other suspension rights, including without limitation under sections 362 or 365 of the Bankruptcy Code or similar laws.
- (c) J. Aron hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

- (d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) title to Assigned Product will pass from PPA Seller to J. Aron upon delivery by PPA Seller of Assigned Product in accordance with the PPA; (ii) PPA Buyer will provide copies to J. Aron of any Notice (as defined in the PPA) of a Force Majeure Event or Event of Default or default, breach or other occurrence that, if not cured within the applicable grace period, could result in an Event of Default contemporaneously upon delivery thereof to PPA Seller and promptly after receipt thereof from PPA Seller; (iii) PPA Seller will provide copies to J. Aron of all invoices and supporting data provided to PPA Buyer pursuant to Section [], provided that any payment adjustments or subsequent reconciliations occurring after the date that is ten (10) days prior to the payment due date for a monthly invoice, including pursuant to Section [], will be resolved solely between PPA Buyer and PPA Seller and therefore PPA Seller will not be obligated to deliver copies of any communications relating thereto to J. Aron; and (iv) PPA Buyer will provide copies to J. Aron of any other information reasonably requested by J. Aron relating to Assigned Products; provided, that in the case of clause (iv), any failure to provide such information shall not excuse the performance of any other Party hereunder.
- (e) PPA Seller acknowledges that (i) J. Aron intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) J. Aron has the right to purchase receivables due from PPA Buyer for any such Assigned Products. To the extent J. Aron purchases any valid, lien-free receivables due from PPA Buyer for Assigned Products, J. Aron may transfer good, marketable and lien-free title to such receivables to PPA Seller and, so long as PPA Buyer does not have any defense in respect of such receivables other than a defense that would have arisen under the PPA if this Assignment Agreement were not in effect apply the face amount thereof as a reduction to any Delivered Product Payment Obligation owed by J. Aron to PPA Seller; provided that no such transfer or application shall reduce or limit PPA Buyer's obligations under Section 1(b) above.
- (f) On or before the commencement of the Assignment Period, The Goldman Sachs Group ("Guarantor"), Inc. will issue, in favor of PPA Seller, a guaranty of J. Aron's payment obligations under this Assignment Agreement substantially in the form of Appendix 3 attached hereto ("Guaranty"). PPA Seller may draw upon, apply, or make demand under the Guaranty to recover any unpaid amounts not timely paid as set forth herein.
- (g) Without in any way affecting the joint and severally liability of PPA Buyer as primary obligor, or the other obligations of PPA Buyer, as specified herein or under the PPA, in the event the PPA or the Assigned Product Rights are rejected, disaffirmed, repudiated or terminated (or any in combination), in or as a result of any bankruptcy, insolvency, reorganization or similar proceeding affecting J. Aron, PPA Buyer shall, at the option of PPA Seller exercised within thirty (30) days after such rejection, disaffirmation, repudiation or termination, enter into a new agreement with PPA Seller having identical terms as the PPA described on Appendix 1 (subject to any conforming changes necessitated by the substitution of parties and other changes as the parties may mutually agree), provided that the term under such new agreement shall be no longer than the remaining balance of the term specified in the PPA described on Appendix 1.
- (h) Nothing in this Agreement modifies or amends any rights or obligations of PPA Buyer and PPA Seller under the PPA with respect to CAISO revenues and costs.

2. Assignment Early Termination.

- (a) The Assignment Period may be terminated early upon the occurrence of any of the following:
 - (1) delivery of a written notice of termination by either J. Aron or PPA Buyer to each of the other Parties hereto;
 - (2) delivery of a written notice of termination by PPA Seller to each of J. Aron and PPA Buyer following J. Aron's failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one business day following receipt by J. Aron of written notice thereof;
 - (3) delivery of a written notice by PPA Seller if any of the events described in Section ☐ [Bankruptcy] of the PPA occurs with respect to J. Aron; or
 - (4) delivery of a written notice by J. Aron if any of the events described in Section ☐ [Bankruptcy] of the PPA occurs with respect to PPA Seller.
- (b) The Assignment Period will end at the end of the last delivery hour on the date specified in the termination notice provided pursuant to Section 2(a), which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clause (a)(1) or (a)(2) above. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the early termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.
- (c) The Assignment Period will automatically terminate upon the expiration or early termination of the PPA. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the expiration of or early termination of the PPA, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.
- (d) The Assignment Period will automatically terminate upon delivery by Guarantor of a notice of termination of the Guaranty. All Assigned Rights and Obligations shall revert from J. Aron to PPA Buyer upon the termination of the Assignment Period, provided that (i) J. Aron shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to J. Aron prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

3. Representations and Warranties. The PPA Seller and the PPA Buyer represent and warrant to J. Aron, each with respect to itself only, that as of the date hereof (a) the PPA is in full force and

effect; (b) to the best of its knowledge, no event or circumstance exists (or would exist with the passage of time or the giving of notice) that would give either of them the right to terminate the PPA or suspend performance thereunder; and (c) all of its obligations under the PPA required to be performed on or before the date hereof have been fulfilled.

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

J. Aron & Company LLC
200 West Street
New York, New York 10282-2198
Email: gs-prepay-notices@gs.com

5. **Miscellaneous.** Sections [] (Buyer's Representations and Warranties), [] (Confidential Information), [] (Severability), [] (Amendments), [] (No Agency), [] (Mobile-Sierra), [] (Counterparts), [] (Facsimile or Electronic Delivery), [] (Binding Effect) and [] (No Recourse to Members of Buyer) of the PPA are incorporated by reference into this Agreement, mutatis mutandis, as if fully set forth herein.

6. **U.S. Resolution Stay Provisions.**

- (a) In the event that J. Aron becomes subject to a proceeding under (i) the Federal Deposit Insurance Act and the regulations promulgated thereunder or (ii) Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act and the regulations promulgated thereunder (a "U.S. Special Resolution Regime") the transfer from [Assignee] of this Agreement, and any interest and obligation in or under, and any property securing, this Agreement, will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if this Agreement, and any interest and obligation in or under, and any property securing, this Agreement were governed by the laws of the United States or a state of the United States.

- (b) In the event that J. Aron or an Affiliate becomes subject to a proceeding under a U.S. Special Resolution Regime, any Default Rights (as defined in 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable ("Default Right")) under this Agreement that may be exercised against J. Aron are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if this Agreement were governed by the laws of the United States or a state of the United States.

(1) Limitation on Exercise of Certain Default Rights Related to an Affiliate's Entry Into Insolvency Proceedings. Notwithstanding anything to the contrary in this Agreement, the Parties expressly acknowledge and agree that:

- i. PPA Buyer and PPA Seller shall not be permitted to exercise any Default Right with respect to this Agreement or any Affiliate Credit Enhancement that is related, directly or indirectly, to an Affiliate of J. Aron becoming subject to receivership, insolvency, liquidation, resolution, or similar proceeding (an "Insolvency Proceeding"), except to

the extent that the exercise of such Default Right would be permitted under the provisions of 12 C.F.R. 252.84, 12 C.F.R. 47.5 or 12 C.F.R. 382.4, as applicable; and

- ii. Nothing in this Agreement shall prohibit the transfer of any Affiliate Credit Enhancement, any interest or obligation in or under such Affiliate Credit Enhancement, or any property securing such Affiliate Credit Enhancement, to a transferee upon or following an Affiliate of J. Aron becoming subject to an Insolvency Proceeding, unless the transfer would result in PPA Buyer or PPA Seller being the beneficiary of such Affiliate Credit Enhancement in violation of any law applicable to PPA Buyer or PPA Seller, as applicable.

(2) U.S. Protocol. To the extent that PPA Buyer and PPA Seller each adhere to the ISDA 2018 U.S. Resolution Stay Protocol, as published by the International Swaps and Derivatives Association, Inc. as of July 31, 2018 (the “**ISDA U.S. Protocol**”), after the date of this Agreement, the terms of the ISDA U.S. Protocol will supersede and replace the terms of this Section 6.

(3) For purposes of this Section 6:

“**Affiliate**” is defined in, and shall be interpreted in accordance with, 12 U.S.C. § 1841(k).

“**Credit Enhancement**” means any credit enhancement or credit support arrangement in support of the obligations of J. Aron under or with respect to this Agreement, including any guarantee, collateral arrangement (including any pledge, charge, mortgage or other security interest in collateral or title transfer arrangement), trust or similar arrangement, letter of credit, transfer of margin or any similar arrangement.

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

- (a) **Governing Law.** This Assignment Agreement and the rights and duties of the Parties under this Assignment Agreement will be governed by and construed, enforced and performed in accordance with the laws of the State of California, without reference to any conflicts of law provisions that would direct the application of another jurisdiction’s laws.
- (b) **Jurisdiction.** Each Party submits to the exclusive jurisdiction of the federal courts of the United States of America for the Northern District of California sitting in the city and county of San Francisco; provided, that if the federal courts do not have jurisdiction over such dispute, the Parties agree that such dispute shall be brought in the courts of the State of California, sitting in the city and county of San Francisco, and each Party submits to the jurisdiction of such courts of the State of California.
- (c) **Waiver of Right to Trial by Jury.** Each Party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this Assignment Agreement.

[Remainder of Page Intentionally Blank]

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

GEYSERS POWER COMPANY, LLC

By: _____

Name: _____

Title: _____

MARIN CLEAN ENERGY

By: _____

Name: _____

Title: _____

J. ARON & COMPANY LLC

By: _____

Name: _____

Title: _____

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

CALIFORNIA COMMUNITY CHOICE FINANCING AUTHORITY

By: _____

Name: _____

Title: _____

Appendix 1

Assigned Rights and Obligations

PPA: “PPA” means that certain [Confirmation] dated [____], by and between Marin Clean Energy and Geysers Power Company, LLC, as amended from time to time.

“**Assignment Period**” means the period beginning on [_____] and extending until [_____] , provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 2 of the Assignment Agreement and (ii) the end of the Delivery Term under the PPA; provided that applicable provisions of this Agreement shall continue in effect after termination of the Assignment Period to the extent necessary to enforce or complete, duties, obligations or responsibilities of the Parties arising prior to the termination.

Assigned Product: “Assigned Products” includes all (i) Facility Energy and (ii) Green Attributes (PCC1) produced by the Facility.

Further Information: PPA Seller shall continue to transfer the WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy under the PPA pursuant to Section [____] of the PPA, provided that the transferee of such WREGIS Certificates may be changed from time to time in accordance with the written instructions of both J. Aron and Marin Clean Energy upon twenty (20) Business Days’ notice, which change shall be effective as of the first day of the next calendar month, unless otherwise agreed. All Assigned Product delivered by PPA Seller to J. Aron shall be a sale made at wholesale, with J. Aron reselling all such Assigned Product.

Appendix 2

Assigned Prepay Quantity

[NOTE: To be set forth in a monthly volume schedule.]

Appendix 3
Form of GSG Guaranty

, 2022

NAME

ADDRESS

Attention:

Ladies and Gentlemen:

For value received, The Goldman Sachs Group, Inc. (the “Guarantor”), a corporation duly organized under the laws of the State of Delaware, hereby unconditionally guarantees the prompt and complete payment when due, whether by acceleration or otherwise, of all obligations and liabilities, whether now in existence or hereafter arising, of J. Aron & Company LLC, a subsidiary of the Guarantor and a limited liability company duly organized under the laws of the State of New York (the “Company”), to **COUNTERPARTY NAME** (the “Counterparty”) arising out of or under the Limited Assignment Agreement among the Company, the Counterparty and Marin Clean Energy dated as of [], 2022. This Guaranty is one of payment and not of collection.

The Guarantor hereby waives notice of acceptance of this Guaranty and notice of any obligation or liability to which it may apply, and waives presentment, demand for payment, protest, notice of dishonor or non-payment of any such obligation or liability, suit or the taking of other action by Counterparty against, and any other notice to, the Company, the Guarantor or others.

Counterparty may at any time and from time to time without notice to or consent of the Guarantor and without impairing or releasing the obligations of the Guarantor hereunder: (1) agree with the Company to make any change in the terms of any obligation or liability of the Company to Counterparty, (2) take or fail to take any action of any kind in respect of any security for any obligation or liability of the Company to Counterparty, (3) exercise or refrain from exercising any rights against the Company or others, or (4) compromise or subordinate any obligation or liability of the Company to Counterparty including any security therefor. Any other suretyship defenses are hereby waived by the Guarantor.

This Guaranty shall continue in full force and effect until the opening of business on the fifth business day after Counterparty receives written notice of termination from the Guarantor. It is understood and agreed, however, that notwithstanding any such termination this Guaranty shall continue in full force and effect with respect to the obligations and liabilities set forth above which shall have been incurred prior to such termination.

The Guarantor may not assign its rights nor delegate its obligations under this Guaranty, in whole or in part,

without prior written consent of the Counterparty, and any purported assignment or delegation absent such consent is void, except for (i) an assignment and delegation of all of the Guarantor's rights and obligations hereunder in whatever form the Guarantor determines may be appropriate to a partnership, corporation, trust or other organization in whatever form that succeeds to all or substantially all of the Guarantor's assets and business and that assumes such obligations by contract, operation of law or otherwise, and (ii) the Guarantor may transfer this Guaranty or any interest or obligation of the Guarantor in or under this Guaranty, or any property securing this Guaranty, to another entity as transferee as part of the resolution, restructuring or reorganization of the Guarantor upon or following the Guarantor becoming subject to a receivership, insolvency, liquidation, resolution or similar proceeding. Upon any such delegation and assumption or transfer of obligations, the Guarantor shall be relieved of and fully discharged from all obligations hereunder, whether such obligations arose before or after such delegation and assumption or transfer.

THIS GUARANTY SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK WITHOUT GIVING EFFECT TO PRINCIPLES OF CONFLICTS OF LAW. GUARANTOR AGREES TO THE EXCLUSIVE JURISDICTION OF COURTS LOCATED IN THE STATE OF NEW YORK, UNITED STATES OF AMERICA, OVER ANY DISPUTES ARISING UNDER OR RELATING TO THIS GUARANTY.

In the event the Guarantor becomes subject to a proceeding under the Federal Deposit Insurance Act or Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together, the "U.S. Special Resolution Regimes"), the transfer of this Guaranty, and any interest and obligation in or under, and any property securing, this Guaranty, from the Guarantor will be effective to the same extent as the transfer would be effective under such U.S. Special Resolution Regime if this Guaranty, and any interest and obligation in or under this Guaranty, were governed by the laws of the United States or a state of the United States. In the event the Company or the Guarantor, or any of their affiliates, becomes subject to a U.S. Special Resolution Regime, default rights against the Company or the Guarantor with respect to this Guaranty are permitted to be exercised to no greater extent than such default rights could be exercised under such U.S. Special Resolution Regime if this Guaranty was governed by the laws of the United States or a state of the United States.

Very truly yours,

THE GOLDMAN SACHS GROUP, INC.

By: _____

Authorized Officer



December 15, 2022

TO: MCE Board of Directors

FROM: Garth Salisbury, Chief Financial Officer & Treasurer
Justin Kudo, Senior Strategic Analysis and Rates Manager
John Dalessi, CEO, Pacific Energy Advisors

RE: MCE Rate Adjustment Effective January 1, 2023 (Agenda Item #09)

ATTACHMENTS: A. Proposed MCE Residential Rates Effective January 1 2023
B. Proposed MCE Commercial Rates Effective January 1 2023

Dear Board Members:

Executive Summary

On November 17, 2022, your Board directed staff to present a \$0.04/kWh increase to system average rates effective January 1, 2023 for final approval at the December Board Meeting. This recommendation was made unanimously following the approval by MCE's Executive Committee on November 4, 2022, and informational discussions on rates and net revenue during the October 10, 2022 Board Meeting and the September 9, 2022 Annual Board Retreat. Revised rates have been drafted based on this guidance, and are presented for your approval in Attachments A and B.

The proposed rate increase would ensure revenue sufficiency through the 2022/23 and 2023/24 fiscal years by addressing the significant increase in current and forecast energy procurement costs. These increased energy costs are on pace, absent the proposed rate increase, to eliminate MCE's budgeted additions to its reserve requirement and instead draw down those reserves to cover expenses.

During previous meetings, your Board considered the impacts of a \$0.03-\$0.05/kWh system average rate increase. A \$0.04/kWh increase was determined to be the appropriate level to consider to ensure revenue sufficiency while limiting customer bill impacts and keeping rates competitive with PG&E.

A key consideration in setting these rates was the significant reduction in PG&E's forecast PCIA fees on MCE customers in 2023. The PCIA calculation methodology has an intrinsically inverse relationship with market energy prices; higher wholesale prices

decrease the PCIA. As a result, the proposed overall PCIA rates for 2023 are approximately zero (a reduction of about \$0.02/kWh), and would offset half of the proposed MCE rate increase. Based on PG&E's proposed rates, MCE should continue to provide customers with a monthly savings in 2023.¹

The proposed MCE generation rates would strike an appropriate balance between core MCE ratesetting principles of revenue sufficiency and cost competitiveness. This proposal would increase the forecast fiscal year 2022/23 addition to Net Position by \$51 million, enabling MCE to both achieve some of its reserve target goals and, if necessary, to manage further increases to energy costs this fiscal year.

December Updates

The November staff report provided a detailed summary of projected net revenues, energy costs, PG&E rates, and the impacts of each scenario.

It should be noted that these numbers are likely still conservative, and that the actual cost difference (savings) with MCE service should be higher. On November 23rd, PG&E requested an expedited adjustment to rates due to additional under-collections of revenue from its customers during calendar year 2022 and proposed amortizing this revenue through higher rates in 2023; this should further benefit MCE rate competitiveness.

PG&E rate forecasts have also been updated based on PG&E's Preliminary Annual Electric True-Up, dated November 15, 2022. This update was received too late to be reflected in the previous staff report but was reflected in the staff presentation provided during the November Board Meeting. If additional PG&E rate updates are received between the publication of this staff report and the December Board Meeting, live updates will be provided during the staff presentation.

Projected net revenues have been updated as a result of updated operational cost and sales revenue forecasts. Projected energy supply costs have decreased in 2022 and increased for 2023.

Proposed Rates

The attached proposed rates would achieve the \$0.04/kWh system average increase recommended by your Board. This rate change is composed of adjustments to 459 different generation rates across 89 different rate schedules. The cost of serving each customer's electricity load is not equal, and myriad rates capture some of this variability. Rate components themselves can vary based on cost of procurement, usage behavior, time-of-use, economies of scale, system peak, behavioral modification, and other factors.

¹ As proposed in PG&E's Preliminary Annual Electric True-Up, November 15 2022, AL-6761-E

Rate Comparisons

Current forecasts project that Light Green MCE service will result in a savings of approximately \$3 per month per for the typical household², or about 2% of total electric charges.

As noted in the summary, we are using the best available but likely conservative PG&E numbers; we expect final 2023 PG&E rates to be higher and improve MCE rate competitiveness as a result of pending regulatory proceedings.

Sample Monthly Residential Electric Charges (E-TOU-C Rate Schedule)

Forecast 2023 Residential Sample	MCE Light Green	MCE Deep Green	PG&E
Generation	\$66.85	\$71.45	\$63.74
Non-Gen (T&D) ³	\$90.89	\$90.89	\$90.89
PCIA ⁴	\$0.01	\$0.01	\$6.38
Total	\$157.75	\$162.35	\$161.01

Staff has also prepared similar cost comparisons using sample average usage⁵ for small and large commercial rates, with similar results.

Sample Monthly Small Commercial Charges (B1 Rate Schedule)

Forecast 2023 Small Commercial Sample	MCE Light Green	MCE Deep Green	PG&E
Generation	\$165.36	\$176.92	\$158.18
Non-Gen (T&D)	\$211.56	\$211.56	\$211.56
PCIA	\$0.04	\$0.04	\$15.34
Total	\$376.96	\$388.51	\$385.08

Sample Medium-Large C&I Commercial Charges (B19SV Rate Schedule)

Forecast 2023 Med/Lg Commercial Sample	MCE Light Green	MCE Deep Green	PG&E
Generation	\$2,949.94	\$3,132.77	\$2,857.70
Non-Gen (T&D)	\$2,057.39	\$2,057.39	\$2,057.39
PCIA	\$0.60	\$0.60	\$240.24
Total	\$5,007.93	\$5,190.76	\$5,155.33

² PG&E-MCE Joint Rate Comparison E-TOU-C Rate, Updated June 1 2022.

³ Each representation of non-generation rates shown are equivalent to current rates; current PG&E forecasts only show de minimis changes.

⁴ PCIA charges will vary depending on PCIA vintage. Illustrative totals in cost comparisons are prorated based on total customers within each vintage.

⁵ Average usage as provided by PG&E for PG&E-MCE Joint Rate Comparison, Updated June 1 2022.

Communications & Outreach

The proposed rates have been posted on MCE's website in the November Board packet and, as required by MCE's Implementation Plan, a thirty-one (31) day review period has been initiated to allow customers to provide comment on the proposed rate changes.

MCE provided notice to customers as follows:

- On-bill messages informed customers of proposed rate adjustments and directed them to additional sources of information and opportunities to comment.
 - As of December 8th, MCE's customer care team only received one phone call and one email regarding the rate increase.
- MCE website banners and content now include summary information, proposed rate tables, information on upcoming Board and Committee meetings, and other opportunities for public comment.
- Newspaper notices were printed (in English and Spanish) in the following publications:
 - Benicia Herald
 - Daily Republic
 - East Bay Times
 - Marin Independent Journal
 - Napa Valley Register
 - Vacaville Reporter
 - Vallejo Times
- Supplemental Spanish-language noticing was issued with digital advertising.
- Staff engaged regarding rates with the MCE Community Power Coalition.
- Messages were included in MCE's eNewsletter and social media accounts.

Fiscal Impacts

Raising rates by \$0.04/kWh is projected to add approximately \$51.5 million in revenue during fiscal year 2022/23 based on current market conditions, and is expected to ensure revenue sufficiency should costs continue to exceed forecasts. The rate adjustment would create an updated projected addition to Net Position for fiscal year 2022/23 of \$45.5 million and for fiscal year 2023/24 of \$105.8 million.

For fiscal year 2022/23, this would result in a cumulative Net Position of \$249.2 million out of the Reserve Target of \$336.8 million. For fiscal year 2023/24, this would result in a cumulative Net Position of \$349.2 million out of the forecast Reserve Target of \$417.1 million.

The projected addition to total reserves for fiscal year 2023/24 has decreased since the last staff report due to increased market cost forecasts.

Projected Change to Net Position Fiscal Year 2022/23 (In Millions)

Fiscal Year	Current Forecast	Additional Revenue	Revised Forecast	Projected Total Reserves	Reserve Target
2022/23	\$(6.0)	\$51.5	\$45.5	\$249.2	\$336.8
2023/24	\$(116.6)	\$222.4	\$105.8	\$349.2	\$417.1

Recommendation:

Staff recommends that the Board of Directors direct staff to implement updated rates as provided in Attachments A and B, effective January 1 2023.

MCE Light Green Residential Rates

(Proposed Rates effective 1.1.23)

E1, EM, ES, ESR, ET - Basic Residential

All Electric Usage \$0.149/kWh

ETOUC - Default Residential Time-of-Use

Summer - Service June 1 through September 30

Peak	\$0.195/kWh	4 P.M. to 9 P.M. every day
Off Peak	\$0.144/kWh	All other hours

Winter - Service October 1 through May 31

Peak	\$0.149/kWh	4 P.M. to 9 P.M. every day
Off Peak	\$0.135/kWh	All other hours

ETOD - Residential Time-of-Use

Summer - Service June 1 through September 30

Peak	\$0.224/kWh	5 P.M. to 8 P.M. Monday through Friday
Off Peak	\$0.124/kWh	All other hours including holidays**

Winter - Service October 1 through May 31

Peak	\$0.185/kWh	5 P.M. to 8 P.M. Monday through Friday
Off Peak	\$0.152/kWh	All other hours including holidays**

ELEC - Residential Time-of-Use for Qualified Electric Technologies

Summer - Service June 1 through September 30

Peak	\$0.301/kWh	4 P.M. to 9 P.M. every day
Part-Peak	\$0.199/kWh	3 P.M. to 4 P.M. and 9 P.M. to 12 A.M. every day
Off Peak	\$0.152/kWh	All other hours

Winter - Service October 1 through May 31

Peak	\$0.134/kWh	4 P.M. to 9 P.M. every day
Part-Peak	\$0.113/kWh	3 P.M. to 4 P.M. and 9 P.M. to 12 A.M. every day
Off Peak	\$0.099/kWh	All other hours

EV2 - Rates for Electric Vehicle Owners

Summer - Service June 1 through September 30

Peak	\$0.210/kWh	4 P.M. to 9 P.M. Monday through Friday including weekend and holidays**
Part-Peak	\$0.167/kWh	3 P.M. to 4 P.M. and 9 P.M. to 12 A.M. everyday
Off Peak	\$0.128/kWh	All other hours

Winter - Service October 1 through May 31

Peak	\$0.155/kWh	4 P.M. to 9 P.M. Monday through Friday including weekend and holidays**
Part-Peak	\$0.144/kWh	3 P.M. to 4 P.M. and 9 P.M. to 12 A.M. everyday
Off Peak	\$0.121/kWh	All other hours

CLOSED rates

*Enrollment in these rate schedules is closed to new customers, but these rates remain temporarily available for previously enrolled customers until closure is finalized

ETOUB - Residential Time-of-Use (Closed to new enrollments)

Summer - Service June 1 through September 30

Peak	\$0.261/kWh	4 P.M. to 9 P.M. Monday through Friday (except holidays**)
Off Peak	\$0.143/kWh	All other hours including holidays**

Winter - Service October 1 through May 31

Peak	\$0.160/kWh	4 P.M. to 9 P.M. Monday through Friday (except holidays**)
Off Peak	\$0.123/kWh	All other hours including holidays**

EV - Rates for Electric Vehicle Owners (Closed to new enrollments)

Summer - Service May 1 through October 31

Peak	\$0.298/kWh	2 P.M. to 9 P.M. Monday through Friday, 3 P.M. to 7 P.M. Saturday, Sunday, and holidays**
Part-Peak	\$0.161/kWh	7 A.M. to 2 P.M. and 9 P.M. to 11 P.M. Monday through Friday, except holidays**
Off Peak	\$0.117/kWh	All other hours including holidays**

Winter - Service November 1 through April 30

Peak	\$0.113/kWh	2 P.M. to 9 P.M. Monday through Friday, 3 P.M. to 7 P.M. Saturday, Sunday, and holidays**
Part-Peak	\$0.089/kWh	7 A.M. to 2 P.M. and 9 P.M. to 11 P.M. Monday through Friday, except holidays**
Off Peak	\$0.089/kWh	All other hours including holidays**

E6, EM-TOU - Residential Time-of-Use (Closed to new enrollments)

Summer - Service June 1 through September 30

Peak	\$0.273/kWh	4 P.M. to 9 P.M. Monday through Friday except holidays**
Part-Peak	\$0.194/kWh	2 PM to 4 P.M. and 9 P.M. to 10 P.M. Monday through Friday. Plus 5 P.M. to 8 P.M. Saturday and Sunday except holidays**
Off Peak	\$0.127/kWh	All other hours including holidays**

Winter - Service October 1 through May 31

Part-Peak	\$0.158/kWh	5 P.M. to 8 P.M. Monday through Friday except holidays**
Off Peak	\$0.126/kWh	All other hours including holidays**

**Holidays for the purpose of these rate schedules are New Year's Day, President's Day, Memorial day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day. The dates will be those in which the holiday are legally observed.

MCE Deep Green Premium

Customers electing the Deep Green 100% renewable energy service option will pay the applicable rate for the Light Green service option plus the following Deep Green energy charge .

All Usage* as above plus \$0.01/kWh

*Deep Green costs an additional penny per kilowatt-hour in addition to MCE's standard Light Green rates. Based on the average residential monthly usage of 500 kWh per month, Deep Green would cost an additional \$5.00 per month.

MCE Light Green Non-Residential Rates

(Proposed Rates effective 1.1.23)

General Service Rates

B1 - Small General Service Time-of-Use (4 P.M. to 9 P.M. Peak)

Summer - Service June 1 through September 30

Peak	\$0.202/kWh	4 P.M. to 9 P.M. everyday, including weekends and holidays
Part-Peak	\$0.155/kWh	2 P.M. to 4 P.M. and 9 P.M. to 11 P.M. everyday, including weekends and holidays
Off-Peak	\$0.136/kWh	All other hours

Winter - Service from October 1 through May 31

Peak	\$0.150/kWh	4 P.M. to 9 P.M. everyday, including weekends and holidays
Off Peak	\$0.134/kWh	All other hours
Super Off Peak	\$0.119/kWh	9 A.M. to 2 P.M. everyday in March, April, and May only, including weekends and holidays

B1ST - Small General Service Time-of-Use (4 P.M. to 9 P.M. Peak) Plus Storage

Summer - Service June 1 through September 30

Peak	\$0.206/kWh	4 P.M. to 9 P.M. everyday, including weekends and holidays
Part-Peak	\$0.165/kWh	2 P.M. to 4 P.M. and 9 P.M. to 11 P.M. everyday, including weekends and holidays
Off Peak	\$0.131/kWh	All other hours

Winter - Service from October 1 through May 31

Peak	\$0.158/kWh	4 P.M. to 9 P.M. everyday, including weekends and holidays
Part-Peak	\$0.146/kWh	2 P.M. to 4 P.M. and 9 P.M. to 11 P.M. everyday, including weekends and holidays
Off Peak	\$0.125/kWh	All other hours
Super Off Peak	\$0.109/kWh	9 A.M. to 2 P.M. everyday in March, April, and May only, including weekends and holidays

B6 - Small General Service Time-of-Use (4 P.M. to 9 P.M. Peak)

Summer - Service June 1 through September 30

Peak	\$0.290/kWh	4 P.M. to 9 P.M. everyday, including weekends and holidays
Off Peak	\$0.128/kWh	All other hours

Winter - Service from October 1 through May 31

Peak	\$0.156/kWh	4 P.M. to 9 P.M. everyday, including weekends and holidays
Off Peak	\$0.118/kWh	All other hours
Super Off Peak	\$0.084/kWh	9 A.M. to 2 P.M. everyday in March, April, and May only, including weekends and holidays

B10 - Medium General Service Time-of-Use (4 P.M. to 9 P.M. Peak)

Summer	Secondary	Primary	Transmission
Peak	\$0.227/kWh	\$0.211/kWh	\$0.190/kWh
Part-Peak	\$0.169/kWh	\$0.155/kWh	\$0.136/kWh
Off Peak	\$0.138/kWh	\$0.126/kWh	\$0.107/kWh
Winter			
Peak	\$0.172/kWh	\$0.159/kWh	\$0.139/kWh
Off Peak	\$0.138/kWh	\$0.127/kWh	\$0.108/kWh
Super Off Peak	\$0.104/kWh	\$0.092/kWh	\$0.073/kWh

Time-of-Use Periods:

Summer - Service June 1 through September 30

Peak	4 P.M. to 9 P.M. everyday, including weekends and holidays
Part-Peak	2 P.M. to 4 P.M. and 9 P.M. to 11 P.M. everyday, including weekends and holidays
Off Peak	All other hours

Winter - Service from October 1 through May 31

Peak	4 P.M. to 9 P.M. everyday, including weekends and holidays
Off Peak	All other hours
Super Off Peak	9 A.M. to 2 P.M. everyday in March, April, and May only, including weekends and holidays

B19 - Medium General Service Time-of-Use (4 P.M. to 9 P.M. Peak)

Summer	Secondary	Primary	Transmission
Peak	\$0.174/kWh	\$0.154/kWh	\$0.140/kWh
Part-Peak	\$0.134/kWh	\$0.123/kWh	\$0.127/kWh
Off-Peak	\$0.105/kWh	\$0.096/kWh	\$0.099/kWh
Winter			
Peak	\$0.149/kWh	\$0.136/kWh	\$0.139/kWh
Off Peak	\$0.105/kWh	\$0.096/kWh	\$0.100/kWh
Super Off Peak	\$0.047/kWh	\$0.040/kWh	\$0.042/kWh

Demand Charges

Summer Peak	\$20.33/kW	\$17.19/kW	\$15.28/kW
Summer Part-Peak	\$2.95/kW	\$2.52/kW	\$3.82/kW
Winter Peak	\$2.41/kW	\$1.76/kW	\$1.47/kW

Time-of-Use Periods:**Summer - Service June 1 through September 30**

Peak	4 P.M. to 9 P.M. everyday, including weekends and holidays
Part-Peak	2 P.M. to 4 P.M. and 9 P.M. to 11 P.M. everyday, including weekends and holidays
Off Peak	All other hours

Winter - Service from October 1 through May 31

Peak	4 P.M. to 9 P.M. everyday, including weekends and holidays
Off Peak	All other hours
Super Off Peak	9 A.M. to 2 P.M. everyday in March, April, and May only, including weekends and holidays

B19R - Medium General Service (4 P.M. to 9 P.M. Peak) (NEM Customers Only)

Summer	Secondary	Primary	Transmission
Peak	\$0.289/kWh	\$0.262/kWh	\$0.229/kWh
Part-Peak	\$0.160/kWh	\$0.144/kWh	\$0.151/kWh
Off Peak	\$0.123/kWh	\$0.111/kWh	\$0.111/kWh
Winter			
Peak	\$0.164/kWh	\$0.147/kWh	\$0.143/kWh
Off Peak	\$0.123/kWh	\$0.111/kWh	\$0.111/kWh
Super Off Peak	\$0.089/kWh	\$0.077/kWh	\$0.077/kWh

Please Note: Time-of-Use periods are the same as B19, above. These rates also apply to B19 Option S.

B20 - Large General Service Time-of-Use (4 P.M. to 9 P.M. Peak)

Summer	Secondary	Primary	Transmission
Peak	\$0.168/kWh	\$0.164/kWh	\$0.142/kWh
Part-Peak	\$0.131/kWh	\$0.125/kWh	\$0.117/kWh
Off Peak	\$0.102/kWh	\$0.097/kWh	\$0.090/kWh
Winter			
Peak	\$0.146/kWh	\$0.139/kWh	\$0.135/kWh
Off Peak	\$0.102/kWh	\$0.097/kWh	\$0.085/kWh
Super Off Peak	\$0.043/kWh	\$0.038/kWh	\$0.036/kWh

Demand Charges

Summer Peak	\$19.20/kW	\$21.49/kW	\$22.41/kW
Summer Part-Peak	\$2.78/kW	\$2.95/kW	\$5.35/kW
Winter Peak	\$2.45/kW	\$2.47/kW	\$2.99/kW

Time-of-Use Periods:**Summer - Service June 1 through September 30**

Peak	4 P.M. to 9 P.M. everyday, including weekends and holidays
Part-Peak	2 P.M. to 4 P.M. and 9 P.M. to 11 P.M. everyday, including weekends and holidays
Off Peak	All other hours

Winter - Service from October 1 through May 31

Peak	4 P.M. to 9 P.M. everyday, including weekends and holidays
Off Peak	All other hours
Super Off Peak	9 A.M. to 2 P.M. everyday in March, April, and May only, including weekends and holidays

B20R - Medium General Service (4 P.M. to 9 P.M. Peak) (NEM Customers Only)

Summer	Secondary	Primary	Transmission
Peak	\$0.279/kWh	\$0.268/kWh	\$0.265/kWh
Part-Peak	\$0.153/kWh	\$0.145/kWh	\$0.152/kWh
Off Peak	\$0.117/kWh	\$0.112/kWh	\$0.104/kWh
Winter			
Part-Peak	\$0.158/kWh	\$0.150/kWh	\$0.151/kWh
Off Peak	\$0.117/kWh	\$0.112/kWh	\$0.101/kWh
Super Off Peak	\$0.083/kWh	\$0.078/kWh	\$0.070/kWh

Please Note: Time-of-Use periods are the same as B20, above. These rates also apply to B20 Option S.

BEV -Business Electric Vehicles

	BEV-1	BEV-2-S	BEV-2-P,T
Peak	\$0.284/kWh	\$0.292/kWh	\$0.302/kWh
Off Peak	\$0.110/kWh	\$0.105/kWh	\$0.108/kWh
Super Off Peak	\$0.086/kWh	\$0.082/kWh	\$0.084/kWh

Time-of-Use Periods:

Peak	4 P.M. to 9 P.M. everyday, including weekends and holidays, all year
Off Peak	9 P.M. to 9 A.M. and 2 P.M. to 4 P.M. everyday including weekends and holidays, all year
Super Off Peak	9 A.M. to 2 P.M. everyday including weekends and holidays, all year

Agricultural rates

AG - Default Time-of-Use Agriculture

Summer	Rate A1, A2	Rate B	Rate C
Peak	\$0.254/kWh	\$0.271/kWh	\$0.132/kWh
Off Peak	\$0.140/kWh	\$0.153/kWh	\$0.104/kWh
Winter			
Part-Peak	\$0.137/kWh	\$0.148/kWh	\$0.118/kWh
Off Peak	\$0.112/kWh	\$0.123/kWh	\$0.094/kWh
Demand & Connected Load Charges			
Summer Peak Demand	-	-	\$17.12/kW

Time-of-Use Periods:

Summer - Service June 1 through September 30

Peak	5 P.M. to 8 P.M. everyday including weekends and holidays
Off Peak	All other hours

Winter - Service October 1 through May 31

Peak	5 P.M. to 8 P.M. everyday including weekends and holidays
Off Peak	All other hours

AGF - Flexible Time-of-Use Agriculture

Summer	Rate A	Rate B	Rate C
Peak	\$0.352/kWh	\$0.233/kWh	\$0.131/kWh
Off Peak	\$0.152/kWh	\$0.156/kWh	\$0.103/kWh
Winter			
Part-Peak	\$0.142/kWh	\$0.144/kWh	\$0.118/kWh
Off Peak	\$0.117/kWh	\$0.119/kWh	\$0.092/kWh
Demand & Connected Load Charges			
Summer Peak Demand	-	-	\$17.12/kW

Time-of-Use Periods:

Each rate plan under Schedule AG-F has three pre-defined options where two days of the week consist solely of off-peak hours and rates (that is, no peak period on these days):

Option I	Off Peak Days are Wednesday and Thursday
Option II	Off Peak Days are Saturday and Sunday
Option III	Off Peak Days are Monday and Friday

Summer - Service June 1 through September 30

Peak:

Option I	5 P.M. to 8 P.M.
Option II	5 P.M. to 8 P.M.
Option III	5 P.M. to 8 P.M.

The above peak hours apply every day of the year, including weekends and holidays, except for the special off-peak days by Group.

Off-Peak: All other hours

The above off-peak hours by Group shall begin at midnight on the designated day and shall continue until midnight 24 hours later. However, peak hours do not begin until 5 P.M. on the five days of the week on which the peak hours apply

Winter - Service October 1 through May 31

Peak:	Same as shown above for summer period
Off Peak	Same as shown above for summer period

Street & Outdoor Lighting Rates

LS1, LS2, LS3, OL1 - Street and Highway Lighting

All Electric Usage	\$0.122/kWh
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TC1 - Traffic Control Service

All Electric Usage	\$0.132/kWh
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Standby Service Rates

SB - Standby Service (4 P.M. to 9 P.M. Peak)

Summer	Secondary	Primary	Transmission
Peak	\$0.128/kWh	\$0.128/kWh	\$0.118/kWh
Part-Peak	\$0.117/kWh	\$0.117/kWh	\$0.106/kWh
Off Peak	\$0.103/kWh	\$0.103/kWh	\$0.094/kWh
Winter			
Part-Peak	\$0.124/kWh	\$0.124/kWh	\$0.113/kWh
Off Peak	\$0.105/kWh	\$0.105/kWh	\$0.095/kWh
Super Off Peak	\$0.063/kWh	\$0.063/kWh	\$0.053/kWh
Reservation Charge	\$0.99/kW	\$0.99/kW	\$0.50/kW

Time-of-Use Periods:

Summer - Service June 1 through September 30

Peak	4 P.M. to 9 P.M. everyday, including weekends and holidays
Part-Peak	2 P.M. to 4 P.M. and 9 P.M. to 11 P.M. everyday, including weekends and holidays
Off Peak	All other hours

Winter - Service from October 1 through May 31

Part-Peak	4 P.M. to 9 P.M. everyday, including weekends and holidays
Off Peak	All other hours
Super Off Peak	9 A.M. to 2 P.M. everyday in March, April, and May only, including weekends and holidays

** Holidays, for the purpose of these rate schedules, are New Year's Day, President's Day, Memorial Day, Independence Day, Labor Day, Veterans Day, Thanksgiving Day and Christmas Day. The dates will be those in which the holidays are legally observed.

CLOSED rates

*Enrollment in these rate schedules is closed to new customers, but these rates remain temporarily available for previously enrolled customers until closure is finalized

A1 - Small General Service (Closed to new enrollments)

Summer - Service May 1 through October 31	\$0.161/kWh
Winter - Service November 1 through April 30	\$0.122/kWh

A1X - Small General Service Time-of-Use (Closed to new enrollments)

Summer - Service May 1 through October 31

Peak	\$0.163/kWh	12 P.M. to 6 P.M. Monday through Friday except holidays**
Part-Peak	\$0.163/kWh	8:30 A.M. to 12 P.M. and 6 P.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	\$0.140/kWh	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

Winter - Service from November 1 through April 30

Part-Peak	\$0.134/kWh	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	\$0.134/kWh	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

A6 - Small General Service Time-of-Use (Closed to new enrollments)

Summer - Service May 1 through October 31

Peak	\$0.175/kWh	12 P.M. to 6 P.M. Monday through Friday except holidays**
Part-Peak	\$0.175/kWh	8:30 A.M. to 12 P.M. and 6 P.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	\$0.143/kWh	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

Winter - Service from November 1 through April 30

Part-Peak	\$0.134/kWh	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	\$0.133/kWh	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

A10 - Medium General Service (Closed to new enrollments)

	Secondary	Primary
Summer - Service May 1 through October 31	\$0.161/kWh	\$0.145/kWh
Winter - Service November 1 through April 30	\$0.140/kWh	\$0.127/kWh

A10X - Medium General Service Time-of-Use (Closed to new enrollments)

Summer	Secondary	Primary
Peak	\$0.174/kWh	\$0.159/kWh
Part-Peak	\$0.174/kWh	\$0.159/kWh
Off Peak	\$0.148/kWh	\$0.135/kWh
Winter		
Part-Peak	\$0.141/kWh	\$0.128/kWh
Off Peak	\$0.140/kWh	\$0.127/kWh

Time-of-Use Periods:**Summer - Service May 1 through October 31**

Peak	12 P.M. to 6 P.M. Monday through Friday except holidays**
Part-Peak	8:30 A.M. to 12 P.M. and 6 P.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

Winter - Service from November 1 through April 30

Part-Peak	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

E19 - Medium General Service Time-of-Use (Closed to new enrollments)

Summer	Secondary	Primary	Transmission
Peak	\$0.112/kWh	\$0.101/kWh	\$0.091/kWh
Part-Peak	\$0.112/kWh	\$0.101/kWh	\$0.091/kWh
Off Peak	\$0.107/kWh	\$0.095/kWh	\$0.085/kWh
Winter			
Part-Peak	\$0.104/kWh	\$0.093/kWh	\$0.083/kWh
Off Peak	\$0.104/kWh	\$0.092/kWh	\$0.082/kWh

Demand Charges

Summer Peak	\$13.17/kW	\$11.58/kW	\$12.80/kW
Summer Part-Peak	\$13.17/kW	\$11.58/kW	\$12.80/kW

Time-of-Use Periods:**Summer - Service May 1 through October 31**

Peak	12 P.M. to 6 P.M. Monday through Friday except holidays**
Part-Peak	8:30 A.M. to 12 P.M. and 6 P.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

Winter - Service from November 1 through April 30

Part-Peak	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

E19R - Medium General Service (NEM Customers Only) (Closed to new enrollments)

Summer	Secondary	Primary	Transmission
Peak	\$0.170/kWh	\$0.151/kWh	\$0.143/kWh
Part-Peak	\$0.170/kWh	\$0.151/kWh	\$0.143/kWh
Off Peak	\$0.138/kWh	\$0.123/kWh	\$0.118/kWh
Winter			
Part-Peak	\$0.136/kWh	\$0.121/kWh	\$0.116/kWh
Off Peak	\$0.135/kWh	\$0.120/kWh	\$0.116/kWh

Please Note: Time-of-Use periods are the same as E19, above.**E20 - Large General Service Time-of-Use (Closed to new enrollments)**

Summer	Secondary	Primary	Transmission
Peak	\$0.107/kWh	\$0.104/kWh	\$0.091/kWh
Part-Peak	\$0.107/kWh	\$0.104/kWh	\$0.091/kWh
Off Peak	\$0.102/kWh	\$0.098/kWh	\$0.085/kWh
Winter			
Part-Peak	\$0.099/kWh	\$0.096/kWh	\$0.083/kWh
Off Peak	\$0.099/kWh	\$0.095/kWh	\$0.083/kWh

Demand Charges

Summer Peak	\$12.65/kW	\$13.57/kW	\$16.45/kW
Summer Part-Peak	\$12.65/kW	\$13.57/kW	\$16.45/kW

Time-of-Use Periods:**Summer - Service May 1 through October 31**

Peak	12 P.M. to 6 P.M. Monday through Friday except holidays**
Part-Peak	8:30 A.M. to 12 P.M. and 6 P.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

Winter - Service from November 1 through April 30

Part-Peak	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	9:30 P.M. to 8:30 A.M. Monday through Friday and all day Saturday and Sunday except holidays**

E20R - Large General Service (NEM Customers Only) (Closed to new enrollments)

Summer	Secondary	Primary	Transmission
Peak	\$0.159/kWh	\$0.155/kWh	\$0.147/kWh
Part-Peak	\$0.159/kWh	\$0.155/kWh	\$0.147/kWh
Off Peak	\$0.130/kWh	\$0.124/kWh	\$0.117/kWh
Winter			
Part-Peak	\$0.127/kWh	\$0.122/kWh	\$0.115/kWh
Off Peak	\$0.127/kWh	\$0.121/kWh	\$0.114/kWh

Please Note: Time-of-Use periods are the same as E20, above.

AG1 - Agriculture (Closed to new enrollments)

	Rate A	Rate B
Summer - Service May 1 through October 31	\$0.120/kWh	\$0.129/kWh
Winter - Service November 1 through April 30	\$0.107/kWh	\$0.101/kWh

Demand & Connected Load Charges

Summer Connected Load	\$2.69/kW	-
Summer Maximum Demand	-	\$3.99/kW

AG4 - Time-of-Use Agriculture (Closed to new enrollments)

Summer	Rate A,D	Rate B,E	Rate C,F
Peak	\$0.115/kWh	\$0.130/kWh	\$0.109/kWh
Part-Peak	-	-	\$0.109/kWh
Off Peak	\$0.115/kWh	\$0.130/kWh	\$0.098/kWh
Winter			
Part-Peak	\$0.102/kWh	\$0.116/kWh	\$0.096/kWh
Off Peak	\$0.101/kWh	\$0.116/kWh	\$0.095/kWh

Demand & Connected Load Charges

Summer Connected Load	\$2.18/kW	-	-
Summer Maximum Demand	-	\$3.97/kW	-
Summer Part-Peak Demand	-	-	\$4.19/kW

Time-of-Use Periods:**Summer - Service May 1 through October 31**For rates A, B, D, and E

Peak	12 P.M. to 6 P.M. Monday through Friday except holidays**
Off Peak	All other hours Monday through Friday All day Saturday, Sunday, and holidays**

For Rates C and F

Peak	12 P.M. to 6 P.M. Monday through Friday except holidays**
Part-Peak	8:30 A.M. to 12 P.M. Monday through Friday except holidays** 6 P.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	9:30 P.M. to 8:30 A.M. Monday through Friday All day Saturday, Sunday, and holidays

Winter - Service November 1 through April 30For rates A, B, C, D, E, and F

Part-Peak	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	All other hours Monday through Friday All day Saturday, Sunday, and holidays**

AG5 - Large Agriculture (Closed to new enrollments)

Summer	Rate A,D	Rate B,E	Rate C,F
Peak	\$0.122/kWh	\$0.118/kWh	\$0.099/kWh
Part-Peak	-	-	\$0.099/kWh
Off Peak	\$0.122/kWh	\$0.118/kWh	\$0.093/kWh
Winter			
Part-Peak	\$0.110/kWh	\$0.106/kWh	\$0.090/kWh
Off Peak	\$0.109/kWh	\$0.105/kWh	\$0.090/kWh

Demand & Connected Load Charges

Summer Connected Load	\$6.03/kW	-	-
Summer Maximum Demand	-	\$7.71/kW	-
Summer Part-Peak Demand	-	-	\$8.65/kW

Time-of-Use Periods:**Summer - Service May 1 through October 31**For rates A, B, D, and E

Peak	12 P.M. to 6 P.M. Monday through Friday except holidays**
Off Peak	All other hours Monday through Friday
	All day Saturday, Sunday, and holidays**

For Rates C and F

Peak	12 P.M. to 6 P.M. Monday through Friday except holidays**
Part-Peak	8:30 A.M. to 12 P.M. Monday through Friday except holidays**
	6 P.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	9:30 P.M. to 8:30 A.M. Monday through Friday
	All day Saturday, Sunday, and holidays

Winter - Service November 1 through April 30For rates A, B, C, D, E, and F

Part-Peak	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	All other hours Monday through Friday
	All day Saturday, Sunday, and holidays**

AGR - Large Agriculture (Closed to new enrollments)

Summer	Rate A	Rate B
Peak	\$0.117/kWh	\$0.111/kWh
Off Peak	\$0.117/kWh	\$0.111/kWh
Winter		
Part-Peak	\$0.101/kWh	\$0.100/kWh
Off Peak	\$0.101/kWh	\$0.099/kWh
Demand & Connected Load Charges		
Summer Connected Load	\$2.13/kW	-
Summar Maximum Demand	-	\$3.14/kW

Time-of-Use Periods:**Summer - Service May 1 through October 31**

Peak	
Group I	12 P.M. to 6 P.M. Monday, Tuesday, Wednesday
Group II	12 P.M. to 6 P.M. Wednesday, Thursday, Friday
Off Peak	All other hours Monday through Friday
	All day Saturday, Sunday, holidays**

Winter - Service November 1 through April 30

Part-Peak	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	All other hours Monday through Friday
	All day Saturday, Sunday, and holidays**

AGV - Large Agriculture (Closed to new enrollments)

Summer	Rate A	Rate B
Peak	\$0.114/kWh	\$0.108/kWh
Off Peak	\$0.114/kWh	\$0.108/kWh
Winter		
Part-Peak	\$0.099/kWh	\$0.096/kWh
Off Peak	\$0.099/kWh	\$0.095/kWh
Demand & Connected Load Charges		
Summer Connected Load	\$2.23/kW	-
Summar Maximum Demand	-	\$2.96/kW

Time-of-Use Periods:**Summer - Service May 1 through October 31**

Peak	
Group I	12 P.M. to 4 P.M. Monday through Friday except holidays**
Group II	1 P.M. to 5 P.M. Monday through Friday except holidays**
Group III	2 P.M. to 6 P.M. Monday through Friday except holidays**
Off Peak	All other hours Monday through Friday
	All day Saturday, Sunday, holidays**

Winter - Service November 1 through April 30

Part-Peak	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	All other hours Monday through Friday
	All day Saturday, Sunday, and holidays**

STOU - Standby Service (Closed to new enrollments)

Summer	Secondary	Primary	Transmission
Peak	\$0.158/kWh	\$0.158/kWh	\$0.129/kWh
Part-Peak	\$0.131/kWh	\$0.131/kWh	\$0.107/kWh
Off Peak	\$0.096/kWh	\$0.096/kWh	\$0.078/kWh
Winter			
Part-Peak	\$0.135/kWh	\$0.135/kWh	\$0.110/kWh
Off Peak	\$0.108/kWh	\$0.108/kWh	\$0.088/kWh
Reservation Charge	\$0.65/kW	\$0.65/kW	\$0.53/kW

Time-of-Use Periods:**Summer - Service May 1 through October 31**

Peak	12 P.M. to 6 P.M. Monday through Friday except holidays**
Part-Peak	8:30 A.M. to 12 P.M. Monday through Friday except holidays** 6 P.M. to 9:30 P.M. Monday through Friday except holidays**
Off-Peak	9:30 P.M. to 8:30 A.M. Monday through Friday All day Saturday, Sunday, and holidays**

Winter - Service November 1 through April 30

Part-Peak	8:30 A.M. to 9:30 P.M. Monday through Friday except holidays**
Off Peak	9:30 P.M. to 8:30 A.M. Monday through Friday except holidays** All day Saturday, Sunday, and holidays**

MCE Deep Green Premium

Customers electing the Deep Green 100% renewable energy service option will pay the applicable rate for the Light Green service option plus the following Deep Green energy charge .

All Usage*	as above plus \$0.01/kWh
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*Deep Green costs an additional penny per kilowatt-hour in addition to MCE's standard Light Green rates. Based on a monthly usage of 1,200 kWh per month, Deep Green would cost an additional \$12.00 more per month.



December 15, 2022

TO: MCE Board of Directors

FROM: Catalina Murphy, Associate General Counsel

RE: Proposed Resolution No. 2022-17 Increasing Purchasing Agent's Authority (Agenda Item #10)

ATTACHMENTS: A.1 Proposed Resolution No. 2022-17 Increasing Purchasing Agent Authority (\$400,000)
A.2 Proposed Resolution No. 2022-17 Increasing Purchasing Agent Authority (\$225,000)
B. Resolution No. 2018-04 Designating the CEO as Purchasing Agent and Delegating Purchasing Agent Authority
C. Strikethrough of Resolution No. 2018-04 Designating the CEO as Purchasing Agent and Delegating Purchasing Agent Authority
D. Resolution No. 2020-04 Rescinding Resolution No. 2018-03 and Delegating Energy Procurement Authority

Dear Board Members:

Summary:

Since MCE launched its service to customers, your Board established the signing authority for the agency to approve and execute non-energy procurement contracts consistent with a Board-approved budget. In 2010, when MCE served 8 communities, the signing authority was \$20,000; in 2013, when MCE served 13 communities, it was increased to \$25,000.

On March 15, 2018, your Board passed and adopted Resolution 2018-04 (Attachment B), designating the Chief Executive Officer ("CEO") as MCE's purchasing agent and authorizing the CEO to enter into non-energy procurement transactions not exceeding \$100,000 per vendor per fiscal year for a given scope of work. The delegated contracting authority would be consistent with an approved Integrated Resource Plan and/or budget. In 2018:

- MCE's total net position was \$50,731,303.

- MCE had 255,497 customers, serving 33 communities.
- MCE executed approximately 50 contracts that year.

Now, in December 2022, staff recommend your Board increase the CEO's purchasing agent authority to \$400,000 to streamline MCE's operational and programmatic contracting needs as it serves 37 communities across the four counties of MCE's service area. This contracting authority of \$400,000 would support MCE's growth, and align with MCE's substantially increased budget, as well as its routine purchasing and contracting needs. In 2022:

- MCE's total net position is \$203,279,213 (400% growth from 2018).
- MCE has more than 582,530 customers (228% growth from 2018).
- MCE has executed approximately 150 contracts (200% growth from 2018), 17 of which were between \$100,000 and \$400,000.

While MCE's total net position has seen a 400% increase from 2018, there has been no increase in delegated non-energy procurement authority.

Establishing the purchasing agent's contracting authority at \$400,000 would represent 0.02% of MCE's current annual budget. Revenues in Fiscal Year 2022/2023 are projected to be \$580,000,000, and MCE's revenues are expected to reach \$700,000,000 in Fiscal Year 2023/2024. As such, MCE's contracting needs would increase, as well as programmatic opportunities that allow MCE to further its mission of confronting the climate crisis and creating equitable community benefits. An increased contracting authority would promote efficiency and responsiveness within MCE's operations to capitalize on those opportunities and not be subject to the timing of an applicable Committee or Board meeting.

Staff recommend increasing the purchasing agent authority of the CEO to \$400,000. Alternatively, staff have prepared materials to increase the purchasing agent authority of the CEO to \$225,000 should your Board prefer to consider it.

To show a comprehensive view of current contracting authority, staff have also included Resolution 2020-04 (Attachment D) adopted by your Board in November 2020, which provides for the separate delegated authority to the CEO for energy procurement.

Fiscal Impacts:

None. All contracts approved under this Resolution 2022-17 would be consistent with a Board-approved budget and/or Integrated Resources Plan.

Recommendation:

Adopt proposed Resolution 2022-17 Increasing Purchasing Agent Authority to \$400,000 (Attachment A.1). Alternatively, adopt proposed Resolution 2022-17 Increasing Purchasing Agent Authority to \$225,000 (Attachment A.2).

RESOLUTION 2022-17

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY RESCINDING RESOLUTION NO. 2018-04 AND DESIGNATING THE CHIEF EXECUTIVE OFFICER AS THE PURCHASING AGENT PURSUANT TO GOVERNMENT CODE 25500 AND DELEGATING PURCHASING AGENT AUTHORITY

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

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

WHEREAS, Resolution 2018-04 designated the Chief Executive Officer as the purchasing agent pursuant to Government Code 25500 and delegated purchasing agent authority; and

WHEREAS, the Board of Directors intends that this Resolution No. 2022-17 replaces Resolution No. 2018-04; and

WHEREAS, Government Code Section 25500 et seq. defines the role of a purchasing agent, and authorizes the governing body of a county to employ a purchasing agent to enter into certain transactions; and

WHEREAS, the Board of Directors desires to appoint a purchasing agent for MCE; and

WHEREAS, the Board of Directors, by designating a purchasing agent and delegating certain contracting authority to the designated purchasing agent as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion; and

WHEREAS, the Board of Directors shall retain contracting authority over all contracts required by law to be approved by the Board, including but not limited to any contracts to borrow money or otherwise incur debt;

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors:

- A. Resolution No. 2018-04 is hereby rescinded.
- B. The Board of Directors hereby designates the Chief Executive Officer as purchasing agent for MCE.
- C. The delegation of contracting authority to the purchasing agent shall be subject to any exemptions that may be adopted by the Board of Directors.
- D. The Board of Directors hereby delegates the following contracting authority consistent with an approved Integrated Resource Plan and/or budget, as applicable, including transactions that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:

1. Delegation to the Executive Committee:

The Executive Committee is hereby authorized to approve and direct the purchasing agent to enter into all transactions, including contracts, amendments and addenda; provided that any transaction greater than \$400,000 shall also be executed by the Executive Committee Chair.

2. Delegation to the Purchasing Agent:

The purchasing agent is hereby authorized to approve and enter into:

- a. transactions for goods, equipment or services with a not-to-exceed maximum dollar amount of \$400,000 per vendor for a given scope of work, per fiscal year;
- b. amendments or addenda to existing contracts, regardless of the existing contract's price or total amount, which improves the terms of the contract to MCE's benefit without increasing the contract's not-to-exceed maximum dollar amount; and
- c. in the event of an emergency situation, transactions with a not-to-exceed maximum dollar amount of:
 - i. \$450,000 in the aggregate; or
 - ii. \$800,000 in the aggregate with the prior written consent of the Chair or Vice Chair of the Executive Committee.

An "emergency situation" for purposes hereof is a sudden, unexpected occurrence that poses an imminent danger to life or property or other material financial loss or to essential public services that calls for immediate action with inadequate time for prior Board of Directors or Executive Committee approval. The purchasing agent shall deliver a report to the Board of Directors at the next regular meeting explaining the necessity for the action, a listing of expenditures made under these emergency powers and any recommended future actions.

3. Exemptions to Limits on Purchasing Agent's Purchasing Authority:

The Board of Directors hereby provides that the following transactions are exempt from the above purchasing and procurement authority limits, provided that such expenditures are consistent with the budget adopted by the Board:

- a. Utilities, where there is no reasonable basis for competitive procurement, including but not limited to telephonic communications, electric power, internet/cable, water, solid waste and debris collection (unless in relation to a construction project), and sewage;
- b. Tariffed costs and fees, including but not limited to PG&E service fees and CAISO fees and costs, including MCE's Estimated Aggregate Liability (EAL);
- c. Notices required by law;
- d. Fees and taxes required by law;
- e. Payments made pursuant to a duly approved contract;
- f. Routine office supplies;
- g. Insurance policies consistent with MCE's approved benefits policy;
- h. Print services; and
- i. Postage costs.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of December 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				

Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of Richmond				
Town of Ross				
City of St. Helena				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of San Ramon				
City of Sausalito				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

RESOLUTION 2022-17

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY RESCINDING RESOLUTION NO. 2018-04 AND DESIGNATING THE CHIEF EXECUTIVE OFFICER AS THE PURCHASING AGENT PURSUANT TO GOVERNMENT CODE 25500 AND DELEGATING PURCHASING AGENT AUTHORITY

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

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

WHEREAS, Resolution 2018-04 designated the Chief Executive Officer as the purchasing agent pursuant to Government Code 25500 and delegated purchasing agent authority; and

WHEREAS, the Board of Directors intends that this Resolution No. 2022-17 replaces Resolution No. 2018-04; and

WHEREAS, Government Code Section 25500 et seq. defines the role of a purchasing agent, and authorizes the governing body of a county to employ a purchasing agent to enter into certain transactions; and

WHEREAS, the Board of Directors desires to appoint a purchasing agent for MCE; and

WHEREAS, the Board of Directors, by designating a purchasing agent and delegating certain contracting authority to the designated purchasing agent as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion; and

WHEREAS, the Board of Directors shall retain contracting authority over all contracts required by law to be approved by the Board, including but not limited to any contracts to borrow money or otherwise incur debt;

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors:

- A. Resolution No. 2018-04 is hereby rescinded.
- B. The Board of Directors hereby designates the Chief Executive Officer as purchasing agent for MCE.
- C. The delegation of contracting authority to the purchasing agent shall be subject to any exemptions that may be adopted by the Board of Directors.
- D. The Board of Directors hereby delegates the following contracting authority consistent with an approved Integrated Resource Plan and/or budget, as applicable, including transactions that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:

1. Delegation to the Executive Committee:

The Executive Committee is hereby authorized to approve and direct the purchasing agent to enter into all transactions, including contracts, amendments and addenda; provided that any transaction greater than \$225,000 shall also be executed by the Executive Committee Chair.

2. Delegation to the Purchasing Agent:

The purchasing agent is hereby authorized to approve and enter into:

- a. transactions for goods, equipment or services with a not-to-exceed maximum dollar amount of \$225,000 per vendor for a given scope of work, per fiscal year;
- b. amendments or addenda to existing contracts, regardless of the existing contract's price or total amount, which improves the terms of the contract to MCE's benefit without increasing the contract's not-to-exceed maximum dollar amount; and
- c. in the event of an emergency situation, transactions with a not-to-exceed maximum dollar amount of:
 - i. \$275,000 in the aggregate; or
 - ii. \$625,000 in the aggregate with the prior written consent of the Chair or Vice Chair of the Executive Committee.

An "emergency situation" for purposes hereof is a sudden, unexpected occurrence that poses an imminent danger to life or property or other material financial loss or to essential public services that calls for immediate action with inadequate time for prior Board of Directors or Executive Committee approval. The purchasing agent shall deliver a report to the Board of Directors at the next regular meeting explaining the necessity for the action, a listing of expenditures made under these emergency powers and any recommended future actions.

3. Exemptions to Limits on Purchasing Agent's Purchasing Authority:

The Board of Directors hereby provides that the following transactions are exempt from the above purchasing and procurement authority limits, provided that such expenditures are consistent with the budget adopted by the Board:

- a. Utilities, where there is no reasonable basis for competitive procurement, including but not limited to telephonic communications, electric power, internet/cable, water, solid waste and debris collection (unless in relation to a construction project), and sewage;
- b. Tariffed costs and fees, including but not limited to PG&E service fees and CAISO fees and costs, including MCE's Estimated Aggregate Liability (EAL);
- c. Notices required by law;
- d. Fees and taxes required by law;
- e. Payments made pursuant to a duly approved contract;
- f. Routine office supplies;
- g. Insurance policies consistent with MCE's approved benefits policy;
- h. Print services; and
- i. Postage costs.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of December 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				

Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of Richmond				
Town of Ross				
City of St. Helena				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of San Ramon				
City of Sausalito				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

MAR 15 2018

RESOLUTION NO. 2018-04

MARIN CLEAN ENERGY

**A RESOLUTION OF THE BOARD OF DIRECTORS OF
MARIN CLEAN ENERGY DESIGNATING THE CHIEF EXECUTIVE OFFICER AS THE
PURCHASING AGENT PURSUANT TO GOVERNMENT CODE 25500 AND
DELEGATING PURCHASING AGENT AUTHORITY**

WHEREAS, Section 2.6 of the MCE Joint Powers Agreement provides that the power of MCE is subject to the same restrictions upon the manner of exercising power possessed by the County of Marin;

WHEREAS, Government Code Section 25500 et seq. defines the role of a purchasing agent, and authorizes the governing body of a county to employ a purchasing agent to enter into certain transactions; and

WHEREAS, the Board of Directors desires to appoint a purchasing agent for MCE; and

WHEREAS, the Board of Directors, by designating a purchasing agent and delegating certain contracting authority to the designated purchasing agent as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion; and

WHEREAS, the Board of Directors shall retain contracting authority over all contracts required by law to be approved by the Board, including but not limited to any contracts to borrow money or otherwise incur debt.

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors:

- A. The Board of Directors hereby designates the Chief Executive Officer as purchasing agent for MCE.
- B. This delegation of contracting authority to the purchasing agent shall be subject to any exemptions that may be adopted by the Board of Directors.
- C. The Board of Directors hereby delegates the following contracting authority, consistent with an approved Integrated Resource Plan and/or budget, as applicable, including transactions that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:

1. Delegation to the Executive Committee:

The Executive Committee is hereby authorized to approve and direct the purchasing agent to enter into all transactions, including contracts, amendments and addenda; provided that any transaction greater than \$100,000 shall also be executed by the Executive Committee Chair.

2. Delegation to the Purchasing Agent:

The purchasing agent is hereby authorized to approve and enter into:

- a. transactions for goods, equipment or services with a not-to-exceed maximum dollar amount of \$100,000 per vendor for a given scope of work, per fiscal year;
- b. amendments or addenda to existing contracts, regardless of the existing contract's price or total amount, which improves the terms of the contract to MCE's benefit without increasing the contract's not-to-exceed maximum dollar amount; and
- c. in the event of an emergency situation, transactions with a not-to-exceed maximum dollar amount of:
 - i. \$150,000 in the aggregate; or
 - ii. \$500,000 in the aggregate with the prior written consent of the Chair or Vice Chair of the Executive Committee.

An "emergency situation" for purposes hereof is a sudden, unexpected occurrence that poses an imminent danger to life or property or other material financial loss or to essential public services that calls for immediate action with inadequate time for prior Board of Directors or Executive Committee approval. The purchasing agent shall deliver a report to the Board of Directors at the next regular meeting explaining the necessity for the action, a listing of expenditures made under these emergency powers and any recommended future actions.

3. Exemptions to Limits on Purchasing Agent's Purchasing Authority:

The Board of Directors hereby provides that the following transactions are exempt from the above purchasing and procurement authority limits, provided that such expenditures are consistent with the budget adopted by the Board:

- a. Utilities, where there is no reasonable basis for competitive procurement, including but not limited to telephonic communications, electric power, internet/cable, water, solid waste and debris collection (unless in relation to a construction project), and sewage;
- b. Tariffed costs and fees, including but not limited to PG&E service fees and CAISO fees and costs, including MCE's Estimated Aggregate Liability (EAL);
- c. Notices required by law;
- d. Fees and taxes required by law;
- e. Payments made pursuant to a duly approved contract;

- f. Routine office supplies;
- g. Insurance policies consistent with MCE's approved benefits policy;
- h. Print services; and
- i. Postage costs.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of March, 2018, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
City of American Canyon				✓
City of Belvedere	✓			
City of Benicia	✓			
City of Calistoga				✓
City of Concord	✓			
Contra Costa County				✓
Town of Corte Madera	✓			
The Town of Danville	✓			
City of El Cerrito	✓			
Town of Fairfax				✓
City of Lafayette	✓			
City of Larkspur				✓
County of Marin	✓			
The City of Martinez				✓
City of Mill Valley	✓			
Town of Moraga	✓			
City of Napa				✓
County of Napa				✓
City of Novato	✓			
City of Oakley	✓			
City of Pinole	✓			
City of Pittsburg				✓
City of Richmond	✓			
Town of Ross	✓			
Town of San Anselmo	✓			
City of San Pablo				✓

City of San Rafael	✓			
City of San Ramon	✓			
City of Sausalito	✓			
City of St. Helena				✓
Town of Tiburon				✓
City of Walnut Creek				✓
Town of Yountville				✓



CHAIR, MCE

Attest:



SECRETARY, MCE

[Changes according to Attachment A.1 (\$400,000) are bracketed in green]
[Changes according to Attachment A.2 (\$225,000) are bracketed in blue]

RESOLUTION 2022-XX

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY ~~DESIGNATING~~RESCINDING RESOLUTION NO. 2018-04 AND DESIGNATING THE CHIEF EXECUTIVE OFFICER AS THE PURCHASING AGENT PURSUANT TO GOVERNMENT CODE 25500 AND DELEGATING PURCHASING AGENT AUTHORITY

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

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

WHEREAS, Resolution 2018-04 designated the Chief Executive Officer as the purchasing agent pursuant to Government Code 25500 and delegated purchasing agent authority; and

WHEREAS, the Board of Directors ~~desires to appoint a purchasing agent for MCE; and intends that this Resolution No. 2022-XX replaces Resolution No. 2018-04;~~
and

WHEREAS, Government Code Section 25500 et seq. defines the role of a purchasing agent, and authorizes the governing body of a county to employ a purchasing agent to enter into certain transactions; and

WHEREAS, the Board of Directors desires to appoint a purchasing agent for MCE; and

WHEREAS, the Board of Directors, by designating a purchasing agent and delegating certain contracting authority to the designated purchasing agent as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion; and

WHEREAS, the Board of Directors shall retain contracting authority over all contracts required by law to be approved by the Board, including but not limited to any contracts to borrow money or otherwise incur debt;

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors:

A. Resolution No. 2018-04 is hereby rescinded.

B. The Board of Directors hereby designates the Chief Executive Officer as purchasing agent for MCE.

C. The delegation of contracting authority to the purchasing agent shall be subject to any exemptions that may be adopted by the Board of Directors.

D. The Board of Directors hereby delegates the following contracting authority, consistent with an approved Integrated Resource Plan and/or budget, as applicable, including transactions that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:

1. Delegation to the Executive Committee:

The Executive Committee is hereby authorized to approve and direct the purchasing agent to enter into all transactions, including contracts, amendments and addenda; provided that any transaction greater than \$~~100~~[400][225],000 shall also be executed by the Executive Committee Chair.

2. Delegation to the Purchasing Agent:

The purchasing agent is hereby authorized to approve and enter into:

a. transactions for goods, equipment or services with a not-to-exceed maximum dollar amount of \$~~100~~[400][225],000 per vendor for a given scope of work, per fiscal year;

b. amendments or addenda to existing contracts, regardless of the existing contract's price or total amount, which improves the terms of the contract to MCE's benefit without increasing the contract's not-to-exceed maximum dollar amount; and

c. in the event of an emergency situation, transactions with a not-to-exceed maximum dollar amount of:

i. \$~~150~~[450][275],000 in the aggregate; or

ii. \$~~500~~[800][625],000 in the aggregate with the prior written consent of the Chair or Vice Chair of the Executive Committee.

An "emergency situation" for purposes hereof is a sudden, unexpected occurrence that poses an imminent danger to life or property or other

material financial loss or to essential public services that calls for immediate action with inadequate time for prior Board of Directors or Executive Committee approval. The purchasing agent shall deliver a report to the Board of Directors at the next regular meeting explaining the necessity for the action, a listing of expenditures made under these emergency powers and any recommended future actions.

3. Exemptions to Limits on Purchasing Agent's Purchasing Authority:

The Board of Directors hereby provides that the following transactions are exempt from the above purchasing and procurement authority limits, provided that such expenditures are consistent with the budget adopted by the Board:

- a. Utilities, where there is no reasonable basis for competitive procurement, including but not limited to telephonic communications, electric power, internet/cable, water, solid waste and debris collection (unless in relation to a construction project), and sewage;
- b. Tariffed costs and fees, including but not limited to PG&E service fees and CAISO fees and costs, including MCE's Estimated Aggregate Liability (EAL);
- c. Notices required by law;
- d. Fees and taxes required by law;
- e. Payments made pursuant to a duly approved contract;
- f. Routine office supplies;
- g. Insurance policies consistent with MCE's approved benefits policy;
- h. Print services; and
- i. Postage costs.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of ~~March, 2018~~December 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				

City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of Richmond				
Town of Ross				
City of St. Helena				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of San Ramon				
City of Sausalito				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

RESOLUTION 2020-04

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY RESCINDING RESOLUTION NO. 2018-03 AND DELEGATING ENERGY PROCUREMENT AUTHORITY

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

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

WHEREAS, Resolution No. 2018-03 set forth energy procurement authority delegated by the Board of Directors; and

WHEREAS, the Board intends that this Resolution No. 2020-04 replaces Resolution No. 2018-03; and

WHEREAS, the Board of Directors, by this delegation of energy procurement and contracting authority as described herein, shall not be divested of any such authority, but shall retain and may exercise such authority at such times as it may deem necessary and proper, at its sole discretion; and

WHEREAS, the Board of Directors shall retain contracting authority over all contracts required by law to be approved by the Board, including but not limited to any contracts to borrow money or otherwise incur debt.

NOW, THEREFORE, BE IT RESOLVED, by the MCE Board of Directors:

- A. Resolution No. 2018-03 is hereby rescinded.
- B. For purposes of this Resolution, "Energy Procurement" shall mean all contracting, purchase and sale of energy and energy-related products for MCE, including but not limited to products related to electricity, capacity, energy efficiency, distributed energy resources, demand response, and storage.
- C. The Board of Directors hereby delegates the following contracting authority consistent with an approved resource plan and/or budget, as applicable, including

contracts that are consistent with the current fiscal year's budget but extend beyond the current fiscal year:

1. Delegation to the Technical Committee

The Technical Committee is hereby authorized to approve and direct the Chief Executive Officer ("CEO") and Technical Committee Chair to execute:

- a. contracts for Energy Procurement as herein defined;
- b. contracts for functions, programs or services related to Energy Procurement; and
- c. contracts related to MCE ownership, leasing or development of energy generation projects and assets.

2. Delegation to the Chief Executive Officer and Technical Committee Chair, Jointly

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

3. Delegation to the Chief Executive Officer

The CEO is hereby authorized to approve and execute:

- a. contracts for Energy Procurement for terms of less than or equal to 12 months, which the CEO shall timely report to the Board of Directors;
- b. amendments or addenda to existing Energy Procurement contracts, regardless of the existing contract's price or total amount, which improve the terms of the contract to MCE's benefit without increasing the contract's not-to-exceed maximum dollar amount; and
- c. in the event of an emergency or critical needs situation, such as exposure to volatile CAISO market conditions during extreme weather events, or a shortage in energy supply compared to load forecasted, short-term purchases, which includes transactions with existing counterparties in both written and oral format.
 - i. Oral transactions may only be executed with existing counterparties contractually enabled with MCE through an approved master agreement on a recorded telephone line where written receipts and voice recordings documenting such transactions are provided to MCE.

- ii. “Short-term purchases” for purposes hereof refers to Energy Procurement on the day-ahead energy market within the forecasted 30 days.
- iii. The CEO shall timely report any short-term purchases to the Board of Directors.
- iv. The CEO may delegate authority to engage in short-term purchases under this subdivision to staff, including the Chief Operating Officer or Manager of Power Resources.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 19th day of November, 2020, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin	X			
Contra Costa County				X
County of Napa	X			
County of Solano				X
City of American Canyon	X			
City of Belvedere	X			
City of Benicia	X			
City of Calistoga	X			
City of Concord	X			
Town of Corte Madera	X			
Town of Danville	X			
City of El Cerrito	X			
Town of Fairfax	X			
City of Lafayette	X			
City of Larkspur	X			
City of Martinez				X
City of Mill Valley	X			
Town of Moraga				X
City of Napa	X			
City of Novato	X			
City of Oakley	X			
City of Pinole	X			
City of Pittsburg	X			
City of Pleasant Hill	X			
City of San Ramon	X			

AI #10_Att. D: Reso. No. 2020-04 Rescinding Reso. No. 2018-03 and Delegating Energy Procurement Auth.

City of Richmond	X			
Town of Ross	X			
Town of San Anselmo	X			
City of San Pablo	X			
City of San Rafael	X			
City of Sausalito	X			
City of St. Helena	X			
Town of Tiburon	X			
City of Vallejo	X			
City of Walnut Creek				X
Town of Yountville	X			

DocuSigned by:



CE0286796CE54A5...

CHAIR, MCE

Attest:

DocuSigned by:



A59878416EBC4F8...

SECRETARY, MCE

RESOLUTION 2022-18

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY HONORING BOARD CHAIR TOM BUTT

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

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

WHEREAS, Thomas King Butt was the driving force that led the City of Richmond to request membership in MCE; and

WHEREAS, the City of Richmond executed the Joint Powers Agreement establishing membership in MCE on July 15, 2012; and

WHEREAS, Tom Butt was elected to the Richmond City Council in 1996, with the most recent eight years in service as Mayor; and

WHEREAS, Chair Butt was appointed to serve on the MCE Board of Directors on November 1, 2012 as the first Board representative from Richmond, where he has served for 10 years on behalf of the City of Richmond, additionally serving as Chair of the Board (2021 – 2022), Vice Chair of the Board (2014-2021), and as a member of the Executive Committee (2013-2022, Chair 2014-2021), Ad Hoc Contracts (2013), Ad Hoc Rate Setting Committee (2014), and Ad Hoc Committee for the Virtual Power Plant (2022); and

WHEREAS, Chair Butt's leadership, drive, and dedication was instrumental to the development and construction of MCE Solar One, the largest publicly operated photovoltaic facility in the Bay Area, a 10.5 MW solar system in the City of Richmond built with the partnership of RichmondBUILD; and

WHEREAS, Chair Butt represented his Richmond constituents skillfully and effectively as a member of the MCE Board of Directors, championing the agency during Contra Costa Mayors and industrial association meetings; and

WHEREAS, under his leadership MCE has dramatically reduced carbon emissions by bringing over 900 megawatts of new renewable power onto the grid,

launching numerous local programs for energy efficiency, electric vehicles, solar and battery storage, and has saved customers an estimated \$90 million on energy bills; and

WHEREAS, Chair Butt inspires integrity and forthrightness and has embraced a commitment to climate action, displayed by his leadership and his conscientious and thoughtful service; and

WHEREAS, the MCE Board of Directors and Staff thank Chair Butt for his support and engagement with the agency, its mission, and its vision.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of MCE that the MCE Board and Staff do hereby extend to Tom Butt our appreciation for his dedicated service, our congratulations on his future endeavors, and our best wishes for his continued success, happiness, and good health in the years to come.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of December, 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				

City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

RESOLUTION 2022-19

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY HONORING BOARD MEMBER DENISE ATHAS

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

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

WHEREAS, the City of Novato executed the Joint Powers Agreement establishing membership in MCE on October 7, 2011; and

WHEREAS, Denise Athas was elected to the Novato City Council in 2009 where she has served three terms as Mayor; and

WHEREAS, Director Athas was appointed to serve as the first representative from the City of Novato on the MCE Board of Directors on January 5, 2012, where she has served for 10 years, additionally serving as Auditor and Treasurer of the Board (2014 – 2018), and as a member of the Executive Committee (2013-2022), Ad Hoc Expansion Committee (2013), Ad Hoc Contracts Committee (2014), and Ad Hoc Rate Setting Committee (2014); and

WHEREAS, Director Athas pushed for local jobs and local energy and was a key partner in the development of renewable energy sites in Novato, including at the Buck Institute for Research on Aging and Cooley Quarry; and

WHEREAS, Director Athas represented her Novato constituents skillfully and effectively as a member of the MCE Board of Directors, playing a key role in advocating for MCE within the Marin Climate Partnership and connecting the agency to the Novato Sustainability Commission; and

WHEREAS, Director Athas served on the Housing and Urban Development (HUD) Countywide Priority Setting Committee for 10 years, wherein the committee allocated HUD funds to nonprofits for much needed services, capital projects, and housing for disadvantaged communities of color, people living below and at the poverty

level, people living with disabilities, survivors of domestic violence, and the unhoused; and

WHEREAS, Director Athas served on the Countywide Assessment of Fair Housing Advisory Group with community-based organizations representing the Canal Alliance, Marin Center for Independent Living, Marin Community Fund, Legal Aid of Marin, Marin City, St. Vincent de Paul Society, Ritter House, and Fair Housing Advocates of Northern California; and

WHEREAS, Director Athas inspires joy and empowerment and has embraced a commitment to climate action, displayed by her leadership and her conscientious and thoughtful service; and

WHEREAS, the MCE Board of Directors and Staff thank Director Athas her support and engagement with the agency, its mission, and its vision.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of MCE that the MCE Board and Staff do hereby extend to Denise Athas our appreciation for her dedicated service, our congratulations on her future endeavors, and our best wishes for her continued success, happiness, and good health in the years to come.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of December, 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				

City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

 CHAIR, MCE

Attest:

 SECRETARY, MCE

RESOLUTION 2022-20

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY HONORING BOARD MEMBER FORD GREENE

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

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

WHEREAS, the Town of San Anselmo executed the Joint Powers Agreement establishing membership in MCE on January 9, 2009; and

WHEREAS, Ford Greene was elected to the San Anselmo Town Council in 2007 serving four terms as a councilmember and serving as Mayor in 2010, 2015, and 2019; and

WHEREAS, Director Greene was appointed to serve on the MCE Board of Directors on January 5, 2012, where he has served for 10 years on behalf of the Town of San Anselmo, additionally serving as a member of the Technical Committee (2013-2022, Chair 2021-2022), Executive Committee (2016-2022), Ad Hoc Rate Setting Committee (Chair 2013, 2018), Ad Hoc Contracts Committee (2016, 2018, 2020, 2021, 2022), and Ad Hoc Bonding Committee (2020, 2021); and

WHEREAS, Director Greene's dedication as Chair of MCE's Technical Committee was instrumental to decision-making on dozens of renewable energy contracts, including the recent contract with Golden Fields to provide a 100 MW solar plus 75 MW storage system, including 100 hours of community benefit time, and pollinator-friendly habitat; and

WHEREAS, Director Greene brought forth questions and compelling arguments to enrich dialogue at Board and Committee meetings, always encouraging MCE to work with determination towards fair outcomes for the community and the planet; and

WHEREAS, Director Green represented his San Anselmo constituents skillfully and effectively as a member of the MCE Board of Directors, passing Climate Emergency Resolution in 2020 and enabling participation and collaboration of the

broader San Anselmo community in climate emergency planning through the formation of the Town's Climate Action Commission; and

WHEREAS, Ford Greene inspires collegiality and progress and has embraced a commitment to climate action, displayed by his leadership and his conscientious and thoughtful service; and

WHEREAS, the MCE Board of Directors and Staff thank Director Greene for his support and engagement with the agency, its mission, and its vision.

NOW, THEREFORE, BE IT RESOLVED, by the by the Board of Directors of MCE that the MCE Board and Staff do hereby extend to Ford Greene our appreciation for his dedicated service, our congratulations on his future endeavors, and our best wishes for his continued success, happiness, and good health in the years to come.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of December, 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				
City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				

City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE

RESOLUTION 2022-21

A RESOLUTION OF THE BOARD OF DIRECTORS OF MARIN CLEAN ENERGY HONORING BOARD MEMBER BRAD WAGENKNECHT

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

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

WHEREAS, the County of Napa executed the Joint Powers Agreement (JPA) establishing membership in MCE on July 22, 2014, and the City of American Canyon executed the JPA establishing membership in MCE on April 7, 2016, and the City of Calistoga executed the JPA establishing membership in MCE on April 7, 2016, and, the City of Napa executed the JPA establishing membership in MCE on April 11, 2016, and the Town of Yountville executed the JPA establishing membership in MCE on April 12, 2016, and, the City of St. Helena executed the JPA establishing membership in MCE on April 14, 2016; and

WHEREAS, Brad Wagenknecht was elected to the Napa County Board of Supervisors in 1999 where he served as a representative for 23 years; and

WHEREAS, Director Wagenknecht was appointed to serve as the first Napa representative on the MCE Board of Directors on September 18, 2014, where he has served for 8 years, additionally serving as a member of the Executive Committee (2021-2022), Ad Hoc Contracts Committee (2016), Ad Hoc Expansion Committee (2016-2017), and Ad Hoc Committee for CEO Compensation (2022); and

WHEREAS, Director Wagenknecht had built so much trust and respect through his years of leadership that the County of Napa along with the Cities of American Canyon, Calistoga, Napa, and St. Helena, and the Town of Yountville chose him as their representative on the MCE Board; and

WHEREAS, Director Wagenknecht supported local jobs and local energy in Napa County and was a key partner in the development of renewable energy sites in Napa County, including American Canyon Solar; and

WHEREAS, Director Wagenknecht represented his County of Napa constituents skillfully and effectively as a member of the MCE Board of Directors, and was instrumental in giving a voice to MCE on the Napa Valley Climate Action Committee; and

WHEREAS, Director Wagenknecht worked alongside MCE staff on legislative efforts, often traveling to meetings with key stakeholders in his district and in Sacramento to help explain and to advocate for MCE's efforts; and

WHEREAS, Director Wagenknecht inspires unity and has embraced a commitment to climate action, displayed by his leadership and his conscientious and thoughtful service and

WHEREAS, the MCE Board of Directors and Staff thank Director Wagenknecht for his support and engagement with the agency, its mission, and its vision.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of MCE that the MCE Board and Staff do hereby extend to Brad Wagenknecht our appreciation for his dedicated service, our congratulations on his future endeavors, and our best wishes for his continued success, happiness, and good health in the years to come.

PASSED AND ADOPTED at a regular meeting of the MCE Board of Directors on this 15th day of December, 2022, by the following vote:

	AYES	NOES	ABSTAIN	ABSENT
County of Marin				
Contra Costa County				
County of Napa				
County of Solano				
City of American Canyon				
City of Belvedere				
City of Benicia				
City of Calistoga				
City of Concord				
Town of Corte Madera				
Town of Danville				
City of El Cerrito				
Town of Fairfax				
City of Fairfield				
City of Lafayette				
City of Larkspur				
City of Martinez				

City of Mill Valley				
Town of Moraga				
City of Napa				
City of Novato				
City of Oakley				
City of Pinole				
City of Pittsburg				
City of Pleasant Hill				
City of San Ramon				
City of Richmond				
Town of Ross				
Town of San Anselmo				
City of San Pablo				
City of San Rafael				
City of Sausalito				
City of St. Helena				
Town of Tiburon				
City of Vallejo				
City of Walnut Creek				
Town of Yountville				

CHAIR, MCE

Attest:

SECRETARY, MCE



MCE Board Offices and Committees

Board Offices:

Tom Butt, Chair (*Rotating off*)

Shanelle Scales-Preston, Vice Chair (*Interested in Chair*)

Gabriel Quinto (*Interested in Vice Chair*)

Barbara Coler (*Interested in Vice Chair*)

Garth Salisbury, Treasurer

Vicken Kasarjian, Deputy Treasurer

Dawn Weisz, Secretary

Executive Committee

1. Kevin Haroff, Chair
2. Denise Athas (*Rotating off*)
3. Edi Birsan
4. Tom Butt
5. Barbara Coler
6. Cindy Darling
7. Ford Greene
8. Devin Murphy
9. Gabriel Quinto
10. Shanelle Scales-Preston
11. Holli Thier
12. Brad Wagenknecht - (*Rotating off*)
13. Sally Wilkinson
14. Max Perrey
15. Dave Fong (*Interested*)

Ad Hoc Contracts Committee – 2023

1. Scott Perkins
2. Kevin Haroff (*Interested*)
- 3.

(Ad Hoc Contracts Committee – 2022)

1. Ford Greene
2. Kevin Haroff
3. Doriss Panduro
4. Holli Thier
5. Scott Perkins

Technical Committee

1. Ford Greene, Chair (*Rotating off*)
2. Devin Murphy (*Interested in Chair*)
3. Gina Dawson
4. John Gioia
5. Kevin Haroff
6. Katy Miessner (*Rotating off*)
7. Teresa Onoda
8. Scott Perkins
9. Katie Rice

Ad Hoc Committee for VPP -2023

(Virtual Power Plant)

1. Tom Butt (*Rotating off*)
2. Gina Dawson
3. Devin Murphy
4. Katie Rice

Ad Hoc Audit Committee – 2023

1. Sally Wilkinson
2. Dave Fong (*Interested*)
3. Kevin Haroff (*Interested*)

(Ad Hoc Audit Committee -2022)

1. Cindy Darling
2. Kevin Haroff
3. Katie Rice



MCE Executive Committee Overview and Scope

Current Membership: 14

Current Members:

- Kevin Haroff, City of Larkspur (Chair)
- Denise Athas, City of Novato
- Edi Birsan, City of Concord
- Tom Butt, City of Richmond
- Barbara Coler, Town of Fairfax
- Cindy Darling, City of Walnut Creek
- Ford Greene, Town of San Anselmo
- Devin Murphy, City of Pinole
- Gabriel Quinto, City of El Cerrito
- Shanelle Scales-Preston, City of Pittsburg
- Holli Thier, Town of Tiburon
- Brad Wagenknecht, County of Napa and All Five Napa Cities
- Sally Wilkinson, City of Belvedere
- Max Perrey, City of Mill Valley
- Dave Fong, Town of Danville (Interested)*

Membership Process: MCE strives to assemble an Executive Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Executive Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when "New Committee Members" is on the Agenda.

Current meeting date: First Fridays of each month at 12:00pm

Scope

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

Authority of Executive Committee

Executive Committee is authorized to make decisions regarding:



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

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

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



MCE Technical Committee Overview and Scope

Current Membership: 9

Current Members:

- Ford Greene, Town of San Anselmo (Chair)
- Gina Dawson, City of Lafayette
- John Gioia, County of Contra Costa
- Kevin Haroff, City of Larkspur
- Katy Miessner, City of Vallejo
- Devin Murphy, City of Pinole
- Teresa Onoda, Town of Moraga
- Scott Perkins, City of San Ramon
- Katie Rice, County of Marin

Membership Process: MCE strives to assemble a Technical Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Technical Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when "New Committee Members" is on the Agenda.

Current meeting date: First Thursday of each month at 8:30 am

Scope

The scope of the MCE Technical Committee is to explore, discuss and provide direction or approval on issues related to electricity supply, distributed generation, greenhouse gas emissions, energy efficiency, procurement risk management and other topics of a technical nature.

Frequent topics include electricity generation technology and procurement, greenhouse gas accounting and reporting, energy efficiency programs and technology, energy storage technology, net energy metering tariff, local solar rebates, electric vehicle programs and technology, Feed-in Tariff activity and other local development, Light Green, Deep Green and Local Sol power content planning, long term integrated resource planning, regulatory compliance, MCE's Energy Risk Management Policy (ERMP), procurement risk oversight, and other activity related to the energy sector. The MCE Technical Committee reviews and discusses new technologies and potential application by MCE.

Authority of Technical Committee

- Approval of and changes to MCE's Net Energy Metering Tariff
- Approval of and changes to MCE's Feed in Tariff
- Approval of annual GHG emissions level and related reporting
- Approval of MCE procurement pursuant to Resolution 2018-03 or its successor
- Approval of MCE procurement-related certifications and reporting, including the Power Content Label
- Approval of contracts with vendors for technical programs or services, energy efficiency program or services and procurement functions or services Approval of power purchase agreements
- Approval of adjustments to power supply product offerings
- Approval of the Integrated Resource Plan
- Receipt of reports from the Risk Oversight Committee (ROC) on at least a quarterly basis regarding the ROC's meetings, deliberations, and any other areas of concern
- Initiation of and oversight of a review of the implementation of the ERMP as necessary
- Approval of substantive changes to MCE's Energy Risk Management Policy (ERMP), including periodic review of the ERPM and periodic review of ERPM implementation



MCE Ad Hoc Contracts Committee Overview and Scope

Current Membership:	To be determined
Current Members:	To be determined 1. Scott Perkins 2. <i>Kevin Haroff (Interested)</i>
Membership Process:	MCE strives to assemble an Ad Hoc Contracts Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Ad Hoc Contracts Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when “New Committee Members” is on the Agenda.
Meeting Frequency:	Typically, two to four times per year, but can be as much as ten times per year depending upon contracting volume.
Current Meeting Date:	Third Thursday of each month at 9:00am, if needed

Scope

The Ad Hoc Contracts Committee may be asked to review and provide input on the following:

- Short term (one- to five-year) power supply product transactions
- Open Season offers for power supply products
- Ad hoc request for offer (RFO) results for power supply products, including hydropower, renewable energy, conventional energy, resource adequacy and shaped delivery products

Authority of Ad Hoc Contracts Committee

- Review Open Season offers and potential long-term Power Purchase supply transactions, and recommend approval to MCE Technical Committee
- Engage in and provide input and recommendations to staff as requested regarding:
 - Resource preferences (e.g., solar vs. wind; PCC1, PCC2, carbon free, etc.)
 - Counterparty exposure, credit considerations
 - Appropriate power supply hedge percentages
 - Confidential discussions regarding price of power supply products
 - Local vs. in-state vs. out-of-state options
 - Contract delivery term options
 - Proposed contract language changes from pro forma for any long-term agreements



MCE Ad Hoc Audit Committee Overview and Scope

Current Membership:	To be determined
Current Members:	<ol style="list-style-type: none"> 1. Sally Wilkinson 2. <i>Dave Fong (Interested)</i> 3. <i>Kevin Haroff (Interested)</i>
Membership Process:	<p>MCE strives to assemble an Ad Hoc Audit Committee comprised of at least one county representative and one city/town representative from each county in the MCE service area. Available seats on the Ad Hoc Audit Committee are therefore first offered to any interested and applicable Board member whose county is not yet represented by one county and one city member. Interested members can be added at a meeting of the Board when “New Committee Members” is on the Agenda. The Ad Hoc Audit Committee is typically formed by the Board in the spring in advance of the annual audit cycle that begins in May of each year.</p>
Meeting Dates:	To be determined; typically in summer months

Scope

Each year MCE contracts with an independent auditing firm to audit MCE’s annual financial statements. The Ad Hoc Audit Committee is responsible for appointing the independent auditor, meeting with the auditor on at least one occasion without staff present, reviewing financial issues or judgments, and investigating other matters pertaining to the audit as it deems necessary. The mandate of the Ad Hoc Audit Committee begins once the Board approves its creation, and will end with the presentation of the audited financial statements to the Board.

Authority of Ad Hoc Audit Committee

- Approve the selection of auditor and execute the contract for services with MCE’s auditor
- Receive the findings of the auditor and meet with the auditor privately as needed
- Investigate other matters pertaining to the audit as it deems necessary
- Report to the governing body that the audit committee has discussed the financial statements with management, with the independent auditors in private, and privately among committee members and believes that they are fairly presented, to the extent such a determination can be made solely on the basis of such conversations