



Board of Directors Meeting

Wednesday, January 19, 2022

5:00 pm

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Webinar ID: 870 2307 1843

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If you have anything that you wish to be distributed to the Board, please email it to the clerk by 5:00 pm the day prior to the meeting.

- 1. Welcome & Roll Call**
- 2. Pledge of Allegiance**
- 3. Public Comment**

This item is reserved for persons wishing to address the Board on any EBCE-related matters that are not otherwise on this meeting agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. Members of the public who wish to address the Board are limited to two minutes per speaker and must complete an electronic [speaker slip](#). The Board Chair may increase or decrease the time allotted to each speaker.

CONSENT AGENDA

All items under Consent Calendar will be considered together by one action of the Board, any Member or members of the public may request that an item be removed and considered separately.

- 4. Approval of Board of Directors Meeting Minutes of December 15, 2021**

5. Treasurer's Report
6. Contracts entered into between December 8, 2021 and January 12, 2022. (Informational Item)
7. Extend the Temporary Suspension of and Revise Certain Customer Terms and Conditions.
8. Adoption of Resolution 2002-___ regarding Imminent Risks Findings Pursuant to AB 361 and Authorization to Continue Meeting via Teleconferencing

REGULAR AGENDA

9. CEO REPORT
 - a. Executive Committee Meeting;
 - b. Marketing and Outreach update;
 - c. Local Development Business Plan Update and
 - d. Update on Opt-out

Recommendation: Accept Chief Executive Officer (CEO) report on update items below.

10. Community Advisory Committee Report – Verbal report
11. Program to Support and Scale Low to Moderate Income Building Electrification and Efficiency

Recommendation: Approve Resolution authorizing CEO to execute an Agreement with BlocPower to provide for \$1 million in investment at the junior capital position and negotiate and execute a separate Agreement to provide \$400,000 in grants to support electrification and clean energy upgrades on low to moderate income homes in EBCE's service area.

12. Mid-Year Budget Review

Recommendation: Receive the report informing the Board of the mid-year Budget position for the 2021-2022 fiscal year.

13. Credit Rating Review

Recommendation: Receive the review of the credit rating and its implications to EBCE operations.

14. Authorize CEO to negotiate and execute a contract with FEC Nevada I

Recommendation: Adopt a Resolution authorizing the CEO to negotiate and execute a contract with FEC Nevada I, LLC for a renewable energy supply agreement for a minimum term of 15 years and a maximum of 20 years.

15. Authorize CEO to Negotiate and Execute a Contract extension with NCPA to Provide Wholesale Energy Services

Recommendation: Adopt a Resolution authorizing the CEO to negotiate and execute a contract with FEC Nevada I, LLC for a renewable energy supply agreement for a minimum term of 15 years and a maximum of 20 years.

16. **Board Member and Staff Announcements including requests to place items on future Board Agendas**

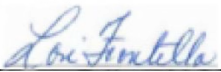
17. **Adjournment** – to Wednesday, February 16, 2022

CERTIFICATION OF POSTING

I, Lori Frontella, Acting Board Clerk, do hereby declare under penalty of perjury that the foregoing agenda was posted on website at www.ebce.org and made available for public review prior to or at 5:00 p.m. on January 14, 2022

Date Posted: January 14,2022

Time Posted:5:00 pm



Lori Frontella, MMC, Board Clerk



Draft Agenda

Board of Directors Meeting

Wednesday, December 15, 2022

5:00 pm

<https://us02web.zoom.us/j/87023071843>

Dial (for higher quality, dial a number based on your current location): US: +1 669 900 6833 or +1 346 248 7799 or +1 253 215 8782 or +1 929 205 6099 or +1 301 715 8592 or 888 475 4499 (Toll Free) or 877 853 5257 (Toll Free)

Webinar ID: 870 2307 1843

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1. Welcome & Roll Call

Present: Directors: Valle (Alameda County), Tiedemann (Albany), Hernandez (Dublin), Cox (Fremont), Marquez (Hayward), Hannon (Newark), Kalb (Oakland), Narum (Pleasanton), Arriola (Tracy), Patino (Union City), Vice-Chair Lopez (San Leandro) and Chair Martinez (Emeryville)

Excused: Directors: Harrison (Berkeley), Munro (Livermore), McCarthy (Piedmont),

Director Cox served as an Alternate for Director Mei (Fremont).

2. Pledge of Allegiance

3. Public Comment

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Wells Brown, on behalf of Rising Sun Center for Opportunity, spoke regarding the Community Innovation Grant. Wells Brown stated that because Rising Sun's youth workforce development program, Climate Careers, was a 2019 recipient of an EBCE Community Innovation Grant they were able to increase the number of youths and homes served in EBCE territory. Wells Brown

encouraged the EBCE Board to continue the Community Innovation Grant program to other Alameda County and City of Tracy organizations.

Chuck Rosselle spoke with respect to a 15-year contract between EBCE and Intersect Power regarding the Oberon Solar project near Desert City, CA., stating the project does not currently conform to the Desert Renewable Energy Conservation Plan negotiated with the BLM, and while EBCE was not aware of this nonconformity prior to signing the contract, Intersect Power was. Chuck Rosselle suggested the review procedures be enhanced to incorporate conformance to land use in California to avoid bringing operational risk to EBCE and to bring the matter to the attention of Intersect Power.

Jessica Tovar, on behalf of East Bay Clean Power Alliance, spoke regarding the importance of the Local Development Business Plan intended to bring community benefits that are invested by EBCE to advance a clean energy future through various programs, including the Community Innovation Fund offered every year to provide seed funding for local non-profits, specifically with a partnership between EBCE and the community organizations.

Chris Gilbert, on behalf of the Sierra Club, spoke regarding problems with the DEIR on the Oberon Renewable project being done by Intersect Power. Chris Gilbert stated desert regions could be damaged due to these problems and requested this item be agendaized for the next Board meeting.

Crystal Huang, on behalf of People Power Solar Cooperative, spoke regarding the Community Innovation Grant that allowed them to build their second and third community-owned solar projects and enabled them to develop resources and tools to enable communities to organize around the energy transition moving forward. Crystal Huang stated that their experience with the Community Innovation Grant proves it is possible to create a partnership between EBCE and community-based organizations and urged EBCE to support the implementation of the Local Development Business Plan, including the Community Innovation Plan.

Joan Taylor, on behalf of the California Nevada Desert Energy Committee of the Sierra Club, spoke regarding the Oberon Solar project. Joan Taylor stated that Intersect Power's claims that its need to generate 500 megawatts justifies bypassing and redefining DREP's management actions could set a damaging precedent by threatening management prescriptions developed by the Desert Renewable Energy Plan.

CONSENT AGENDA

4. **Adoption of Imminent Risks Findings Pursuant to AB 361 and Authorization to Continue Meeting via Teleconferencing**
5. **Contracts Entered into (Informational Item)**
6. **Adopt a Resolution authorizing CEO to negotiate and execute a Consulting Service Agreement with Acterra to offer an induction Cooktop Lending Program to EBCE's residential customers.**
7. **Adopt a Resolution authorizing the CEO to negotiate and execute a Third Amendment to the Consulting Services Agreement with Weideman Group, Inc.**
8. **Summary of changes made to service terms and conditions to support product transitions in January 2022**

9. Adopt a Resolution authorizing CEO or Treasurer to execute a Consulting Service Agreement with Maher Accountancy
10. Adopt a Resolution amending the Conflict of Interest Code clarifying those certain specified positions (BODs & Treasurer) must file a Form 700 under Government Code Section 87200

Director Valle joined the meeting prior to motion to approve the Consent Agenda.

Director Arriola motioned to approve the Consent Agenda. Director Hernandez seconded the motion which passed 11/0. Excused: Director Cox.

REGULAR AGENDA

11. CEO REPORT

- CC Power Policies
- Presentation on Service Transitions

Ceyda Durmaz Dogan, on behalf of the Clean Energy Alliance, stated CC Power should not go with the project-by-project approach and should not act in a way that would harm the reputation of individual CCAs in California, that their policies should be at least as strong as the policies of member CCAs or it would undermine decisions made by EBCE and other boards of member CCAs. Ceyda Durmaz Dogan stated CC Power should adopt environmental justice and labor policies that would require project proposals to include benefits to local communities and support work force development for underserved and disadvantaged workers.

The Board Discussed:

- Reflecting EBCE's values and priorities in CC Power's policies.
- Educating the public on the meaning of opting up or opting down on residential and commercial sides and the cost to them.
- California Public Utilities Commission Net Energy Metering 3.0. engagement with cities.
- Transition to the renewable 100%, how the solar true-up works, and the difference between PG&E and EBCE.
- Educating the public that the decision by cities to opt everyone in is part of legislation from Sacramento for CCAs, not the choice of the cities.
- CC Power project procurement policy and meaning of 2.5%, which is the scoring that goes into it, how that percentage was arrived at, and preferences allowed under Prop 209.

Ann Olivia Eldred, Chair of Community Advisory Committee, joined the meeting at 6:04pm.

12. Community Advisory Committee Report (Verbal report)

- Chair Eldred announced two new CAC members were sworn in at the Committee's December 13, 2021 meeting.
- Chair Eldred stated the CAC has received public comments regarding concerns about the DRECP emissions level in the Right Choice product, updates on the net energy metering decision, and the Community Innovation Grants.
- Chair Eldred also stated the CAC has received a request that the Board look at funding the Community Innovation Grants and get report backs from some of the programs EBCE has agreed to fund.

13. Adopt a Resolution approving a fifth amended and restated Administrative Procurement Policy to include a preference for Disabled Veteran Owned Businesses and Businesses located in Disadvantaged Communities

Director Cox motioned to adopt a Resolution Approving a Fifth Amended and Restated Administrative Procurement Policy to Include a Preference for Disabled Veteran Owned Businesses and Businesses Located in Disadvantaged Communities. Vice Chair Lopez seconded the motion.

There were no speakers for public comment.

The Board Discussed:

- Adding language that indicates a business should be located in a disadvantaged community and providing benefits for that community.

The motion passed 12/0. Excused: Director Harrison, Director Munro, Director McCarthy.

14. Board Member and Staff Announcements including requests to place items on future Board Agendas

CEO Chaset appreciated Director Hernandez's service and commitment to EBCE as this is Director Hernandez's last meeting as a member of the EBCE Board.

Director Hernandez stated one reason for taking her position on the EBCE Board was to ensure the City of Dublin got into a great position and Dublin is now 100% renewable energy. Director Hernandez commended the members of EBCE for putting their hearts into bringing clean energy to residents and businesses.

Vice Chair Lopez appreciated Director Hernandez's service and leadership in also inspiring the City of San Leandro to also reach 100% renewable energy. Vice Chair Lopez requested to learn more regarding a contract EBCE has entered into involving desert land by having an analysis done, verifying public concerns, and looking to see what steps EBCE could take going forward.

CAC Chair Eldred stated the CAC would also be hearing the item regarding the desert plan. Chair Eldred stated this would be a good time to begin looking at a review and update of the Local Development Business Plan.

Director Mei requested EBCE focus on the City of Fremont's work in joint efforts trying to encourage more solar adoption, in particular charging stations. Director Mei also requested to focus on legislative advocacy in those areas and appreciated the partnership with the California Energy Commission in that regard and thanked CEO Chaset and the EBCE team for its leadership in this area.

Jessica Tovar, on behalf of East Bay Clean Power Alliance, expressed huge appreciation for Director Hernandez's service on the EBCE Board, noting that Director Hernandez was one of very few women and women of color representing EBCE and the clean energy work it does.

Chair Martinez also expressed deep appreciation for Director Hernandez's contributions and the great pleasure it has been to work together and share ideas.

15. Adjournment to January 19, 2022 5:00 p.m.



Staff Report Item 5

TO: East Bay Community Energy Board of Directors
FROM: Howard Chang, Chief Operating Officer & Treasurer
SUBJECT: Treasurer’s Report (Informational Item)
DATE: January 19, 2022

Recommendation

Receive report on EBCE cash position

Background and Discussion

For quarter ending December 31, 2021, EBCE has maintained a positive cash balance on all EBCE bank accounts. Below is a summary of account balances, cash received, and outstanding loan balances.

Account Balances as of 12/31/2021

<u>Account</u>	<u>Amount</u>
Internal Operating	\$ 1,878,838
Operating Fund	\$ 82,643,022
Lockbox (Includes \$2,000,000 reserve)	\$ 10,734,706
Operating Reserve Fund	\$ 41,096,812
Money Market	\$ 1,006,173
Insured Cash Sweep	\$ 21,308,968
SubTotal	\$ 158,668,519

Cash Received by Month into Lockbox Account

October	2021	\$ 43,147,236
November	2021	\$ 36,863,220
December	2021	\$ 36,613,096
Total		\$116,623,552

Outstanding Loan Balances:

Barclays Credit Facility: \$0.00

Customer Delinquency:

As of December 31, 2021

30 - 60 Days: \$ 4,380,600

60 - 90 Days: \$ 3,664,133

90 - 120 Days: \$ 3,013,455

120+ Days: \$ 22,113,668

More recent data has not yet been provided by PG&E and billing vendor on the date this report was generated



Consent Item 6

TO: East Bay Community Energy Board of Directors
FROM: Nick Chaset, Chief Executive Officer
SUBJECT: Contracts Entered Into
DATE: January 19, 2022

RECOMMENDATION

Accept the CEO's report on contracts that EBCE has entered, as required by the Administrative Procurement Policy. **Items executed between December 8, 2021 and January 12, 2022;**

C-2021-130 Thomas E. Dum Real Estate Appraisers (Brentwood, CA) Contract for Real Estate Appraisal for 251 8th Street, total amount in not to exceed \$4,275.

C-2021-131 Regional Government Services Authority (Carmel Valley, CA) Consulting Services Agreement for Board Clerk services, for an amount not to exceed \$35,000 through June 30, 2022.

C-2021-132 Sixth Dimension PMCM (Oakland) Consulting Services Agreement for Construction Management services, for an amount not to exceed \$33,005 through June 30, 2022.

C-2021-133 Fluence Energy Platform Services Agreement (San Francisco) access to the Fluence Platform, a Software as Service, with an cost of \$50,000 for the first year, and a \$30,000 Integration fee.

C-2021-134 Vicki Blandin (Greensboro, NC) Consulting Services Agreement for the purposes of providing Meeting Transcription services through June 30, 2022, for an amount not to exceed \$20,000.

C-2021-135 First Principles Advisory (Capitola, CA) Consulting Services Agreement for Integrated Resource Plan services through March 31, 2023 with compensation not to exceed \$95,000.

C-2021-136 The Mixing Bowl (Oakland) Catering Contract - food for all day December 2021 in person meeting and Holiday Party, not to exceed \$11,639.37.

C-2021-137 Wilson Sonsini Goodrich Rosati (Palo Alto, CA) Second Amendment to CSA for the purposes of increasing the compensation for FY 20-21 by \$21,900 for an amount not to exceed \$271,900 through June 30, 2021.

C-2021-138 Acterra: Action for a Healthy Planet (Palo Alto, CA) Consulting Services Agreement for induction cooktop lending and outreach awareness building services to EBCE, for an amount not to exceed \$135,000 through March 21, 2022.

C-2021-139 Full Court Press (Oakland) Second Amendment to CSA extends the termination date to June 30, 2022 and updated the Schedule of Work.

C-2021-140, & C-2021-141 SMUD Amendment 2 to MSA & Amendment 3 to Task Order 2 - extends the term of the agreement for call center and data management services for an additional two years, may extend for up to an additional 5 years.

C-2021-142 Energy and Environmental Economics (San Francisco) Consulting Services Agreement for technical energy and regulatory services for an amount not to exceed \$100,000 through June 30, 2022.



Consent Item 7

TO: East Bay Community Energy Board of Directors

FROM: Kelly Brezovec, Sr Manager of Account Services

SUBJECT: Extend the Temporary Suspension of and Revise Certain Customer Terms and Conditions

DATE: January 19, 2022

Recommendation

Adopt a Resolution to extend the temporary suspension of and revise certain customer terms and conditions and administrative policies.

Background and Discussion

Over the course of 2020 and 2021, the Board approved Resolutions to temporarily authorize the CEO to suspend the following customer terms and conditions and administrative policies:

- (a) Customer terms and conditions related to 'Failure to Pay' and
- (b) Delinquent Accounts and Collections Policy.

PG&E suspended service disconnections for non-payment for all residential and small business customers until January 1, 2022. EBCE matched that previous timeline for the suspension of our own collections and "failure to pay" activities.

Currently, staff requests that we extend the temporary suspension of our Failure to Pay and collection policies until May 1, 2022. An extension beyond the PG&E disconnection moratorium end date gives EBCE staff the opportunity to apply debt forgiveness funds anticipated through the California Arrearage Payment Program (CAPP), as well as implement efforts to ramp up customer enrollment in the Arrearage Management Plan (AMP) program. Per state requirements, CAPP funds must be applied to customer accounts by April 1, 2022. EBCE is currently accepting applications through February 25, 2022 for local organizations to support outreach

focused on AMP enrollment. Both the application of the CAPP funds and expanded enrollment in AMP will put customers in a better position to pay off past-due debt.

Staff recommend we revisit the policy during the April 2022 board meeting to determine if an additional extension is needed.

Financial Impacts

The financial impact is minimal given the limited pool of customers who would be eligible for return to PG&E and for collections after application of CAPP funding and enrollment in AMP.

Attachments

- A. Resolution of the Board of Directors of the East Bay Community Energy Authority to Extend the Temporary Suspension of and Revise Certain Customer Terms and Conditions and Administrative Policies
- B. Revised Failure to Pay Section of Service Terms and Conditions

RESOLUTION NO. R-2022-xx

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY TO EXTEND SUSPENSION OF AND REVISE CERTAIN CUSTOMER TERMS AND CONDITIONS AND ADMINISTRATIVE POLICIES

WHEREAS, the East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS, in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), spread around the world, impacting more than 75 countries, including the United States; and

WHEREAS, many EBCE customers continue to face ongoing economic hardships as fall out the COVID-19 global health pandemic; and

WHEREAS, throughout 2020 and 2021, the Board of Directors resolved on multiple occasions to temporarily suspend certain customer terms and conditions and administrative policies associated with collections and customer payments; and

WHEREAS, PG&E suspended disconnection services through January 1, 2022; and

WHEREAS, EBCE desires to extend the suspension of and revise certain customer terms and conditions and administrative policies associated with collections and customer payments in order to continue to support the recovery of customers from the financial impacts of COVID-19.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. For a period of 120 days from January 1, 2022 through May 1, 2022, the Board hereby authorizes the CEO to suspend the following customer terms and conditions and administrative policies:

- (a) Customer terms and conditions related to ‘Failure to Pay’ and
- (b) Delinquent Accounts and Collections Policy.

Section 2. Unless extended by the Board, this suspension shall expire and be of no further force or effect on May 2, 2022, at which point the approved terms and policy shall resume to be effective.

Section 3. The Board hereby approves revisions to the Service Terms and Conditions related to 'Failure to Pay', as shown in Exhibit A.

ADOPTED AND APPROVED this 19th day of January 2022.

Dianne Martinez, Chair

ATTEST:

Proposed Revisions to the
Failure to Pay Section of Service Terms and Conditions

Failure to Pay

If you fail to pay your bill, EBCE may transfer your account to PG&E upon 30 days' written notice for commercial customers and 60 days' written notice for residential customers. If your account is transferred, you will be required to pay the opt out fees described above. This provision is suspended until at least ~~December 31, 2021~~May 1, 2022 and does not apply to any customer that is participating in a payment plan.



Staff Report Item 8

TO: East Bay Community Energy Board of Directors

FROM: Inder Khalsa, General Counsel

SUBJECT: Adoption of Imminent Risks Findings Pursuant to AB 361 and Authorization to Continue Meeting via Teleconferencing

DATE: January 19, 2022

Recommendation

Find that conducting in-person meetings of the Board would present imminent risks to attendees' health and authorize the Board to continue meeting via teleconferencing pursuant to Government Code Section 54953(e).

Background and Discussion

On March 4, 2020, Governor Gavin Newsom proclaimed a state of emergency related to COVID-19, pursuant to Government Code Section 8625, which is still in effect. On March 10, 2020, the Alameda County Board of Supervisors ratified the County Health Officer's declaration of a local health emergency due to COVID-19.

The Brown Act allows legislative bodies to meet by "teleconference," but only if the agenda listed the remote location of each member, the agenda was posted at all remote locations, and the public could access any of the remote locations. Additionally, a quorum of the legislative body had to be within the legislative body's jurisdiction. See Government Code Section 54953(b)(3)

Due to the COVID-19 pandemic, the Governor issued Executive Order N-29-20, suspending certain sections of the Brown Act. Pursuant to the Executive Order, legislative bodies no longer needed to list the location of each remote attendee, post agendas at each remote location, or allow the public to access each location. Further, a quorum of the legislative body does not need to be within the legislative body's

jurisdiction. After several extensions, Executive Order N-29-20 expired on September 30, 2021.

On September 16, 2021 Governor Newsom signed AB 361, new legislation that amends the Brown Act to allow local agencies to meet remotely during Governor declared emergencies under certain conditions. AB 361 took effect immediately as an urgency measure, but the Governor subsequently suspended application of the legislation – with limited exceptions – until October 1, 2021. The provisions of AB 361 relevant to local agencies are codified at Government Code Section 54953(e).

AB 361 authorizes local agencies to continue meeting remotely without following the Brown Act's standard teleconferencing provisions if the meeting is held during a state of emergency proclaimed by the Governor and either of the following applies: (1) state or local officials have imposed or recommended measures to promote social distancing; or (2) the agency has already determined or is determining whether, as a result of the emergency, meeting in person would present imminent risks to the health or safety of attendees.

The legislative body must make the required findings every 30 days, until the end of the state of emergency or recommended or required social distancing.

AB 361 also requires legislative bodies to make remote public meetings accessible telephonically or otherwise electronically to all members of the public seeking to observe and to address the local legislative body, and to make reasonable efforts to adhere as closely as reasonably possible to the provisions of the Brown Act. AB 361 adds new procedures and clarifies the requirements for conducting remote meetings. A legislative body that meets remotely must allow members of the public to access the meeting via a call-in option or an internet-based service option, and the agenda for the remote meeting must provide an opportunity for members of the public to directly address the body in real time.

Due to the rise in COVID-19 cases caused by the Delta Variant, Alameda County is still impacted by the effects of the COVID-19 emergency. The Centers for Disease Control (CDC) recommends physical distancing of at least six (6) feet whenever possible, avoiding crowds, and avoiding spaces that do not offer fresh air from the outdoors, particularly for people who are not fully vaccinated or who are at higher risk of getting very sick from COVID-19. The CDC also recommends that people who live with unvaccinated people avoid activities that make physical distancing hard.

EBCE's public-meetings are held at indoor facilities not designed to ensure circulation of fresh or outdoor air, particularly during periods of cold and/or rainy weather, and were not designed to ensure that attendees can remain six (6) feet apart. Additionally, holding in-person meetings may encourage community members to come to EBCE facilities to participate in EBCE meetings in-person, and some of them could be at high risk of getting very sick from COVID-19 and/or live with someone who is at high risk. At this point in time, there are few in-person locations available for the EBCE to meet in, since most of the agencies in Alameda County are still holding remote meetings.

In-person meetings could also tempt community members who are experiencing COVID-19 symptoms to leave their homes in order to come to EBCE Board meetings to participate. Attendees may need to use ride-share services and/or public transit to travel to in-person meetings, thereby putting them in close and prolonged contact with additional people outside of their households.

For these reasons, staff recommends that the Board adopt findings that, as a result of the state of emergency caused by COVID-19, meeting in person would present imminent risks to the health and safety of attendees.

Staff will continue to monitor the situation and will return to the Board every 30 days or as needed with additional recommendations related to the conduct of public meetings.

Attachments

- Proclamation of Governor Newsom of a State of Emergency due to COVID-19
- Resolution No. R-2020-91 of the Alameda County Board of Supervisors Ratifying the Declaration of a Local Health Emergency due to COVID-19

EXECUTIVE DEPARTMENT
STATE OF CALIFORNIA

PROCLAMATION OF A STATE OF EMERGENCY

WHEREAS in December 2019, an outbreak of respiratory illness due to a novel coronavirus (a disease now known as COVID-19), was first identified in Wuhan City, Hubei Province, China, and has spread outside of China, impacting more than 75 countries, including the United States; and

WHEREAS the State of California has been working in close collaboration with the national Centers for Disease Control and Prevention (CDC), with the United States Health and Human Services Agency, and with local health departments since December 2019 to monitor and plan for the potential spread of COVID-19 to the United States; and

WHEREAS on January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the country; and

WHEREAS on January 24, 2020, the California Department of Public Health activated its Medical and Health Coordination Center and on March 2, 2020, the Office of Emergency Services activated the State Operations Center to support and guide state and local actions to preserve public health; and

WHEREAS the California Department of Public Health has been in regular communication with hospitals, clinics and other health providers and has provided guidance to health facilities and providers regarding COVID-19; and

WHEREAS as of March 4, 2020, across the globe, there are more than 94,000 confirmed cases of COVID-19, tragically resulting in more than 3,000 deaths worldwide; and

WHEREAS as of March 4, 2020, there are 129 confirmed cases of COVID-19 in the United States, including 53 in California, and more than 9,400 Californians across 49 counties are in home monitoring based on possible travel-based exposure to the virus, and officials expect the number of cases in California, the United States, and worldwide to increase; and

WHEREAS for more than a decade California has had a robust pandemic influenza plan, supported local governments in the development of local plans, and required that state and local plans be regularly updated and exercised; and

WHEREAS California has a strong federal, state and local public health and health care delivery system that has effectively responded to prior events including the H1N1 influenza virus in 2009, and most recently Ebola; and

WHEREAS experts anticipate that while a high percentage of individuals affected by COVID-19 will experience mild flu-like symptoms, some will have more serious symptoms and require hospitalization, particularly individuals who are elderly or already have underlying chronic health conditions; and

WHEREAS it is imperative to prepare for and respond to suspected or confirmed COVID-19 cases in California, to implement measures to mitigate the spread of COVID-19, and to prepare to respond to an increasing number of individuals requiring medical care and hospitalization; and

WHEREAS if COVID-19 spreads in California at a rate comparable to the rate of spread in other countries, the number of persons requiring medical care may exceed locally available resources, and controlling outbreaks minimizes the risk to the public, maintains the health and safety of the people of California, and limits the spread of infection in our communities and within the healthcare delivery system; and

WHEREAS personal protective equipment (PPE) is not necessary for use by the general population but appropriate PPE is one of the most effective ways to preserve and protect California's healthcare workforce at this critical time and to prevent the spread of COVID-19 broadly; and

WHEREAS state and local health departments must use all available preventative measures to combat the spread of COVID-19, which will require access to services, personnel, equipment, facilities, and other resources, potentially including resources beyond those currently available, to prepare for and respond to any potential cases and the spread of the virus; and

WHEREAS I find that conditions of Government Code section 8558(b), relating to the declaration of a State of Emergency, have been met; and

WHEREAS I find that the conditions caused by COVID-19 are likely to require the combined forces of a mutual aid region or regions to appropriately respond; and

WHEREAS under the provisions of Government Code section 8625(c), I find that local authority is inadequate to cope with the threat posed by COVID-19; and

WHEREAS under the provisions of Government Code section 8571, I find that strict compliance with various statutes and regulations specified in this order would prevent, hinder, or delay appropriate actions to prevent and mitigate the effects of the COVID-19.

NOW, THEREFORE, I, GAVIN NEWSOM, Governor of the State of California, in accordance with the authority vested in me by the State Constitution and statutes, including the California Emergency Services Act, and in particular, Government Code section 8625, **HEREBY PROCLAIM A STATE OF EMERGENCY** to exist in California.

IT IS HEREBY ORDERED THAT:

1. In preparing for and responding to COVID-19, all agencies of the state government use and employ state personnel, equipment, and facilities or perform any and all activities consistent with the direction of the Office of Emergency Services and the State Emergency Plan, as well as the California Department of Public Health and the Emergency Medical Services Authority. Also, all residents are to heed the advice of emergency officials with regard to this emergency in order to protect their safety.
2. As necessary to assist local governments and for the protection of public health, state agencies shall enter into contracts to arrange for the procurement of materials, goods, and services needed to assist in preparing for, containing, responding to, mitigating the effects of, and recovering from the spread of COVID-19. Applicable provisions of the Government Code and the Public Contract Code, including but not limited to travel, advertising, and competitive bidding requirements, are suspended to the extent necessary to address the effects of COVID-19.
3. Any out-of-state personnel, including, but not limited to, medical personnel, entering California to assist in preparing for, responding to, mitigating the effects of, and recovering from COVID-19 shall be permitted to provide services in the same manner as prescribed in Government Code section 179.5, with respect to licensing and certification. Permission for any such individual rendering service is subject to the approval of the Director of the Emergency Medical Services Authority for medical personnel and the Director of the Office of Emergency Services for non-medical personnel and shall be in effect for a period of time not to exceed the duration of this emergency.
4. The time limitation set forth in Penal Code section 396, subdivision (b), prohibiting price gouging in time of emergency is hereby waived as it relates to emergency supplies and medical supplies. These price gouging protections shall be in effect through September 4, 2020.
5. Any state-owned properties that the Office of Emergency Services determines are suitable for use to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services for this purpose, notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.
6. Any fairgrounds that the Office of Emergency Services determines are suitable to assist in preparing for, responding to, mitigating the effects of, or recovering from COVID-19 shall be made available to the Office of Emergency Services pursuant to the Emergency Services Act, Government Code section 8589. The Office of Emergency Services shall notify the fairgrounds of the intended use and can immediately use the fairgrounds without the fairground board of directors' approval, and

notwithstanding any state or local law that would restrict, delay, or otherwise inhibit such use.

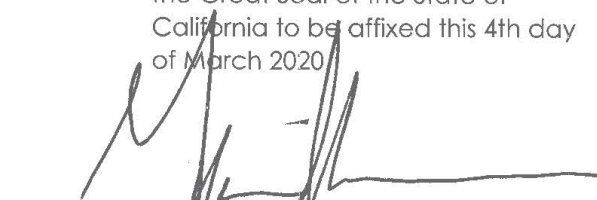
7. The 30-day time period in Health and Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local health emergency.
8. The 60-day time period in Government Code section 8630, within which local government authorities must renew a local emergency, is hereby waived for the duration of this statewide emergency. Any local emergency proclaimed will remain in effect until each local governing authority terminates its respective local emergency.
9. The Office of Emergency Services shall provide assistance to local governments that have demonstrated extraordinary or disproportionate impacts from COVID-19, if appropriate and necessary, under the authority of the California Disaster Assistance Act, Government Code section 8680 et seq., and California Code of Regulations, Title 19, section 2900 et seq.
10. To ensure hospitals and other health facilities are able to adequately treat patients legally isolated as a result of COVID-19, the Director of the California Department of Public Health may waive any of the licensing requirements of Chapter 2 of Division 2 of the Health and Safety Code and accompanying regulations with respect to any hospital or health facility identified in Health and Safety Code section 1250. Any waiver shall include alternative measures that, under the circumstances, will allow the facilities to treat legally isolated patients while protecting public health and safety. Any facilities being granted a waiver shall be established and operated in accordance with the facility's required disaster and mass casualty plan. Any waivers granted pursuant to this paragraph shall be posted on the Department's website.
11. To support consistent practices across California, state departments, in coordination with the Office of Emergency Services, shall provide updated and specific guidance relating to preventing and mitigating COVID-19 to schools, employers, employees, first responders and community care facilities by no later than March 10, 2020.
12. To promptly respond for the protection of public health, state entities are, notwithstanding any other state or local law, authorized to share relevant medical information, limited to the patient's underlying health conditions, age, current condition, date of exposure, and possible contact tracing, as necessary to address the effect of the COVID-19 outbreak with state, local, federal, and nongovernmental partners, with such information to be used for the limited purposes of monitoring, investigation and control, and treatment and coordination of care. The

notification requirement of Civil Code section 1798.24, subdivision (i), is suspended.

13. Notwithstanding Health and Safety Code sections 1797.52 and 1797.218, during the course of this emergency, any EMT-P licensees shall have the authority to transport patients to medical facilities other than acute care hospitals when approved by the California EMS Authority. In order to carry out this order, to the extent that the provisions of Health and Safety Code sections 1797.52 and 1797.218 may prohibit EMT-P licensees from transporting patients to facilities other than acute care hospitals, those statutes are hereby suspended until the termination of this State of Emergency.
14. The Department of Social Services may, to the extent the Department deems necessary to respond to the threat of COVID-19, waive any provisions of the Health and Safety Code or Welfare and Institutions Code, and accompanying regulations, interim licensing standards, or other written policies or procedures with respect to the use, licensing, or approval of facilities or homes within the Department's jurisdiction set forth in the California Community Care Facilities Act (Health and Safety Code section 1500 et seq.), the California Child Day Care Facilities Act (Health and Safety Code section 1596.70 et seq.), and the California Residential Care Facilities for the Elderly Act (Health and Safety Code section 1569 et seq.). Any waivers granted pursuant to this paragraph shall be posted on the Department's website.

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

IN WITNESS WHEREOF I have hereunto set my hand and caused the Great Seal of the State of California to be affixed this 4th day of March 2020.



GAVIN NEWSOM
Governor of California

ATTEST:

ALEX PADILLA
Secretary of State



OFFICE OF THE AGENCY DIRECTOR

1000 San Leandro Boulevard, Suite 300
San Leandro, CA 94577
TEL (510) 618-3452
FAX (510) 351-1367

March 6, 2020

The Honorable Board of Supervisors
County Administration Building
1221 Oak Street
Oakland, CA 94612

SUBJECT: ADOPT A RESOLUTION RATIFYING THE DECLARATION OF A LOCAL HEALTH EMERGENCY BY THE COUNTY HEALTH OFFICER RELATED TO THE 2019 NOVEL CORONAVIRUS

Dear Board Members:

RECOMMENDATION

Adopt a Resolution ratifying the Declaration of a Local Health Emergency by the County Health Officer related to the 2019 Novel Coronavirus

DISCUSSION/SUMMARY

In December 2019, an outbreak of a respiratory illness due to a novel coronavirus (a disease known as 2019 Novel Coronavirus or COVID-19) was first identified in Wuhan City, Hubei Province, China. Since then, the outbreak has spread to more than 75 countries, including the United States. As of March 5, 14 California counties have had at least one citizen infected with the virus. The County of Alameda is among those counties, as are several Bay Area counties including Contra Costa, San Francisco, San Mateo, Santa Clara, Solano, and Sonoma.

The United States Centers for Disease Control and Prevention (CDC) considers COVID-19 to present a very serious threat to public health. On January 23, 2020, the CDC activated its Emergency Response System to provide ongoing support for the response to COVID-19 across the United States. On January 31, 2020, the Secretary of the US Department of Health and Human Services declared a public health emergency in the United States.

As of March 6, 2020, the CDC has identified 164 confirmed cases of COVID-19 infection, across 19 states, including 45 in California. The number of reported cases has escalated dramatically, with more than 94,000 confirmed cases and more than 3,300 deaths worldwide.

On March 1, 2020, the California Department of Public Health confirmed that an Oakland resident had become infected with COVID-19 after providing healthcare to the Solano County COVID-19 patient. Two days later, an individual in Berkeley also tested positive for COVID-19 Infection.

California Health and Safety Code section 101080 allows a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, "whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent." On March 1, 2020, Alameda County Interim Health Officer Erica Pan, MD, MPH, FAAP declared a local health emergency. Dr. Pan found that with "multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda." Dr. Pan renewed this declaration of emergency on March 5, 2020.

The declaration of a local health emergency provides the following benefits: it allows other jurisdictions and state agencies to provide mutual aid; it allows the extraordinary costs of providing mutual aid to be a legal charge against the state; and it provides immunity to healthcare providers who render aid during the emergency. The declaration also provides the local Health Officer with the authority to exercise the full range of her power to protect the community's public health, which includes issuance and enforcement of orders for quarantine and isolation.

Under section 101080, your Board is required to ratify the Health Officer's declaration of emergency. Ordinarily, your Board would need to renew this ratification every thirty (30) days; however, on March 4, 2020, California Governor Gavin Newsom issued a Proclamation of a State of Emergency relating to the COVID-19 outbreak that included a waiver of the renewal requirement: "The 30-day time period in Health & Safety Code section 101080, within which a local governing authority must renew a local health emergency, is hereby waived for the duration of this statewide emergency. Any such local health emergency will remain in effect until each local governing authority terminates its respective local emergency." The Governor similarly waived the renewal requirement for a declaration of local emergency.

VISION 2026 GOAL

This Resolution meets the 10X goal pathway of **Healthcare for All** in support of our shared visions of **Safe and Livable Communities**, **Thriving and Resilient Population**, and **Healthy Environment**.

Sincerely,

DocuSigned by:

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Colleen Chawla, Director
Health Care Services Agency

A RESOLUTION OF THE BOARD OF SUPERVISORS OF THE COUNTY OF ALAMEDA RATIFYING THE DECLARATION OF LOCAL HEALTH EMERGENCY BY THE COUNTY HEALTH OFFICER RELATED TO THE 2019 NOVEL CORONAVIRUS

WHEREAS, California Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, non-communicable biological agent, toxin, or radioactive agent; and

WHEREAS, on March 1, 2020 and again on March 5, 2020, the County's Health Officer declared a local health emergency based on an imminent and proximate threat to public health from the introduction of a novel coronavirus (named COVID-19) in the County of Alameda; and

WHEREAS, under Health and Safety Code section 101080, the local health emergency shall not remain in effect for more than seven (7) days unless ratified by the Board of Supervisors; and

WHEREAS, the Board of Supervisors hereby finds that there continues to exist an imminent and proximate threat to public health from the introduction of COVID-19 in the County for reasons set forth in the declaration of local health emergency by the County's Health Officer, dated March 5, 2020;

NOW, THEREFORE, BE IT RESOLVED, by the Board of Supervisors of the County of Alameda as follows:

Section 1 – The local health emergency declared by the County's Health Officer on March 5, 2020 is hereby ratified. Under authority granted by California Governor Gavin Newsom in a Proclamation of a State of Emergency issued on March 4, 2020, this declaration of local emergency shall remain in effect until the Board of Supervisors determines that the emergency condition no longer exists.

Section 2 – The Board of Supervisors hereby delegates to the County's Health Officer authority to terminate the local health emergency, pursuant to Health & Safety Code section 101080 "at the earliest possible date that conditions warrant the termination."

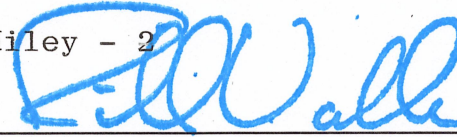
Section 3 – All County departments and agencies take those actions, measures, and steps deemed necessary to assure the health, safety, and welfare of County citizens and property, including requesting mutual aid to the extent such aid is necessary.

The foregoing Resolution was passed and adopted by the Board of Supervisors of the County of Alameda, State of California, at a regular meeting of the Board on the 10 day of March, 2020 by the following vote:

AYES: Supervisors Carson, Haggerty and President Valle - 3

NOES: None

EXCUSED: Supervisors Chan and Miley - 2

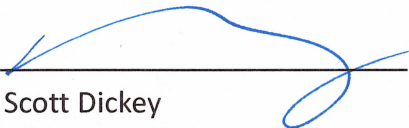


Richard Valle, President of the Board of Supervisors

ATTEST:
Clerk of the Board of Supervisors,
County of Alameda, State of California

By: 
Deputy

APPROVED AS TO FORM:
Donna R. Ziegler, County Counsel

By: 
K. Scott Dickey
Assistant County Counsel

DECLARATION OF A LOCAL HEALTH EMERGENCY

WHEREAS, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent;

WHEREAS, COVID-19 is a contagious, infectious, or communicable disease;

WHEREAS, the Secretary of the United States Department of Health and Human Services declared a public health emergency on January 31, 2020, for the United States;

WHEREAS, the Centers for Disease Control and Prevention announced on February 25, 2020, that community spread of COVID-19 is likely to occur in the United States;

WHEREAS, the first confirmed case of COVID-19 has now been identified in the County of Alameda;

WHEREAS, the Governor Gavin Newsom issued a Proclamation of a State of Emergency on March 4, 2020 for California;

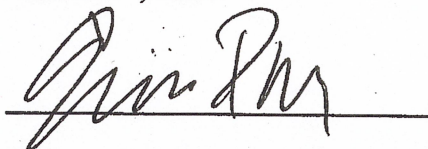
WHEREAS, based on the United States Department of Health and Human Services declaration and the Centers for Disease Control and Prevention statements, and multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda;

WHEREAS, based on the foregoing, the Health Officer of Alameda County does hereby find that there is an imminent and proximate threat of the introduction and spread of COVID-19 in the County of Alameda and a threat to the public health of the residents of the County of Alameda;

THEREFORE, the County Health Officer hereby declares a renewal of a local health emergency originally declared on March 1st, 2020 throughout the County of Alameda;

IT IS SO DECLARED, on this date: March 5th, 2020.

BY:



Name: Dr. Erica Pan

Title: Interim Health Officer

Public Health Department, County of Alameda

DECLARATION OF A LOCAL HEALTH EMERGENCY

WHEREAS, Health and Safety Code section 101080 authorizes a local health officer to declare a local health emergency in the health officer's jurisdiction, or any part thereof, whenever the health officer reasonably determines that there is an imminent and proximate threat of the introduction of any contagious, infectious, or communicable disease, chemical agent, noncommunicable biologic agent, toxin, or radioactive agent;

WHEREAS, COVID-19 is a contagious, infectious, or communicable disease;

WHEREAS, the Secretary of the United States Department of Health and Human Services declared a public health emergency on January 31, 2020, for the United States;

WHEREAS, the Centers for Disease Control and Prevention announced on February 25, 2020, that community spread of COVID-19 is likely to occur in the United States;

WHEREAS, the first confirmed case of COVID-19 has now been identified in the County of Alameda;

WHEREAS, the Governor Gavin Newsom issued a Proclamation of a State of Emergency on March 4, 2020 for California;

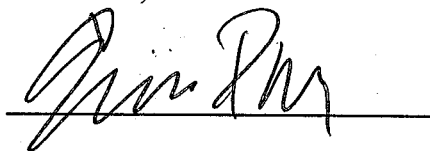
WHEREAS, based on the United States Department of Health and Human Services declaration and the Centers for Disease Control and Prevention statements, and multiple cases of COVID-19 and evidence of community transmission in the region, there is an ongoing risk and likelihood of additional COVID-19 positive patients and community spread in the County of Alameda;

WHEREAS, based on the foregoing, the Health Officer of Alameda County does hereby find that there is an imminent and proximate threat of the introduction and spread of COVID-19 in the County of Alameda and a threat to the public health of the residents of the County of Alameda;

THEREFORE, the County Health Officer hereby declares a renewal of a local health emergency originally declared on March 1st, 2020 throughout the County of Alameda;

IT IS SO DECLARED, on this date: March 5th, 2020.

BY:



Name: Dr. Erica Pan

Title: Interim Health Officer

Public Health Department, County of Alameda



Staff Report Item 9

TO: East Bay Community Energy Board of Directors

FROM: Nick Chaset, Chief Executive Officer

SUBJECT: CEO Report (Informational Item)

DATE: January 19, 2022

Recommendation

Accept Chief Executive Officer (CEO) report on update items below.

Recommendation

Accept Chief Executive Officer (CEO) report on update items below.

Executive Committee Meeting

A Special Executive Committee Meeting was held on Friday December 4, 2020 at 12 pm. Members received an update on the legislative program, as well as a presentation on EBCE's ability to sell the nuclear energy from the 2021 Pacific Gas and Electric carbon free allocation. The next meeting is scheduled for Friday January 22, 2021 at 12 pm.

Finance, Administration and Procurement Subcommittee Meeting

The December 11th meeting for the FAP Subcommittee was cancelled. Meetings will resume in 2021.

Marketing Regulatory and Legislative Subcommittee Meeting

There is no Marketing, Regulatory and Legislative meeting scheduled for the month of December. Meetings will resume in 2021.

New Staff

Update on Brilliant 100 Closure and Renewable 100 Transitions

The Brilliant 100 product is no longer available to any customers as of January 2022. Additionally, four cities are transitioning most of their customers to Renewable 100 during the month of January. Those cities are Albany, Dublin (residential only), Hayward, and Pleasanton. Voluntary Brilliant 100 customers and impacted customers in the four cities were

sent printed and electronic notifications in December. A second notification was mailed and emailed during the first two weeks of January.

Staff has tracked the enrollment status of customers in these areas and found that customers who act are more frequently staying with EBCE on Bright Choice rather than choosing to return to PG&E. Within the four cities, a range of 2.95% to 11.22% are choosing to select Bright Choice rather than transition to Renewable 100. While a much smaller population of customers, a range of 0.19% to 0.60%, within those cities are returning to PG&E service. These figures suggest that customers are making informed decisions about their electricity service.

Below is a table showing the change in enrollment status percentages from November 2021 to January 4, 2022. Note that “All EBCE” includes those voluntary Brilliant 100 customers that were transitioned to Bright Choice in January 2022.

	Current as of 1/4/22			Change from November 2021	
	Total Eligible	Total % Opt Out	Total % Move to/ Stay on BC	% Opt Out	% Move to/ Stay on BC
Albany	7342	2.98%	12.34%	0.19%	11.22%
Dublin	27503	5.09%	2.96%	0.25%	2.95%
Hayward	57801	6.35%	11.17%	0.18%	10.31%
Pleasanton	32085	4.82%	5.10%	0.60%	4.36%
All EBCE	674072	5.45%	1.95%	0.09%	1.81%



Staff Report Item 11

TO: East Bay Community Energy Board of Directors

FROM: Beckie Menten, Program Manager, Building Electrification and Energy Efficiency

SUBJECT: Program to Support and Scale Low to Moderate Income Building Electrification and Efficiency

DATE: January 19, 2022

Recommendation

Approve Resolution authorizing CEO to execute an Agreement with BlocPower to provide for \$1 million in investment at the junior capital position and negotiate and execute a separate Agreement to provide \$400,000 in grants to support electrification and clean energy upgrades on low to moderate income homes in EBCE's service area.

Background and Discussion

This item was heard at the November 15th EBCE Board of Directors meeting. At that meeting, the Directors offered strong support for the program concept and requested additional information on customer benefits and obligations, including the types of measures funded, the costs to participating customers, and the underwriting criteria and default provisions of the program. This Board Memo and the attached presentation address that request; more background information can be found in the [November 17th, 2021 Board Packet](#)¹.

BlocPower provided information on several projects installed recently in EBCE's service area. Typical installation costs average \$35,000 and project scopes most frequently include at least one electric appliance (i.e. heat pump water heater or space conditioning equipment), several energy efficiency measures (i.e. lighting and

¹ Item 11: Low and Moderate Income Electrification Program. EBCE Board of Directors Packet, November 17th 2021. https://res.cloudinary.com/diactiwk7/image/upload/v1637026693/Item_11_-_LMI_Electrification_hztmlwp.pdf

building envelope improvements) and additional building upgrades (service panel replacements, new windows or doors, plumbing and/or new appliances). Most projects included in the portfolio saw a net increase in monthly expenses of \$55-100 while 22% (two of nine projects) are expected to generate net monthly savings.

There may be many reasons why a customer voluntarily accepts an increase in monthly expenses. Efficiency and electrification projects provide important co-benefits beyond energy savings, including improvements in indoor air quality and an increase in safety and comfort. In spite of a customer's ability and willingness to undertake a home improvement project, they may find themselves unable to access capital. Traditional financing programs remain out of reach to some customers based on strict underwriting criteria and low risk acceptance; in turn, these customers are frequently left out of traditional rebate-based programs that require an upfront investment.

BlocPower provides a mission driven service intended to improve the health, performance, and carbon footprint of homes. Customers are presented with a proposal before committing to the project which summarizes monthly expense and other terms of the financing on the front page. Customers make informed decisions on upgrades to their homes and the net savings or payments resulting from the project. BlocPower works with independent community stewards who review and approve proposals before submission to the customer. This program aggregates multiple incentives with competitive, accessible financing to make these upgrades viable for customers who may otherwise not be able to improve their homes.

Fiscal Impact

EBCE staff are proposing a \$1 million investment in BlocPower and an additional \$400,000 in grant dollars for customer projects. \$650,000 of this funding would be sourced from this year's Local Programs budget and includes the additional \$250,000 that the Board requested to be allocated to Community Grants in the June 16th, 2021 Board meeting approving the FY'22 EBCE Budget. The remaining \$750,000 will be allocated from the upcoming FY 2022/2023 programs budget.

EBCE anticipates earning \$500,000 in interest payments on this investment over a 15-year period. Additionally, EBCE anticipates additional revenue associated with the electrification of homes. Finally, this funding would be leveraged with BlocPower's existing capital stack.

Attachments

1. Resolution Authorizing the CEO to execute a Loan Agreement and Promissory Note with BlocPower for 1 Million Dollars and to negotiate and execute an Agreement to administer \$400,000 in grants
2. PowerPoint presentation
3. Loan Agreement and Promissory Note.
4. Consulting Services Agreement for \$400,000 in customer grants.

RESOLUTION NO. R-2022-

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO EXECUTE A LOAN AGREEMENT AND PROMISSORY NOTE WITH BLOCPower FOR \$1 MILLION DOLLARS AND TO NEGOTIATE AND EXECUTE AN AGREEMENT TO ADMINISTER \$400,000 IN INCENTIVES

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS building electrification can improve the health, comfort, and efficiency of homes within EBCE’s service area, savings customers money on energy bills while improving indoor air quality and providing a new source of revenue for EBCE;

WHEREAS EBCE recognizes that frontline communities, defined as those hardest hit by a combination of historical underinvestment, exposure to environmental pollution, and lower income rates, have historically been excluded from participation in clean energy subsidy programs by requiring upfront investment on the part of participants;

WHEREAS BlocPower is a company which seeks to provide building electrification upgrades that also address energy efficiency, health, and safety to low to moderate income customers in EBCE’s service area;

WHEREAS EBCE desires to provide a loan to BlocPower to provide more EBCE customers opportunities to access the health and safety benefits associated with building electrification while providing a sustaining fund to continue re-investment in our community;

WHEREAS EBCE desires to provide incentive funds to BlocPower to be used to reduce overall project costs and to improve the affordability and access to the program.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. Authorize Chief Executive Officer to execute a Loan Agreement and Promissory Note with BlocPower for \$1 million to finance electrification projects for EBCE's customer base, and

Section 2. Authorize Chief Executive Officer to negotiate and execute an agreement with BlocPower to provide \$400,000 in incentives to low and moderate income customers to facilitate residential energy efficiency and electrification home upgrades.

ADOPTED AND APPROVED this 19th day of January, 2022.

Dianne Martinez, Chair

ATTEST:

Clerk of the Board

LMI Electrification

January 19, 2021

BOD MEETING



Background:

- Presentation in November Board meeting
 - BOD supportive of program concept and design
- To approve The LMI Electrification Program, the Board requested clarification on the following:
 - Provide evidence of project economics
 - Clarify non-monetary customer benefits
 - Clarify customer protections and the sales process

\$1.4 Million LMI Electrification Program

- \$1M in project capital at 5.5% interest rate
- \$400k in grants for LMI customers (up to 120% of Area Median Income)

EBCE Budget Impact

- \$500k allocated from FY'21 Local Programs Electrification budget
- \$250k allocated by BOD for electrification grants to LMI communities (June '21)
- \$650k to be requested in FY'22

Sole Source with BlocPower

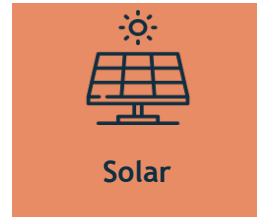
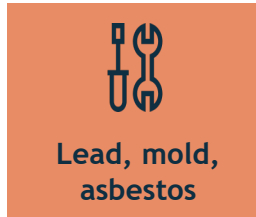
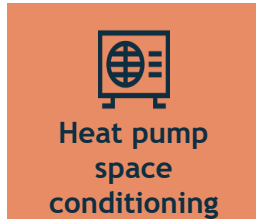
- BlocPower's "electrification-as-a-service" approach and focus on LMI communities is unique in the market
- BlocPower will use local contractors to provide electrification and EE to ~60 EBCE customers
- Provides access to well priced capital that LMI customers may not otherwise access

LMI Customers

- Households up to 120% of Area Median Income (AMI)
- Incentives scaled to income
- Higher incentive levels for lower income households
- Incentives will minimize bill impacts to CARE customers

% AMI Income	Household = 1	Household = 4	Maximum Incentive
80%	\$76,720	\$109,600	\$10,000
120%	\$105,500	\$150,700	\$4,000

Qualifying technologies / scope



Pilot projects tested affordability + proved value to homeowners



Project	Scope of Work	Avg. total project costs (pre-incentives)	Avg. Monthly Payments	Avg. Total Customer Payments	Avg Annual GHG Savings
#1	Air Sealing, Attic Insulation, Wall Insulation Mini Split HVAC HP + Smart Thermostat LED lighting, 1 window, 1 door	\$34,687	-\$52	-\$11,500	2.2T
#2	Air Sealing Attic Insulation Wall Insulation Mini Split HP HVAC + smart thermostat, HP water heater, Floor Insulation, replace windows and door Main Panel upgrade				
#3	Air Sealing, Attic/Wall Insulation, Floor Insulation LED lighting HP Water Heater, Mini Split HP				
#4	Minisplit HP, HP WH, air sealing, insulation floor, wall, attic (3 units)				
#5	Minisplit HP, air sealing, insulation floor, wall, attic new windows				

- Non-monetary benefits include comfort, safety, indoor air quality and useability
- General home improvements increase the value of homes and the opportunity to make additional investments
- Total payments are far below the costs of the home improvements
- Monthly Customer Payments benefit from other incentives from BayREN, TECH and other sources
- Pilot program tested customer acquisition and project development, but was not replicable for BlocPower economically



EBCE Program sustainably scales program, addresses most support to highest-need and improves value to customer

Total expected project costs (pre-incentives)	Income based EBCE grants	Expected Monthly Customer Payments (post-incentives, post-financing)	Expected Monthly Energy Bill Savings	Expected Net Monthly Payments (yr 1)	Estimated Net Customer Payments	Income Bracket
\$37,500	\$10,000	-\$146	\$87	-\$59	-\$10,662	Low Income
	\$4,000	-\$199		-\$112	-\$20,075	Mod Income
Project Costs assuming no EBCE Program						
*\$34,500	NA	-\$235	\$87	-\$148	-\$26,607	NA

- Income based incentives higher for low income customers
- Improvements improve quality of life and reduce energy bills
- BlocPower lending criteria broadens program eligibility
- *Prevailing wage requirement will increase labor costs by ~\$3,000
- EBCE debt lowers cost of financing for participants by ~\$6,000

Estimated # of projects	60
Total Program Capex	\$2,250,000
Program Grants	\$400,000
Net Cost	\$1,850,000



BlocPower partners with local developers, contractors, trainers and workers to deliver completed projects

Role	Company	Details
Developer	Revalue.io	West Oakland-based, MWOB
Contractors	East Bay Indoor Environmental	Oakland-based MWOB
	Eco Options	Oakland-based, MWOB
	Energeers	Hayward-based MWOB
	BOLD Construction	Oakland and San Leandro-based MWOB
Workforce Development	Cypress Mandela	Oakland and Union City-based MWO Non-profit

Trust is key

- Multi-faceted retrofits involving different trades, program administrators, financing obstacles, and decisions. The risk of fatigue is high.
- Trusted community partners help bridge that gap

Education is both hard, and a necessary step

- Unfamiliar technologies, and their value needs explanation so they can deliver expected results.
- Simplifying the process is critical for buy in and overcoming decision fatigue.

Turnkey

- Programs need to be stitched together to actually work for homeowners. We can't have them jump through too many hoops for this to actually work.

Customer agreement safeguards customer interests

Sample customer agreement



BlocPower
LEASE AGREEMENT
COVER PAGE

Customer: [REDACTED]

Property (Location of Equipment): [REDACTED]

Customer Address (if different than Property):

Customer Contact Information: Phone: __

Provider: BlocPower Energy Services 3, LLC

Description of Leased Equipment: 3 zone mini split heat pump and all other equipment ancillary thereto, and all additions, modifications, attachments, accessions, substitutions of the forgoing, and parts thereof, including all equipment more fully identified on Schedule B (the "Equipment").

Effective Date of Agreement: September 22, 2021

<u>Amount Due at Lease Signing or Delivery</u>	<u>Monthly Payments</u>	<u>Other Charges</u>	<u>Total of Payments</u>
\$0.00	Your 240 monthly payments of \$130.00 each will be due on the 15th day of each calendar month. This Monthly Fee will increase by 1% every year. We estimate the first payment will be due on 11/15/2021 (based on when the estimated date of completion of energy efficiency upgrades or, on installation of the net meter). The total of your monthly payments is \$34,349.76	(not part of your monthly payment) None.	(The amount you will have paid by the end of the lease) \$34,349.76
Capitalized Cost Reduction (estimate): \$0.00 _____			
\$0.00 _____			
Total			

Purchase Option: On or after the 90th day after the Commercial Operation Date, if you are not in default, you will have the option to purchase the Equipment for the amounts set forth on Schedule C.

Termination: You may not voluntarily terminate this lease and may pay a substantial fee if this lease is terminating due to your default.

Servicing & Insurance: You are responsible for insuring the Equipment and the cost of any servicing necessary for the Equipment.

Security Interest: The Equipment is the personal property of the Lessor. You only have a leasehold interest in the Equipment subject to this Agreement.

Official Fees and Taxes: The total amount you will pay for official fees and taxes over the term of this agreement, included with your monthly payments or assessed otherwise: \$3,193.52 (estimate). This estimate does not include the purchase option at the end of the lease term or any late fees you may incur.

Customer Service: Please reach out to Revaluae.io, Inc: 2408 Mandela Parkway Oakland, CA 94607; (510) 387-0416

This agreement consists of this Cover Page and the attached terms and conditions, and any addendums, schedules and exhibits attached hereto (collectively, the "Agreement").

Agenda Item: 11

Page 13



Our customers tell us that health and community are among their most important values

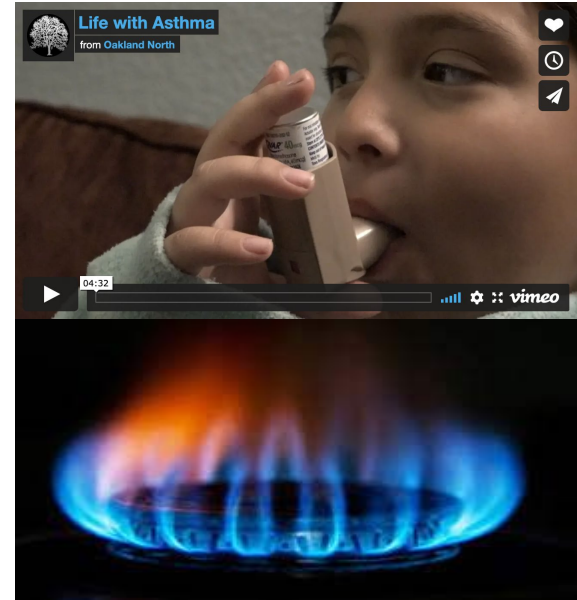
Our pilot customers shared key insights that helped them appreciate the benefits of energy transformation. We started by remediating home health hazards (Indoor Air Quality - IAQ) and creating energy cost-savings.

Health Impacts

- Lead, Mold, Asbestos and other environmental toxins persist in West Oakland housing.
- Burning fossil fuels within the building envelope contributes significantly to poor health outcomes (source: EPA).
- The ability to deliver clean, healthy air is a crucial decision factor for customers. See <https://www.blocpower.io/covid-19-resources>

Marshal St. owner Vince Gibbs

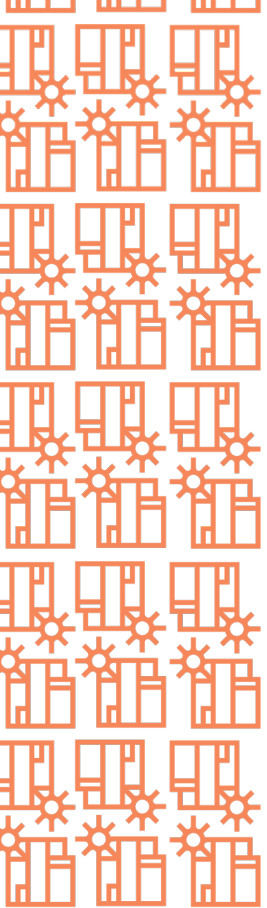
"My daughters were so uncomfortable in their room, now we hardly even have to run our mini-split, the insulation job is amazing and the moisture smell is gone!!"



<https://oaklandnorth.net/2018/12/11/oaklands-air-quality-problem-can-first-of-its-kind-legislation-solve-it/>
<https://science.howstuffworks.com/environmental/energy/natural-gas-energy.htm>



Additional Slides





About BlocPower

- Black-owned climate tech company founded in 2014
- Focused on greening residential and small commercial buildings in the US, particularly in Low and Moderate Income (LMI) neighborhoods
- Gas-to-electrification technology building conversions (air source heat pumps, hot water, etc.)
- Built a tech platform to speed up energy assessments and financing, lowering project development costs by 50%+
- Backed by government offices, utilities, and the world's top investors



Smarter, Healthier, Greener buildings for ALL



Helen St. owner Reymon LaCheaux
"I knew I wanted to be energy efficient, just didn't know where to start. Working with the Revalue.io team and Blocpower, made the process seamless and easy."



Marshal St. owner Vince Gibbs
"My daughters were so uncomfortable in their room, now we hardly even have to run our mini-split, the insulation job is amazing and the moisture smell is gone!!"



"Nobody cares about building electrification if they can't breathe in their home...and having contractors that reflect the community helps establish trust" - Mark Hall, Revalue.io

Case Study: AFFORDABLE HOUSING IMPROVEMENTS



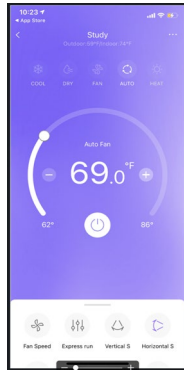
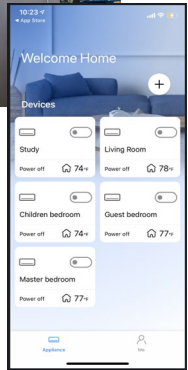
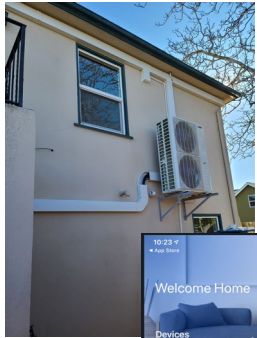
Union Street, Oakland



Pictured: Owner and Mark Hall, Revalue.io

Case Study: GREEN HEALTHY HOME

Marshall Street, Oakland

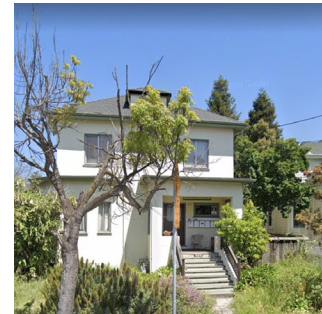


Case Study: ENABLEMENT CAPITAL

Northern California Land Trust; 36th Street, Oakland



<https://nclt.org/>).





Holistic financing program enables projects while safeguarding customer interests

Financing Program Details



Financing Instrument

- Lease, target term of 15 years + Customer payments targeted to savings
- Targeting ~6.5% effective interest, secured only by the assets installed.
- Low 1% annual escalation in payment.
- Operations + Maint. costs may be included for 15 years; Full guarantee on equipment & service
- Purchase, renew or remove options at end of term
- No lien on underlying property



Underwriting criteria

Customers are qualified through a holistic review of their financial portfolio, beyond just a credit score. We do require no bankruptcy within the last three years, and no outstanding major judgements or liens.



Non-payment

BlocPower engages in a managed and flexible process to support payment. Rather than going directly to collections, we work with other service providers like PromisePay to work with our customer portfolio to support their obligations



Negotiating complex incentives + financing is a significant barrier

Access to health equity resources is confusing, cumbersome and often insufficient to remediate home health hazards. What we need are:

Enablement capital

- The federal, state and local programs that offer grants (e.g., LIHEAP, WAP) and financing programs (REEL) for LMI customers often restrict projects through narrow requirements.
- Bridge financing makes qualification for many of these programs possible.

Flexible underwriting

- Many eligible residents have been excluded even from low-cost financing due to structural discrimination and predatory practices.

Complete Scope

- Essential considerations for health and long-term deferred maintenance are also included in project design, not just energy efficiency or weatherization.



Loan Agreement By And Between East Bay Community Energy Authority and BlocPower Energy Services 3

This Loan Agreement (the “**Agreement**”), dated as of January 19, 2022 (the “Effective Date”), is entered into by and between the by and between East Bay Community Energy Authority, a joint powers authority formed under the laws of the State of California (“EBCE”), and BlocPower Energy Services 3, LLC, a Delaware limited liability company (the “Borrower”).

RECITALS

A. Fossil fuel based heating and appliances are connected to harmful indoor air quality and contribute to climate change.

B. In recently signed SB 68, the California Legislature found that emissions from fossil fuels in residential buildings make up a significant share of the State’s carbon emissions. The Legislature found that it is a priority to make it as easy as possible for building owners to switch from fossil fuel to electric based energy.

C. Many in EBCE’s service area have already transitioned from fossil fuel to electric heating and appliances and as a result, a smaller pool of ratepayers must pay to maintain fossil fuel distribution infrastructure.

D. Low to moderate income (LMI) customers are disproportionately impacted by the health and financial effects of fossil fuel.

E. LMI customers are more likely to rent and therefore have less control over decisions impacting the buildings in which they live.

F. The Borrower is a black-owned company, specializing in making residential and commercial buildings more energy efficient, especially in LMI communities.

G. The Borrower assists LMI customers and landlords with LMI tenants with electrification of buildings, by providing equipment and installation with limited upfront costs and long term payment options. The Borrower has now completed projects in almost 1,000 buildings.

H. The Borrower has also developed a technology platform that reduces administrative costs associated with project implementation, including energy assessments and financing, helping to reduce overall project cost to participants.

I. In order to assist LMI customers and landlords with LMI tenants with the electrification of residential buildings and meet the State’s decarbonization goals, the EBCE Board of Directors has authorized a loan to Borrower in the amount of \$1,000,000.

J. The proceeds of the loan shall be used solely for the electrification of buildings by providing equipment and installation with limited upfront costs and long term payment options for LMI customers or landlords with LMI tenants, in EBCE's service area.

NOW, THEREFORE, IN CONSIDERATION OF THE MUTUAL COVENANTS AND CONDITIONS CONTAINED HEREIN, AND OTHER VALUABLE CONSIDERATION, THE ADEQUACY OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

Article I. DEFINITIONS; CONSTRUCTION; EXHIBITS

Section I.01 Definitions

The following capitalized terms have the meanings set forth in this Section 1.01 wherever used in this Agreement, unless otherwise provided:

- (a) **"Agreement"** means this Agreement, as the same may be modified from time to time, pursuant to the terms hereof.
- (b) **"Business Day"** means a day other than: (i) a Saturday, (ii) a Sunday, or (iii) a day on which the administrative offices of the EBCE are closed.
- (c) **"EBCE"** means East Bay Community Energy Authority, a joint powers authority formed under the laws of the State of California
- (d) **"Default Rate"** means the interest rate equal to the lesser of: (i) 6.5 percent per annum, or (ii) if lower, the highest rate permitted by law.
- (e) **"Event of Default"** has the meaning set forth in Section 5.1.
- (f) **"Fiscal Year"** means calendar year or, if the Borrower uses another 12-month period as its annual accounting period, then such other 12-month period.
- (g) **"Funding Date"** means the first date on which EBCE funds the Loan.
- (h) **"Law"** means, collectively, all federal, state or local laws, rules, regulations, statutes, ordinances, codes, orders, injunctions or decrees.
- (i) **"LMI"** means a household or family with income not greater than 100% of the Alameda County area median income, adjusted for household or family size.
- (j) **"Loan"** is the loan being made by EBCE to the Borrower pursuant to the terms of this Agreement.
- (k) **"Loan Documents"** means this Agreement and the Promissory Note.

(l) **“Material Adverse Effect”** means a material adverse effect on: (i) the business, assets, operations, prospects or condition, financial or otherwise, of the Borrower, (ii) the ability of the Borrower to perform any of its obligations under the Loan Documents, or (iii) the rights of or benefits available to EBCE under the Loan Documents.

(m) **“Payment Date”** means the 1st Business Day of each month, commencing on December 2022 .

(n) **“Payment Schedule”** means the schedule set forth in Exhibit A, which sets forth the scheduled principal and interest payment for the Loan on each Payment Date.

(o) **“Parties”** means EBCE and the Borrower.

(p) **“Project”** has the meaning set forth in Recital J.

(q) **“Promissory Note”** means the promissory note, in the form attached hereto as Exhibit B, that will evidence Borrower's obligation to repay the loan.

(r) **“State”** means the State of California.

(s) **“Tenant Improvements”** means the improvements or other alterations, to be undertaken and paid by the Borrower, at the properties where the Borrower conducts its business for the Project.

Section I.02 Construction

(a) Unless the context otherwise indicates, words expressed in the singular shall include the plural and vice versa and the use of the neuter, masculine, or feminine gender is for convenience only and shall be deemed to include the neuter, masculine or feminine gender, as appropriate.

(b) Headings of sections in this Agreement are solely for convenience of reference, do not constitute a part of this Agreement and shall not affect the meaning, construction or effect of the provisions of this Agreement.

(c) Each of the Parties affirms that it has reviewed and understood each and every provision of this Agreement and has consulted an attorney before executing this Agreement. As such, no court or other judicial authority shall construe any provision of this Agreement against any party by reason of such party's being deemed to have drafted such provision.

Section I.03 Exhibits

The following exhibits are attached to this Agreement and incorporated into this Agreement by reference:

Exhibit A: Payment Schedule

Exhibit B: Form of Promissory Note

Exhibit C: Form of Officers Certificate

Exhibit D: California Labor Code Compliance

Article II. LOAN TERMS; PAYMENTS

Section II.01 Loan

(a) EBCE agrees, subject to the terms and conditions set forth in this Agreement, to make the Loan in the principal amount of **One Million Dollars (\$1,000,000.00)** to Borrower for the Project.

(b) The Loan shall be evidenced by the Promissory Note, in substantially the form set forth in Exhibit B.

(c) The Loan shall bear interest, commencing on the date that is 12 months from the Effective Date, at the rate of **five and one half percent (5.5%)** per annum (calculated on the basis of a 360-day year of twelve 30-day months), and shall be payable on each Payment Date in the amounts set forth in the Payment Schedule set forth in Exhibit A.

(d) Notwithstanding the foregoing, upon the occurrence of an Event of Default and so long as it is continuing and remains uncured, the Loan shall bear interest at the Default Rate. Interest due based on such Default Rate shall be in addition to any fee due pursuant to Section 2.03(c).

Section II.02 Prepayment

(a) Subject to the provisions of this Section 2.02 and Section 2.03 below, the Borrower may prepay all or a portion of the outstanding principal together with accrued interest thereon of the Loan on any Payment Date without penalty, in addition to scheduled principal and interest payment due on that Payment Date.

(b) Unless otherwise agreed in writing by the CEO of EBCE, any partial prepayment shall be applied to scheduled principal payments in inverse order of maturity (*i.e.*, with the latest due date).

(c) At least 15 days before any prepayment, the Borrower shall send to EBCE: (i) a written notice specifying the prepayment amount and (ii) unless no principal amount of the Loan will remain outstanding after such prepayment, a proposed revised Payment Schedule to become effective after such prepayment. EBCE shall notify the Borrower at least five days before the proposed prepayment date whether such revised Payment Schedule is acceptable to EBCE. If EBCE has any objection to the proposed revised Payment Schedule, then the Parties shall cooperate in good faith to make mutually

acceptable revisions. No prepayment shall be made or accepted until EBCE and the Borrower agree on a revised Payment Schedule.

Section II.03 Payments Generally

(a) Borrower shall make each payment required to be made under the Loan Documents no later than 12:00 PM on its respective due dates, in immediately available funds in lawful money of the United States of America, without set-off, counterclaim, withholding or deduction of any kind whatsoever. Such payments shall be either by cashier's check, certified check, or by wire/electronic transfer, and sent to the following (provided, that EBCE may designate a different address or a different account in writing from time to time):

- (i) If by check, made to "East Bay Community Energy" (with "BLOCPOWER 2021 LOAN" in the reference line) and sent to
East Bay Community Energy
Attention: CEO
1999 Harrison Street, Suite 800
Oakland, CA 94612

- (ii) If by wire/electronic transfer, to the following account:

ACCOUNT INFORMATION

(b) If at any time EBCE receives insufficient funds from the Borrower to pay fully all amounts of principal, interest and fees then due hereunder, such funds received shall be applied: (i) first, to pay costs, expenses and fees due to EBCE hereunder, (ii) second, to pay interest then due hereunder, (iii) third, to pay principal then due hereunder; provided that, after the occurrence and during the continuation of an Event of Default, EBCE may apply insufficient funds differently at its sole discretion.

(c) In addition, if any principal of or interest on the Loan or other amount payable by the Borrower hereunder past due, remains unpaid for 5 days, after written notice by EBCE, whether due at stated maturity, upon acceleration or otherwise, the Borrower agrees to pay a late charge of three percent (3%) of the amount which is past due. The parties agree that such late charge represents the reasonable estimate of a fair average compensation to EBCE for additional expenses to process such delinquency.

**Article III. FUNDING DATE;
CONDITIONS PRECEDENT TO FUNDING OF LOAN**

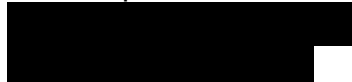
Section III.01 Funding Date and Location.

(a) The parties anticipate that the Funding Date shall be **January, 20 2022**; provided, that the Funding Date may be such other Business Day as agreed by the Parties in writing; provided, further, funding shall only occur after the Borrower's satisfaction of all of the conditions set forth in Section 3.02.

(b) On the Funding Date and on July 1, 2022, EBCE shall issue a check or wire transfer to the Borrower the amount of \$ 500,000, in lawful moneys of the United States of America,.

(c) Funds shall be transferred to:

BlocPower Energy Services 3 LLC
First Republic Bank



Section III.02 Conditions Precedent.

(a) The obligations of EBCE to make the Loan hereunder shall not become effective until EBCE shall have received the following on or before the Funding Date:

(i) Executed copies of this Agreement and the Promissory Note.

(ii) A true, correct and complete copy of each of: (A) the Certificate of Formation of the Borrower, (B) the current operating agreement of the Borrower, and (C) a Certificate of Good Standing (or similar document), issued by the Secretary of State within 30 days of the Funding Date, showing the Borrower's good standing to conduct business in the State.

(iii) Financial statements of the Borrower for the two full Fiscal Years completed before the Funding Date (which may be unaudited financial statements, if no audited financial statements have not been prepared and, therefore, unavailable).

(iv) A written description of any event or change since the end of the period covered by the Borrower's most recent audited financial statements, which may have a Material Adverse Effect.

(v) The Borrower's most recent cash flow projection reasonably forecasting the next five years of operations (including revenues, expenses and capital expenditures) for: (i) the Borrower, and (ii) the Project.

(vi) Evidence of the insurance coverage meeting the requirements of Section 5.06 below (which shall include disclosure regarding all applicable deductibles).

(vii) A certificate of the Parent of the Borrower's CEO and CFO, dated the Funding Date, in substantially the form set forth in Exhibit C.

(viii) Such other certificates, instruments and other documents as EBCE may reasonably request.

(b) If the Borrower shall be unable to satisfy the conditions set forth in this Section 3.02, or if EBCE shall determine in good faith (and provide written notice to the Borrower) that there has been a change in law which prohibits the funding of the Loan, then this Agreement shall terminate and the Borrower and EBCE shall be under no further obligation hereunder.

Article IV. REPRESENTATIONS AND WARRANTIES OF BORROWER

The Borrower represents and warrants to EBCE that, as of the date of this Agreement and as of the Funding Date:

Section IV.01 Organization; Authorization.

(a) The Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware and has the corporate power and authority to carry on its business as it is now being conducted and to own, operate and lease its properties and assets in the State of California.¹

(b) The Borrower has the full power, authority and legal right to undertake the Project.

(c) The Borrower has full power, authority and legal right to enter into and execute the Loan Documents.

Section IV.02 Enforceability; No Conflict.

(a) The Loan Documents and all other documents or instruments executed or delivered in connection herewith have been duly authorized by all necessary action on the part of the Borrower, have been duly executed and delivered and are the legal, valid and binding obligations of Borrower and are enforceable in accordance with their respective terms, subject to applicable bankruptcy, insolvency, reorganization, moratorium and other laws affecting creditors' rights generally and subject to general principles of equity, regardless of whether considered in a proceeding in equity or at law.

(b) The execution, delivery and performance by Borrower of the Loan Documents do not and will not conflict with, or result in, any breach or violation of any of the terms and conditions of, or constitute a default under, or give rise to a right to require

¹ NTD: BlocPower LLC is registered to do business in CA. BPES3 is not required to be registered in CA.

the Borrower to make any payment under, or result in the creation of any lien or encumbrance upon any assets or properties of the Borrower pursuant to: (a) the certificate of formation or operating agreement or other organizational or constituent documents of Borrower, (b) any Law or requirement imposed under any permit or by any governmental authority applicable to Borrower, (c) any judicial order, judgment, injunction or decree to which the Borrower is a party or by which it is bound or (d) any agreement to which the Borrower is a party or by which it is bound.

Section IV.03 Audited Financial Statements; Cash Flow Projections.

(a) The financial statements delivered by the Borrower to EBCE present fairly, in all material respects, the financial position of the Borrower as of their respective dates. Except as disclosed to EBCE in writing, since the date of the most recent financial statements, there has been no material adverse change in the business, assets, operations, prospects or condition (financial or otherwise) of the Borrower.

(b) The cash flow projections provided to EBCE regarding the Borrower and the Project have been prepared in good faith and reflect the true expectation of the Borrower (subject to reasonable assumptions), based on the experience of the Borrower.

Section IV.04 Outstanding Indebtedness.

(a) Borrower does not have any outstanding indebtedness except: (i) the indebtedness evidenced by the Note, (ii) debt pursuant to Regulation CF and (iii) as previously disclosed to EBCE in writing or included in the submitted financial statements.²

(b) Except as previously disclosed to EBCE in writing, there are no outstanding liens on record against any of the Borrower's properties or assets.

Section IV.05 Insurance.

All premiums in respect of all insurance maintained by or on behalf of the Borrower, including all insurance required hereunder, have been paid. The Borrower believes that the insurance maintained by or on behalf of the Borrower is adequate.

Section IV.06 Compliance with Laws and Agreements.

(a) The Borrower is in compliance with all Laws applicable to it or its property and all leases, agreements and other instruments binding on it or its property, except where failures to do so, in the aggregate, could not reasonably be expected to result in a Material Adverse Effect. No material default (however defined) under any such agreement or instrument has occurred and is continuing.

² NTD: Please confirm EBCE has received info about our crowdfunding debt.

(b) The Borrower has timely filed or caused to be filed all tax returns and reports required to have been filed by it and has paid or caused to be paid all taxes required to have been paid by it as and when due.

Section IV.07 No Litigation.

There are no actions, suits or proceedings pending against or, to the knowledge of the Borrower, threatened against or affecting the Borrower by or before any arbitrator or court or governmental or administrative body or agency. The Borrower is not subject to any judgment, confession of judgment, injunction, decree, order, order to show cause, writ, lien or attachment of any kind, whether or not final or contingent, and none of the foregoing has been filed, recorded or otherwise attached to any of Borrower's assets or properties.

Section IV.08 Disclosure.

The Borrower has disclosed to EBCE all agreements, instruments and corporate or other restrictions to which Borrower is subject, and all other matters known to it that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect. None of the information contained in this Agreement or any other instrument, document, list, certificate, statement, schedule or exhibit delivered to EBCE in connection with the negotiation of this Agreement or the Promissory Note or delivered hereunder or thereunder (as modified or supplemented by other information so furnished) contains any untrue statement or material fact or omits to state a material fact necessary in order to make the statements contained herein or therein not misleading.

Article V. COVENANTS

So long as any portion of the Loan remains outstanding or any other amount is unpaid hereunder, the Borrower shall comply with the following covenants:

Section V.01 Continuation of Business.

(a) The Borrower shall not assign, sell, transfer, dispose or encumber its assets or revenues (including accounts receivables) or rights with respect thereto, in any manner that would adversely affect its continuing existence or otherwise reasonably be expected to have a Material Adverse Effect.

(b) Borrower shall obtain and maintain in full force such government approval, authorization, certificate of need, license, or designation as required to operate its business.

Section V.02 Undertaking of Project; Use of Proceeds; Applicability of Prevailing Wage Requirements.

(a) The Borrower shall use proceeds of the Loan solely for the Project.

(b) The Borrower acknowledges that use of the proceeds of the Loan outside of the scope of the Project may constitute a “gift of public funds,” which is prohibited by Cal. Const., art. XVI, §6.

(c) The Borrower acknowledges that, in view of the benefit conferred by EBCE’s assistance to the Project in the form of the Loan, use of Loan for any construction is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code, as if they are undertaken by EBCE. The Borrower agrees to comply with, and to require any and all contractors performing construction, alteration, demolition, installation, repair work or any other work constituting a public work as described in California Labor Code Section 1720, in connection with the Tenant Improvements, to comply with, the provisions set forth in Exhibit D.

Section V.03 Compliance with Law and Contracts.

(a) The Borrower shall conduct its business in a manner that complies with all applicable Law.

(b) Borrower will not commit any default on its contractual obligations in any manner which could reasonably be expected to result in a Material Adverse Effect.

Section V.04 Payment of Indebtedness and Other Obligations; Incurrence of Other Indebtedness or Creation of Lien.

(a) Borrower shall pay and discharge, when due (i) all of its debts and other obligations and liabilities, including, but not limited to, payroll obligations, and (ii) all taxes, assessments and other governmental charges on its income and properties, in each case as and when the same are due, and in all events before the same shall become delinquent or in default such that interest or penalties would accrue, except where: (I) the validity or amount thereof is being diligently contested in good faith by appropriate proceedings, (II) the Borrower has set aside on its books reserves with respect thereto that are reasonably adequate, (III) such contest effectively suspends collection of the contested obligation and the enforcement of any lien securing such obligation, or Borrower has posted such bonds or other security or instruments as may be necessary to remove any such lien from title to any of Borrower’s assets or properties, and (IV) the failure to make payment pending such contest could not reasonably be expected to result in a Material Adverse Effect.

(b) Without EBCE’s prior written consent, the Borrower shall not borrow money from other sources (or enter into capital leases or similar instrument), that exceeds \$10,000,000 in the aggregate.

(c) The Borrower shall not create, assume or allow any security interest or lien on any property that the Borrower now or later owns, except for: (i) liens and security interest in favor of EBCE, (ii) liens for taxes not yet due, (iii) liens outstanding on the date of this Agreement and disclosed to EBCE in writing, and (iv) liens arising in the ordinary course of business securing amounts the Borrower owes in the operation of its business.

Section V.05 Books and Records; Financial Statements.

(a) Borrower shall, at all times, keep proper books of record and account in which complete and correct entries are made of all transactions relating to its business and activities. The Borrower will permit any representatives designated by EBCE, upon reasonable prior notice, to visit and inspect its properties, to examine and make extracts from its books and records, to audit such books and records, and to discuss its affairs, finances and condition with its officers and independent accountants, all at such reasonable times and as often as reasonably requested.

(b) After the close of each calendar year, the Borrower shall cause an independent certified public accountant to prepare on a consolidated basis an audit of the financial transactions and records of EBCE for such Fiscal Year. No later than four months days after the end of each Fiscal Year, the Borrower shall furnish to EBCE a copy of the full audited financial report for such Fiscal Year.

Section V.06 Insurance.

(a) Borrower shall procure and maintain general comprehensive liability insurance and automobile liability insurance (for any owned, non-owned or hired vehicle), against loss arising from personal injury and death or property damage caused by accident or occurrence, in the amount not less than One Million Dollars (\$1,000,000.00) for any occurrence or accident, Two Million Dollars (\$2,000,000.00) annual aggregate and naming EBCE and its officials, officers, employees, agents, and contractors as additional insured. Such insurance may be provided through a combination of primary and excess (or umbrella) policies. All such policies (other than umbrella policies, if such endorsement is not available for umbrella policies) shall name EBCE as an additional insured.

(b) The Borrower shall comply with all State requirements relating to the procurement and maintenance of workers' compensation insurance, any state mandated disability benefits insurance, and such other forms of insurance which the Borrower is required by Law to provide in at least the coverage amounts required by Law.

(c) Borrower shall provide EBCE at least thirty (30) days prior written notice of cancellation of any policy required by this Agreement, except that the Borrower shall provide at least ten (10) days prior written notice of cancellation of any such policy due to non-payment of premium. If any of the required coverage is cancelled or expires during the term of this Agreement, the Borrower shall deliver renewal certificate(s) including the required Additional Insured endorsement to EBCE at least ten (10) days prior to the effective date of cancellation or expiration.

(d) All required policies of insurance shall be endorsed to waive the right of subrogation. All insurance policies obtained by the Borrower, including all deductibles, shall be reasonably satisfactory to EBCE. Copies of the insurance policies and endorsements for all insurance required to be obtained by Borrower shall be delivered to EBCE prior to the Funding Date.

Section V.07 Disclosure Notices.

(a) The Borrower shall furnish to EBCE prompt written notice of any of the following:

- (i) The occurrence of an Event of Default;
- (ii) Any development in the business or affairs of the Borrower that results in, or could reasonably be expected to result in, a Material Adverse Effect; or
- (iii) Any upcoming change in the senior management of the Borrower; or
- (iv) Any upcoming change in the Borrower's primary business location(s).

(b) Each notice delivered under this Section shall be accompanied by a statement describing the nature thereof and the action the Borrower proposes to take with respect thereto.

Section V.08 Indemnification; Costs and Expenses.

(a) To the fullest extent permitted by law, the Borrower shall indemnify defend, and hold harmless EBCE and its officials, officers, employees, agents, and contractors (collectively, the "Indemnitees") against and hold the Indemnitees harmless from any and all claims, actions, suits, proceedings, damages, liabilities, reasonable costs, reasonable expenses (collectively, "Claims"), including attorneys' fees, arising out of, connected with or resulting from any acts or omission to act by the Borrower (or the Borrower's officers, employees, agents or contractors) in connection with or related to the Loan, this Agreement or the Project; provided, however, that the Borrower shall not be required to indemnify the Indemnitees for any Claims that are caused by the sole gross negligence, bad faith or willful misconduct of the Indemnitees.

(b) Borrower's duty to indemnify, defend, and hold harmless EBCE and the Indemnitees shall extend to claims, actions, suits, proceedings, damages, liabilities, reasonable costs, reasonable expenses (collectively, "Claims"), including attorneys' fees, arising out of, connected with or resulting from any acts or omission to act by the Borrower (or the Borrower's officers, employees, agents or contractors) in connection with or related to the requirements of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code.

(c) Borrower shall not assert, and hereby waives, any claim against any Indemnitee on any theory of liability, for special, indirect, consequential or punitive

damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, the Loan or the use of the proceeds thereof, or the Project.

(d) The Borrower shall promptly pay the reasonable out-of-pocket expenses and disbursements of EBCE, including reasonable attorney fees, and related expenses and disbursements, in connection with: (A) obtaining by the Borrower of any waiver or consent under this Agreement, the Loan or any Event of Default hereunder, (B) the preparation, execution, delivery, administration, defense and enforcement or preservation of rights in connection with a workout, restructuring or waiver with respect to the Loan, and (C) the occurrence of an Event of Default and collection and other enforcement proceedings resulting therefrom.

(e) The Borrower shall pay all amounts due under this Section 5.08 within 20 days after written demand.

(f) The provisions of this Section 5.08 shall survive the repayment of the Loan and the termination of this Agreement.

Section V.09 Equal Opportunity Employer.

The Borrower shall not discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, sex, age or other interests protected by the State or Federal Constitutions. Such non-discrimination shall include, but not be limited to, all activities related to initial employment, upgrading, demotion, transfer, recruitment or recruitment advertising, layoff or termination.

Section V.10 Further Assurances.

The Borrower shall preserve and protect the rights of EBCE pursuant to this Agreement. From and after the date of issuance of the Promissory Note, the Borrower will not contest the validity or enforceability of the Promissory Note or Loan Agreement. The Borrower shall take such action, and make, execute and deliver any and all such further instruments and assurances as may be reasonably necessary or proper to carry out the intention or to facilitate the performance of this Loan Agreement, and for the better assuring and confirming unto EBCE of its rights and benefits provided in the Loan Documents.

Article VI. EVENTS OF DEFAULT

Section VI.01 Events of Default.

The occurrence of any of the following events shall constitute an “Event of Default” hereunder:

(a) The Borrower shall have failed to make a payment required hereunder when after payment becomes due, EBCE sends written notice to Borrower and such failure continues for five days after the date of written notice;

(b) Failure by the Borrower to observe and perform any covenant, condition or agreement on its part to be observed or performed, other than as referred to in Section 6.01(a), for a period of 30 days after written notice, specifying such failure and requesting that it be remedied, is given to the Borrower by EBCE, unless EBCE agrees in writing to an extension of such time prior to its expiration; provided, if the failure stated in the notice cannot be corrected within the applicable period, EBCE will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Borrower within the applicable period and diligently pursued until the default is corrected; or

(c) Any representation or warranty made by the Borrower set forth herein or in any information concerning the Borrower’s business operation or financial condition submitted by the Borrower to EBCE in connection with the Loan proves to have been incorrect in any material respect when made; or

(d) The Borrower is dissolved or liquidated or merged with or into any other entity; or, if Borrower ceases to exist in its present form and (where applicable) in good standing and duly qualified under the laws of the State; or all or substantially all of the assets of Borrower are sold or otherwise transferred; or

(e) The Borrower is subject to an order for relief by the bankruptcy court, or is unable or admits in writing its inability to pay its debts as they mature or makes an assignment for the benefit of creditors; or the Borrower applies for or consents to the appointment of any receiver, trustee or similar official for Borrower or for all or any part of its assets (or an appointment is made without its consent and the appointment continues undischarged and unstayed for sixty (60) days); or the Borrower institutes or consents to any bankruptcy, insolvency, reorganization, arrangement, readjustment of debt, dissolution, custodianship, conservatorship, liquidation, rehabilitation or similar proceeding relating to Borrower or to all or any part of its assets under the laws of any jurisdiction (or a proceeding is instituted without its consent and continues undismissed and unstayed for more than sixty (60) days); or any judgment, writ, warrant of attachment or execution or similar process is issued or levied against the improvements or any other assets of Borrower and is not released, vacated or fully bonded within sixty (60) days after its issue or levy; or

(f) The Borrower is in default of its obligations under any other agreement entered into with EBCE, and the default remains uncured following the expiration of any applicable cure periods.

Section VI.02 Default Rate; Acceleration.

(a) Pursuant to Section 2.01(d), upon the occurrence of an Event of Default and so long as it is continuing and remains uncured, the Loan shall bear interest at the Default Rate.

(b) Upon the occurrence of an Event of Default, EBCE may, by notice in writing to the Borrower, declare the principal of the Loan then outstanding, the interest accrued thereon and any other charges due hereunder and under the Promissory Note, to be due and payable immediately, and upon any such declaration, the same shall become and shall be immediately due and payable, without protest, presentment, notice of dishonor, demand or further notice of any kind, all of which the Borrower expressly waives.

Section VI.03 Other Remedies; Remedies Not Exclusive.

(a) EBCE may take whatever other action at law or in equity may appear necessary or desirable to enforce its rights under this Agreement.

(b) No remedy conferred upon or reserved to EBCE in this Agreement is intended to be exclusive of any other remedy. Every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing, at law or in equity or by statute or otherwise, and may be exercised without exhausting and without regard to any other remedy conferred by law.

Section VI.04 Non-Waiver.

A waiver by EBCE of any default or breach of duty or contract hereunder shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission by a party hereunder to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence in such default, and every power and remedy conferred upon the party by law or by this Agreement may be enforced and exercised from time to time and as often as shall be deemed expedient by EBCE.

Section VI.05 Restoration of Positions.

If a suit, action or proceeding to enforce any right or exercise any remedy is abandoned or determined adversely to EBCE, the Borrower and EBCE shall be restored to their former positions, rights and remedies as if such suit, action or proceeding had not been brought or taken, subject to any court directions or agreements by the Parties.

Article VII. MISCELLANEOUS

Section VII.01 Notices.

Any notice, request, complaint, demand or other communication under this Loan Agreement shall be given by first certified or registered mail or personal delivery to the party entitled thereto at its address set forth below, by overnight mail, as a .pdf attachment to electronic mail, or by telecopy or other form of telecommunication (provided, for any electronic mail, telecopy or other form of telecommunication, the sender shall obtain confirmation of receipt of the communication by the receiving party). Notice shall be effective either: (i) upon transmission by telecopy or other form of telecommunication, (ii) 48 hours after deposit in the United States mail, postage prepaid, (iii) in the case of overnight mail, upon delivery to the addressed destination, or (iv) in the case of personal delivery to any person, upon actual receipt. Each entity below may, by written notice to the other party from time to time, modify addresses, telephone or e-mail addresses to which communications are to be given under this Agreement.

To EBCE: East Bay Community Energy
 1999 Harrison Street, Suite 800
 Oakland, CA 94612
 Attention: TITLE
 Telephone: (XXX) XXX-XXXX
 E-mail: XXXX

To Borrower: BlocPower
 1623 Flatbush Avenue, Box #222

 Brooklyn New York 11210

 Attention: General Counsel
 E-mail: legalnotice@blocpower.io

Section VII.02 No Third Party Beneficiaries.

Nothing in this Agreement or the Promissory Note, expressed or implied, is intended to give to any entity or person other than EBCE and the Borrower any right, remedy or claim under or by reason of this Loan Agreement.

Section VII.03 EBCE Obligations Limited to Funding of Loan.

EBCE's sole obligation under this Agreement is limited to providing the funds for the Loan as described in this Agreement, subject to the conditions precedent set forth herein. Under no circumstances, including breach of this Agreement, will EBCE be liable to the Borrower for any special or consequential damages arising out of actions or failure to act by EBCE in connection with the Loan or the Loan Documents.

Section VII.04 Inurement; Assignment.

The benefits of this Agreement shall inure to the successors and assigns of EBCE and the Borrower, as applicable; provided, that the Borrower may not assign this Agreement or the Promissory Note (or delegate any obligations hereunder or thereunder) without EBCE's prior consent of EBCE, which may be given or withheld in EBCE's sole and absolute discretion. EBCE may transfer or assign its interest in this Agreement and the Note.

Section VII.05 Amendments.

This Agreement may be amended only in writing signed by the parties hereto.

Section VII.06 Severability.

The unenforceability or invalidity of any provision or provisions of this Agreement (as determined by a court of competent jurisdiction) as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other provisions or circumstances, and all provisions of this Agreement, in all other respects, shall remain valid and enforceable.

Section VII.07 Integration.

This Agreement, together with all exhibits hereto, constitutes the entire understanding and agreement of the parties with respect to the subject matters hereof, and integrates all of the terms and conditions mentioned herein or incidental thereto, and supersedes all prior or contemporaneous negotiations, discussions and previous agreements between EBCE and the Borrower concerning all or any part of the subject matter of this Agreement.

Section VII.08 Business Days.

Whenever a scheduled Payment Date is not a Business Day, such payment may be made on the next succeeding Business Day. When any other action is provided for in this Agreement to be done on a day within a specified time period, and the day or the last day of the period falls on a day other than a Business Day, such action may be performed on the next ensuing Business Day with the same effect as though performed on the appointed day or within the specified period.

Section VII.09 Governing Law; Venue.

This Agreement shall be governed and construed in accordance with the laws of the State of California. Venue for any legal action arising out of this Agreement shall be Alameda County, California.

Section VII.10 Execution in Counterparts.

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts shall together constitute but one and the same instrument.

IN WITNESS WHEREOF, each of EBCE and the Borrower has caused this Agreement to be signed in its name by its duly authorized representative, all as of the date first above written.

EBCE:
East Bay Community Energy,
a California municipal corporation

BORROWER
BlocPower,
a Delaware limited liability company

By: _____
Nick Chaset
CEO

By: _____
Cullen Kasunic
CFO

By: _____
Inder Khalsa
General Counsel

EXHIBIT A
PAYMENT SCHEDULE³

Date	Month	Draw Down	Begin Balance	Interest	Payment	End Balance
1/31/2022	0	\$500,000	\$(500,000)			
2/28/2022	1		\$(500,000)			
3/31/2022	2		\$(500,000)			
4/30/2022	3		\$(500,000)			
5/31/2022	4		\$(500,000)			
6/30/2022	5		\$(500,000)			
7/31/2022	6	\$500,000	\$(1,000,000)			
8/31/2022	7		\$(1,000,000)			
9/30/2022	8		\$(1,000,000)			
10/31/2022	9		\$(1,000,000)			
11/30/2022	10		\$(1,000,000)			
12/31/2022	11		\$(1,000,000)			
1/31/2023	12		\$(1,000,000)	\$(4,583)	\$8,142	\$(996,442)
2/28/2023	13		\$(996,442)	\$(4,567)	\$8,142	\$(992,867)
3/31/2023	14		\$(992,867)	\$(4,551)	\$8,142	\$(989,276)
4/30/2023	15		\$(989,276)	\$(4,534)	\$8,142	\$(985,668)
5/31/2023	16		\$(985,668)	\$(4,518)	\$8,142	\$(982,044)
6/30/2023	17		\$(982,044)	\$(4,501)	\$8,142	\$(978,403)
7/31/2023	18		\$(978,403)	\$(4,484)	\$8,142	\$(974,746)
8/31/2023	19		\$(974,746)	\$(4,468)	\$8,142	\$(971,072)
9/30/2023	20		\$(971,072)	\$(4,451)	\$8,142	\$(967,381)
10/31/2023	21		\$(967,381)	\$(4,434)	\$8,142	\$(963,673)

³ Subject to adjustments pursuant to the terms of the Loan Agreement in the event of a prepayment or an Event of Default.

11/30/2023	22	\$(963,673)	\$(4,417)	\$8,142	\$(959,948)
12/31/2023	23	\$(959,948)	\$(4,400)	\$8,142	\$(956,206)
1/31/2024	24	\$(956,206)	\$(4,383)	\$8,142	\$(952,447)
2/29/2024	25	\$(952,447)	\$(4,365)	\$8,142	\$(948,670)
3/31/2024	26	\$(948,670)	\$(4,348)	\$8,142	\$(944,877)
4/30/2024	27	\$(944,877)	\$(4,331)	\$8,142	\$(941,066)
5/31/2024	28	\$(941,066)	\$(4,313)	\$8,142	\$(937,237)
6/30/2024	29	\$(937,237)	\$(4,296)	\$8,142	\$(933,391)
7/31/2024	30	\$(933,391)	\$(4,278)	\$8,142	\$(929,527)
8/31/2024	31	\$(929,527)	\$(4,260)	\$8,142	\$(925,646)
9/30/2024	32	\$(925,646)	\$(4,243)	\$8,142	\$(921,747)
10/31/2024	33	\$(921,747)	\$(4,225)	\$8,142	\$(917,829)
11/30/2024	34	\$(917,829)	\$(4,207)	\$8,142	\$(913,894)
12/31/2024	35	\$(913,894)	\$(4,189)	\$8,142	\$(909,941)
1/31/2025	36	\$(909,941)	\$(4,171)	\$8,142	\$(905,970)
2/28/2025	37	\$(905,970)	\$(4,152)	\$8,142	\$(901,981)
3/31/2025	38	\$(901,981)	\$(4,134)	\$8,142	\$(897,973)
4/30/2025	39	\$(897,973)	\$(4,116)	\$8,142	\$(893,947)
5/31/2025	40	\$(893,947)	\$(4,097)	\$8,142	\$(889,903)
6/30/2025	41	\$(889,903)	\$(4,079)	\$8,142	\$(885,840)
7/31/2025	42	\$(885,840)	\$(4,060)	\$8,142	\$(881,758)
8/31/2025	43	\$(881,758)	\$(4,041)	\$8,142	\$(877,657)
9/30/2025	44	\$(877,657)	\$(4,023)	\$8,142	\$(873,538)
10/31/2025	45	\$(873,538)	\$(4,004)	\$8,142	\$(869,400)
11/30/2025	46	\$(869,400)	\$(3,985)	\$8,142	\$(865,243)
12/31/2025	47	\$(865,243)	\$(3,966)	\$8,142	\$(861,067)
1/31/2026	48	\$(861,067)	\$(3,947)	\$8,142	\$(856,872)
2/28/2026	49	\$(856,872)	\$(3,927)	\$8,142	\$(852,658)
3/31/2026	50	\$(852,658)	\$(3,908)	\$8,142	\$(848,424)
4/30/2026	51	\$(848,424)	\$(3,889)	\$8,142	\$(844,171)
5/31/2026	52	\$(844,171)	\$(3,869)	\$8,142	\$(839,898)
6/30/2026	53	\$(839,898)	\$(3,850)	\$8,142	\$(835,606)
7/31/2026	54	\$(835,606)	\$(3,830)	\$8,142	\$(831,294)

8/31/2026	55	\$(831,294)	\$(3,810)	\$8,142	\$(826,962)
9/30/2026	56	\$(826,962)	\$(3,790)	\$8,142	\$(822,611)
10/31/2026	57	\$(822,611)	\$(3,770)	\$8,142	\$(818,239)
11/30/2026	58	\$(818,239)	\$(3,750)	\$8,142	\$(813,848)
12/31/2026	59	\$(813,848)	\$(3,730)	\$8,142	\$(809,436)
1/31/2027	60	\$(809,436)	\$(3,710)	\$8,142	\$(805,004)
2/28/2027	61	\$(805,004)	\$(3,690)	\$8,142	\$(800,552)
3/31/2027	62	\$(800,552)	\$(3,669)	\$8,142	\$(796,080)
4/30/2027	63	\$(796,080)	\$(3,649)	\$8,142	\$(791,587)
5/31/2027	64	\$(791,587)	\$(3,628)	\$8,142	\$(787,073)
6/30/2027	65	\$(787,073)	\$(3,607)	\$8,142	\$(782,539)
7/31/2027	66	\$(782,539)	\$(3,587)	\$8,142	\$(777,983)
8/31/2027	67	\$(777,983)	\$(3,566)	\$8,142	\$(773,407)
9/30/2027	68	\$(773,407)	\$(3,545)	\$8,142	\$(768,810)
10/31/2027	69	\$(768,810)	\$(3,524)	\$8,142	\$(764,192)
11/30/2027	70	\$(764,192)	\$(3,503)	\$8,142	\$(759,553)
12/31/2027	71	\$(759,553)	\$(3,481)	\$8,142	\$(754,893)
1/31/2028	72	\$(754,893)	\$(3,460)	\$8,142	\$(750,211)
2/29/2028	73	\$(750,211)	\$(3,438)	\$8,142	\$(745,508)
3/31/2028	74	\$(745,508)	\$(3,417)	\$8,142	\$(740,783)
4/30/2028	75	\$(740,783)	\$(3,395)	\$8,142	\$(736,036)
5/31/2028	76	\$(736,036)	\$(3,373)	\$8,142	\$(731,268)
6/30/2028	77	\$(731,268)	\$(3,352)	\$8,142	\$(726,478)
7/31/2028	78	\$(726,478)	\$(3,330)	\$8,142	\$(721,666)
8/31/2028	79	\$(721,666)	\$(3,308)	\$8,142	\$(716,832)
9/30/2028	80	\$(716,832)	\$(3,285)	\$8,142	\$(711,975)
10/31/2028	81	\$(711,975)	\$(3,263)	\$8,142	\$(707,097)
11/30/2028	82	\$(707,097)	\$(3,241)	\$8,142	\$(702,196)
12/31/2028	83	\$(702,196)	\$(3,218)	\$8,142	\$(697,273)
1/31/2029	84	\$(697,273)	\$(3,196)	\$8,142	\$(692,327)
2/28/2029	85	\$(692,327)	\$(3,173)	\$8,142	\$(687,358)
3/31/2029	86	\$(687,358)	\$(3,150)	\$8,142	\$(682,367)
4/30/2029	87	\$(682,367)	\$(3,128)	\$8,142	\$(677,352)

5/31/2029	88	\$(677,352)	\$(3,105)	\$8,142	\$(672,315)
6/30/2029	89	\$(672,315)	\$(3,081)	\$8,142	\$(667,255)
7/31/2029	90	\$(667,255)	\$(3,058)	\$8,142	\$(662,171)
8/31/2029	91	\$(662,171)	\$(3,035)	\$8,142	\$(657,065)
9/30/2029	92	\$(657,065)	\$(3,012)	\$8,142	\$(651,934)
10/31/2029	93	\$(651,934)	\$(2,988)	\$8,142	\$(646,781)
11/30/2029	94	\$(646,781)	\$(2,964)	\$8,142	\$(641,603)
12/31/2029	95	\$(641,603)	\$(2,941)	\$8,142	\$(636,402)
1/31/2030	96	\$(636,402)	\$(2,917)	\$8,142	\$(631,177)
2/28/2030	97	\$(631,177)	\$(2,893)	\$8,142	\$(625,928)
3/31/2030	98	\$(625,928)	\$(2,869)	\$8,142	\$(620,656)
4/30/2030	99	\$(620,656)	\$(2,845)	\$8,142	\$(615,358)
5/31/2030	100	\$(615,358)	\$(2,820)	\$8,142	\$(610,037)
6/30/2030	101	\$(610,037)	\$(2,796)	\$8,142	\$(604,691)
7/31/2030	102	\$(604,691)	\$(2,772)	\$8,142	\$(599,321)
8/31/2030	103	\$(599,321)	\$(2,747)	\$8,142	\$(593,926)
9/30/2030	104	\$(593,926)	\$(2,722)	\$8,142	\$(588,507)
10/31/2030	105	\$(588,507)	\$(2,697)	\$8,142	\$(583,062)
11/30/2030	106	\$(583,062)	\$(2,672)	\$8,142	\$(577,593)
12/31/2030	107	\$(577,593)	\$(2,647)	\$8,142	\$(572,098)
1/31/2031	108	\$(572,098)	\$(2,622)	\$8,142	\$(566,579)
2/28/2031	109	\$(566,579)	\$(2,597)	\$8,142	\$(561,034)
3/31/2031	110	\$(561,034)	\$(2,571)	\$8,142	\$(555,463)
4/30/2031	111	\$(555,463)	\$(2,546)	\$8,142	\$(549,867)
5/31/2031	112	\$(549,867)	\$(2,520)	\$8,142	\$(544,246)
6/30/2031	113	\$(544,246)	\$(2,494)	\$8,142	\$(538,599)
7/31/2031	114	\$(538,599)	\$(2,469)	\$8,142	\$(532,925)
8/31/2031	115	\$(532,925)	\$(2,443)	\$8,142	\$(527,226)
9/30/2031	116	\$(527,226)	\$(2,416)	\$8,142	\$(521,501)
10/31/2031	117	\$(521,501)	\$(2,390)	\$8,142	\$(515,749)
11/30/2031	118	\$(515,749)	\$(2,364)	\$8,142	\$(509,972)
12/31/2031	119	\$(509,972)	\$(2,337)	\$8,142	\$(504,167)
1/31/2032	120	\$(504,167)	\$(2,311)	\$8,142	\$(498,336)

2/29/2032	121	\$(498,336)	\$(2,284)	\$8,142	\$(492,478)
3/31/2032	122	\$(492,478)	\$(2,257)	\$8,142	\$(486,594)
4/30/2032	123	\$(486,594)	\$(2,230)	\$8,142	\$(480,682)
5/31/2032	124	\$(480,682)	\$(2,203)	\$8,142	\$(474,744)
6/30/2032	125	\$(474,744)	\$(2,176)	\$8,142	\$(468,778)
7/31/2032	126	\$(468,778)	\$(2,149)	\$8,142	\$(462,785)
8/31/2032	127	\$(462,785)	\$(2,121)	\$8,142	\$(456,764)
9/30/2032	128	\$(456,764)	\$(2,094)	\$8,142	\$(450,716)
10/31/2032	129	\$(450,716)	\$(2,066)	\$8,142	\$(444,640)
11/30/2032	130	\$(444,640)	\$(2,038)	\$8,142	\$(438,536)
12/31/2032	131	\$(438,536)	\$(2,010)	\$8,142	\$(432,404)
1/31/2033	132	\$(432,404)	\$(1,982)	\$8,142	\$(426,244)
2/28/2033	133	\$(426,244)	\$(1,954)	\$8,142	\$(420,056)
3/31/2033	134	\$(420,056)	\$(1,925)	\$8,142	\$(413,840)
4/30/2033	135	\$(413,840)	\$(1,897)	\$8,142	\$(407,595)
5/31/2033	136	\$(407,595)	\$(1,868)	\$8,142	\$(401,321)
6/30/2033	137	\$(401,321)	\$(1,839)	\$8,142	\$(395,019)
7/31/2033	138	\$(395,019)	\$(1,811)	\$8,142	\$(388,687)
8/31/2033	139	\$(388,687)	\$(1,781)	\$8,142	\$(382,327)
9/30/2033	140	\$(382,327)	\$(1,752)	\$8,142	\$(375,938)
10/31/2033	141	\$(375,938)	\$(1,723)	\$8,142	\$(369,519)
11/30/2033	142	\$(369,519)	\$(1,694)	\$8,142	\$(363,071)
12/31/2033	143	\$(363,071)	\$(1,664)	\$8,142	\$(356,593)
1/31/2034	144	\$(356,593)	\$(1,634)	\$8,142	\$(350,086)
2/28/2034	145	\$(350,086)	\$(1,605)	\$8,142	\$(343,548)
3/31/2034	146	\$(343,548)	\$(1,575)	\$8,142	\$(336,981)
4/30/2034	147	\$(336,981)	\$(1,544)	\$8,142	\$(330,384)
5/31/2034	148	\$(330,384)	\$(1,514)	\$8,142	\$(323,757)
6/30/2034	149	\$(323,757)	\$(1,484)	\$8,142	\$(317,099)
7/31/2034	150	\$(317,099)	\$(1,453)	\$8,142	\$(310,410)
8/31/2034	151	\$(310,410)	\$(1,423)	\$8,142	\$(303,691)
9/30/2034	152	\$(303,691)	\$(1,392)	\$8,142	\$(296,941)
10/31/2034	153	\$(296,941)	\$(1,361)	\$8,142	\$(290,161)

11/30/2034	154	\$(290,161)	\$(1,330)	\$8,142	\$(283,349)
12/31/2034	155	\$(283,349)	\$(1,299)	\$8,142	\$(276,506)
1/31/2035	156	\$(276,506)	\$(1,267)	\$8,142	\$(269,631)
2/28/2035	157	\$(269,631)	\$(1,236)	\$8,142	\$(262,725)
3/31/2035	158	\$(262,725)	\$(1,204)	\$8,142	\$(255,788)
4/30/2035	159	\$(255,788)	\$(1,172)	\$8,142	\$(248,818)
5/31/2035	160	\$(248,818)	\$(1,140)	\$8,142	\$(241,817)
6/30/2035	161	\$(241,817)	\$(1,108)	\$8,142	\$(234,784)
7/31/2035	162	\$(234,784)	\$(1,076)	\$8,142	\$(227,718)
8/31/2035	163	\$(227,718)	\$(1,044)	\$8,142	\$(220,620)
9/30/2035	164	\$(220,620)	\$(1,011)	\$8,142	\$(213,489)
10/31/2035	165	\$(213,489)	\$(978)	\$8,142	\$(206,326)
11/30/2035	166	\$(206,326)	\$(946)	\$8,142	\$(199,130)
12/31/2035	167	\$(199,130)	\$(913)	\$8,142	\$(191,901)
1/31/2036	168	\$(191,901)	\$(880)	\$8,142	\$(184,639)
2/29/2036	169	\$(184,639)	\$(846)	\$8,142	\$(177,343)
3/31/2036	170	\$(177,343)	\$(813)	\$8,142	\$(170,014)
4/30/2036	171	\$(170,014)	\$(779)	\$8,142	\$(162,652)
5/31/2036	172	\$(162,652)	\$(745)	\$8,142	\$(155,255)
6/30/2036	173	\$(155,255)	\$(712)	\$8,142	\$(147,825)
7/31/2036	174	\$(147,825)	\$(678)	\$8,142	\$(140,361)
8/31/2036	175	\$(140,361)	\$(643)	\$8,142	\$(132,863)
9/30/2036	176	\$(132,863)	\$(609)	\$8,142	\$(125,330)
10/31/2036	177	\$(125,330)	\$(574)	\$8,142	\$(117,762)
11/30/2036	178	\$(117,762)	\$(540)	\$8,142	\$(110,160)
12/31/2036	179	\$(110,160)	\$(505)	\$8,142	\$(102,523)
1/31/2037	180	\$(102,523)	\$(470)	\$8,142	\$(94,852)
2/28/2037	181	\$(94,852)	\$(435)	\$8,142	\$(87,145)
3/31/2037	182	\$(87,145)	\$(399)	\$8,142	\$(79,402)
4/30/2037	183	\$(79,402)	\$(364)	\$8,142	\$(71,624)
5/31/2037	184	\$(71,624)	\$(328)	\$8,142	\$(63,811)
6/30/2037	185	\$(63,811)	\$(292)	\$8,142	\$(55,962)
7/31/2037	186	\$(55,962)	\$(256)	\$8,142	\$(48,076)

8/31/2037	187	\$(48,076)	\$(220)	\$8,142	\$(40,155)
9/30/2037	188	\$(40,155)	\$(184)	\$8,142	\$(32,197)
10/31/2037	189	\$(32,197)	\$(148)	\$8,142	\$(24,203)
11/30/2037	190	\$(24,203)	\$(111)	\$8,142	\$(16,172)
12/31/2037	191	\$(16,172)	\$(74)	\$8,142	\$(8,105)
1/31/2038	192	\$(8,105)	\$(37)	\$8,142	\$(0)

EXHIBIT B
FORM OF PROMISSORY NOTE

PROMISSORY NOTE

Note Amount: **US \$1,000,000.00**

Date: _____

FOR VALUE RECEIVED, **BlocPower Energy Services 3, LLC, a Delaware limited liability company** (the “**Borrower**”) promises to pay to East Bay Community Energy Authority, a joint powers authority formed under the laws of the State of California (the “**EBCE**”), the sum of **ONE MILLION AND NO/100 DOLLARS (\$100,000.00)**, plus accrued interest, and other charges owing hereunder.

This Promissory Note (the “**Note**”) evidences that certain Loan made pursuant to the Loan Agreement, dated as of _____, 2021 (the “**Loan Agreement**”), by and between EBCE and Borrower. Capitalized term used but not defined herein have the meanings set forth in the Loan Agreement. The Loan Agreement (as the same may be amended and supplemented from time to time pursuant to the terms thereof) is hereby incorporated as though set forth herein.

The Loan was made to assist the Borrower with respect to a project to expand the local supply of specialized incubator space.

1. Loan Terms; Payment Schedule

(a) So long as no Event of Default has occurred and continuing,[interest shall accrue at the rate of five and 1/2 percent (5.5%) per annum]. Interest shall be calculated on the basis of a 360-day year of twelve 30-day months.

(b) The Borrower shall make principal and interest payment on the first of each month, commencing December 1, 2022, in the amounts set forth the Payment Schedule set forth in **Exhibit A**. As reflected in the Payment Schedule, in the absence of any prepayment (or default), the final Payment Date is _____.

(c) Subject to the provisions of the Loan Agreement, the Borrower may prepay all or a portion of the outstanding principal amount of the Loan on any Payment Date, in addition to scheduled principal and interest payment due on that Payment Date. Unless otherwise agreed in writing by the CEO of EBCE, any partial prepayment shall be applied to scheduled principal payments in inverse order of maturity (*i.e.*, with the latest due date). At least 15 days before any prepayment, the Borrower shall send to EBCE: (i) a written notice specifying the prepayment amount, and (ii) unless no principal amount of the Loan will remain outstanding after such prepayment, a proposed revised Payment Schedule to become effective after such prepayment. EBCE shall notify the Borrower at least five

days before the proposed prepayment date whether such revised Payment Schedule is acceptable to EBCE. If EBCE has any objection to the proposed revised Payment Schedule, then the parties shall cooperate in good faith to make mutually acceptable revisions. No prepayment shall be made or accepted until EBCE and the Borrower mutually agree on a revised Payment Schedule.

2. No Waiver by EBCE

A waiver by EBCE of any default or breach of duty or contract hereunder or under the Loan Agreement shall not affect any subsequent default or breach of duty or contract, or impair any rights or remedies on any such subsequent default or breach. No delay or omission by EBCE to exercise any right or power accruing upon any default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence in such default, and every power and remedy conferred upon EBCE hereby or this Note or the Loan Agreement may be enforced and exercised from time to time and as often as shall be deemed expedient by EBCE.

3. Severability; Governing Law; Amendment

(a) The unenforceability or invalidity of any provision or provisions of this Note (as determined by a court of competent jurisdiction) as to any persons or circumstances shall not render that provision or those provisions unenforceable or invalid as to any other provisions or circumstances, and all provisions of this Note, in all other respects, shall remain valid and enforceable.

(b) This Note has been executed and delivered by Borrower in the State of California and is to be governed and construed in accordance with the laws thereof.

(c) Neither this Note nor any term hereof may be waived, amended, discharged, modified, changed, or terminated orally; nor shall any waiver of any provision hereof be effective except by an instrument in writing signed by Borrower and EBCE.

4. Certain Waivers by Borrower

The Borrower hereby waives for itself and any person or entity who now or may hereafter become liable with respect to this Note, to the fullest extent permitted by law, diligence, presentment, protest and demand, notice of dishonor and all other notices and demands without in any way affecting the liability of the Borrower and any other person or entity who now or may hereafter become liable with respect to this Note. The Borrower further waives, to the full extent permitted by law, the right to plead any and all statutes of limitations.

5. Assignment

The Borrower may not assign this Note (or delegate any obligations hereunder) without EBCE's prior written consent, which may be given or withheld in EBCE's sole and absolute discretion. EBCE may transfer or assign its interest in this Note.

IN WITNESS WHEREOF, the Borrower has caused this Note to be executed in its name and on its behalf by its CEO, on the date first written above.

EBCE:

**East Bay Community Energy,
a California municipal corporation**

BORROWER

**BlocPower,
a Delaware limited liability company**

By: _____
Nick Chaset
CEO

By: _____
Cullen Kasunic
CFO

EXHIBIT C
FORM OF OFFICERS CERTIFICATE

CERTIFICATE OF
BLOCPower CEO AND CFO

with reference to

*Loan Agreement, dated as of _____, 2022 (the “**Loan Agreement**”),
by and between East Bay Community Energy, as Lender,
and BlocPower, a Delaware limited liability company (“**BlocPower**”),
as Borrower*

With reference to the above-captioned Loan Agreement, the undersigned hereby state and certify as follows:

(a) The undersigned Donnel Baird is the duly acting Chief Executive Officer of BlocPower, and the undersigned Cullen Kasunic is the duly acting Chief Financial Officer of BlocPower.

(b) By all necessary actions, BlocPower has duly authorized and approve the execution and delivery of the Loan Agreement and the Promissory Note, and BlocPower has duly executed and deliver the same.

(c) The undersigned are familiar with, and understand, the provisions of the Loan Agreement.

(d) The representations of BlocPower contained in the Loan Agreement are true and correct in all material respects on and as of the date hereof with the same effect as if made on the date of.

Capitalized terms used but not defined herein have the meanings ascribed to them in the Loan Agreement.

Each of the undersigned declare under penalty of perjury under the laws of the State of California that the statements contained herein are true and correct.

Date: January 20, 2022

Donnel Baird

Cullen Kasunic

EXHIBIT D

CALIFORNIA LABOR CODE COMPLIANCE

1. Borrower (below for the purposes of this Exhibit, "Contractor") acknowledges that in view of the financial assistance provided by EBCE to the Project, work for the the Project is subject to the provisions of Division 2, Part 7, Chapter 1 (commencing with Section 1720) of the California Labor Code relating to public works and EBCE. Contractor agrees to be bound, and to require any and all contractors and subcontractors performing such work to be bound, by all the provisions thereof as though set forth in full herein.

2. Work for the Project is considered the same as a public work project and requires the payment of prevailing wages for the work or craft in which the worker is employed for any public work done under the contract by Contractor or by any subcontractor pursuant to Section 1771 of the Labor Code. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, EBCE has obtained the general prevailing rate of per diem wages and the general rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this contract from the Director of the Department of Industrial Relations. These rates are on file with EBCE's Clerk or may be obtained at <http://www.dir.ca.gov/OPRL/DPreWageDetermination.htm>.

Copies may be obtained at cost at EBCE's Clerk's office. Contractor shall post a copy of such wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Contractor shall comply with the provisions of Sections 1775, 1776, 1777.5, 1777.6, and 1813 of the Labor Code. Pursuant to the provisions of 1775 of the Labor Code, Contractor shall forfeit to EBCE, as a penalty, not more than \$200.00 for each calendar day, or portion thereof, for each laborer, worker, or mechanic employed, paid less than the stipulated prevailing rates for any work done under this contract, by the Contractor or by any subcontractor thereunder, in violation of the provisions of this Agreement.

3. In accordance with Labor Code Sections 1725.5 and 1771.1, and except for projects involving construction, alteration, demolition, installation, or repair work of \$25,000 or less, or maintenance work of \$15,000 or less, no contractor or subcontractor shall be qualified to bid on, be listed in a bid proposal, subject to the requirements of Section 4104 of the Public Contract Code, or engage in the performance of any public work contract unless currently registered and qualified to perform public work pursuant to Section 1725.5 [with limited exceptions for bid purposes, only, pursuant to Labor Code Section 1771.1(a)].

4. Pursuant to Labor Code Section 1776, Contractor shall maintain and make available an accurate record showing the name of each worker and hours worked each day and each week by each worker employed by Contractor performing

services covered by this Agreement. Contractor and its subcontractors shall furnish electronic certified payroll records to the Labor Commissioner in accordance with Labor Code Section 1771.4. The Project is subject to compliance monitoring and enforcement by the Department of Industrial Relations (the "DIR"). The Contractor is responsible for compliance with Section 1776 by itself and all of its subcontractors. This Project is subject to compliance monitoring and enforcement by the DIR. The Contractor shall post job site notices, as prescribed by regulation.

5. Contractor shall comply with and be bound by the provisions of Labor Code Sections 1777.5, 1777.6 and 1777.7 and California Code of Regulations Title 8, Section 200 *et seq.* concerning the employment of apprentices on public works projects. The Contractor shall be responsible for compliance with these Sections for all apprenticeable occupations. Before commencing Work on this Project, the Contractor shall provide EBCE with a copy of the information submitted to any applicable apprenticeship program. Within sixty (60) Days after concluding Work, Contractor and each of its Subcontractors shall submit to EBCE a verified statement of the journeyman and apprentice hours performed under this Contract.
6. Contractor agrees to comply with the provisions of California Labor Code Section 1813 concerning penalties for workers who work excess hours. The Contractor shall, as a penalty to EBCE, forfeit twenty-five dollars (\$25) for each worker employed in the execution of the contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than 8 hours in any one calendar day and 40 hours in any one calendar week in violation of the provisions of Division 2, Part 7, Chapter 1, Article 3 of the California Labor Code.
7. California Labor Code Sections 1860 and 3700 provide that every contractor will be required to secure the payment of compensation to its employees. In accordance with the provisions of California Labor Code Section 1861, Contractor hereby certifies as follows:

"I am aware of the provisions of Section 3700 of the Labor Code which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing the performance of the work of this contract."

Date _____

Signature _____

EXHIBIT E

Terms of Projects to Be Financed

- **Overview**

[BlocPower](#) is a Black-owned climate tech leader focused on Smarter, Healthier, Greener Buildings for all. We have deep experience delivering electrification and energy efficiency projects in low-and-moderate-income (LMI) communities and will engage, on behalf of EBCE, a program to deliver clean, healthy, electrified buildings.

The program will leverage \$1M of project finance made available by EBCE to fund building remediation and retrofit projects in EBCE service territory.

The investment will provide a scalable financing opportunity to re-invest the returns from customer payments over time into additional projects. (The scope of this effort does not require EBCE to do so but will provide a model for how that can be executed). BlocPower will add value to the proposed project by implementing workforce development services in the EBCE service territory. BlocPower will provide high-road clean energy jobs and democratizing wealth creation opportunities for local communities.

In addition to project finance, EBCE will offer \$400,000 in incentives to further enable the above program.

- **Use of Funds**

- Targeting [60] households (single or multi-family units less than (5 units) at an average incentive level of [~\$7,000] to further enable the financials of the project through 2022-2023.
- If BlocPower is not able to enroll sufficient customers to utilize the full \$1M in EBCE project capital, BlocPower will return unused project capital to EBCE
- BlocPower will, with their local partners, engage in Customer acquisition, education, project development, financing, construction management, and ongoing O&M, as applicable.
- Sufficient underwriting to ensure a prudent investment

- **EBCE's investment will serve the following**

- **Public Purpose:**

- Invest in household health remediations, energy efficiency and electrification for low-to-moderate income (LMI) households (defined as households below 12 0% of area median income)

- Deliver insights and analysis for policy to further support and engage under-served and energy-burdened communities on a quarterly basis, and at the conclusion of the program
- Provide high-road clean energy jobs, democratizing wealth creation opportunities

- **Types of Projects Funded:**

- Energy Efficiency Upgrades
 - LED lighting
 - Air sealing, insulation
 - High-efficiency window treatments
 - Energy-efficient appliances
- Electrification / Fuel switching
 - Electrical upgrades
 - Air source heat pumps
 - Heat pump water heaters
 - Induction cooktops
 - Efficient washers & dryers
- Retrofitting Measures
 - Smart thermostats
 - Hazardous materials abatement (lead, asbestos, mold)
 - IoT monitoring & controls for M&V
 - Low-flow water fixtures
- Clean Energy Projects
 - Roofing upgrades
 - PV
 - Solar + Storage (Battery storage)
 - Solar water heating
 - EV charging infrastructure

- **Further Details:**

BlocPower will continue to invest in the East Bay market, expanding on existing partnerships with local developers such as Revalue.io, and leveraging existing incentives and capital available through BayREN, the CPUC TECH program and additional sources to provide this offer to local building owners. Prevailing wages will be applied to those projects receiving EBCE incentives and financing, as applicable. Documentation will be provided to EBCE on a customer-basis as requested. EBCE to provide format for customer enrollment and savings data to match with EBCE system of customer record.

- **Quality Assurance**

- **Customer Underwriting Overview**

The target clients are building owners, not tenants. The buildings may have low/moderate income tenants, regular market rate tenants, or be co-ops or condos. Low income residents may receive rental payment support from government programs, paid directly to building owners. Building owners may be non-profits.

Materials BlocPower will gather:

- Standard financials (at least 2 years income statement/balance sheet)
- Tax return (at least one year, to match financials; tax returns may be substituted for financials if needed, at BlocPower discretion)
- Rent roll (current and prior year, to evaluate vacancy)
- Debt details (mortgage terms, covenants to estimate DSCR)
- Recent property appraisal (This is typically from the client's mortgage or a refinance. If old, or not available, the market value of the property will be estimated directly via comps.)
- DOB violations
- Business credit report (Experian, D&B, Equifax, etc.)
- 12 months of utility bills (this will show both the client's rates, and whether there have been any late payments in the last 12 months)

BlocPower evaluates global DSCR as a primary means of determining if the client will be able to meet project payment obligations. This is calculated as EBITDA over all financing obligations, including those related to our project. We will accept personal or corporate guarantors to help meet the obligations if it appears if DSCR is tight, or the building cannot meet the obligations on its own. The income and obligations of the guarantors will be included in global DSCR calculation. We will factor the expected net energy savings into the global DSCR calculation, as they should reduce operating expenses. We will however include some margin of safety on the savings.

We will not accept a bankruptcy within 3 years, unless there are heavy mitigating factors. We will similarly not accept anyone with a global DSCR less than 1.20x without significant mitigation. Historical vacancy, and debt-to-equity ratio of the client will also be taken into account. Excessive DOB violations will be a negative indicator, unless the measures to be implemented will address the source of violations. The client must be current on their utility bills before entering into an agreement, and delinquencies over 30 days must be explained, with additional mitigation provided.

We do not take any liens on the underlying real estate.

- **Credit Evaluation**

When evaluating the credit of a real estate business, primary factors include coverage of current debt obligations, leverage, property value, operating performance, and history of payment. In our analysis, these are expressed respectively by:

- Debt Service Coverage Ratio, determined by looking at all debt held by the entity, and dividing this by its Net Operating Income or EBITDA.
- Debt to Equity ratio, determined by comparing the entity's debt outstanding against an acceptable market valuation of the property.
- Rents and Operations, determined by evaluating the property's rental history, operating costs, and Net Operating Income to determine whether the building is being well managed.
- Creditworthiness, determined by evaluating a combination of the property's business credit (as reported by Experian, D&B, Equifax, or other agencies), payment history on utility bills (as reported on the 12 months of utility bills collected from the client), and violation history (publicly available through the local municipalities)

- **Criteria**

Required Criteria

- No bankruptcy within the last three years
- No outstanding major judgements or lien

Strong positive indicators, lack of which may be adjusted only with considerable mitigation and/or suitable explanation

- DSCR equal to 1.20x or greater, including any net savings from the project, subject to a 20% margin of safety on the savings estimates
- Debt-to-Equity ratio of 80% or below, including the termination value of our lease obligation

General negative indicators, requiring explanation

- Utility bill delinquencies 30+ days past due in reviewed period
- Average vacancies over 15% for multi-family properties in reviewed period
- Excessive DOB violations will be a negative indicator as well, unless the measures to be implemented will address the source of violations.

Acceptable mitigants

- Personal guarantee, typically from a substantial equity holder in the entity
- Corporate guarantee, typically from a parent company or other related entity
- Down-payment of some portion of the system costs. This improves DSCR and decreases exposure.
- Shortened lease term, with associated increase to monthly payments
- Increased monthly payments. While acting as a net drag on DSCR, increased revenue can serve to mitigate against increased risk in certain areas.

- Security Package

BlocPower places a UCC 1 filed at the county level for the assets owned and installed at the customer property. This enables us to remove the property as needed, while also serving as a lien should the client attempt to sell their building. In addition, BlocPower maintains security through the ability to switch systems off in the event of non-payment. Through remote access, individual systems or all systems at the property may be throttled, turned off, or turned on.

- Ensuring Quality Construction of Projects

- Completing Agreements Between BP and Contractors

- Scope of work and services to be performed are agreed upon between BlocPower and its contractors and is appended to SCHEDULE A of the ESA

- Payment Approval Process

Requirements for each application w/dates:

A timeline is associated with each project, which is part of the project gantt chart. Payments and amounts to the contractor(s), equipment provider(s), and other parties (each a "Vendor") are outlined here. Funding sources for the project are identified, including which accounts to be used, how much to be spent from each, and method of sending payment (check, ACH, or Wire). If capital contributions are made from the parent to an SPE, then a Memorandum of Investment is produced, which formalizes the investment, and provides basis from an accounting perspective that cash assets have decreased in the Parent, but the value of project assets has increased in equal proportion.

Construction Manager reviews the invoice, and determines if the payment requirements have been met. This review consists of:

- For Contractors: Examining the work in detail either in-person or by proxy, with photographic evidence showing the work has been completed to specification for the milestone.
- For Equipment Providers: Comparing the bill of lading and BlocPower PO to ensure that all required materials have been received. All materials will be examined in person or by proxy, with photographic evidence taken of all major materials showing presence and actual condition of materials received. This will include documentation of any damage to boxes or equipment itself that may be required for a later claim of any kind.
- Other parties: Reviewing the work product with the appropriate parties to ensure it meets the requirements of the associated purchase order, contract, or other agreement. For example, when procuring professional engineering services, the Head of Engineering must provide written notification that the completed work is acceptable.

Upon approval that work has been completed in accordance with requirements, the Construction Manager will prepare a written notification of such. This may take the form of a standard memo and shall be signed by the construction manager.

The Construction Manager will prepare a memo to approve payment, for signoff by the Head of Engineering and the Head of Finance. Once they are satisfied that work has been completed in a satisfactory manner, they will provide their approval, and the memo will be shared with the CEO for final authorization.

A short meeting will be held bi-weekly or as needed to review all requests and issue payments. This meeting may include the CEO, General Manager, COO, Head of Finance, and Head of Engineering.

Consulting Services Agreement for Services By And Between East Bay Community Energy Authority and BlocPower Energy Services 3

This Consulting Services Agreement (“Agreement”) is made this 20 day of January, 2020 (“Effective Date”) by and between East Bay Community Energy Authority, a joint powers authority formed under the laws of the State of California (“EBCE”) and BlocPower Energy Services 3, LLC, a Delaware limited liability company (“Consultant”) for the purpose of providing rebates to low and moderate income residential customers in EBCE’s service area.

Section 1. Recitals

1.1 The Authority is an independent joint powers authority duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.) (“Act”) with the power to conduct its business and enter into agreements.

1.2 Consultant possesses the skill, experience, ability, background, certification and knowledge to provide the services described in this Agreement pursuant to the terms and conditions described herein.

NOW THEREFORE, for good and valuable consideration, the amount and sufficiency of which is hereby acknowledged, the Parties to this Agreement, agree as follows:

Section 2. Term

The term of this Agreement is from the Effective Date of this Agreement through June, 30, 2023, unless terminated earlier pursuant to Section 8.

Section 3. Scope of Work/Compliance with Laws and Regulations

3.1 Consultant agrees to perform the scope of work (the “Work”) in Exhibit A in accordance with the compliance schedule in Exhibit B.

3.2 Consultant represents and warrants that it has the skill and expertise to perform the Work. Consultant agrees to obtain any and all necessary licenses, approvals or permits necessary to perform the Work.

3.3 Consultant and its Subconsultants must comply with all federal, state and local laws and regulations in performing the Work under this Agreement.

Section 4. Consultant Staffing

Exhibit C contains a list of Consultant's project manager and all team members. Consultant will not change or substitute the project manager or any team members or add additional team members without consultation with EBCE.

Section 5. Subconsultants

5.1 Consultant agrees to use only those Subconsultants listed on Exhibit D. Consultant shall notify EBCE within a reasonable period of time of any changes, additions, or removals of a Subconsultant.

5.2 Consultant agrees to require all Subconsultants to comply with the terms of this Agreement, including without limitation, maintaining insurance in compliance with the insurance obligations under Section 9, the Confidentiality requirements under Section 11 and indemnifying EBCE under Section 12.

Section 6. Compensation and Payment

6.1 The maximum compensation under this Agreement is \$400,000.

6.2 If the Work under this Agreement is to be performed on a time and materials basis, Consultant must submit invoices to EBCE on a monthly basis, complete with the name of the individual that conducted the Work, the time spent, and a brief description of the tasks performed during that time. On all invoices, Consultant must include the contract number provided by EBCE and the total compensation left on the Agreement after deducting the amount of the invoice. Notification to EBCE is required once the contract budget has been used up by 80% (including invoiced work and work that may not have been invoiced yet) which is \$320,000 for this Agreement. Invoices must be submitted to EBCE by the 20th of the month following the month in which Consultant performed the Work.

6.3 If the Work under this Agreement is to be performed on a task or project basis, the Consultant will submit an invoice within thirty (30) days of completing the project to the satisfaction of EBCE for full payment, unless other arrangements have been made.

6.4 EBCE will not agree to pay any markups on Subconsultant Services or supplies unless such markups are included in Exhibit E, Compensation/Budget and such markups were included in Consultant's bid, if applicable.

6.5 The following are conditions on EBCE's obligation to process any payments under this Agreement:

6.5.1 If the Consultant is a U.S. based person or entity, the Consultant must provide to EBCE a properly completed Internal Revenue Service Form W-9 before EBCE will process payment. If the Consultant is a U.S based person or entity but has neither a

permanent place of business in California nor is registered with the California Secretary of State to do business in California, the Consultant must provide EBCE with a properly completed California Franchise Tax Board form related to nonresident withholding of California source income before EBCE will process payment.

6.5.2 If the Consultant is not a U.S. based person or entity, the Consultant must provide EBCE with the applicable Internal Revenue Service form related to its foreign status and a California Franchise Tax Board form related to nonresident withholding before EBCE will process payment.

6.6 EBCE agrees to pay invoices within forty-five (45) days of receipt. Invoices may be sent to EBCE by U.S. mail or electronic mail to AP@EBCE.org. Invoices will be deemed received on the next business day following the date of transmission via electronic mail or three days after placement in the U.S. mail.

6.7 EBCE, as a Joint Powers Authority, is a separate public entity from its constituent members and will be solely responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Consultant acknowledges that it will have no rights and agrees not to make any claims, take any actions or assert any remedies against any of EBCE's constituent members in connection with this Agreement.

Section 7. Records Retention and Ownership of Work Product

7.1 The Consultant must retain all ledgers, books of accounts, invoices, vouchers, cancelled checks, background materials, or other records relating to its performance under this Agreement for a period of three years following termination of this Agreement.

7.2 EBCE owns all rights, including without limitation, all licenses, copyrights, service marks and patents, in and to all Work Product(s), whether written or electronic, without restriction or limitation upon their use and immediately when and as created by the Consultant, any Subconsultants, or any other person engaged directly or indirectly by the Consultant to perform under this Agreement. "Work Product(s)" means all writings, reports, drawings, plans, data, video, media, photographs, renderings, plans, software, models, and other similar documents and materials developed or created by Consultant or its Subconsultants on behalf of or for use by EBCE under this Agreement. All Work Product(s) will be considered "works made for hire," and together with any and all intellectual property rights arising from their creation will be and remain the property of EBCE without restriction or limitation upon their use, duplication or dissemination by EBCE. Consultant agrees not to obtain or attempt to obtain copyright protection in its own name for any Work Product.

Section 8. Termination

8.1 EBCE may terminate this Agreement at any time and for any reason, in EBCE's sole and absolute discretion, by giving Consultant written notice. The termination notice shall set the date of termination.

8.2

8.4 EBCE will pay Consultant the reasonable value of services satisfactorily rendered by the Consultant to EBCE up to the date of written Notice of Termination. If EBCE authorizes Consultant to continue performing the Work through the date of termination, EBCE will pay Consultant the reasonable value of services satisfactorily rendered up through the date of termination, providing such services are in compliance with the Compensation/Budget in Exhibit E.

8.5 Upon termination of this Agreement, and at no cost to EBCE, Consultant, its Subconsultants and anyone working for EBCE under control of Consultant must return all Work Product to EBCE. Consultant may only retain copies of the Work Product by express written permission of EBCE.

Section 9. Insurance

9.1 Consultant must procure, maintain and comply with the insurance requirements in Exhibit F throughout the full Term of this Agreement. Consultant must provide proof of insurance either in the form of a certificate of insurance or, if requested by EBCE, a copy of the insurance policy, prior to performing any work under this Agreement.

9.2 Consultant agrees to stay in compliance with the insurance coverage requirements during the term of this Agreement. Consultant must give EBCE ten (10) days written notice and obtain EBCE's written approval prior to making any modifications that would reduce its insurance coverage.

9.3 Consultant must either include Subconsultants under its insurance policies or require each Subconsultant to comply with the insurance obligations in Exhibit F.

Section 10. No Discrimination or Conflict of Interest

10.1 Consultant represents and warrants, on behalf of itself and its Subconsultants, that it has not and will not discriminate against anyone based on his/her age, color religion, sex, sexual orientation, disability, race or national origin.

10.2 Consultant represents and warrants, on behalf of itself and its Subconsultants, that it is familiar with local, state and federal conflict of interest laws, that in entering into this Agreement it is not violating any of the conflict of interest laws, that it will avoid any conflicts of interest during the term of this Agreement, and that it will notify EBCE immediately if it identifies any conflicts of interest Consultant understands that violations

of this Section 10 could result in immediate termination of this Agreement and disgorgement of compensation.

10.3 In accordance with the California Political Reform Act (Cal. Gov't Code section 81000 *et seq.*), Consultant will cause each of the following people performing services under this Agreement to file a Form 700 within 30 days after the person begins performing services under this Agreement and subsequently on an annual basis in conformance with the requirements of the Political Reform Act by filing the original with the EBCE Clerk to the Board of Directors. Form 700 submissions should be sent to cob@ebce.org, with carbon copy to the EBCE contact. Each of the identified positions must disclose interests in accordance with the EBCE Resolution-2018-7, Conflict of Interest Code, which may be amended from time to time. For the work currently outlined in Exhibit A, this Agreement does not require the Filing of Form 700 at this time.

Name	Position or Assignment

Section 11. Confidentiality

11.1 Except as authorized by EBCE or as otherwise required by law, Consultant shall not disclose to any third party/ies any draft or final Work Product, discussions or written correspondence between Consultant and its Subconsultants or discussions or written correspondence between Consultant and EBCE staff. In the event Consultant receives a request from any third-party requesting disclosure of any Work Product, discussions, communications or any other information Consultant is prohibited from disclosing, Consultant will immediately notify EBCE and wait for direction from EBCE before disclosing the information.

11.2 For the purposes of this Section 11, “third parties” refers to any person or group other than EBCE staff and Board members. For example, “third parties” include community groups, Board advisory groups, other governmental agencies, other consultants or members of the community.

11.3 This Section 11 will survive the expiration or termination of this Agreement.

Section 12. Indemnity

12.1 Except with regard to any matter involving professional negligence, Consultant agrees, at its sole cost and expense, to indemnify, defend with counsel reasonably approved by EBCE, and protect and hold harmless EBCE, its officers, directors, employees, agents, attorneys, designated volunteers, successors and assigns, and those EBCE agents serving as independent contractors in the role of EBCE staff (collectively "EBCE Indemnitees") from and against any and all damages, costs, expenses, liabilities, claims, demands, causes of action, proceedings, penalties, judgements, liens and losses of whatever nature ("Claims") that arise, directly or indirectly, in whole or in part, out of or are in any way related to Consultant's or Subconsultant's performance or failure to perform the Work under this Agreement, regardless of whether the Consultant or its Subconsultants acted or failed to act intentionally, willfully, recklessly or negligently. Consultant agrees that its indemnity and defense obligations include all costs and expenses, including all attorney fees, expert fees, mediation, arbitration, or court costs in connection with the defense. Consultant further agrees to indemnify, defend, protect and hold harmless Indemnitees from and against any breach of this Agreement and any infringement of patent rights, trade secret, trade name, copyright, trademark, service mark or any other proprietary right of any person(s) caused by EBCE's use of any services, Work Product or other items provided by Consultant or its Subconsultants under this Agreement.

12.2 With regard to any matter involving professional negligence, Consultant agrees, at its sole cost and expense, to indemnify, defend with counsel reasonably approved by EBCE, and protect and hold harmless the EBCE Indemnitees from and against any and all Claims to the extent arising out of or resulting from Consultant's or Subconsultant's negligence, recklessness, or willful misconduct. In no event shall the cost to defend charged to Consultant exceed the Consultant's proportionate percentage of fault.

12.3 Consultant's obligations in Subsection 12.1 and 12.2 do not apply to the extent any Claim results from the sole negligence or willful misconduct of the EBCE Indemnitees.

12.4 Except as limited by Subsection 12.2, Consultant's obligation to defend EBCE applies to the maximum extent allowed by law and includes defending Indemnitees as set forth in California Civil Code sections 2778 and 2782.8.

12.5 The Consultant's obligations under Section 12 applies regardless of the existence or amount of insurance the Consultant carries or has made available to EBCE.

12.6 The Parties agree that this Section 12 survives the expiration or earlier termination of the Agreement.

Section 13. Consultant is an Independent Contractor

13.1 Consultant and its Subconsultant(s) are and at all times will be independent contractors. Consultant has complete control over its operations and employees and is

not an agent or employee of the EBCE and must not represent or act as the EBCE's agent or employee. Consultant agrees, on behalf of itself and its employees and Subconsultants, that it does not have any rights to retirement benefits or other benefits accruing to EBCE employees, and expressly waives any claim it may have to any such rights.

13.2 As an independent contractor, Consultant has complete control over its Subconsultants, Sub, suppliers, affiliates agents and any other person or entity with whom the Consultant contracts in furtherance of this Agreement (collectively "Subconsultants"). Subject to the requirements of Section 5 of this Agreement, Consultant is solely responsible for selecting, managing and compensating its Subconsultants, and for ensuring they comply with this Agreement.

Section 14. Miscellaneous Terms and Conditions

14.1 EBCE Authority.

The Chief Executive Officer or his/her designee is authorized to take all actions under this Agreement, including without limitation, amendments that fall within the Chief Executive Officer's signing authority, termination or modification of terms.

14.2 Waiver.

Waiver by either party of any one or more conditions, Sections, provisions or performance of this Agreement will not be a waiver of any other provision; nor will failure to enforce a provision or Section in one instance waive the right to enforce such provision or Section in the future. In no event will payment by EBCE to Consultant constitute or be construed as a waiver by EBCE of any breach or default of this Agreement, nor will such payment prejudice any of EBCE's other rights or remedies.

14.3 Governing Law.

Consultant and EBCE agree that this Agreement will be interpreted under the laws of the State of California.

14.4 Venue.

Any litigation resulting from this Agreement will be filed and resolved by a state court in Alameda County, California, or if appropriate, the federal courts in the Northern District of California located in San Francisco.

14.5 Audit Rights.

All records or documents required to be kept pursuant to this Agreement must be made available for audit at no cost to EBCE, at any time during regular business hours, upon written request by EBCE. Copies of such records or documents shall be provided to EBCE at EBCE's offices unless an alternative location is mutually agreed upon.

14.6 Recitals and Exhibits.

The Recitals in Section 1 above are intentionally made a part of this Agreement. All Exhibits and any other documents incorporated by reference are a part of this Agreement.

14.7 Notices.

Any notices required to be given under this Agreement must be made in writing and may be delivered a) personally, in which case they are effective upon receipt; b) by U.S. Mail, in which case they are effective three (3) days following deposit in the U.S. Mail, unless accompanied by a return receipt in which case, they are effective upon the date on the receipt; or c) by electronic mail, in which case they are effective upon confirmation of receipt, and if no confirmation of receipt, they are effective one day after transmission, providing that a hard copy is also sent via U.S. mail. All notices must be sent to the addresses below:

EBCE

Attn: Beckie Menten
East Bay Community Energy
1999 Harrison Street, Suite 800
Oakland, CA 94612
Email: bmenten@ebce.org
Phone: (510) 988-1736

Consultant

Attn: Grace Park-Bradbury
BlocPower
1625 Flatbush Avenue, Box #222
Brooklyn, NY 11210
Email: grace@blocpower.io
Phone: (510) 282-0697

14.8 Assignment.

Except to the extent this Agreement authorizes Consultant to use Subconsultants, Consultant will not assign any part of this Agreement without the EBCE's prior written consent. EBCE, at its sole discretion, may void this Agreement if a violation of this provision occurs.

14.9 Integrated Agreement.

The Recitals, this Agreement and the Exhibits attached to this Agreement contain the complete understanding between EBCE and Consultant and supersedes any prior or contemporaneous negotiations, representations, agreements, understandings and

statements, written or oral respecting the Work up through the Effective Date of this Agreement.

14.10 Amendments.

Any and all amendments or modifications to this Agreement must be made in writing and signed by each Party before such amendment will be effective.

14.11 Government Claims Act.

Nothing in this Agreement waives the requirements to comply with the Governmental Claims Act, where applicable.

14.12 Severability.

If a court of competent jurisdiction holds any Section or part of this Agreement to be invalid or unenforceable for any reason and the Work can still be performed, the Parties agree to sever the invalid or unenforceable Section from this Agreement and that all remaining Sections or parts of this Agreement will continue to be enforceable.

14.13 Counterparts.

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

14.14 No Party Deemed Drafter.

This Agreement will be considered for all purposes as prepared through the joint efforts of the Parties and will not be construed against one Party or the other as a result of the preparation, substitution, submission, or other event of negotiation, drafting or execution hereof.

14.15 Supplier Diversity.

EBCE is required to report to the California Public Utilities Commission on their diverse suppliers, as defined by CPUC General Order 156. Consistent with the California Public Utilities Code and California Public Utilities Commission policy objectives, Contractor agrees to document and provide information to EBCE regarding Contractor's status and any engagement of women, minority, disabled veteran, and LGBT owned business enterprises in its provision of Services under this Agreement. Specifically, Contractor agrees to complete EBCE's Supplier Diversity questionnaire, which may be updated or revised during the term of the Agreement, and otherwise reasonably cooperate with EBCE to provide the information described above. Contractor shall provide such information in the timeframe requested by EBCE and in no event later than January 31 of the year following the Effective Date of this Agreement.

Section 15. Authorized Signatories

15.1 Proper Countersignatures

Type of Entity	Authorized Signatories		
For a corporation:	Pursuant to California Corporations Code Section 313 proof of authority to execute the Agreement is established if one of the corporate officers listed in Column A below and one of the corporate officers listed in Column B below both sign the documents.		
	Column A	AND	Column B
	Chairman of the Board, or		Secretary, or
	President, or		Assistant Secretary, or
	Vice President		Chief Financial Officer, or
			Assistant Treasurer
For a general partnership, a limited partnership, or a limited liability partnership:	If the agreement is signed by any combination of persons other than those listed above or by an individual, then the agreement must be accompanied by a copy of the Board minutes, resolution, Corporate Secretary's certificate, or articles of incorporation stating that the signatories have the authority to bind the corporation.		
For a limited liability company (LLC)	All the general partners must sign the Agreement (a general partnership agreement is sufficient to establish the names of all general partners) unless the person signing the Agreement provides proof that he/she has authority to bind the partnership.		
For a sole proprietor, or a sole proprietor doing business under another name:	Copies of the following documents should be provided to establish who has authority to bind the LLC: (1) State Forms LLC-1 and LLC-12 if the company was formed in California; and (2) the operating agreement for the LLC – whether formed in California or another state.		
	Only the individual who owns the business can sign. Either a Fictitious Business Name Statement or a EBCE Business Tax Certificate is sufficient to establish the authority of an individual to bind a sole proprietorship.		

[signatures on following page]

IN WITNESS WHEREOF, the parties have caused the Agreement to be executed as of the date set forth above.

[VENDOR'S LEGAL NAME]
Legal form of business, state of formation

EAST BAY COMMUNITY ENERGY AUTHORITY
A Joint Powers Authority

By _____
Title _____
Date _____

By _____
Title _____
Date _____

By _____
Title _____
Date _____

APPROVED AS TO FORM:

[*remove if chart in 15.1 confirms only one signature is required]

EBCE Counsel

LIST OF EXHIBITS

EXHIBIT A: SCOPE OF WORK

EXHIBIT B: SCHEDULE

EXHIBIT C: CONSULTANT STAFFING

EXHIBIT D: SUBCONSULTANTS

EXHIBIT E: COMPENSATION/BUDGET

EXHIBIT F: INSURANCE REQUIREMENTS

Exhibit A

SCOPE OF WORK

Overview

BlocPower is a Black-owned climatetech leader focused on Smarter, Healthier, Greener Buildings for all. We have deep experience delivering electrification and energy efficiency projects in low-and-moderate-income (LMI) communities and will engage, on behalf of EBCE, a program to deliver clean, healthy, electrified buildings.

The program will leverage \$1M of project finance made available by EBCE to fund building remediation and retrofit projects in EBCE service territory. The investment will provide a scalable financing opportunity to re-invest the returns from customer payments over time into additional projects. (The scope of this effort does not require EBCE to do so but will provide a model for how that can be executed).

This scope of work governs the additional \$400,000 in incentives EBCE will offer to further enable the above program.

Use of Funds

- Targeting [60] households (single or multi-family units) at an average incentive level of [~\$6,667] to further enable the financials of the project through 2022-2023.
- BlocPower will, with their local partners, engage in Customer acquisition, education, project development, financing, construction management, and ongoing O&M, as applicable.
- Sufficient underwriting to ensure a prudent investment

EBCE's investment will serve the following public purpose:

- Invest in household health remediations, energy efficiency and electrification for low-to-moderate income (LMI) households (defined as households below 120% of area median income)
- Deliver insights and analysis for policy to further support and engage underserved and energy-burdened communities on a quarterly basis, and at the conclusion of the program

Task 1. Administration

This task covers general administrative activities associated with the disbursement of incentives for EBCE. BlocPower will provide monthly reporting and invoicing to EBCE to communicate project progress and submit documentation associated with incentives disbursed during the invoicing period. EBCE and BlocPower will develop a standard invoicing and reporting template. In addition to the information agreed upon for monthly

reporting and invoicing, BlocPower shall retain all project-specific information. BlocPower will also furnish an annual report no later than 14 months following program launch reporting on program impacts.

Deliverables:

- Monthly invoice and report template
- Monthly invoicing
- Monthly reporting
- Annual report

Task 2. Incentive Disbursement

Incentives will be scaled based on need, as determined by income level, according to the table below. BlocPower will verify incentive eligibility and will invoice EBCE no more frequently than monthly for incentives. BlocPower will provide EBCE with documentation showing verified income and associated incentive disbursed per project; EBCE retains the right to request more detailed income information.

Income Level	Incentive
At or Below 80%AMI	Up to \$10,000
Above 80% AMI	Up to \$4,000

Incentives should be stacked on other program incentives as available; however, overall incentives are not to exceed costs associated with material and installation costs for eligible measures. Eligible measures for this incentive are listed below; BlocPower may include other energy efficiency and building electrification measures if those incentives are included in existing IOU rebate programs or if permission is received in writing from EBCE. BlocPower assumes responsibility for ensuring quality installation of projects, including compliance with local permitting and inspection requirements. Sample eligible measure list:

- Energy Efficiency Upgrades
 - LED lighting
 - Air sealing, insulation
 - High-efficiency window treatments
 - Energy-efficient appliances
- Electrification / Fuel switching
 - Electrical upgrades
 - Air source heat pumps
 - Heat pump water heaters
 - Induction cooktops
 - Efficient washers & dryers
- Retrofitting Measures

- Smart thermostats
- Hazardous materials abatement (lead, asbestos, mold)
- IoT monitoring & controls for M&V
- Low-flow water fixtures

BlocPower shall invoice EBCE monthly for incentives disbursed the prior month. Incentive disbursement requests should include itemized project invoices, identification of other program incentives applied to the project, and income level of incentive recipient.

Deliverable:

- Monthly incentive invoices

Task 3. Inclusion of tenants in program

EBCE's LMI population is characterized by a high proportion of tenants. EBCE seeks an expansion of the existing program model to serve renter populations. EBCE will work with BlocPower to identify potential barriers and negative impacts to renter populations, including threat of eviction or rent increases, and will develop policies to mitigate potential concerns. EBCE and BlocPower have committed to inclusion of rental properties within six months of program launch, if possible.

Deliverables:

- Memo categorizing program policy updates for rental populations

Further Details:

BlocPower will continue to invest in the East Bay market, expanding on existing partnerships with local developers such as Revalue.io, and leveraging existing incentives and capital available through BayREN, the CPUC TECH program and additional sources to provide this offer to local building owners. Prevailing wages will be applied to those projects receiving EBCE incentives and financing, as applicable. Documentation will be provided to EBCE on a customer-basis as requested. EBCE will provide format for customer enrollment and savings data to match with EBCE system of customer record.

Customer Underwriting Overview

BlocPower will implement reasonable underwriting criteria, which may include the following.

The target clients are building owners, not tenants. The buildings may have low/moderate income tenants, regular market rate tenants, or be co-ops or

condos. Low income residents may receive rental payment support from government programs, paid directly to building owners. Building owners may be non-profits.

Materials BlocPower will gather:

- Standard financials (at least 2 years income statement/balance sheet)
- Tax return (at least one year, to match financials; tax returns may be substituted for financials if needed, at BlocPower discretion)
- Rent roll (current and prior year, to evaluate vacancy)
- Debt details (mortgage terms, covenants to estimate DSCR)
- Recent property appraisal (This is typically from the client's mortgage or a refinance. If old, or not available, the market value of the property will be estimated directly via comps.)
- DOB violations
- Business credit report (Experian, D&B, Equifax, etc.)
- 12 months of utility bills (this will show both the client's rates, and whether there have been any late payments in the last 12 months)

BlocPower evaluates global DSCR as a primary means of determining if the client will be able to meet project payment obligations. This is calculated as EBITDA over all financing obligations, including those related to our project. We will accept personal or corporate guarantors to help meet the obligations if it appears if DSCR is tight, or the building cannot meet the obligations on its own. The income and obligations of the guarantors will be included in global DSCR calculation. We will factor the expected net energy savings into the global DSCR calculation, as they should reduce operating expenses. We will however include some margin of safety on the savings.

BlocPower will not accept a bankruptcy within 3 years, unless there are heavy mitigating factors. We will similarly not accept anyone with a global DSCR less than 1.20x without significant mitigation. Historical vacancy, and debt-to-equity ratio of the client will also be taken into account. Excessive DOB violations will be a negative indicator, unless the measures to be implemented will address the source of violations. The client must be current on their utility bills before entering into an agreement, and delinquencies over 30 days must be explained, with additional mitigation provided.

BlocPower does not take any liens on the underlying real estate.

Credit Evaluation

When evaluating the credit of a real estate business, primary factors include coverage of current debt obligations, leverage, property value, operating performance, and history of payment. In our analysis, these are expressed respectively by:

- Debt Service Coverage Ratio, determined by looking at all debt held by the entity, and dividing this by its Net Operating Income or EBITDA.
- Debt to Equity ratio, determined by comparing the entity's debt outstanding against an acceptable market valuation of the property

- Rents and Operations, determined by evaluating the property's rental history, operating costs, and Net Operating Income to determine whether the building is being well managed.
- Creditworthiness, determined by evaluating a combination of the property's business credit (as reported by Experian, D&B, Equifax, or other agencies), payment history on utility bills (as reported on the 12 months of utility bills collected from the client), and violation history (publicly available through the local municipalities)

Criteria

Required Criteria

- No bankruptcy within the last three years
- No outstanding major judgements or lien

Strong positive indicators, lack of which may be adjusted only with considerable mitigation and/or suitable explanation

- DSCR equal to 1.20x or greater, including any net savings from the project, subject to a 20% margin of safety on the savings estimates
- Debt-to-Equity ratio of 80% or below, including the termination value of our lease obligation

General negative indicators, requiring explanation

- Utility bill delinquencies 30+ days past due in reviewed period
- Average vacancies over 15% for multi-family properties in reviewed period
- Excessive DOB violations will be a negative indicator as well, unless the measures to be implemented will address the source of violations.

Acceptable mitigants

- Personal guarantee, typically from a substantial equity holder in the entity
- Corporate guarantee, typically from a parent company or other related entity
- Down-payment of some portion of the system costs. This improves DSCR and decreases exposure.
- Shortened lease term, with associated increase to monthly payments
- Increased monthly payments. While acting as a net drag on DSCR, increased revenue can serve to mitigate against increased risk in certain areas.

Security Package

BlocPower places a UCC 1 filed at the county level for the assets owned and installed at the customer property. This enables us to remove the property as needed, while also serving as a lien should the client attempt to sell their building. In addition, BlocPower maintains security through the ability to switch systems off in the event of non-payment. Through remote access, individual systems or all systems at the property may be throttled, turned off, or turned on.

Ensuring Quality Construction of Projects / Completing Agreements Between BP and Contractors

- Scope of work and services to be performed are agreed upon between BlocPower and its contractors and is appended to SCHEDULE A of the ESA

Payment Approval Process

Requirements for each application w/dates:

A timeline is associated with each project, which is part of the project gantt chart. Payments and amounts to the contractor(s), equipment provider(s), and other parties (each a “Vendor”) are outlined here. Funding sources for the project are identified, including which accounts to be used, how much to be spent from each, and method of sending payment (check, ACH, or Wire). If capital contributions are made from the parent to an SPE, then a Memorandum of Investment is produced, which formalizes the investment, and provides basis from an accounting perspective that cash assets have decreased in the Parent, but the value of project assets has increased in equal proportion.

Construction Manager reviews the invoice, and determines if the payment requirements have been met. This review consists of:

- For Contractors: Examining the work in detail either in-person or by proxy, with photographic evidence showing the work has been completed to specification for the milestone.
- For Equipment Providers: Comparing the bill of lading and BlocPower PO to ensure that all required materials have been received. All materials will be examined in person or by proxy, with photographic evidence taken of all major materials showing presence and actual condition of materials received. This will include documentation of any damage to boxes or equipment itself that may be required for a later claim of any kind.
- Other parties: Reviewing the work product with the appropriate parties to ensure it meets the requirements of the associated purchase order, contract, or other agreement. For example, when procuring professional engineering services, the Head of Engineering must provide written notification that the completed work is acceptable.

Upon approval that work has been completed in accordance with requirements, the Construction Manager will prepare a written notification of such. This may take the form of a standard memo and shall be signed by the construction manager.

The Construction Manager will prepare a memo to approve payment, for signoff by the Head of Engineering and the Head of Finance. Once they are satisfied that work has been completed in a satisfactory manner, they will provide their approval, and the memo will be shared with the CEO for final authorization.

A short meeting will be held bi-weekly or as needed to review all requests and issue payments. This meeting may include the CEO, General Manager, COO, Head of Finance, and Head of Engineering.

Additional Services:

Consultant will not provide additional services outside of the services identified in Exhibit A, unless it obtains advance written authorization from the project manager or lead EBCE representative prior to commencement of any additional services.

Exhibit B

SCHEDULE

As directed by EBCE.

Exhibit C

CONSULTANT STAFFING

[Include names of all team members who will be providing EBCE services.]

Exhibit D

SUBCONSULTANTS

Subconsultants must be authorized in advance, in writing by EBCE.

Exhibit E

COMPENSATION/BUDGET

The funding for this program will be available for use by BlocPower to reduce the project cost associated with energy related home improvements for EBCE's low and moderate income customers. Incentives will be scaled based on need, as determined by income level. BlocPower will verify incentive eligibility and will invoice EBCE no more frequently than monthly for incentives. BlocPower will provide EBCE with documentation showing verified income and associated incentive disbursed per project; EBCE retains the right to request more detailed income information.

Income Level	Incentive
At or Below 80%AMI	Up to \$10,000
Above 80% AMI	Up to \$4,000

The maximum compensation under this Agreement is \$400,000.

Exhibit F

INSURANCE REQUIREMENTS

A. Minimum Scope and Limits of Insurance. Consultant must procure, and at all times during the term of this Agreement carry, maintain, and keep in full force and effect, insurance as follows:

1) Commercial General Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per occurrence for bodily injury, personal injury and property damage and a general aggregate limit of Two Million Dollars (\$2,000,000.00) per project or location. If Consultant is a limited liability company, the commercial general liability coverage must be amended so that Consultant and its managers, affiliates, employees, agents and other persons necessary or incidental to its operation are insureds.

2) Automobile Liability Insurance for any owned, non-owned or hired vehicle used in connection with the performance of this Agreement with a combined single limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury and property damage.

3) Workers' Compensation Insurance as required by the State of California and Employer's Liability Insurance with a minimum limit of One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. If Consultant has no employees while performing Services under this Agreement, workers' compensation policy is not required, but Consultant must execute a declaration that it has no employees.

4) Professional Liability/Errors & Omissions Insurance with minimum limits of Two Million Dollars (\$2,000,000.00) per claim and in aggregate.

B. Acceptability of Insurers. The insurance policies required under this Exhibit E must be issued by an insurer admitted to write insurance in the State of California with a rating of A:VII or better in the latest edition of the A.M. Best Insurance Rating Guide.

C. Additional Insured/Additional Named Insured. The automobile liability policies must contain an endorsement naming EBCE, its officers, employees, agents and volunteers as additional insureds. The commercial general liability policy must contain an endorsement naming EBCE, its officers, employees, agents and volunteers as additional named insureds.

D. Primary and Non-Contributing. The insurance policies required under this Agreement must apply on a primary non-contributing basis in relation to any other insurance or self-insurance available to EBCE. Any insurance or self-insurance maintained by EBCE, its officers, employees, agents or volunteers, will be in excess of Consultant's insurance and will not contribute with it.

E. Consultant's Waiver of Subrogation. The insurance policies required under this Agreement will not prohibit Consultant and Consultant's employees, agents or Subconsultants from waiving the right of subrogation prior to a loss. Consultant hereby waives all rights of subrogation against EBCE.

F. Deductibles and Self-Insured Retentions. Any deductibles or self-insured retentions must be declared to and approved by EBCE. At EBCE's option, Consultant must either reduce or eliminate the deductibles or self-insured retentions with respect to EBCE, or Consultant must procure a bond guaranteeing payment of losses and expenses.

G. Cancellations or Modifications to Coverage. Consultant agrees not to cancel any insurance coverage during the Term. Consultant further agrees not to, reduce or otherwise modify the insurance policies required by this Agreement during the term of this Agreement, without the prior written approval of EBCE. The commercial general and automobile liability policies required under this Agreement must be endorsed to state that should the issuing insurer cancel the policy before the expiration date, the issuing insurer will endeavor to mail 30 days' prior written notice to EBCE. If any insurance policy required under Agreement is canceled or reduced in coverage or limits, Consultant must, within two business days of notice from the insurer, phone and notify EBCE via electronic mail and certified mail, return receipt requested, of the cancellation of or reductions to any policy.

H. EBCE Remedy for Noncompliance. If Consultant does not maintain the policies of insurance required under this Agreement in full force and effect during the term of this Agreement, or in the event any of Consultant's policies do not comply with the requirements of this Exhibit F, EBCE may either immediately terminate this Agreement or, if insurance is available at a reasonable cost, EBCE may, but has no duty to, take out the necessary insurance and pay, at Consultant's expense, the premium thereon. Consultant must promptly reimburse EBCE for any premium paid by EBCE or EBCE, in its sole discretion, may withhold amounts sufficient to pay the premiums from payments due to Consultant.

I. Evidence of Insurance. Prior to the performance of Services under this Agreement, Consultant must furnish EBCE with a certificate or certificates of insurance and all original endorsements evidencing and effecting the coverages required under this Agreement. The endorsements are subject to EBCE's approval. EBCE may request, and Consultant must provide complete, certified copies of all required insurance policies to EBCE. Consultant must maintain current endorsements on file with EBCE. Consultant must provide proof to EBCE that insurance policies expiring during the term of this Agreement have been renewed or replaced with other policies providing at least the same coverage. Consultant must furnish such proof at least two weeks prior to the expiration of the coverages.

J. Indemnity Requirements not Limiting. Procurement of insurance by Consultant will not be construed as a limitation of Consultant's liability or as full performance of Consultant's duty to indemnify EBCE under Section 12 of this Agreement.

K. Subconsultant Insurance Requirements. Consultant's insurance coverage must include its Subconsultants or Consultant must require each of its Subconsultants that perform Work under this Agreement to maintain insurance coverage that meets all the requirements of this Exhibit F.



Staff Report Item 12

TO: East Bay Community Energy Board of

FROM: Directors Jason Bartlett, Finance Manager

SUBJECT: Fiscal Year 2021-2022 Mid-Year Budget Report (Informational)

DATE: January 19, 2022

Recommendation

Receive the report informing the Board of the mid-year Budget position for the 2021-2022 fiscal year.

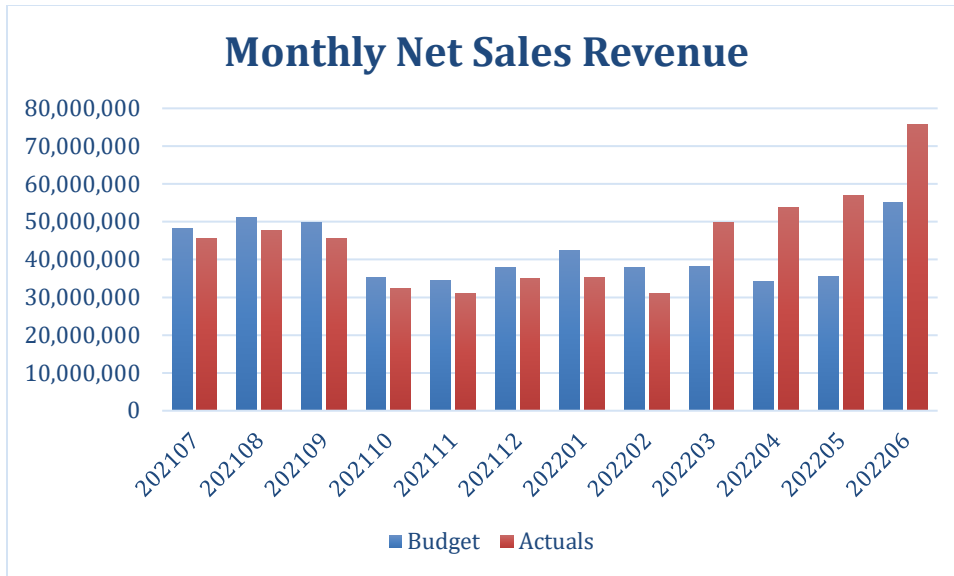
Background and Discussion

This staff report compares EBCE's financial performance for the current fiscal year from July 1, 2021 through November 30, 2021 with the approved June budget. December's revenues and expenses are still being reconciled, and therefore included in this report as estimates.

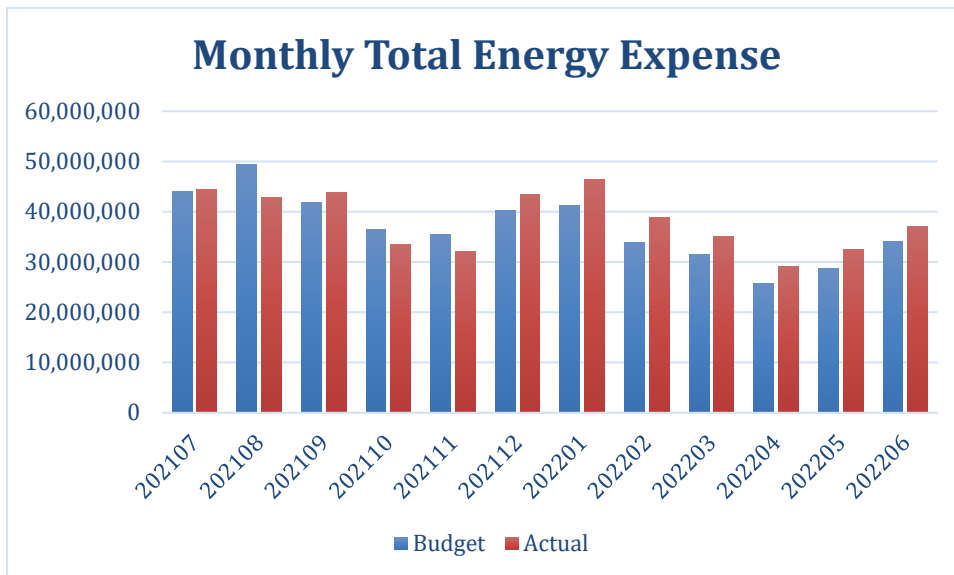
Attachment A provides the numerical table summaries and comparisons. The difference for each category shown in dollar amounts and percentages relative to budgeted amounts.

Highlights and assumptions from this comparison are listed here:

- Revenues
 - Year-end electricity sales are expected to be 7.9% above budgeted amounts due to CPUC approving higher than expected rates starting in March of 2022, but sales have come in softer in the mid-year due to lower demand from cooler temperatures
 - Uncollectable amounts are still estimated at 2.0% for 2021 and 1.5% for 2022

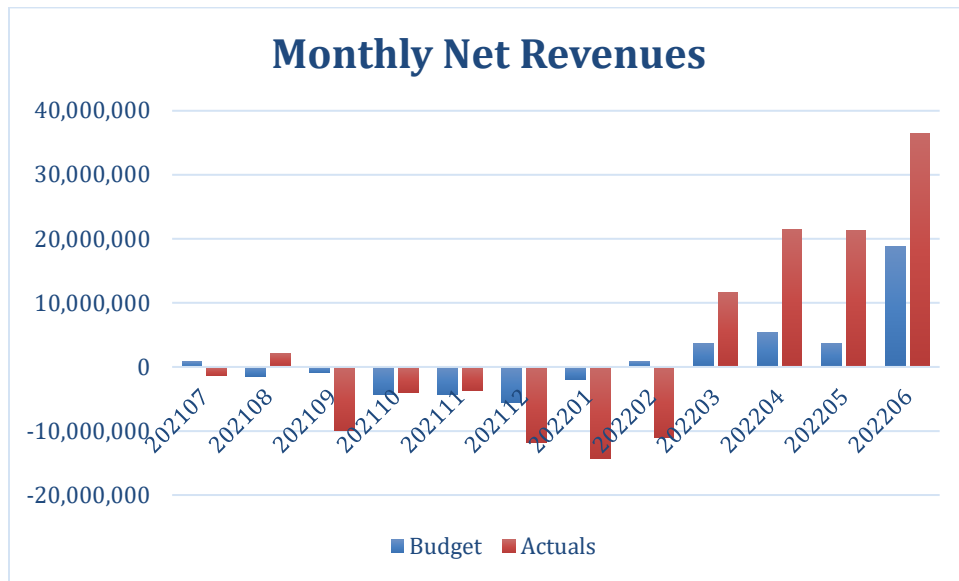


- Energy Costs
 - Year-end Cost of Energy is 3.5% above budgeted amounts due to higher than expected market prices estimated in 2022, with mid-year costs coming in lower than expected due to cooler temperatures
 - Pre-Pay agreement adds about \$2MM in cost reduction in 2022 estimates



- Operating Overhead
 - Overhead is 10.6% below budgeted amounts due to less than expected costs with personnel as not all positions have been filled
- Non-Operational Position

- Non-Operating Position is 25.2% above budgeted amounts primarily due to the new building purchase
- Interest on cash accounts performing at 0.25% average as compared to budgeted 0.4%
- Some grant revenue has been recognized against appropriate expenses
- Net Position
 - Overall year-end Net Position is 148.0% above budget estimates due to the significant increase in expected revenues from 2022 rates despite rising energy costs in the same time period



Fiscal Impact

This report has no fiscal impact on operations

Attachments

- A. FY 2021-22 Mid-Year Budget Report Table

ITEM 11—Attachment A: FY 2021-2022 Mid-Year Budget Comparison

	BUDGET	ACTUAL	DELTA	%D
OPERATIONS				
REVENUE & OTHER SOURCES				
Operating Revenue				
Electricity Sales	508,636,000	548,790,000	40,154,000	7.9%
Uncollectables	(8,939,000)	(9,441,000)	(502,000)	5.6%
Other Operations Revenue	0	112,000	112,000	0.0%
Total Operating Revenue	499,697,000	539,461,000	39,764,000	8.0%
EXPENSES & OTHER USES				
Energy Operating Expenses				
Cost of Energy	442,338,000	459,087,000	16,749,000	3.8%
Data Management/CRM	8,645,000	8,032,000	(613,000)	-7.1%
Billing & Metering	2,752,000	2,709,000	(43,000)	-1.6%
Scheduling	843,000	848,000	5,000	0.6%
Total Energy Operating Expenses	454,578,000	470,676,000	16,098,000	3.5%
Overhead Operating Expenses				
Personnel	9,421,000	8,472,000	(949,000)	-10.1%
Marketing & Communications	1,614,000	1,422,000	(192,000)	-11.9%
Legal, Policy, & Regulatory Affairs	1,592,000	1,403,000	(189,000)	-11.9%
Other Professional Services	850,000	822,000	(28,000)	-3.3%
General & Administrative	3,033,000	2,639,000	(394,000)	-13.0%
Depreciation	60,000	57,000	(3,000)	-5.0%
Total Overhead Operating Expenses	16,570,000	14,815,000	(1,755,000)	-10.6%
Total Operating Expenses	471,148,000	485,491,000	14,343,000	3.0%
NON-OPERATIONS				
NON-OPERATING REVENUE				
Interest Income	798,000	141,000	(657,000)	-82.3%
Grants	894,000	894,000	0	0.0%
Other Non-Operating Revenue	0	210,000	210,000	0.0%
Total Non-Operating Revenue	1,692,000	1,245,000	(447,000)	-26.4%
NON-OPERATING EXPENSES				
Borrowing Interest	898,000	906,000	8,000	0.9%
Local Development Funding	9,007,000	9,007,000	0	0.0%
Capital Expenditures	5,500,000	8,507,000	3,007,000	54.7%
Total Non-Operating Expenses	15,405,000	18,420,000	3,015,000	19.6%
NET NON-OPERATING POSITION	(13,713,000)	(17,175,000)	(3,462,000)	25.2%
TOTAL REVENUES	501,389,000	540,706,000	39,317,000	7.8%
TOTAL EXPENSES	486,553,000	503,911,000	17,358,000	3.6%
NET INCREASE(DECREASE) IN POSITION	14,836,000	36,795,000	21,959,000	148.0%



Staff Report Item 13

TO: East Bay Community Energy Board of

FROM: Directors Howard Chang, COO & Treasurer

SUBJECT: Credit Rating Review (Informational Item)

DATE: January 19, 2022

Recommendation

Receive the review of the credit rating and its implications to EBCE operations.

Background and Discussion

On December 9, 2021 EBCE received a grade of “A/Stable” credit rating by S&P Global Ratings.

This rating was based on several aspects of EBCE’s enterprise operations as it relates to various aspects of risk. The following is a summary of the strengths listed by S&P in the report:

- Deep customer base of 640,000 accounts with residential customers responsible for almost half of the load which gives EBCE large economies of scale, and a less than 5% opt out rate shows community support of value proposition
- Protective joint powers agreement with the jurisdictional members
- Diverse power supply arrangements
- Solid financial performance with an expectation of considerable liquidity increase in the coming years
- Limited direct exposure to local wildfire hazards

These strengths were considered partly offset by the following challenges:

- Direct retail competition with PG&E, which can limit rate-setting
- Volatile load profile and fulfilling renewable energy balancing mandates

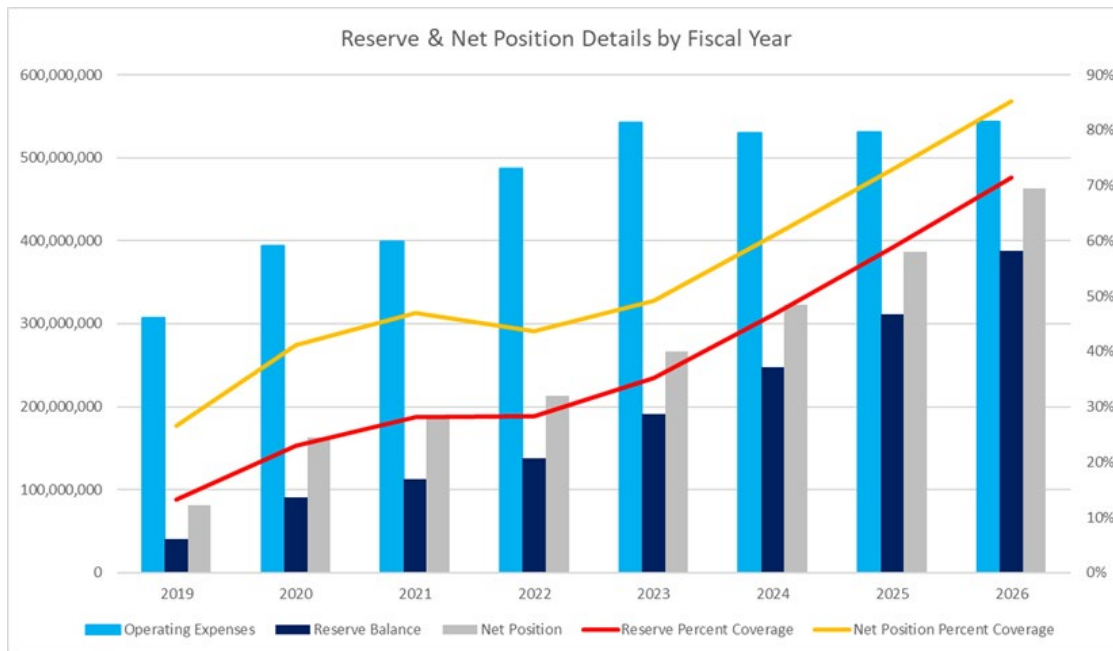
- Exposure to PCIA
- Open position exposure to market purchases
- Still developing reserves and in a marginally tight current year of operations

The conclusions in the report were based upon data submitted to S&P and a staff presentation given to the rating analysts on Oct 22, 2021.

The presentation included a summary of EBCE’s historical financial performance and strong five-year projections based on some essential assumptions; primarily in areas of PCIA, rates, established power purchase agreements, and expected forward costs of energy prices. The fundamental predication being on EBCE’s net liquidity metrics. For S&P, the basis of the stable rating is EBCE’s ability to generate and retain substantial cost coverage by holding high levels of cash and equivalents, which allows the organization to remain competitive with PG&E.

	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21	Updated Budget				
						FY 2021/22	FY 2022/23	FY 2023/24	FY 2024/25	FY 2025/26
OPERATING REVENUES										
Electricity Sales, net	-	16,142,192	387,065,191	475,727,273	425,733,911	523,540,000	606,950,000	597,483,000	605,888,000	630,052,000
GASB 62 Revenue Deferral Fund	-	-	-	(12,680,000)	(3,134,000)	-	-	-	-	-
Other Revenue	-	-	186,742	334,205	902,949	894,000	-	-	-	-
Total Operating Revenues	-	16,142,192	387,251,933	463,381,478	423,502,860	524,434,000	606,950,000	597,483,000	605,888,000	630,052,000
Operating Expenses										
Cost of Electricity	-	7,116,223	293,176,788	373,477,417	377,480,734	458,392,000	512,591,000	499,421,000	499,351,000	510,321,000
Contract Services	1,677,333	1,619,904	9,609,129	12,890,724	12,076,636	13,090,000	13,548,000	14,022,000	14,513,000	15,021,000
Staff Compensation	112,172	1,268,342	3,830,701	5,852,793	7,134,883	9,421,000	9,751,000	10,092,000	10,445,000	10,811,000
General & Administration	14,025	811,417	767,035	2,252,505	2,585,219	6,239,000	6,457,000	6,683,000	6,917,000	7,159,000
Depreciation	-	5,304	14,084	43,298	52,603	60,000	273,000	278,000	283,000	288,000
Total Operating Expenses	1,803,530	10,821,190	307,397,737	394,516,737	399,330,075	487,202,000	542,620,000	530,496,000	531,509,000	543,600,000
Operating Income	(1,803,530)	5,321,002	79,854,196	68,864,741	24,172,785	37,232,000	64,330,000	66,987,000	74,379,000	86,452,000
NONOPERATING REVENUE (EXPENSES)										
Interest Income	-	-	248,702	1,357,175	636,395	798,000	493,000	627,000	768,000	928,000
Interest Expense	-	(432,952)	(1,813,959)	(743,178)	(869,612)	(898,000)	(1,093,000)	(1,093,000)	(1,093,000)	(1,093,000)
Capital Expenditures	-	-	-	-	-	(3,000,000)	-	-	-	-
Local Development Fund Transfer	-	-	-	(1,050,263)	(1,829,978)	(9,007,000)	(10,000,000)	(10,000,000)	(10,000,000)	(10,000,000)
Total Nonoperating Revenues (Expenses)	-	(432,952)	(1,565,257)	(436,266)	(2,063,195)	(12,107,000)	(10,600,000)	(10,466,000)	(10,325,000)	(10,165,000)
NET POSITION										
Change in Net Position	(1,803,530)	4,888,050	78,288,939	68,428,475	22,109,590	25,125,000	53,730,000	56,521,000	64,054,000	76,287,000
Net position at beginning of year	-	(1,803,530)	3,084,520	81,373,459	149,801,934	171,911,524	197,036,524	250,766,524	307,287,524	371,341,524
Net position at end of year	(1,803,530)	3,084,520	81,373,459	149,801,934	171,911,524	197,036,524	250,766,524	307,287,524	371,341,524	447,628,524
GASB 62 Balance	-	-	-	12,680,000	15,814,000	15,814,000	15,814,000	15,814,000	15,814,000	15,814,000
Total Net Position w/ GASB 62 Balance	(1,803,530)	3,084,520	81,373,459	162,481,934	187,725,524	212,850,524	266,580,524	323,101,524	387,155,524	463,442,524
Days Liquidity on Hand										
Days Liquidity on Hand		4	75	148	137	140	180	218	255	305
Adjusted Days Liquidity on Hand										
Adjusted Days Liquidity on Hand		63	121	193	181	180	220	258	295	345

It is important to note, by our current reserve policy (Policy P-10.1) liquidity and reserves are not exactly the same in this case. Liquidity reflects available cash and represents the organization’s ability to absorb cost or operational shocks, whereas reserves is a subset of cash held to be untouched except in extreme circumstances and with Board permission. Because it is difficult to forecast future Reserves, the provided forecasts assume all incremental net position contributes to liquidity and is allocated to Reserves. The graph below shows net position and reserves both increasing in future years.



Based on the above tables, and as of July 1, 2021, EBCE’s days liquidity on hand could cover approximately 137 days of operation based on net position and GASB 62 revenues.[HC1] EBCE’s Formal Reserve Policy states a target of 50% with a range of 25-75%. In addition to our cash/reserve position, our credit facility with Barclays Bank, LLC provides an additional 45 days of operating liquidity, should it be required. The facility is sized at \$80MM with up to \$60MM for cash and \$35MM for LOCs. Additionally EBCE noted two potential working capital changes: Evaluating financing of the new office building purchase with low-cost financing through a lease leaseback structure and a planned RFP for new bank credit line in early 2022 to further improve credit terms and consider upsizing.

Fiscal Impact

This report is expected to have no fiscal impact on EBCE operations

Attachments

- A. S&P Global Ratings Direct Report for EBCE

RatingsDirect®

Summary:

East Bay Community Energy, California; Retail Electric

Primary Credit Analyst:

Timothy P Meernik, Centennial + 1 (303) 721 4786; timothy.meernik@spglobal.com

Secondary Contact:

Doug Snider, Centennial + 1 (303) 721 4709; doug.snider@spglobal.com

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Rating Action

Stable Outlook

Credit Opinion

Related Research

Summary:

East Bay Community Energy, California; Retail Electric

Credit Profile

ICR

Long Term Rating

A/Stable

New

Rating Action

S&P Global Ratings assigned its 'A' issuer credit rating (ICR) to East Bay Community Energy (EBCE), Calif. The outlook is stable.

At fiscal year-end 2021, EBCE had no debt outstanding.

Credit overview

EBCE, a community choice aggregator (CCA) that began serving electricity in 2018, has quickly gained more than half a million customer accounts and, we believe, has achieved credit supportive financial results while offering competitive rates. The CCA, formed to provide clean and affordable power and stimulate the local economy, is responsible for procuring a sufficient power supply for its customers' demands. EBCE uses the transmission and distribution assets of the service area's incumbent investor-owned utility, Pacific Gas and Electric Co. (PG&E; BB-/Negative), to deliver the electricity. Because the CCA provides retail electric service and is a public agency, S&P Global Ratings evaluates EBCE's creditworthiness under the scope of our municipal retail electric and gas utilities criteria.

The rating further reflects our view of EBCE's:

- Deep customer base of 640,000 accounts with residential customers responsible for almost half of EBCE's kilowatt-hour sales, enhancing revenue stability;
- Protective joint powers agreements with its member communities, requiring a departing member to provide six months' notice, receive EBCE board approval, and make the CCA whole for any costs incurred to serve that member signed prior to its departure, which we believe serves as a disincentive for a member to terminate its contract with EBCE;
- Diverse power supply arrangements with a variety of contract types, geographic locations, and storage capabilities (many of the supply contracts provide renewable power, which positions the CCA well for California's renewable portfolio standard as well as potential future federal carbon emission regulations);
- Solid financial performance including historical fixed-cost and imputed charge coverage (FCC) around 1.3x on a historical and projected basis and, at the end of fiscal 2021, considerable liquidity of more than 180 days, which we expect will increase in the coming years; and
- Limited direct exposure to wildfires through California's strict liability standard and inverse condemnation given the absence of CCA-owned generation, transmission, or distribution assets.

Partly offsetting the above strengths, in our view, are EBCE's:

- Direct retail competition with PG&E, which limits the CCA's rate-setting flexibility (EBCE has rate setting autonomy, but in its first few years of operations, the CCA has purposefully kept its standard offering slightly below the PG&E rate);
- Power procurement uncertainty as the CCA must balance its obligation to enter long-term contracts with a potentially volatile load profile given possible member community and/or individual customer exit from the CCA, as well as a need to balance its renewable mandates with the need for reliable baseload energy;
- Exposure to the power charge indifference adjustment (PCIA), which varies year to year and could pressure the CCA's competitiveness if costly enough; and
- High reliance on market purchases with the CCA planning to purchase more than a quarter of its electricity from the market in each of the next several years (although we recognize that the CCA's hedging practices considerably reduce EBCE's exposure to elevated market prices, with typically more than 80% of projected load hedged at the start of each month).

The stable outlook reflects our expectation that EBCE's rates will maintain competitive with PG&E, enabling the CCA to sustain its large customer base. We also believe that EBCE's significant unrestricted reserves will continue growing, providing flexibility to meet financial obligations.

Environmental, social, and governance

We believe EBCE's environmental risk exposure is low, based on its predominantly carbon-free resource portfolio. In 2020, the CCA's fuel mix of its standard offering was 40% renewable and less than 1% specified fossil fuel resources. EBCE plans for its fuel mix to be 100% carbon-free and a minimum of 65% from eligible renewables by 2030. However, as a practical matter, the intermittency of renewable resources might frustrate EBCE from achieving California's ambitious greenhouse gas emission goals in the absence of storage technology breakthroughs. We also note that EBCE has indirect exposure to wildfires that affect PG&E's transmission and distribution assets needed to serve the CCA's customers.

Regarding social factors, health and safety precautions that officials enacted in response to the COVID-19 pandemic resulted in EBCE's experiencing reduced weather-normalized electric sales in calendar 2020. The CCA has suspended its "Delinquent Accounts and Collections Policy" through the end of 2021. EBCE initially increased its uncollectables budget to 2.5% from 0.5%, but has since lowered the budget to 1%; the CCA expects to receive state funding to cover at least some of its arrearages. S&P Global Economics forecasts that U.S. GDP declined 3.4% in 2020 and estimates a rebound of 5.5% in 2021. (See "Economic Outlook U.S. Q1 2022: Cruising At A Lower Altitude," published Nov. 29, 2021, on RatingsDirect.) S&P Global Ratings believes uncertainty remains high, albeit moderating, about the evolution of the coronavirus pandemic and its economic effects.

We view EBCE's governance factors as credit-supportive, as they include robust joint powers agreements with members, full rate-setting autonomy, comprehensive policies and planning (including a risk management program with detailed hedging targets), and a sophisticated management team. The CCA produces detailed long-term financial forecasting and integrated resource plans, and participates in California utility proceedings. We also believe that EBCE performs appropriate due diligence when entering power supply contracts, including examining counterparties'

financial well-being and requiring collateral postings. However, the potential for retail customer opt-out somewhat tempers our view of EBCE's governance factors.

Stable Outlook

Downside scenario

We could lower the rating if EBCE experiences increases in its power supply costs, which could either pressure the CCA's rate competitiveness and/or result in a reduction in EBCE's unrestricted reserves, depending on management's actions. Also, if any of the member communities leave the CCA, EBCE could be forced to sell surplus contracted power to the market. In the event market prices decrease to levels significantly below those of the CCA's portfolio, EBCE could face significant financial pressure, which, in turn, could lead us to lower the rating.

Upside scenario

We do not expect to raise the rating in the next two years, given the inherent risks posed by the direct competition for EBCE's retail customer base. However, if the CCA's operations result in significant competitive advantages relative to the incumbent investor-owned utility over the next several years, while EBCE's FCC and liquidity strengthen, we could raise the rating.

Credit Opinion

In our view, EBCE's service area has favorable economic fundamentals. The CCA serves 15 member communities, all but one in Alameda County. Median household effective buying income in the county, which is part of the board and diverse San Francisco Bay Area economy, is 153% of the national level. We also note no customer concentration in the service area with the top 10 customers accounting for only 2.9% of sales and the top customer 0.4%.

EBCE has a large number of customer accounts, which we believe provides the CCA with considerable economies of scale. EBCE has grown quickly in the few years in which it has operated because all the accounts in the member communities that PG&E previously served were automatically switched to the CCA when that member community joined EBCE. Customers have the option to opt out of EBCE service and return to PG&E; there is no penalty to return to PG&E if undertaken within a set timeframe. However, the CCA's opt-out rate has been less than 5%, which we view as low and demonstrating EBCE's value proposition.

Compared with the member communities, individual customers have a much lower barrier to leave the CCA, which, in our view, constrains EBCE's rate-raising flexibility. In its first few years of operations, the CCA has offered customers a rate slightly lower than the customers would have received from PG&E, while still increasing unrestricted reserves. We believe EBCE's lower rate offering is a significant reason why the CCA's opt-out rates have been minimal. If EBCE's rates became more expensive than PG&E, we think more customers would opt-out and return to PG&E. Because of this, we think that EBCE's rate-setting flexibility is somewhat limited and especially so for as long as the CCA intends to set rates relative to the PG&E rate.

One area where EBCE has minimal control over its rates is the PCIA, which reflects the costs that PG&E incurred to procure power at above-market costs for these customers when PG&E still served them. The PCIA will decline in fiscal

2022 relative to its 2021 level. In addition, over the longer term, the PCIA will become less meaningful as power supply contracts that PG&E signed for its former customers expire.

We believe that EBCE's FCC demonstrates healthy cost recovery, averaging 1.3x over the past three years. FCC is an S&P Global Ratings-calculated metric that treats a share of the CCA's purchased power expenses as debtlike instead of an operating expense. FCC was closer to 1.1x in fiscal 2021 as the COVID-19 pandemic reduced sales and the PCIA was elevated. Although EBCE has a short operating history, we project the CCA's FCC will rebound to near 1.3x over the next several years.

The utility has considerable liquidity to meet operational and financial challenges. Unrestricted cash and cash equivalents, including undrawn amounts on a committed line of credit, exceeded \$206 million, or more than half a year of operating expenses, at fiscal year-end 2021. We believe EBCE's risks associated with its core business model--specifically the potential for customer exodus, rate-setting constraints, and substantial purchases of market electricity--necessitate enhanced reserves. The CCA has a formal liquidity target of 50% of operating expenses and expects to have reserves, including a committed line of credit, that reach 75% of operating expenses in the next five years, which we view as a credit positive.

EBCE has no debt outstanding, which we view favorably. The CCA's management reports that EBCE could incur indebtedness if the debt and associated assets were economical and fit within its risk management plan's tolerances. We note that if the CCA acquires direct or indirect ownership of capital assets, this could have implications for EBCE's exposure to California's strict liability standard and inverse condemnation.

Related Research

Through The ESG Lens 2.0: A Deeper Dive Into U.S. Public Finance Credit Factors, April 28, 2020

Certain terms used in this report, particularly certain adjectives used to express our view on rating relevant factors, have specific meanings ascribed to them in our criteria, and should therefore be read in conjunction with such criteria. Please see Ratings Criteria at www.standardandpoors.com for further information. Complete ratings information is available to subscribers of RatingsDirect at www.capitaliq.com. All ratings affected by this rating action can be found on S&P Global Ratings' public website at www.standardandpoors.com. Use the Ratings search box located in the left column.

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Staff Report Item 14

TO: East Bay Community Energy Board of Directors

FROM: Marie Fontenot, Senior Director of Power Resources

SUBJECT: Authorize CEO to negotiate and execute a contract with FEC Nevada I

DATE: January 19, 2022

Recommendation

Adopt a Resolution authorizing the CEO to negotiate and execute a contract with FEC Nevada I, LLC for a renewable energy supply agreement for a minimum term of 15 years and a maximum of 20 years.

Background and Discussion

In November of 2020 EBCE released its second long-term contract solicitation, the 2020 Renewable Energy and Storage RFO. The RFO sought several hundred megawatts (MW) of contracts with renewable energy and battery storage projects with a preference for projects located in CA, and more preferentially, those located in Alameda County. EBCE's objective was to drive investments in new renewable and energy storage projects in Alameda and CA, while securing affordable resources to manage future power price risk. EBCE received a very healthy response to its RFO both in volume and quality of projects and proposals. EBCE administered the RFO and completed robust analytics using internal tools and the cQuant valuation platform to calculate the net present value of proposed projects and determine the optimal portfolio to meet its objectives. All of these contracts will be utilized to hedge EBCE against price fluctuation in the CAISO energy markets and they will also contribute to procurement mandates issued by the California Public Utilities Commission (CPUC).

On June 30, 2021 the California Public Utilities Commission (CPUC) released Decision 21-06-035, the "Decision Requiring Procurement to Address Mid-Term Reliability

(2023-2026)”¹ (the “Decision”). This Decision requires CPUC jurisdictional load serving entities execute contracts with new, incremental generating resources through long-term contracts. The Decision includes a carve out, requiring procurement of long lead time resources comprised of long duration storage (i.e. storage able to deliver energy for eight hours or longer) and of generation capacity with no on-site emissions and at least an 80 percent capacity factor that is not weather dependent.

As a result of the long lead time resource requirement, Staff revisited the 2020 RFO results and identified the Fervo Energy, FEC Nevada I geothermal project as a desirable resource to meet the 80 percent capacity factor requirement. EBCE seeks to execute a contract with FEC Nevada I, LLC in the coming weeks. Staff will seek long duration storage resources in a future solicitation.

Conclusion

EBCE staff recommends authorizing the CEO to negotiate and execute the 15 to 20 year RPS contract with FEC Nevada I, LLC. This project will help EBCE to satisfy the Decision Requiring Procurement for Mid-Term Reliability 2023-2026, as mandated by the CPUC.

Committee Recommendation

Not applicable.

Attachments

- A. Resolution Authorizing CEO to Negotiate and Execute the Contract with FEC Nevada for up to a Twenty-Year Term.
- B. EBCE Proforma RPS Power Purchase Agreement (for reference only).
- C. PowerPoint Presentation

¹ <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>

RESOLUTION NO. R-2022-xx_____

A RESOLUTION OF THE BOARD OF DIRECTORS

OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING CEO TO
NEGOTIATE AND EXECUTE A RENEWABLE ENERGY SUPPLY AGREEMENT WITH FEC
NEVADA I, LLC FOR A MINIMUM TERM OF FIFTEEN YEARS UP TO A MAXIMUM TERM
OF TWENTY YEARS

WHEREAS, The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS, EBCE issued the 2020 Renewable Energy and Storage RFO in November 2020; and

WHEREAS, in response to the RFO, FEC Nevada I, LLC proposed a 40 MW geothermal generating project in Churchill County, Nevada, developed by Fervo Energy; and

WHEREAS, the project is expected to be operational by May 1, 2026 and will remain operational for a minimum contract term of fifteen years and a maximum contract term of twenty years.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The CEO is hereby authorized to negotiate and execute an agreement with FEC Nevada I, LLC for a 40 MW geothermal energy project located in Churchill County, Nevada. The term of the agreement shall not be less than fifteen years or more than twenty years. The final agreement shall include the key terms outlined in the staff report associated with this Resolution.

ADOPTED AND APPROVED this 19th day of January, 2022.

Dianne Martinez, Chair

ATTEST:

Clerk of the Board

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: [Seller Name, e.g., Project Company LLC] (“**Seller**”)

Buyer: East Bay Community Energy Authority, a California joint powers authority (“**Buyer**”)

Description of Facility: A [XX] MW [e.g., solar photovoltaic, wind, geothermal, small hydro, etc.] project located in [] County, in the State of [].

Milestones:

Milestone	Date for Completion
Evidence of Site Control	
CEC Pre-Certification Obtained	
Financing Milestone	
Documentation of Conditional Use Permit if required: CEQA [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [] EIR	
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	
Executed Interconnection Agreement	
Financial Close	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Network Upgrades completed	
Expected Commercial Operation Date	

Delivery Term: The period for Product delivery will be for [XX] Contract Years.

Expected Energy: “**Expected Energy**” means [XXX,XXX] MWh during the first 12-month Contract Year and for each 12-month Contract Year thereafter during the Delivery Term. [If there is an annual adjustment for degradation, this should be noted.]

Contract Year	Expected Energy (MWh)
1	[Subject to adjustment based upon Commercial Operation Date]
2 – [XX]	

Hourly Settlement Quantity: *If applicable*

Hour Ending	Hourly Settlement Quantity (MW)
0100 - 0600	N/A
0700 - 2200	[XX]
2300 - 2400	N/A

Guaranteed Capacity: [XX] MW

Guaranteed RA Amount: [XX] MW

Contract Price: *Select one*

Option A:

The “**Contract Price**” shall be \$[XX.XX]/MWh, [with escalation at 2% per Contract Year] [with no] escalation.

Option B:

“**Contract Price**” shall be equal to the sum of the Energy Price and the REC Price, less the CAISO Credit.

Contract Price shall be calculated as follows:

Contract Price = (Energy Price + REC Price) - CAISO Credit

Where:

“**CAISO Credit**” means the Energy Price paid by the CAISO for the energy associated with the Product.

“**Energy Price**” means the applicable day-ahead hourly market, hour-ahead fifteen-minute market, or real-time five-minute market, locational marginal price clearing at the Delivery Point, as published by the CAISO, per MWh of energy delivered.

“**REC Price**” is equal to \$XX.XX/MWh.

Product:

- Facility Energy
- Green Attributes (Portfolio Content Category 1)
- Capacity Attributes (select options below as applicable)
 - Energy Only Status
 - Full Capacity Deliverability Status on and after the RA Guarantee Date
- Ancillary Services

Scheduling Coordinator: [Buyer or Buyer’s agent][Seller or Seller’s agent]

Development Security and Performance Security

Development Security: \$90/kW of Guaranteed Capacity

Performance Security: \$105/kW of Guaranteed Capacity

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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (this “**Agreement**”) is entered into as of _____, 2021 (the “**Effective Date**”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “**Party**” and jointly as the “**Parties**.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1 DEFINITIONS

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

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.14.

“**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”, “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 any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“**Alternating Current**” or “**AC**” means alternating current.

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Facility. As of the Effective Date, the Parties agree and acknowledge that there are no Ancillary Services for Seller to provide and thus no value to the Ancillary Services.

“Approved Forecast Vendor” means (x) CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

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

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

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

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

“Buyer” means East Bay Community Energy Authority, a California joint powers authority.

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

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

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

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

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

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

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

generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

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

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

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

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

“CAISO” means the California Independent System Operator Corporation.

“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; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures, on the one hand, and the Tariff, on the other hand, the Tariff will control.

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

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct, including any of the same counted towards any current or future resource adequacy or reserve requirements, associated with the electric generation capability and capacity of the Facility or the Facility’s capability and ability to produce and deliver energy.

Capacity Attributes shall be deemed to include all Resource Adequacy Benefits, if any, associated with the Facility. Capacity Attributes are measured in MW and shall exclude Energy, Green Attributes, Other Attributes, and PTCs or any other Renewable Energy Incentives now or in the future associated with the construction, ownership or operation of the Facility.

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

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

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

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

“CEQA” means the California Environmental Quality Act.

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

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

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

“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” or **“COD Delay Damages”** means an amount equal to [$\$x/day$] that is the result of (a) the Development Security amount required hereunder, divided by (b) sixty (60).

“Compliance” has the meaning set forth in Section 3.14.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.14.

“Compliance Showings” means the (a) the Resource Adequacy Requirements compliance or advisory showings (or similar or successor showings), (b) if applicable, the Local RAR compliance or advisory showings (or similar or successor showings) and (c) if applicable, the Flexible RAR compliance or advisory showings (or similar successor showings), that Buyer is required to make to the CPUC (and, to the extent authorized by the CPUC, to the CAISO), pursuant to the Resource Adequacy Rulings, to the CAISO pursuant to the CAISO Tariff, or to any Governmental Authority having jurisdiction.

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

“Construction Delay Damages” means an amount equal to [\$x/day] that is the result of (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“Construction Start” has the meaning set forth in Exhibit B.

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

“Contract Price” has the meaning set forth on the Cover Sheet; provided, however, that for all Facility Energy and Deemed Delivered Energy generated or deemed generated during the period on and after the Commercial Operation Date until the RA Guarantee Date, the Contract Price shall be equal to the Test Energy Rate.

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

“Contract Year” means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence 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, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating and replacing the Agreement.

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

“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**” is the document issued annually by the CPUC which sets forth the guidelines, requirements and instructions for load serving entities to demonstrate compliance with the CPUC’s resource adequacy program.

“**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.

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

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

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

(b) a curtailment ordered by the Participating Transmission Owner 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; or

(e) a curtailment by Seller.

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

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

“**Day-Ahead Forecast**” has the meaning set forth in Section 4.3.

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

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

“**Deemed Delivered Energy**” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, shall be calculated using the CAISO VER forecast or an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site, less the amount of Energy delivered to the Delivery Point during the Buyer Curtailment Period; *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

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

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

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

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

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

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

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

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

“**Electrical Losses**” means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of 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 electrical energy (measured in MWh) generated by the Facility.

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

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

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

“**Executed Interconnection Agreement Milestone**” means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.

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

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

“**Expected Energy**” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Facility during each 12-month Contract Year in the quantity specified on the Cover Sheet.

“**Facility**” means the electric generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Energy to the Delivery Point.

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

“**Facility Meter**” means the CAISO Approved Meter that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the low voltage side of the main step up transformer and 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.

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

“**Financing Milestone**” means the date set forth on the Cover Sheet for Seller to satisfy the following requirements demonstrating the Facility’s eligibility for the [ITC/PTC] by [*Seller to propose suggested criteria for establishing eligibility, e.g., safe harboring of equipment prior to sunset dates, tax counsel opinion, etc.*].

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

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

“Forecasting Penalty” means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities in such hour with respect to Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility, multiplied by (B) the absolute value of the Real-Time Price in such hour.

“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.

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

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

“Gains” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic benefit (if any) shall be deemed the gain (if any) to such Non-Defaulting Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-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 hereto.

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

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

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

“**Guaranteed Commercial Operation Date**” means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

“**Guaranteed Construction Start Date**” means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

“**Guaranteed Energy Production**” means an amount of Product, as measured in MWh, equal to [*eighty-five percent (85%) – solar*]/[*seventy-five percent (75%) – wind*] of the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement

Period.

“Guaranteed RA Amount” means the amount of Resource Adequacy Benefits (in MW) from the Facility Net Qualifying Capacity (NQC) (in MW) of the Facility as set forth on the Cover Sheet.

“Guarantor” means, with respect to the Party providing Performance Security in the form of a Guaranty, any Person that:

- (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued,
- (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer;
- (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s;
- (d) has a tangible net worth of at least One Hundred Million Dollars (\$100,000,000);
- (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction; and
- (f) executes and delivers a Guaranty for the benefit of the other Party.

“Guaranty” means a payment guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L or in such other form as is reasonably agreed to by the Parties.

“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 16.3.

“Indemnified Party” has the meaning set forth in Section 16.3.

“Indemnifying Party” has the meaning set forth in Section 16.3.

“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 (up to but not in excess of the Guaranteed Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate(s) substantially in the form attached as Exhibit I hereto.

“Interconnection Agreement” means the interconnection agreements entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the

Guaranteed Capacity, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

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

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

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

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

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

"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 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

"Lender" means, collectively, any Person (i) providing credit support, senior or subordinated construction, interim, back leverage or long-term debt, working capital, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation, operation, maintenance, repair, replacement or improvement of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller 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.

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

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

“**Local RAR**” means the local resource adequacy requirements established for load serving entities by the CPUC pursuant to the Resource Adequacy Rulings, the CAISO pursuant to the CAISO Tariff, or by any other Governmental Authority having jurisdiction.

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

“**Losses**” means, with respect to the Non-Defaulting Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner, which economic loss (if any) shall be deemed to be the loss (if any) to such Party represented by the difference between the present value of the payments required to be made during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under transaction(s) replacing this Agreement. Factors used in determining economic loss to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

“**Major Project Development Milestone**” has the meaning set forth in Exhibit B.

“**Major Subcontractors**” means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of Ten Million Dollars (\$10,000,000) for performance of any part of the Work at the Site.

“**Meter Service Agreement**” has the meaning set forth in the CAISO Tariff.

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

“**Monthly Delivery Forecast**” has the meaning set forth in Section 4.3(b).

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

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

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

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than Zero dollars (\$0).

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

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

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

“**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 electronic mail (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 Committee**” means one representative each from Buyer and Seller appointed pursuant to Section 6.3.

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

“**Other Attributes**” means any and all attributes, products or services, associated with the existence or operation of the Facility that may be claimed or tracked other than (a) Energy, (b) Green Attributes, (c) Capacity Attributes and (d) Renewable Energy Incentives.

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

“**Participating Transmission Owner**” or “**PTO**” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities 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 period consisting of two (2) consecutive rolling Contract Years.

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

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

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

(b) At least five (5) 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.

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

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

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

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

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

“**PTC Amount**” means the amount, on a dollar per MWh basis, equal to the PTC that Seller would have earned in respect of Energy from the Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the number of the Facility’s wind turbines that are eligible to receive Production Tax Credits at the time of determination.

“**Qualifying 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 date that is sixty (60) days after the Commercial Operation Date.

“**RA Shortfall Amount**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), the extent, expressed in kW, to which during any month commencing after the RA Guarantee Date, the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan (as defined in the CAISO Tariff) to the CAISO and CPUC and counted as Resource Adequacy Capacity (as defined in the CAISO Tariff) was less than the Guaranteed RA Amount for such month due to (a) the Facility not having achieved Full Capacity Deliverability Status, (b) a Forced Facility Outage, or (c) the CAISO’s reduction in the Net Qualifying Capacity of the Facility due to the Facility’s actual Forced Facility Outage rate (i.e., past performance).

“**RA Shortfall Month**” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month commencing after the RA Guarantee Date during which there is an RA Shortfall Amount.

“**Real-Time Forecast**” means any Notice of any change to the Available Generating Capacity or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

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

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

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility; 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 Green Attributes” means Renewable Energy Credits that are Portfolio Content Category 1 and were generated by a California RPS-eligible generating resource that does not produce emissions.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable Showing Month in which a RA Deficiency Amount is due to Buyer, and, to the extent that Facility was eligible for Local RAR, located within NP 15 or Greater Bay Area Local Capacity Area Resource.

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

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

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031, 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024, 14-06-050, and any other existing or subsequent decisions, resolutions, or rulings related to resource adequacy, including, without limitation, the CPUC Filing Guide, 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.).

“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.

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

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

“**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.

“**Station Use**” means:

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

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

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

property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

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

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

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

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

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

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

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

“**Ultimate Parent**” means _____, a [State of organization] [Type of entity].

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

“**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 January 4, 2021, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

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

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

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

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

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

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

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

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

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

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

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

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

(l) “or” is not necessarily exclusive; 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.

The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (the “Contract Term”); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product (other than Test Energy) are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(n) 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 five (5) 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:

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

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

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

(q) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained (or if not obtained, applied for and reasonably expected to be received within 90 days) and all conditions thereof that are capable of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect, and Seller has delivered to Buyer an attestation certificate from an officer of Seller certifying to the satisfaction of this condition;

(r) 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);

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

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

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

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. Details regarding the form and content of the Progress Report are set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**ARTICLE 3
PURCHASE AND SALE**

3.1 Purchase and Sale of Product.

(a) In accordance with and subject to the terms and conditions of this Agreement, at all times during the Delivery Term Seller shall sell and deliver to Buyer at the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, all of the Facility Energy delivered to the Delivery Point and all of the Product produced by or associated with the Facility.

(b) Notwithstanding the foregoing:

Seller's obligation to sell and deliver Facility Energy to Buyer at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event or System Emergency, (B) a Buyer Bid Curtailment, (C) periods of curtailment requested by Buyer as set forth in a Buyer Curtailment Order, (D) a Curtailment Period; provided that such Curtailment Period is not attributable to Seller's breach of its obligations under this Agreement, (E) a period of Seller suspension due to a Buyer Default pursuant to Section 11.1 or (F) as necessary to maintain health and safety pursuant to Section 6.2; and

Buyer's obligation to accept Facility Energy at the Delivery Point shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event or System Emergency, (B) periods of curtailment requested by Buyer as set forth in a Buyer Curtailment Period, (C) a Curtailment Period, or (D) a period of Buyer suspension due to a Seller Default pursuant to Section 11.1; and

Buyer's obligation to make payment for Facility Energy and all of the remaining Product from Seller under this Agreement shall be excused during the pendency of, and to the extent required by (A) a Force Majeure Event, (B) a Curtailment Period, or (C) a period of Buyer suspension due to a Seller Default pursuant to Section 11.1.

(c) Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale in the market or to any third party, and retain and receive any and all related revenues.

(d) Subject to Buyer's obligation to pay for Deemed Delivered Energy, 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.

3.2 Compensation. Buyer shall pay Seller for the Product in accordance with Exhibit C.

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

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

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5, and Sections 3.5(b) and 3.14, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration on terms acceptable to Seller.

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

3.6 **Test Energy.** No less than five (5) Business Days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis until the Commercial Operation Date. Seller shall be compensated for Test Energy in an amount equal to one-hundred percent (100%) of net CAISO revenues associated with such Test Energy [*If Seller is SC, modify language to allow Seller to retain such revenues.*] (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller has obtained Full Capacity Deliverability Status as part of its CAISO generator interconnection process. As between Buyer and Seller, Seller is

responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

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

(c) Throughout the Delivery Term, Seller shall maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions reasonably necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

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

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

(f) At all times during the Delivery Term, Seller shall install such meters and power electronics as are necessary so that Ancillary Services and Capacity Attributes may be provided from the Facility by Buyer.

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 the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the product of (i) the RA Shortfall Amount, and (ii) the sum of (a) the CPUC System RA Penalty and (b) the CPM Soft Offer Cap; *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of the RA Shortfall Amount, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.

3.9 CEC Certification and Verification. Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the 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, 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.

3.10 California Renewables Portfolio Standard.

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s electrical energy 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. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.10. [STC 6].

Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Period 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].

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

3.11 **Change in Law.**

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

(b) If a change in Laws occurring after the Effective Date has increased Seller's known or reasonably expected costs 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 pursuant to Sections 3.5, 3.7(c), 3.9, 3.10, 4.3(g), 4.5, 4.8, and 4.10 (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 of such obligations shall be capped at twenty-five thousand dollars (\$25,000.00) per MW of Guaranteed Capacity in aggregate at over the Contract Term (the "**Compliance Expenditure Cap**").

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

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions. If Buyer does not respond to a Notice given by Seller under this Section 3.11 within sixty (60) days after

Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions for the Compliance Action(s) described in the Notice.

(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 pay Seller in advance to effect the Compliance Actions. Under no circumstances shall Seller be obligated to expend more than the Accepted Compliance Costs. When the Compliance Actions are completed, if the Seller's actual costs are less than the Accepted Compliance Costs, Seller shall refund the excess to Buyer.

(f) Any change in the value of any attributes provided by Seller to Buyer resulting from any change in Law shall not affect the Contract Price or Buyer's obligation to pay Seller for any attributes delivered.

3.12 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party prior to the Construction Start Date, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms acceptable to both Parties in their sole discretion.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 Delivery.

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

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

4.2 **Title and Risk of Loss.**

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

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

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

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

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

(e) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) hourly expected Energy, in each case, for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's estimate based on information reasonably available to Buyer.

(f) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the then-current rules for participation in the Real-Time Market. If the Available Generating Capacity or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than five (5) Business Days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and email to Buyer.

(g) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

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

(i) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.12, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate and, if applicable, the PTC Amount, in accordance with Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

4.5 Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

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

(a) Facility Maintenance. Subject to providing Buyer one-hundred twenty (120) days prior Notice, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller, provided that, between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the Energy generation of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage for inspection, preventative maintenance, corrective maintenance, or in

accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each of the foregoing, (a) “**Planned Outage**”).

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

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

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

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

4.7 **Guaranteed Energy Production**.¹ Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (1) Deemed Delivered Energy and (2) Lost Output from the Performance Measurement Period. 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.

[Alternate language if Seller is providing a shaped product:]

4.7 **Failure to Deliver Hourly Settlement Quantity**. If Seller fails to deliver any portion of the Hourly Settlement Quantity, and such failure is not excused under the terms of this Agreement, Seller shall be subject to damages equal to the amount of the unexcused shortfall (in MWh) for each Settlement Interval multiplied by the positive difference, if any, obtained by subtracting the Contract Price from the Replacement Price for such Settlement Interval. “**Replacement Price**” means the amount in \$/MWh that is the sum of (a) Day-Ahead LMP at the Delivery Point for the applicable Settlement Interval, plus (b) (i) \$25.00/MWh or, or at Buyer’s option, (ii) the market value of Replacement Green Attributes as determined by Buyer in a commercially reasonable manner.

4.8 **WREGIS**. Seller shall at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be

¹ Note – Section 4.7 (Guaranteed Energy Production) is not applicable if Seller is providing a shaped product.

given sole title to all such WREGIS Certificates. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**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 for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and damages, if any, under Exhibit G for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month. 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 **Interconnection Capacity.** Seller shall have and maintain interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity under the Interconnection Agreement during the Test Energy period and throughout the Delivery Term.

4.10 **Green-E Certification.** Upon request of Buyer, Seller shall submit, a Green-e® Energy Tracking Attestation Form (“**Attestation**”) for Product delivered under this Agreement to the Center for Resource Solutions (“**CRS**”) at <https://www.tfaforms.com/4652008> or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer’s request or the last day of the month in which the applicable Facility Energy was generated, whichever is later.

ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the 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 and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer 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 within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

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

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the generation and sale of Product, and the disposal and recycling of any equipment associated with the Facility, including without limitation solar panels.

6.2 **Maintenance of Health and Safety.** Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller

becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt action to prevent such damage or injury and shall give Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller's rights and obligations under the Interconnection Agreement and Seller's rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among two or more of Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing interconnection capacity for the Facility in an amount not less than the Guaranteed Capacity, and (ii) continue to provide for separate metering and a separate CAISO Resource ID for the Facility.

6.4 **Operating Committee and Operating Procedures.**

Buyer and Seller shall each appoint one representative and one alternate representative to act as the Operating Committee in matters relating to the Parties' performance obligations under this Agreement and to develop operating arrangements for the generation, delivery and receipt of any output from the Facility.

The Operating Committee may develop mutually agreeable written Operating Procedures consistent with the requirements of this Agreement to address: matters of day-to-day communications; key personnel; operations-center interface; metering, telemetering, telecommunications and data acquisition procedures; operations and maintenance scheduling and reporting; reports; operations log; testing procedures; and such other matters as may be mutually agreed upon by the Parties. The Operating Committee shall develop mutually agreeable written Operating Procedures consistent with the requirements of this Agreement.

The Operating Committee shall have authority to act in all technical and day-to-day operational matters relating to performance of this Agreement and to attempt to resolve disputes or potential disputes; provided, however, that except to the extent explicitly provided for in this Agreement, such representatives and the Operating Committee shall not have the authority to amend or modify any provision of this Agreement.

ARTICLE 7 METERING

7.1 **Metering.** The Facility shall be separately metered from any other generation or storage facility. Seller shall measure the amount of Facility Energy using the Facility Meter, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. All meters

will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval. Metering will be consistent with the Metering Diagram set forth as Exhibit P, and a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO resource IDs, provided that any out-of-pocket costs associated with obtaining such additional CAISO resource IDs incurred by Seller shall be reimbursed by Buyer. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** If Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. Seller may elect to install and maintain, at its own expense, backup metering devices.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer within ten (10) days after the end of the prior monthly delivery period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Energy produced by the Facility as read by the Facility Meter, the amount of Replacement RA delivered to Buyer (if any), calculation of Facility Energy, Deemed Delivered Energy and 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; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably agreed by the Parties within sixty (60) days following the Effective Date, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, promptly provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices. The invoice shall be delivered by electronic mail.

8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) Days after receipt of the invoice, or the end of the prior monthly delivery period, whichever is later. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on the 3-Month prime rate (or any equivalent successor rate accepted by a majority of major financial institutions) published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days’ Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated or payments made pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller’s performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

8.4 **Invoice Adjustments.** Invoice adjustments shall be made if (a) there have been good faith inaccuracies in invoicing or payment that are not otherwise disputed under Section 8.5, (b) an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO or (c) there have been meter inaccuracies; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies except to the extent that such meter adjustments are accepted by CAISO for revenue purposes. 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, payment or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution

along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned 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 may discharge undisputed mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due after netting any such undisputed amount shall be paid by the Party who owes it.

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

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

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

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

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

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

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

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

ARTICLE 9 NOTICES

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

9.2 **Acceptable Means of Delivering Notice.** Except as expressly provided otherwise, each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered if sent by electronic mail at the time indicated by the time stamp upon delivery, except that if received after 5:00 PM Pacific Prevailing Time, it shall be deemed received on the next Business Day. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic mail, or any other mutually-acceptable form of electronic communication, and shall be considered delivered upon successful completion of such transmission. Notices sent pursuant to Article 11 (Event of Default), Article 15 (Dispute Resolution), and Article 16 (Indemnification) must concurrently be sent by hand delivery or overnight carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees.

ARTICLE 10 FORCE MAJEURE

10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether direct or indirect) and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include an epidemic or pandemic, including in connection with the impacts of and efforts to combat or mitigate the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof (**“COVID-19”**).

(d) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than

under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

(e) Notwithstanding any provision to the contrary, a Force Majeure Event does not excuse Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date except to the extent such Force Majeure Event is allowed pursuant to a Development Cure Period.

10.2 Termination Following Force Majeure Event. If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party. 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 Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Construction Start Date or the Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(ii) or (iv) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

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

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 diligently seeking a cure);

(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 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 4.8) 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 diligently seeking a cure);

(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 appropriate; or

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

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

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

(ii) the failure by Seller to achieve Commercial Operation within ninety (90) days following the Guaranteed Commercial Operation Date;

(iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.4 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

(iv) the failure by Seller to achieve the Construction Start Date within one hundred twenty (120) days of the Guaranteed Construction Start Date;

(v) Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the Product, or any portion thereof, during the Delivery Term to any party other than Buyer except as expressly permitted under this Agreement;

(vi) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the Expected Energy amount for such period, and Seller fails to either (x) demonstrate to Buyer's reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum; or (y) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) 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 a Licensed Professional Engineer 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 one hundred eighty (180) days;

(vii) if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least fifty percent (50%) of the Expected Energy amount in any Contract Year;

(viii) if, in any Performance Measurement Period during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount;

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

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

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

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

(C) the Guarantor becomes Bankrupt;

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

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

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

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least BBB by S&P or Baa2 by Moody's;

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

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

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

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

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

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

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

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

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

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

(d) to suspend performance; or

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

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

11.3 **Termination Payment**. The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, 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 a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

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

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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

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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a [Type of entity], 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. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary [*limited liability company*]/[*corporate*] action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

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

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

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.

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.

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

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.

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

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 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 **Prevailing Wage.** Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any ("**Prevailing Wage Requirement**"). Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any California labor laws. Buyer agrees that Seller's obligations under this Section 13.4 will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

13.5 **Reserved.**

13.6 **Workforce Development and Supplier Diversity.** Seller shall perform the obligations related to workforce development and community investment set forth in Exhibit Q. In addition, Seller agrees to, or cause its contractors to, complete an annual supplier diversity and labor practices questionnaire provided by Buyer and, upon request of Buyer, 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 below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party. Any purported assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Buyer will have no obligation to provide any consent, or enter into any agreement, that materially and adversely affects any of Buyer's rights, benefits, risks or obligations under this Agreement, or to modify the Agreement, except as set forth below. Seller shall be responsible for Buyer's reasonable third party costs, including reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement.

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, upon request of Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement shall include the following provisions:

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

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

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

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

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

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

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to

require the report with respect to a particular Event of Default after that Event of Default has been cured;

Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement, which shall not exceed a maximum of sixty (60) days (or one hundred twenty (120) days in the event of a bankruptcy of Seller, or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

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

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

If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer, and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings), or
- (ii) Not assume this Agreement;

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

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within thirty (30) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or

termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

14.3 **Permitted Assignment by Seller.** Except as may be precluded by, or would cause the Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller.

14.4 **Permitted Assignment by Buyer.** Buyer may make a limited assignment in connection with a municipal prepayment transaction to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer ("**Limited Assignee**") of Buyer's right to receive Product and Buyer's obligation to make payments to the Seller. The limited assignment shall be expressly subject to the Limited Assignee's timely payment of amounts due under the PPA. Buyer may make such assignment upon not less than thirty (30) days' notice by delivering a written request for such assignment in the form attached to the PPA. Subject to the foregoing, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer.

14.5 **Purchase Option.** Seller hereby grants Buyer the exclusive right, but not the obligation, to purchase the Facility at a price equal to the fair market value (determined in a commercially reasonable manner by a third-party independent evaluator qualified and experienced in the appraisal of facilities similar to the Facility mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator qualified and experienced in the appraisal of facilities similar to the Facility mutually agreed by two independent evaluators, with each independent evaluator selected by each of the Parties), and in either case, at Seller's sole cost) of the Facility (the "**Purchase Option**"). The Purchase Option may be exercised by Buyer by delivering notice to Seller at least twelve (12) months prior to the end of the Delivery Term, with closing to occur on the day after the last day of the Delivery Term.

14.6 **Right of First Refusal as to Future Phases, Additional Projects, Addition of Storage Capacity.**

(a) For the duration of the Delivery Term, Seller hereby grants Buyer with the exclusive right (such right, the "**Right of First Refusal**" or "**ROFR**") to the purchase of (i) all of the output of any additional phases of the Facility and (ii) any separate renewable energy or energy storage projects that are currently under development by, or will be developed by, Seller or

Affiliates of Seller, and that will use or share infrastructure, land, equipment (including the ability to jointly procure equipment), or other facilities (each such future phase or separate renewable energy or energy storage project, an “**Expansion Project**”). The requirements of this Section 14.6 shall apply to each Expansion Project.

(b) Prior to offering the output of the Expansion Project for sale to any third party, Seller shall present a binding commercial offer for the output of the Expansion Project (the “**ROFR Offer**”), for Buyer to accept, subject only to finalization and execution of a power purchase agreement for the Expansion Project (the “**Project PPA**” or the “**PPA**”) incorporating the Material Terms of such ROFR Offer, and any additional terms the Parties agree to include, including credit requirements, and to the extent not inconsistent with the foregoing, the terms and conditions of this Agreement, as applicable. The ROFR Offer provided by Seller shall specifically identify the material financial and other terms and conditions of such ROFR Offer (the “**Material Terms**”).

(c) At any time prior to the expiration of the forty-five (45) day period following Buyer's receipt of the ROFR Offer (the “**Exercise Period**”), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent executed by Buyer. If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 14.6, at any time following the expiration of the Exercise Period, Seller may enter into a Project PPA for the Expansion Project with a third party (the “**Third-Party Transaction**”); provided, that if such Third-Party Transaction is not consummated within twelve months of the date of the ROFR Offer Notice, or if Seller offers the Expansion Project on terms more favorable than the Material Terms, the terms and conditions of this Section 14.6 will again apply, Seller shall not enter into any Third-Party Transaction for the Expansion Project without affording Buyer the right of first refusal on the terms and conditions of this Section 14.6.

In addition to Buyer's Right of First Refusal, upon request of Buyer, Seller shall provide a written proposal to Buyer to add new storage technologies to the Facility, at a price not to exceed the lesser of (i) current market prices or (ii) Seller's direct cost to add such capacity, plus ten percent (10%).]²

ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or the courts of the State of California sitting in the County of Alameda, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement,

² NTD: Buyer and Seller to discuss.

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

ARTICLE 16 INDEMNIFICATION

16.1 Indemnity.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, consultants, employees and representatives (the "**Indemnified Party**") from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees (collectively, "**Indemnifiable Losses**") arising out of or relating to or in any way connected with the Indemnifying Party's or its Affiliates' negligence, willful misconduct or breach of the Agreement.

(b) In those circumstances in which Seller acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party against Indemnifiable Losses arising out of or relating to or in any way connected with the Indemnifying Party's or its Affiliates' (i) ownership, development, construction, operation or maintenance of the Facility, including the Site(s); (ii) breach of this Agreement or other agreements related to the development, construction, ownership, operation or maintenance of the Facility or Site; or (iii) delivery of Energy up to and at the Delivery Point.

(c) In those circumstances in which Buyer acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party from and against Indemnifiable Losses arising out of or relating to or in any way connected with Buyer's receipt of Energy after the Delivery Point.

16.2 Claim Notice.

(a) **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 the 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 the the Indemnified Party regarding the Indemnifiable Loss.

(b) **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.2 will not affect the rights or obligations of the Indemnified Party except and only to the extent that, as a result of such failure, the Indemnifying Party 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.

16.3 **Defense of Claims.** If, within ten (10) days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 16.2(a), the Indemnified Party receives Notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the 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 the Indemnified Party, the 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 the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the 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 the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.4 **Amounts Owed.** Except as otherwise provided in this Article 18, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s actual loss net of any insurance proceeds received by the Indemnified Party following a commercially reasonable effort by the Indemnified Party to obtain such insurance proceeds.

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

ARTICLE 17 INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars (\$2,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars (\$2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars (\$5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

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

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.

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

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

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

Subcontractor Insurance. Seller shall require all of its Major Subcontractors to carry at least the same levels of insurance as Seller, provided Major Subcontractors shall not be required to carry construction all-risk form property insurance. All Major Subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All Major Subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18 CONFIDENTIAL INFORMATION

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

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any Law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator 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 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 herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, advisors, actual or potential investors, consultants, contractors, or trustees, so long as the Person (other than a Person that has an ethical duty to Seller) to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions no less stringent than those in this Article 18 (subject to customary survival terms). Seller shall provide written notice to Buyer of any disclosure of Confidential Information pursuant to this Section 18.4, including the identity of the party receiving such Confidential Information.

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.

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

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

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated

as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender or Indemnified Party.

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

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

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

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

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

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

19.11 **Forward Contract.** The Parties 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.

19.12 **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.

[SELLER]

By: _____
Name: _____
Title: _____

**EAST BAY COMMUNITY ENERGY
AUTHORITY, a California joint powers
authority**

By: _____
Name: _____
Title: _____

Approved as to form:

By: _____
Name: _____
Title: _____

EXHIBIT A
FACILITY DESCRIPTION

Site Name:

Site includes all or some of the following APNs: (To be filled in prior to execution)

County:

CEQA Lead Agency:

Type of Facility:

Operating Characteristics of Facility:

Guaranteed Capacity: [] MW (AC)

Maximum Capacity: [] MW

Delivery Point: PNode

Facility Meter: See Exhibit P.

P-node: [If not available at the Effective Date, the PNode shall be updated by mutual agreement of Buyer and Seller prior to the initial delivery of Test Energy hereunder to reflect the PNode corresponding to the Facility's point of interconnection with the CAISO Grid.]

Participating Transmission Owner:

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. Major Project Development Milestones.

- a. **“Construction Start”** will occur upon Seller’s acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, has engaged all major contractors and ordered all major equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract or an equipment supply agreement and a balance of plant contract and issued thereunder a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

- b. **“Major Project Development Milestone”** means either the Guaranteed Construction Start Date or the Executed Interconnection Agreement Milestone. If Construction Start is not achieved by the Guaranteed Construction Start Date, or the Interconnection Agreement is not signed by Seller and the PTO on or before the Executed Interconnection Agreement Milestone, Seller shall pay Construction Delay Damages to Buyer for each day for which a Major Project Development Milestone has not been completed. Construction Delay Damages will be calculated separately and accrue independently for each Major Project Development Milestone. Construction Delay Damages shall be payable to Buyer by Seller until Seller completes both Major Project Development Milestone. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Construction Delay Damages set forth in such invoice. Construction Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Construction Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Major Project Development Milestones, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be either (i) the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved, or (ii) if Seller provides Buyer at least ninety (90) days’ advance Notice that the Facility will achieve Commercial Operation before the Expected Commercial Operation Date, the date on which Commercial Operation is achieved; provided, that such earlier date of Commercial Operation shall not, absent Buyer’s express written consent, occur earlier than one hundred twenty (120) days before the Expected Commercial Operation Date.
- a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Seller shall pay COD Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date and shall be paid to Buyer in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance. The Parties agree that Buyer’s receipt of COD Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s failure to achieve 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 receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.
3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date, as it may be extended as provided herein, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis due to a

Force Majeure Event for a period of up to one-hundred twenty (120) days on a cumulative basis (the “**Development Cure Period**”). Notwithstanding anything to the contrary, no extension shall be given under the Development Cure Period for a Force Majeure Event if the delay was due to Seller’s failure to take commercially reasonable actions to meet its requirements and deadlines or does not otherwise satisfy the requirements of a Force Majeure Event, including the notice and documentation requirements under Section 10.3.

5. **Failure to Reach Guaranteed Capacity.**

- a. *Guaranteed Capacity.* If, at Commercial Operation, the Installed Capacity is less than one hundred percent (100%) of the Guaranteed Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars (\$250,000) for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

EXHIBIT C
COMPENSATION

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

- (a) Test Energy. Test Energy is compensated in accordance with Section 3.6.
- (b) Curtailed Payments. Notwithstanding any provision in this Agreement to the contrary, Seller shall receive no compensation from Buyer for (i) Facility Energy or Deemed Delivered Energy during any Curtailment Period (ii) Deemed Delivered Energy in amounts below the Curtailment Cap.
- (c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Capacity and the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh (“**Negative LMP Costs**”).
- (d) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Except as otherwise provided herein, Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

[If Seller is not providing a shaped product:

- (e) Contract Price. For each MWh of Facility Energy and Deemed Delivered Energy, if any, up to one hundred five percent (105%) of the Expected Energy for such Contract Year, Buyer shall pay the Contract Price;
- (f) Excess Contract Year Deliveries Over 105%. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy equals or exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval or (b) seventy-five percent (75%) of the Contract Price, but not less than \$0.00/MWh.
- (g) PTC Amount. During the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving the PTC, Buyer shall also pay the

PTC Amount for Deemed Delivered Energy until the sum of Delivered Energy plus the amount of Deemed Delivered Energy exceeds one hundred five percent (105%) of the Expected Energy for such Contract Year.

(h) Excess Contract Year Deliveries Over 115%. If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy equals or exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy shall be \$0.00/MWh.]

[If Seller is providing a shaped product:

(i) Contract Price. For each MWh of Facility Energy and Deemed Delivered Energy, if any, up to the Annual Contract Quantity, Buyer shall pay the Contract Price.

(j) PTC Amount. If applicable, during the period (not to exceed a total of one hundred twenty (120) consecutive months) in which Seller is receiving the PTC, Buyer shall also pay the PTC Amount for Deemed Delivered Energy until the sum of Delivered Energy plus the amount of Deemed Delivered Energy exceeds the Annual Contract Quantity.

(k) Excess Contract Year Deliveries. During any Contract Year, if the amount of Facility Energy for such Contract Year exceeds the Annual Contract Quantity, then for the amount of Facility Energy that would exceed the Annual Contract Quantity (the “**Excess MWh**”), (i) Buyer shall have no obligation to purchase or receive such Excess MWh, and (ii) Seller shall have the right to sell all or any portion of the Product associated with the Excess MWh to one or more third parties and retain all resulting revenue. “**Annual Contract Quantity**” means the sum of all Hourly Settlement Quantity amounts for the applicable Contract Year.]

*[If applicable, the Contract Price shall be subject to a Settlement Point adjustment. The “**Settlement Point**” shall be [the pNode/ NP-15 (TH_NP15_GEN-APND)].*

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

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

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions associated with delivery of Resource Adequacy Benefits from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)); provided 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, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this

Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

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

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

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

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

EXHIBIT E
PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are likely to potentially affect Seller's Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months
11. Prevailing wage reports as required by Law.
12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
13. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
14. Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
15. Any other documentation reasonably requested by Buyer.

EXHIBIT F-1

AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
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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

AVAILABLE CAPACITY

[Available Generating Capacity, MWh Per Hour] – [Insert Month]

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

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

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

$$[(A - B) * (C - D)]$$

where:

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

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

C = Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (i) \$50/MWh or (ii) the market value of Replacement Green Attributes generated by the Facility during the Performance Measurement Period, as determined by Buyer in a commercially reasonable manner.

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

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

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after a Contract Year which ends each Performance Measurement Period, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer within thirty (30) days of such Notice.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“**Certification**”) of Commercial Operation is delivered by [*licensed professional engineer*] (“**Engineer**”) to East Bay Community Energy Authority, 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 Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System;
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
4. 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.
5. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the PPA and/or the CAISO.
6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.
9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility.

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this day of , 20.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [*LICENSED PROFESSIONAL ENGINEER*] (“**Engineer**”) to East Bay Community Energy Authority, 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 Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) 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 (the “**Installed Capacity**”);

EXECUTED by [*LICENSED PROFESSIONAL ENGINEER*]

this [] day of [], 20 [].

[*LICENSED PROFESSIONAL ENGINEER*]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“**Certification**”) is delivered by [SELLER NAME] (“**Seller**”) to East Bay Community Energy Authority, 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 Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

- (1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
- (2) the Construction Start Date occurred on [DATE] (the “**Construction Start Date**”); and
- (3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

_____.

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

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXXXX]
Expiry Date:

Beneficiary:

East Bay Community Energy Authority
1999 Harrison Street, Suite 800
Oakland, CA 94612

Ladies and Gentlemen:

By the order of _____ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of East Bay Community Energy Authority, 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 _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“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 [XXX-XXX-XXXX]] confirmed by [email to [bank email address]]. 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 all documents presented under and in compliance with

the terms of this Letter of Credit, that such drafts 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 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 subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: East Bay Community Energy Authority, Chief Operating Officer, 1999 Harrison Street, Suite 800, Oakland, CA 94612. 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]

(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 East Bay Community Energy Authority, a California joint powers authority, 1999 Harrison Street, Suite 800, Oakland, CA 94612, as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of _____ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of _____, 20__ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$_____ because a Seller Event of Default (as such term is defined in the Agreement) has occurred or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

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

3. The undersigned is a duly authorized representative of East Bay Community Energy 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 East Bay Community Energy Authority by wire transfer in immediately available funds to the following account:

[Specify account information]

East Bay Community Energy Authority

Name and Title of Authorized Representative

Date _____

EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “**Guaranty**”) is entered into as of [DATE] (the “Effective Date”) by and between [REDACTED], a [State of formation and type of entity] (“Guarantor”), and East Bay Community Energy Authority, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals

- A. Buyer and [SELLER ENTITY], a [State of formation and type of entity] (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [DATE].
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

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

2. **Demand Notice.** For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and

conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "Demand Notice"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "Payment Demand") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

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

- (i) the extension of time for the payment of any Guaranteed Amount, or
- (ii) any amendment, modification or other alteration of the PPA, or
- (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity

or enforceability, including of the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

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

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

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

- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

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

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

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

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at
Attn:
Fax:

If delivered to Guarantor, to it at
Attn:
Fax:

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

9. **Miscellaneous.** This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and

understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

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

GUARANTOR:

[_____]

By: _____

Printed Name: _____

Title: _____

BUYER:

[_____]

By: _____

Printed Name: _____

Title: _____

By: _____

Printed Name: _____

Title: _____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “**Notice**”) is delivered by [SELLER ENTITY] (“**Seller**”) to East Bay Community Energy Authority, 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.

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT N
NOTICES

<div style="background-color: #cccccc; width: 150px; height: 15px; margin-bottom: 5px;"></div> ("Seller")	EAST BAY COMMUNITY ENERGY AUTHORITY ("Buyer")
All Notices: Street: City: Attn: Phone: Email:	All Notices: 1999 Harrison Street, Suite 800 Oakland, CA 94612 Attn: Power Resources Phone: (510) 809-7458 Email: powernotices@ebce.org
Reference Numbers: Duns: Federal Tax ID Number:	Reference Numbers: Duns: 08-110-3072 Federal Tax ID Number: 82-2262960
Invoices: Attn: Phone: Email:	Invoices: Attn: Power Resources Phone: (510) 827-2051 Email: ap@ebce.org ; powersettlements@ebce.org
Scheduling: Attn: Phone: Email:	Scheduling: Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 Email: powerscheduling@ebce.org
Confirmations: Attn: Phone: Email:	Confirmations: Attn: Power Resources Phone: (510) 361-6247 Email: powernotices@ebce.org ; powersettlements@ebce.org
Payments: Attn: Phone: Email:	Payments: Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: AP@ebce.org ;
Wire Transfer: BNK: ABA: ACCT:	Wire Transfer: BNK: River City Bank ABA: 121133416 ACCT: *****7551
Credit and Collections: Attn: Phone: Email:	Credit and Collections: Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: powersettlements@ebce.org ; powernotices@ebce.org ; ap@ebce.org

<div style="background-color: #cccccc; width: 150px; height: 15px; margin-bottom: 5px;"></div> ("Seller")	EAST BAY COMMUNITY ENERGY AUTHORITY ("Buyer")
With additional Notices of an Event of Default to: Attn: Phone: Facsimile: Email:	With additional Notices of an Event of Default to: Attn: Power Resources 1999 Harrison Street, Suite 800 Oakland, CA 94612 Phone: (510) 809-7458 Email: powernotices@ebce.org ; legal@ebce.org With an additional copy to: Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: steve@hallenergylaw.com

EXHIBIT O
OPERATING RESTRICTIONS

EXHIBIT P
METERING DIAGRAM

EXHIBIT Q
WORKFORCE DEVELOPMENT



2020 RPS & Storage Resource RFO - Project Approvals

PRESENTED BY: Howard Chang

DATE: January 19, 2022

Solicitation Overview

Goals & Objectives

- Secure a portfolio of contracts to provide EBCE customers with affordable renewable and clean energy sources
- Meet a significant percent of SB350 long-term contracting requirements, equal to 65% of RPS obligations
- Meet IRP Near- and Mid-Term Resource Adequacy Reliability Procurement mandates
- Create new renewable energy projects to deliver PCC1 REC's
- Contract low-cost energy hedges to complement existing portfolio

Actions

- Issued a broad, open, competitive solicitation to ensure wide array of opportunities considered
- Evaluated exhaustive combinations of projects to achieve desired volume targets, while optimizing project risk, location, workforce development, economics, and other characteristics
- Encouraged RFO participants to be creative and provide proposal variations on individual projects and include battery storage

- **Robust project offering with over 70 unique project sites and over 400 contract variations**
- **All 6 products that were solicited were offered**
- **Offers included solar, wind, geothermal, hydro, and storage**
- **Projects based in 6 different states, predominantly CA**
 - **Only 2 projects in EBCE service territory. 1 project is speculative without site control, the other project in Tracy is shortlisted.*

Evaluation Process

- **Evaluation Rubric scored 3 areas:**
 - Counterparty Execution, Offer Competitiveness, and Project Development Status
 - Multiple items under each area
- **Two reviewers were assigned to each project.**
- **Staff reviewed all submitted information and provided scores for all categories except for Term Sheet Markups and NPV.**
 - Each item has 10 point max. at its own weighting.
 - Term Sheet Markups were scored by one assigned reviewer.
 - NPV scores were directly incorporated into overall project score with a weighting of 45%.
 - The Net Present Value was calculated based on simulations on 3 different forward curves
 - For each forward curve we took a weighted average of the P5 (50%), P50 (25%), and P95 (25%) and then took a simple average across the 3 curves
 - We normalized this number on a \$/MW basis and the projects were then assigned a 0-10 score based on the NPV distribution
- **Scoring and rubric were consistent with the selection process for the 2018 California Renewables RFP.**

Projects Proposed for Execution

Seeking approval for one contract: one fixed price, shaped energy RPS Power Purchase Agreement (PPA) submitted into EBCE's 2020 Renewable Energy & Storage Resource RFO

- Geothermal PPA, facility sited in Nevada. 15-year term with option to extend to 20 years. Structured as a fixed price energy agreement. Developed by Fervo Energy. Expected to be operational in May, 2026.
 - Project will meet CPUC mandate for “long lead time resources”, as required under CPUC D.21-06-035

Fervo Project Details



- Selected via the 2020 Renewable Energy & Storage RFO
- 40 MW geothermal project based in Churchill County, Nevada
 - Total project size is anticipated to be 115 MW
- 15-year contract; EBCE has option but not obligation to extend to 20 years
- Expected Commercial Operation Date is May 1, 2026
- Project has an executed facility study and system interconnection agreements and site control.
- Fervo will make a financial or time contribution to EBCE's Community Investment fund as part of this contract.
- Committed toward utilizing union labor where possible and prevailing wages in Nevada.
- The contracting entity under Fervo is FEC Nevada I, LLC.

Fervo Company Overview



- Fervo Energy is a developer of geothermal energy resources.
- Founded in 2017, Fervo's team is comprised of reservoir engineers, geophysicists, data scientist, and renewable power developers.
- Fervo has combined advanced drilling techniques, fiber-optic sensing, and cloud-based analytics to unlock new geothermal resources.
- FEC Nevada I represents the first resource Fervo will develop and operationalize, however the Fervo team has developed over 1 GW of generation projects including the Hudson Ranch Geothermal Plant, completed in 2012.

RPS Portfolio Summary

Contracted RPS Portfolio:							
Developer	Technology	Nameplate MW	Storage MW	County	Actual or Expected COD	Term	Settlement
Clearway Energy Group	Solar	112	n/a	Kern	12/22/2020	15	DLAP
Salka Energy Group	Wind	57.5	n/a	Alameda	6/30/2021	20	Pnode
Pattern Energy	Wind	100	n/a	Torrance & Guadalupe, NM	12/22/2021	10	Pnode
Idemitsu Solar	Solar	55.8	n/a	Tulare	2/1/2022	15	DLAP
EDP Renewables North America	Solar+Storage	100	30MW/120MWh	Fresno	12/31/2022	20	Pnode
sPower / AES	Solar+Storage	125	80MW/160MWh	Kern	12/31/2022	20	Pnode
Terra-Gen	Solar+Virtual Storage	100	TBD	Kern	12/31/2022	15	Pnode
Intersect	Solar+Storage	125	125MW	Riverside	1/1/2024	15	Index

Next Steps

- Complete negotiations of Fervo contract; execute by early-February
- Assess projects as they hit key milestones and mature further.
- Update filing to CPUC on status of 2023-2026 Medi-Term Reliability due August 1, 2022.
- Release next RFO for Long-Term Resources in Q1 2022.



Staff Report Item 15

TO: East Bay Community Energy Board of Directors

FROM: Marie Fontenot, Senior Director of Power Resources

SUBJECT: Authorize CEO to Negotiate and Execute a Contract extension with NCPA to Provide Wholesale Energy Services

DATE: January 19, 2022

Recommendation

Adopt a Resolution authorizing the CEO to negotiate and execute a contract extension with Northern California Power Authority (NCPA) for up to a five-year term.

Background and Discussion

EBCE originally entered into a contract with NCPA to provide Wholesale Energy Services on March 23, 2018. The contract was for a term of two (2) years, plus a one (1) year extension. EBCE issued an RFP for these services on August 30, 2021 and received responses on September 13, 2021 from: 1) Boston Energy Trading and Marketing, 2) NCPA, 3) The Energy Authority (TEA), 4) Tenaska Power Services, and 5) Z Global. Two EBCE staff members, the Senior Director of Power Resources and the Senior Manager of Power Resource Contracts and Settlements, reviewed all five (5) proposals and submitted follow up questions to respondents.

Staff identified NCPA and Tenaska as the proposals best aligned with EBCE's needs. EBCE staff then convened an interview panel and interviewed Tenaska. The panel was comprised of six staff (the COO, Senior Director of Power Resources, Senior Manager of Power Resources Contracts and Settlements, Manager of Power Resources, Finance Manager, and Vice President of Data and Analytics). Staff's three years of working experience with NCPA obviated the need for interviews with NCPA as a

candidate. After the interview, the Senior Director of Power Resources and Senior Manager of Power Resources Contracts and Settlements finalized the scoring matrix.

Experience & Qualifications (0 - 25 points)
Pricing (0 - 25 points)
Methodology/Approach (0-40 Points)
References (0 - 10 points)

After awarding NCPA the highest score, Staff recommends that EBCE extend the contract for NCPA to provide Wholesale Energy Services for a minimum period of one year with the ability to extend the contract for four additional years, for a total length of up to five years. NCPA’s services shall continue to include:

- CAISO Scheduling Coordinator Services, including real-time dispatch and monitoring
- Regulatory Reporting Services
- Congestion Revenue Rights Services
- Portfolio Management Support
- Middle Office, Risk, and Credit Support Services
- Deal Capture and Reporting Services

Fiscal Impact

The annual base cost of the contract will be \$693,000. A 2% escalation factor will be applied for each consecutive year.

Committee Recommendation

Not applicable.

Attachments

1. **Resolution Authorizing CEO to Negotiate and Execute a Contract Extension with Northern California Power Authority for up to a Five-Year Term**

RESOLUTION NO. R-2022-

A RESOLUTION OF THE BOARD OF DIRECTORS

**OF THE EAST BAY COMMUNITY ENERGY AUTHORITY AUTHORIZING CEO TO
NEGOTIATE AND EXECUTE A CONTRACT EXTENSION WITH NORTHERN CALIFORNIA
POWER AUTHORITY FOR UP TO A FIVE YEAR TERM**

WHEREAS The East Bay Community Energy Authority (“EBCE”) was formed as a community choice aggregation agency (“CCA”) on December 1, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 *et seq.*, among the County of Alameda, and the Cities of Albany, Berkeley, Dublin, Emeryville, Fremont, Hayward, Livermore, Piedmont, Oakland, San Leandro, and Union City to study, promote, develop, conduct, operate, and manage energy-related climate change programs in all of the member jurisdictions. The cities of Newark and Pleasanton, located in Alameda County, along with the City of Tracy, located in San Joaquin County, were added as members of EBCE and parties to the JPA in March of 2020.

WHEREAS On Mach 23, 2018, EBCE entered into an agreement with Northern California Power Authority (NCPA) for the provision of Wholesale Energy Services;

WHEREAS NCPA has provided critical Wholesale Energy Services necessary to EBCE’s day to day operations since 2018;

WHEREAS EBCE is obliged to survey the market periodically to ensure its customers receive high quality services at reasonable cost;

WHEREAS EBCE released an RFP on August 30, 2021 and received proposals from five respondents, including NCPA;

WHEREAS NCPA was selected through the RFP process as providing the most comprehensive support at a reasonable price;

WHEREAS, EBCE has been satisfied with NCPA’s services and wishes to continue to utilize NCPA for Wholesale Energy Services.

NOW, THEREFORE, THE BOARD OF DIRECTORS OF THE EAST BAY COMMUNITY ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:

Section 1. The Board hereby authorizes the Chief Executive Officer to enter negotiations and execute, subject to the approval of General Counsel, an Amendment to the Agreement with Northern California Power Authority for Wholesale Energy Services (Agreement), to extend the term of the Agreement for up to five years and to provide additional compensation of up to \$3,606,400, for a total compensation amount not to exceed \$4,000,000.

ADOPTED AND APPROVED this 19th day of January, 2022.

Dianne Martinez, Chair

ATTEST:

Clerk of the Board