



## **Board of Directors Meeting**

Wednesday, November 15, 2023

6:00 pm

### In Person

The Lake Merritt Room  
Cal State East Bay - the Oakland Center  
In the Transpacific Centre  
1000 Broadway, Suite 109  
Oakland, CA 94607

### Or from the following remote locations:

Wells Fargo Building - 2140 Shattuck Avenue, Floor 6, Berkeley, CA 94704  
Dublin City Hall - 100 Civic Plaza, Dublin, CA 94568  
4260 Halleck St., Emeryville, CA 94608  
Conference Room 4A - Hayward City Hall 777 B Street, Hayward CA 94541  
1755 Harvest Landing Lane, Tracy, CA 95376  
Omni Hotel Lobby - 100 CNN Center, Atlanta, GA 30303

### Via Zoom:

<https://ebce-org.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

*Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least 2 working days before the meeting at (510) 906-0491 or [cob@avaenergy.org](mailto:cob@avaenergy.org).*

*If you have anything that you wish to be distributed to the Board of Directors, 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 Ava Community Energy-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. As with all public comment, members of the public who wish to address the Board are customarily 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**

- 4. Approval of Minutes from October 18, 2023**
- 5. Contracts Entered into (Informational Item)**
- 6. Consulting Service Agreement for NV5, Inc.**  
Seeking Board approval for CSA contract for professional Engineering consulting services from NV5
- 7. Longroad Sun Pond Contract Approval**  
Seeking Board Approval to execute contract with Sun Pond LLC; contract was originally approved in Feb 2023

### **REGULAR AGENDA**

- 8. CEO Report**
- 9. CAC Chair Report**
- 10. Audited Financial Statements for FY 2022-2023 (Informational Item)**  
Present and review the results of the FY 2022-23 audited financial statements
- 11. FY 2022-2023 Budget Surplus and Reserve Allocation (Action Item)**  
Confirm and approval allocation of budget surplus
- 12. Levine Act (Informational Item)**  
Summary of Levine Act
- 13. SunZia Project Expansion (Action Item)**  
Seeking Board Approval to increase the size of the SunZia project agreement
- 14. Board Member and Staff Announcements including requests to place items on future Board agendas**
- 15. Executive Committee Closed Session**
  - Public Employee Performance Evaluation pursuant to Government Code § 54957:  
Chief Executive Officer
- 16. General Report Out of Closed Session**
- 17. Adjourn**

The next Board of Directors meeting will be held on Wednesday, December 20, 2023 at 6:00 pm.





## **Draft Minutes**

### **Board of Directors Meeting**

Wednesday, October 18, 2023

6:00 pm

#### In Person

The Lake Merritt Room  
Cal State East Bay - the Oakland Center  
In the Transpacific Centre  
1000 Broadway, Suite 109  
Oakland, CA 94607

#### Or from the following locations:

- Wells Fargo Building - 2140 Shattuck Avenue, Floor 6, Berkeley, CA 94704
- Conference Room, Irvington Community Center, 41885 Blacow Rd., Fremont, CA 94538
- 1755 Harvest Landing Lane, Tracy, CA 95376
- Centennial Plaza Resort – Lobby, 200 E Beach Blvd. Gulfport, MS 39507

#### Via Zoom:

<https://ebce-org.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)

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#### **1. Welcome & Roll Call**

Present: Directors: Tiedemann (Albany), Bauters (Emeryville), Cox (Fremont), Roche (Hayward), Barrientos (Livermore), Jorgens (Newark), Kalb (Oakland), Andersen (Piedmont), Gonzalez (San Leandro), Wright (Stockton), Bedolla (Tracy), Patino (Union City), Hernandez (Community Advisory Committee), Vice-Chair Balch (Pleasanton) and Chair Marquez (Alameda County)

Excused: Directors: Bartlett (Berkeley) and Hu (Dublin)

*Member Kalb (Oakland) joined the meeting at 6:52pm*

**CAC Vice-Chair Hernandez served as the alternate for CAC Chair Eldred (Community Advisory Committee).**

## **2. Pledge of Allegiance**

**Chair Marquez led the body in the pledge of allegiance.**

## **3. Public Comment**

*This item is reserved for persons wishing to address the Board on any -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. As with all public comment, members of the public who wish to address the Board are customarily 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.*

**Public Comment: (4:39) Jessica Tovar**, representing the Local Clean Energy Alliance, addressed the board regarding the Local Development Business Plan (LDBP). She emphasized the LDBP's goal to deliver community benefits, such as building energy assets, promoting electrification, community resilience, energy efficiency, and reducing energy waste. Jessica Tovar highlighted the significance of creating clean energy jobs and reducing local pollution. She noted that at the five-year milestone of the LDBP, it's essential to assess the project's outcomes, like job creation and community asset development, to evaluate and update the plan effectively.

**Public Comment: (6:30) Dan Huynh**, representing the Local Clean Energy Alliance, advocated for a focus on long-term sustainability through renewable and clean energy sources to minimize environmental impact and ensure energy systems that can serve the community over the long term. Dan Huynh emphasized the need for greater community engagement in energy planning, incorporating input from residents and businesses. Additionally, he argued for the funding of microgrids and resilience hubs, citing their critical role in maintaining reliable local energy during grid failures and disasters. Dan Huynh recommended that resilience hubs be situated in community-friendly locations like schools, libraries, and recreational centers, rather than police or fire stations, to foster a sense of safety and comfort. He stressed the importance of these hubs for remote and underserved areas to improve access to reliable electricity and enhance living standards.

## **CONSENT AGENDA**

### **4. Approval of Minutes from September 20, 2023**

### **5. Contracts Entered into (Informational Item)**

### **6. Treasurer's Report**

Report on EBCE's cash position as of Sept 30, 2023

**7. Department of Energy Conflict of Interest Policy**

Adoption of DOE conflict of interest policy

**8. CSA with Project6**

Direct CEO to negotiate agreement with Project6 for Web Development services

**9. CQuant Contract Renewal**

Renewal of cQuant CSA

**Member Bauters (Emeryville) motioned to approve the Consent Agenda. Member Wright (Stockton) seconded the item, which passed 13/0.**

**Excused: Directors: Bartlett (Berkeley), Hu (Dublin) and Kalb (Oakland).**

**REGULAR AGENDA**

**10. CEO Report**

**(10:04) CEO Chaset** announced the transition from East Bay Community Energy to Ava Community Energy. He highlighted that this meeting would be the last instance of using the old name and logo. The change will be reflected on the website, materials, and correspondences, although existing e-mails and the website URL will remain functional for continuity.

CEO Chaset also shared the timeline for the rebranding, with the website getting updated on Tuesday, October 24, 2023 and social media handles changing to "Powered with Ava." Email addresses, call center scripts, and IVR will also be updated to reflect the new Ava Community Energy branding. However, more proactive customer outreach and marketing efforts are planned for the beginning of 2024, when the brand will be introduced more broadly to the public.

**Public Comment: (15:40) Jim Lutz** spoke in opposition to the brand change, specifically his observation of the omission of the term "Community Energy" in the new branding. He noted that the new website domain, social media handle, and email addresses all reflect "Ava Energy" or "Powered with Ava" without the "community" aspect, which he found concerning given the importance he feels that should be placed on community representation in the name.

**Public Comment: (17:22) Jessica Tovar** emphasized the importance of including "Community Energy" in the name of the agency, stating that it holds significant meaning for the community.

**11. CAC Chair Report**

**(20:25) CAC Vice-Chair Hernandez**, representing the Community Advisory Committee in CAC Chair Eldred's absence, reported on their recent discussions and recommendations. Vice-Chair Hernandez stated that the CAC urges the Board to

expedite the consideration of the Net Billing Tariff rather than waiting until the proposed December 2024 date. Additionally, during the review of the Community Innovation Grants program, there was feedback suggesting smaller multi-year grants to make applications more accessible for small businesses and community organizations, as well as the introduction of one-time grants for pilot projects.

The CAC expressed strong support for offering technical assistance to smaller organizations applying for grants and for the implementation of the resilient hub concept. While the importance of creating clean jobs was highlighted, there was less enthusiasm for energy education and awareness campaigns. The Committee advised that Innovation Grants should focus on community projects rather than Ava Community Energy's marketing and advertising.

## 12. (24:30) Emissions Overview (Informational Item)

### Informational Overview on Emissions

- EBCE staff member Izzy Carson gave an overview presentation on EBCE's emissions, focusing specifically on the Bright Choice electricity product.
- Izzy Carson discussed the power content label, which shows the sources of energy that EBCE buys to serve Bright Choice customers. A significant portion comes from unspecified sources via the CAISO market.
- EBCE has two main products - Renewable 100 which is 100% renewable energy, and Bright Choice which has renewable energy, large hydro, and unspecified power.
- EBCE originally used The Climate Registry methodology for emissions accounting but switched to a California-specific methodology in 2020 due to a state law. This resulted in an increase in reported emissions.
- In 2020, EBCE decided to accept PG&E's allocation of large hydro but reject the nuclear allocation. This was a contentious issue with much community discussion.
- EBCE is currently ahead of the emissions reduction goals set in 2022 for the Bright Choice product. Goals were increased 5-10% in 2022 and 2023.
- Compared to other CCAs, EBCE has moderate renewable content and emissions. Rates are lower than other CCAs that have lower emissions. There are many factors that contribute to differences between CCAs.
- EBCE serves significantly more load than some other CCAs which makes emissions reductions more challenging.

**(48:17) Member Bauters** questioned the feasibility of revising the emissions schedule to reflect the advanced progress made on targets, suggesting that updating the plan could positively impact marketing and communicate responsiveness to the work accomplished. CEO Chaset was receptive to this idea, indicating staff's readiness to conduct such an assessment if directed by the board. Member Bauters advocated for showcasing more ambitious goals, especially as the agency expands, to demonstrate its proactive stance rather than adhering to outdated timelines.

**(50:07) Member Roche** inquired about the impact of expansion on meeting clean energy goals and the Bright Choice program, voicing concerns from Hayward residents regarding the procurement of clean energy and emissions targets. CEO Chaset assured her that recent expansions do not significantly impact their ability to meet targets, as they don't add a substantial load, and highlighted efforts to create city-specific power content labels for better transparency. CEO Chaset also mentioned an upcoming shift in PG&E's emissions accounting that would likely result in EBCE's Bright Choice program having lower emissions in comparison, reinforcing the organization's commitment to staying cleaner than PG&E.

**(55:22) Member Tiedemann** suggested that future CCA comparison charts include the size by load and number of accounts to provide context for why some CCAs might achieve their targets more easily due to having fewer customers and lower megawatt-hour commitments.

**(56:11) Member Gonzalez** sought clarification on the Renewable 100 program, questioning whether it truly delivers 100% renewably sourced energy and if the organization is meeting this goal. CEO Chaset confirmed that Renewable 100 is indeed sourced entirely from renewables and explained that while the total emissions chart includes all customer load, including the smaller contribution from Renewable 100, the product itself is 100% renewable. CEO Chaset further addressed Gonzalez's questions about Renewable Energy Credits (RECs), particularly PCC1 RECs, which are associated with energy that physically reaches California, as opposed to PCC2, which represents energy produced and consumed out-of-state but for which the carbon reduction rights are purchased. CEO Chaset clarified the discrepancy between state renewable energy standards, which recognize both PCC1 and PCC2, and AB 1110's carbon accounting, which only credits carbon-free power that is imported into California coincident with its generation.

**(1:04:12) Member Tiedemann** observed a significant increase in customers choosing the 100% renewable energy option and asked CEO Chaset about PG&E's surplus power and its impact on unspecified energy sources. CEO Chaset confirmed that PG&E's excess energy, which is less clean, goes into an unspecified pool and is counted as such in the overall energy mix.

**(1:05:13) Chair Marquez** asked whether the board should re-evaluate its goals in light of new information before considering further expansion. CEO Chaset suggested that while a comprehensive analysis could align with the integrated resource planning process taking about a year, initial information on different scenarios could be provided sooner..

**(1:11:03) CAC Vice-Chair Hernandez** praised the progress in maintaining competitive electricity rates and moving towards renewable energy goals, but noted CO2 emissions per megawatt-hour could be improved compared to similar CCAs. He advocated for more local renewables and a more accurate accounting of emissions that impact local air quality.



**Public Comment: (1:12:43) Jessica Tovar** criticized the approach of merely shifting numbers to show greenhouse gas reductions, arguing that this does not tangibly reduce local pollution or create local jobs. She urged for genuine investment in the production of local clean energy, reflecting concerns that the marketing promises of Renewable 100 were not being met with actual local energy investments. Jessica Tovar also spoke in opposition to the use of what she perceived as corporate tactics in the debate over nuclear energy allocation, specifically referencing EBCE's controversial handling of the Diablo Canyon issue. She recounted community opposition to nuclear energy, criticized EBCE's decision to sell nuclear allocation despite this opposition, and called for an end to narratives that blame the community choice energy model for the organization's challenges in reducing emissions.

**Public Comment: (1:14:56) Jim Lutz** raised a concern about the potential long-term financial risks associated with EBCE's long-term renewable energy contracts, wondering if they might end up being above-market rate in the future. CEO Chaset acknowledged the risk and explained that purchasing PCC 2s, which can be contracted for shorter terms, is one strategy staff uses to mitigate this risk, contrasting with PCC 1s that typically require longer-term commitments.

**13. Joint Powers Authority Amendment (Action Item)**

Adopt an amendment to change name to Ava Community Energy

**Member Gonzalez motioned to approve the JPA Amendment. Member Wright seconded the motion which was approved 13/1/2**

**Yes: Members: Tiedemann, Cox, Roche, Barrientos, Jorgens, Kalb, Andersen, Gonzalez, Wright, Bedolla, Patino, Vice Chair Balch and Chair Marquez.**

**No: Member Bauters**

**Excused: Members: Bartlett and Hu**

*For the remainder of these minutes, East Bay Community Energy (EBCE) will be referred to by its new name, Ava Community Energy (Ava).*

**14. (1:19:44) Legislative Update (Informational Item)**

Informational update on the 2023 state and federal legislative process

- **Legislative Year Overview:** Alec Ward reported on a busy legislative year, with the Governor signing 85% of over 1,000 bills, reflecting a typical veto rate, often due to budgetary constraints or redundancy.
- **Key Bills:**
  - **AB 1373:** Ava Community Energy moved to a neutral position after negotiations; the bill was signed and establishes a new central procurement entity for renewable energies.
  - **Interconnection Bills:** Success with bills AB 50 and SB 410, both signed into law, mandating a "shot clock" on interconnection processes and improving transparency.

- **Brown Act Flexibility:**
  - **AB 557:** Passed, allowing teleconferencing flexibilities during states of emergency.
- **Unpassed Bills:** Several bills, including those focused on EV sharing grants and building decarbonization, moved to a two-year bill status for potential future consideration.
- **Watch Bills:**
  - **Streamlining Environmental Review:** SB 49 was signed, aimed at streamlining the California Environmental Quality Act processes.
  - **Clean Energy Bond:** Discussions ongoing, proposing \$2 billion for a clean energy bond to fund various clean energy initiatives.
  - **EBCE's Engagement:** The report highlighted Ava's proactive defense of energy funding, successful negotiation on key bills, and the intention to revisit important issues next year.

(1:30:33) **Member Cox** inquired about how Ava plans to comply with the Levine Act, which was passed in January 2023 and calls for transparency in contract approvals. Specifically, she asked for an update on the implementation of the act concerning the disclosure of contracts over \$250.

Subsequently, Member Bauters provided clarification, referencing SB 1439, known as the Glazer bill, which amends the Levine Act. This amendment requires that board members who have received campaign contributions of \$250 or more from a contracting party in the past year must recuse themselves from voting on related contracts. This rule is retroactive for a year, and violations could nullify the vote. They agreed on the necessity of obtaining legal guidance on this matter. Member Cox suggested that, similar to other government entities, board meeting agendas should identify which items are subject to the Levine Act disclosure, enhancing transparency for both the board and the public. Member Wright also noted that there is a provision for rectification where the contribution can be returned to avoid a conflict of interest.

Chair Marquez proposed to bring this topic back for future discussion to ensure all directors are informed about the policy. Ava General Council Khalsa clarified that while she can provide information about contract participants, each Board Member is individually responsible for monitoring their own campaign contributions to avoid conflicts of interest.

(1:35:36) **Member Bauters** commented on AB 557, the approved Brown Act bill, expressing concern that the 40-mile threshold for remote participation overlooks those relying on active transportation, like biking, and suggested that time-based criteria should be considered alongside distance for determining the necessity of remote participation.

(1:36:20) **Member Kalb** asked about the significance of the interconnection bills for various projects beyond solar or wind, such as housing and hospitals. CEO Chaset acknowledged their importance, noting the potential consequences of this legislation. Despite the bills facing opposition, particularly from investor-owned utilities, CEO Chaset stated that there is still an opportunity to pass two of the bills next year.

**15. (1:38:42) Sunzia Project Agreement (Action Item)**

Requesting approval of long term Agreement for 150 MW of Wind online by 9/30/26

- Jim Dorrance presented the Sunzia Project Agreement to the Board, detailing a proposal to execute an agreement for a 150-megawatt segment of a larger 3,515-megawatt wind project located in New Mexico. This project, though out-of-state, is directly interconnected to California, allowing the energy produced to serve California residents and Ava Community Energy customers. The project aims to provide renewable energy, energy hedging, and resource adequacy, with an expected online date in September 2026. The Board was asked to authorize the CEO to execute the agreement, following the evaluation from the 2023 long-term request for offer (RFO), which considered projects based on counterparty execution, economic value, and development status. Pattern Energy, the developer, has a strong track record with California utilities and CCAs, and there's a possibility that Ava might consider increasing its off-take from the project. The agreement includes a prevailing wage requirement and potential union labor.

**(1:54:03) Member Gonzalez** questioned the positioning of Ava's 150-megawatt commitment within the larger 3,000-megawatt Sunzia wind project and its implications for resource adequacy, referencing past concerns about the agency's stake in such projects. CEO Chaset responded by ensuring that Ava has included safeguards in the agreement to protect its off-take and confirmed that the project will provide actual resource adequacy to California.

**(1:56:45) Member Cox** inquired about the potential division of the wind project contract into two separate agreements and how it would affect Ava's interests, particularly concerning prioritization and supply risks. CEO Chaset explained that splitting the contract could occur if the developer decides to sell part of the project, which is common in large-scale renewable projects. This split could be beneficial for diversification and mitigating concentration risk. He assured that the amount of renewable energy supplied to Ava would remain unaffected by such a split, as it's mainly a matter of financing and ownership structure. Regarding supply chain concerns, CEO Chaset acknowledged the challenges posed by global disruptions in recent years but indicated no specific risks to the project at present. He highlighted the importance of partnering with experienced developers who can navigate such uncertainties and have robust supply chain strategies.

**(2:02:10) Chair Marquez** asked for elaboration on the economic viability of local project applicants within California, to which Jim Dorrance responded that while there were economically viable projects in the state, the ones in their territory were not cost-effective for customers. Issues with land use conflicts also prevented further negotiations with one such local project. Howard Chang, Ava Community Energy COO, added that this Sunzia Project Agreement is only the first of multiple long-term Power Purchase Agreements (PPAs) that will be brought to the Board.

**(2:05:39) CAC Vice-Chair Hernandez** emphasized the CAC's discussion about the importance of funding local projects and the alignment of Ava Community Energy's

organizational values, which prioritizes local job creation and community support. Vice-Chair Hernandez expressed concerns about the evaluation criteria used for projects, questioning whether they adequately measure the value brought to the community beyond just cost. Vice-Chair Hernandez noted that while cost is an important factor, the value in terms of local benefits and support, including environmental justice, should also be considered. The final decision from the CAC was not unanimous, with five members in favor and four abstaining, yet the project was carried forward with their approval.

**(2:07:11) Chair Marquez** inquired about when the board would get to review the value of Power Purchase Agreements (PPAs), specifically regarding local projects. CEO Chaset explained that while there's a thorough, confidential analysis conducted, only one or two local generation projects were viable, with land constraints and costs being major issues.

**Member Kalb motioned to approve the staff recommendation which was seconded by Member Bauters. The motion was approved 14/0/2**

**Yes: Members Tiedemann, Bauters, Cox, Roche, Barrientos, Jorgens, Kalb, Andersen, Gonzalez, Wright, Bedolla, Patino, Vice Chair Balch and Chair Marquez.**  
**Excused: Members Bartlett and Hu.**

**16. (2:12:46) Board Member and Staff Announcements including requests to place items on future Board agendas**

- **Member Wright** raised a concern about the surge of warehouse developments in Central Valley cities, particularly a large Walmart fulfillment center, which were approved with conditions after discussions with the Attorney General. He mentioned that the local Sierra Club in San Joaquin County is advocating for these warehouses to implement rooftop solar as part of their environmental mitigation strategies and as a potential community resource. Wright requested that Ava Community Energy stay alert to these developments and participate in discussions when appropriate.
- **Member Cox** requested that the Levine Act be put on the agenda for a briefing.
- **Member Cox** inquired about the metrics for the Local Development Business Plan., and asked that the findings be presented to the Board. CEO Chaset agreed, proposing an initial discussion at an Executive Committee meeting.
- **Member Roche** called for a preliminary examination of the acceleration of project procurement, which Chair Marquez noted would align with the budget process at the start of the year.
- **CAC Vice-Chair Hernandez** reminded the board about four items previously discussed: decisions on the use of \$14.75 million from the budget meeting, updates on bringing a cost center in-house, and the intentions for acquired property in Oakland, such as whether it could become a resilience hub or be used for apprenticeship or training programs. Chair Marquez acknowledged these items, noting that they are being tracked by the staff for appropriate timing to be brought back to the board.

**17. Closed Session**

- Public Employee Performance Evaluation pursuant to Government Code § 54957: Chief Executive Officer.

**18. General Report Out of Closed Session**

**There were no items to report out of Closed Session.**

**19. Adjourn**

The next Board of Directors meeting will be held on Wednesday, November 15, 2023 at 6:00 pm.



### Consent Item 5

**TO:** Ava Community Energy Board of Directors  
**FROM:** Nick Chaset, Chief Executive Officer  
**SUBJECT:** Contracts Entered Into  
**DATE:** November 15, 2023

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#### **RECOMMENDATION**

Accept the CEO's report on contracts that EBCE has entered into, as required by the Administrative Procurement Policy from October 12, 2023 to November 8, 2023;

C-2023-112 Braun Blaising & Wynne Second Amendment to CSA updates the Scope of Work, extends the Agreement through June 30, 2024, increasing the compensation by \$25,000, with total compensation not to exceed \$59,000, and updated the hourly rates of

C-2023-113 Clean Energy Capital Securities (San Francisco) Consulting Services Agreement for treasury management services with compensation not to exceed \$19,750,50 through December 31, 2023.

C-2023-118 Pacific Office Automation Equipment/Service and Supply Contract with Terms and Conditions for Lease of office equipment - 2 printers with stapling finishers, cost of \$427 per month, for a term of 36 months.

C-2023-119 Jason Blalock (Oakland) Consulting Service Agreement for filming and editing services, through June 30, 2024, \$10,000

C-2023-120 Bentham Paulos Fourth Amendment to CSA Adding \$6,900 in additional compensation for June 2023 and authorizing a subconsultant.

C-2023-121 Bay Area Air Quality Management District Amendment No. 2 to 2103-17497, Amends: 1. Attachment A, Paragraph 8 "Project Schedule", 2. Attachment C, Paragraphs 2, 3, 4.

C-2023-122 Enertel.AI, Enertel Trial Agreement, no cost agreement for trial of Enertel services.

C-2023-123 Sacramento Municipal Utility District (SMUD) Amendment 20 to Exhibit A, Task Order 2 for work done to update our 2023-2024 value proposition - the IVR, webforms, and our billing determinants, additional cost is \$14,000.

C-2023-124 Sacramento Municipal Utility District (SMUD) Amendment 21 to Exhibit A, Task Order 2 DAC PIPP Enrollment Logic, at a cost of \$4,000.

C-2023-125 cQuant.IO Third Amendment adds additional compensation, expands the scope of services, and renews a 3-year subscription term with annual payments of \$185,110 for year 1, \$198,067 for year 2, and \$211,932 for year 3, with a new total compensation amount for the Agreement not to exceed \$1,196,109.



## Consent Item 6

**TO:** Ava Community Energy Authority Board of Directors

**FROM:** Anish Patel, Director, Infrastructure Delivery

**SUBJECT:** Resolution Authorizing Ava CEO to Negotiate and Execute a Consulting Services Agreement with NV5 Inc.

**DATE:** November 15<sup>th</sup> 2023

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### **Recommendation**

Approve a Resolution authorizing Ava CEO to negotiate and execute a Consulting Services Agreement (“Agreement”) with NV5 Inc. (“NV5”) dated Nov 15th, 2023, to provide professional engineering consulting services that will facilitate transportation electrification infrastructure development with respect to the direct current fast charging (“DCFC”) stations, for a total amount not to exceed \$250,000 through December 31, 2026.

### **Background and Discussion**

Ava has conducted a detailed analysis to understand home charging access in our service area and identified critical disparities that will hinder widespread Electric Vehicle (“EV”) adoption and, therefore, the ability to achieve California’s Zero Emission Vehicle (“ZEV”) goals. Ava is investing in an Equitable EV Fast Charging Network to ensure all residents can join and benefit from the transition to EVs. Ava wants to hire a consultant, NV5, to determine various options to design the DCFC infrastructure by proposing the DCFC product. Ava completed a competitive solicitation to select NV5 for these services.



By 2030, Ava intends to deploy a public network of DCFC hubs, each with a minimum of 10 dual-port DCFCs, to supplement a diverse array of community-specific Transportation Electrification (“TE”) programs. Our goal is to have upwards of 40 to 50 DCFC hubs operational to meet the recharging needs of light-duty passenger EVs, as well as medium- and heavy-duty goods movement vehicles.

In order to meet our goal, we issued Request for Proposal (“RFP”) to six (6) Engineering consulting firms in June 2023 which describes the scope of services. We obtained five (5) written proposals for the RFP, per our procurement policy. Based on our internal review of the proposals, relevant experience, qualifications of the firm and their employees, proposed fee structure and an interview with firms we identified that NV5 is the most qualified firm among all.

### **DCFC Infrastructure Development Support Engineering Professional Services**

Ava has been working on pre-development activity regarding the DCFC infrastructure development for several sites in Alameda County. One of the critical tasks for us is to work on new electrical service planning with PG&E as well as develop the conceptual design layout/engineering.

Our goal is to install multiple high capacity DCFC chargers with a total of 10 to 20 EV stalls including ADA stalls. We seek professional engineering consultation from NV5 to get various design options, conceptual site layout, PG&E electrical service planning, development support to build sites.

In turn, the staff is seeking authorization for the CEO to negotiate and execute an Agreement with NV5 for professional engineering services with compensation not to exceed \$250,000.

### **Fiscal Impact**

This Agreement will be funded with \$250,000 from the previously approved Local Development Budget.

### **Attachments**

- A) Resolution of the Board of Directors of the Ava Community Energy Authority Authorizing the CEO to execute the Consulting Services Agreement with NV5, Inc.

**RESOLUTION NO. R-2023-xx**

**A RESOLUTION OF THE BOARD OF DIRECTORS**

**OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO EXECUTE THE CONSULTING SERVICES AGREEMENT WITH NV5, INC.**

**WHEREAS** The Ava Community Energy Authority (“Ava”) 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 Ava and parties to the JPA in March of 2020. The city of Stockton, located in San Joaquin County was added as a member of Ava and party to the JPA in September of 2022. The city of Lathrop, located in San Joaquin County, was added as a member to Ava and party to the JPA in October of 2023. On October 24, 2023, the Authority legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

**WHEREAS** On July 18, 2018, the Board approved the Local Development Business Plan (“LDBP”) and budget. The LDBP identifies a series of local development early actions, outlines a series of policy principles, and defines a set of metrics to measure the impact on Alameda County,

**WHEREAS** Ava issued an RFP in June 2023 to select vendors to provide professional consulting, electrical service planning and conceptual engineering design services that will support direct current fast charging (“DCFC”) deployment. We obtained five (5) written proposals for the RFP, per our procurement policy. Based on our internal review of the proposals, relevant experience, qualifications of the firm and their employees, proposed fee structure and an interview with firms we identified that NV5 is the most qualified firm among all.

**WHEREAS** Ava wishes to execute a Consulting Service Agreement (“CSA”) with NV5, Inc. (“NV5”) dated Nov 15th, 2023 (“Agreement”) to assist Ava with phase 2 sites of DCFC deployment with respect to conceptual engineering design services.

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

Section 1. The CEO of Ava is hereby authorized to negotiate and execute a CSA for the infrastructure development consultation that will facilitate deployment of DCFC and battery energy storage systems at public parking spaces, with total

compensation not to exceed \$250,000. The CEO is further authorized to execute any additional clarifying or clerical changes to the Agreement, which must be approved by General Counsel.

ADOPTED AND APPROVED this 15<sup>th</sup> day of November 2023.

---

Elisa Márquez, Chair

ATTEST:

---

Adrian Bankhead, Clerk of the Board



## Consent Item 7

**TO:** Ava Community Energy Authority

**FROM:** Marie Fontenot, Vice President of Power Resources

**SUBJECT:** Longroad Sun Pond Contract Approval (Action)

**DATE:** November 15, 2023

---

### **Recommendation**

Adopt a Resolution authorizing the Chief Executive Officer to execute an Agreement with contracting entity Sun Pond, LLC developed by Longroad Energy.

- a. Sun Pond: 20-year, 42.5 MW solar project paired with a 42.5 MW/170 MWh battery storage facility in Maricopa County, Arizona. April 2025 online date. Developed by Longroad Energy.

### **Background and Discussion**

The 2022 Long-Term Resource Request for Offers (RFO) was EBCE's third long-term contract solicitation. The RFO was launched in February 2022. The RFO sought several hundred megawatts (MW) of contracts with renewable energy and battery storage projects with a preference for projects located in California, and more preferentially, those located in Alameda County. EBCE's objective was to drive investments in new renewable and energy storage projects in Alameda County and California, 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.io valuation platform to calculate the net present value of proposed projects and determine the optimal portfolio to meet its objectives.

EBCE brought contracts from the 2022 RFO to the EBCE board of directors for approval during the fall of 2022 and winter of 2023. The Sun Pond contract was originally approved by EBCE's board of directors in February, 2023. The Resolution for the contract defined an April 2025 online date but prior to full execution of the contract a major piece of equipment necessary to build and interconnect the project was delayed, resulting in a necessary delay to the online date of the Sun Pond project.

The Longroad Energy contract is for half of the output from the Sun Pond project, providing renewable energy, resource adequacy, renewable energy credits, and ancillary services. The full Sun Pond project is an 85 MW solar project paired with an 85 MW/340 MWh Lithium-Ion battery located in Maricopa County, Arizona. EBCE will enter into a 20-year contract for a 42.5 MW solar project paired with a 42.5 MW/170 MWh battery storage with a planned commercial operation date of April 1, 2026, to be developed by Longroad Energy. Longroad Energy is an experienced developer with a focus on the development and operation of utility-scale wind, solar, and battery storage energy projects across the United States. It has successfully brought online 1.9 GW of solar projects online since 2019. The contracting entity is Sun Pond, LLC.

#### **Attachments**

- A. Resolution Authorizing the CEO to Negotiate and Execute a Twenty-Year Renewable Energy and Battery Storage Agreement with Sun Pond, LLC
- B. Redacted draft of contract with Sun Pond, LLC

**RESOLUTION NO. R-2023-XX**

**A RESOLUTION OF THE BOARD OF DIRECTORS**

**OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO NEGOTIATE AND EXECUTE A POWER PURCHASE AND ENERGY STORAGE AGREEMENT WITH SUN POND, LLC**

**WHEREAS** The Ava Community Energy Authority (“Ava”) 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 Ava and parties to the JPA in March of 2020. The city of Stockton, located in San Joaquin County was added as a member of Ava and party to the JPA in September of 2022. The city of Lathrop, located in San Joaquin County, was added as a member to Ava and party to the JPA in October of 2023. On October 24, 2023, the Authority legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

**WHEREAS** Sun Pond, LLC proposed 42.5 MW of renewable energy, environmental attributes, Ancillary Services (AS) and Resource Adequacy (RA) from an 42.5 MW/170 MWh solar photovoltaic project and battery energy storage facility in Maricopa County, AZ developed by Longroad Development Company, LLC;

**WHEREAS** the project is expected to be operational by April 1, 2026 and will deliver renewable energy, environmental attributes, AS, and RA for a term of twenty years; and

**WHEREAS** Ava staff considers this is a competitive proposal based on submissions to the 2022 Long-Term Resources Request For Offers (RFO).

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

Section 1. The CEO is hereby authorized to negotiate and execute a twenty-year agreement with Sun Pond, LLC for a 42.5 MW solar and battery energy storage project in Maricopa County, AZ. The final agreement shall include the key terms outlined in the Staff Report associated with this resolution.

ADOPTED AND APPROVED this 15<sup>th</sup> day of November, 2023.

---

Elisa Márquez, Chair

ATTEST:

---

Adrian Bankhead, Clerk of the Board

CONFIDENTIAL  
 SUN POND  
 BUYERS DRAFT  
 26 October 2023

## RENEWABLE POWER PURCHASE AGREEMENT

### COVER SHEET

**Seller:** Sun Pond, LLC (“Seller”)

**Buyer:** [Ava Community Energy Authority, a California joint powers authority][City of San José, a California municipal corporation] (“Buyer”)

**Description of Facility:** A 42.5 MW solar photovoltaic project (the “Generating Facility”), and a battery energy storage facility as further described below (the “Storage Facility”), located in Maricopa County, in the State of Arizona, as further described in Exhibit A.

**Milestones:**

Milestone	Date for Completion
Evidence of Site Control	████████
CEC Pre-Certification Obtained	██████████
Documentation of Conditional Use Permit if required	████████
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	██████████
Executed Interconnection Agreement	██████████
Procure Major Equipment	████████
Financial Close	████████
Expected Construction Start Date	████████
Initial Synchronization	1/15/2026
Network Upgrades completed	██████████
Expected Commercial Operation Date	4/1/2026

**Delivery Term:** 20 Contract Years

**Expected Energy:**



Contract Year	Expected Energy (MWh)
1	
2	
3	
4	
5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

**Guaranteed Capacity:** 42.5 MW

**Storage Contract Capacity:** 42.5 MW, as may be adjusted pursuant to Section 5(b) of Exhibit B

**Storage Contract Output:** 170 MWh

**Guaranteed Efficiency Rate:**

Contract Year	Guaranteed Efficiency Rate
1	
2	
3	
4	

5		
6		
7		
8		
9		
10		
11		
12		
13		
14		
15		
16		
17		
18		
19		
20		

**Minimum Efficiency Rate:** [REDACTED]

**Contract Price**

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	[REDACTED]

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	[REDACTED]

**Product:**

- Generating Facility Energy
- Green Attributes (Portfolio Content Category 1)
- Storage Capacity
- Capacity Attributes (select options below as applicable)

- Energy Only Status
- Resource Specific Import RA
- Ancillary Services

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

**Development Security and Performance Security**

Development Security: [REDACTED]

Performance Security: [REDACTED]

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**Exhibits:**

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Exhibit S	Workforce Development and Community Investment
Exhibit T	Form of Limited Assignment Agreement
Exhibit U	[Reserved.]

## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“Agreement”) is entered into as of the last dated signature on the signature page hereto (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 or otherwise control, and operate the Facility; and

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

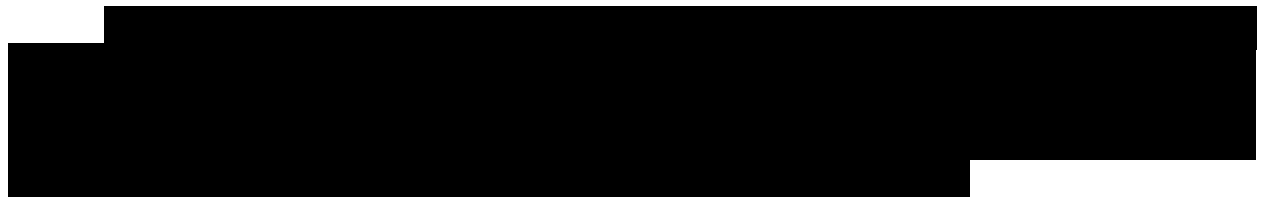
NOW THEREFORE, in consideration of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the sufficiency and adequacy of which are hereby acknowledged, the Parties agree to the following:

### ARTICLE 1 DEFINITIONS

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

“Accepted Compliance Costs” has the meaning set forth in Section 3.12(d).

“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.

“Approved Forecast Vendor” means (x) any of 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).

“Availability Adjustment” or “AA” has the meaning set forth in Exhibit P.

“Available Energy” has the meaning set forth in Exhibit P.

“Available Energy Measured” has the meaning set forth in Exhibit P.

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

“Available Power” has the meaning set forth in Exhibit P.

“Available Power Measured” has the meaning set forth in Exhibit P.

“Balancing Authority Area” or “BAA” has the meaning as set forth in the CAISO Tariff

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

“Bid” has the meaning as 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 (PPT) for the Party sending a Notice, or payment, or performing a specified action.

“Buyer” means [Ava Community Energy Authority, a California joint powers authority][City of San José, a California municipal corporation].

“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, Facility Energy or Ancillary Services, as applicable, including where the 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 or discharged 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 during such period shall not include any Generating Facility Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means (i) the instruction from Buyer to Seller to reduce Generating Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Order or (ii) a reduction of Generating Facility Energy due to Buyer’s participation in the Ancillary Services market.

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces Generating Facility Energy from the Generating Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer Default; 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 a failure by Buyer (or its agents) to perform Buyer’s obligations hereunder, and includes an Event of Default of Buyer.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.11(a).

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

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

“CAISO Operating Order” means “Operating Instruction” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), 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 (as such term is defined in Appendix A to the CAISO Tariff), on the one hand, and the CAISO Tariff, on the other hand, the CAISO 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 Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Generating 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.

“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 cash equity and tax equity provider directly or indirectly providing financing or refinancing

for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf) or any assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

“Charging Energy” means the as-available Energy generated by the Generating Facility and/or Energy delivered from the grid (subject to Section 4.5(f)) and delivered to the Storage Facility pursuant to a Charging Notice, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. All Charging Energy shall be used solely to charge the Storage Facility, except as provided in Section 4.10.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, directing the Storage Facility to charge at a specific MW rate for a specified period of time or amount of MWh, provided that any such operating instruction shall be in accordance with the Operating Restrictions. For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test shall be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

“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.



“Compliance Action” has the meaning set forth in Section 3.12(b).

“Compliance Expenditure Cap” has the meaning set forth in Section 3.12(b).

“Compliance Showing” means, for each Showing Month, the submission deadline for 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.

“Compliance Showing Deadline” means, for each Showing Month, the Compliance Showing plan submission due date for such Showing Month. For illustrative purposes only, as of the Effective Date, the applicable Compliance Showing plan submission due dates are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year

for the annual Supply Plan, such dates may be modified by the CAISO from time to time throughout the Delivery Period.

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

[REDACTED]

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

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

“Contract Capacity” means the sum of the Guaranteed Capacity and the Storage Contract Capacity.

“Contract Price” has the meaning set forth on the Cover Sheet. To be clear, the Contract Price is each of the Renewable Rate and the Storage Rate.

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

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

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

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

[REDACTED]

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

[REDACTED]

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements)

or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.



“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including 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.

“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.

“Cycle Equivalent(s)” means a quantity of Discharging Energy (in MWh) equal to the Storage Contract Output. A combination of Partial Cycles with total MWh of Discharging Energy equal to the Storage Contract Output is also one (1) Cycle Equivalent.

“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(c).

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

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

“Deemed Delivered Energy” means the amount of Generating Facility Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount 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 as input for the period of time during such Buyer Curtailment Period, less the amount of Generating Facility Energy delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period (or other relevant period); *provided* that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). For all purposes under this Agreement, including compensation under Exhibit C and the Curtailment Cap, Deemed Delivered Energy shall be reduced in any Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

“Deemed Delivered RA” means for each hour of the Relevant Day in the applicable Showing Month the amount of Net Qualifying Capacity expressed in MW that the Facility would have delivered to the Delivery Point, but for (i) the failure of Buyer to obtain Import Capability sufficient to allow for the importation of such capacity into the CAISO, if required pursuant to Section 3.7(c), (ii) a Force Majeure Event as provided in Section 4.6(d), and (c) Planned Outages permitted by the terms of this Agreement to the extent such Planned Outages reduce the maximum achievable Net Qualifying Capacity of the Facility.

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

“Deficient Month” has the meaning set forth in Section 4.11(e).

“Delivered RA” means for each hour of the Relevant Day in the applicable Showing Month the sum of (a) the Net Qualifying Capacity of the Facility for such month able to be shown on Buyer’s monthly or annual Resource Adequacy Plan to the CAISO and CPUC and counted as Resource Adequacy Capacity by both the CAISO and CPUC, (b) Deemed Delivered RA and (c) Replacement RA.

“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.

“Discharging Energy” means all Energy delivered to the Delivery Point from the Storage Facility, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such metering reading is adjusted by the CAISO for any applicable Electrical Losses. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

“Discharging Notice” means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer’s SC or the CAISO to discharge, the sum of Generating Facility Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and Generating Facility Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or the CAISO issues a further modified Discharging Notice. For the avoidance of doubt, any instruction to discharge the Storage Facility pursuant to a Storage Capacity Test shall be considered a Discharging Notice, and any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

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

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

“Efficiency Rate” has the meaning set forth in Exhibit O.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements, including, as applicable, CAISO’s rules for Pseudo-Tie Resources, and in accordance with Section 7.1, all transmission or transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of Generating Facility Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, (c) as applicable, between the Generating Facility and the Storage Facility Metering Point associated with delivery of Charging Energy, and (d) of Energy within the Storage Facility’s energy storage equipment. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

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

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



“Energy In” has the meaning set forth in Exhibit O.

“Energy Management Software” has the meaning set forth in Exhibit A.

“Energy Out” has the meaning set forth in Exhibit O.

“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.

“Excused Event Hours” has the meaning set forth in Exhibit P.

“Executed Interconnection Agreement Milestone” means the date for completion of execution of the Interconnection Agreement by Seller or Affiliate of 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 Generating Facility Energy (assuming no Charging Energy or Discharging Energy) specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed Capacity to Installed Generating Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

“Facility” means the Generating Facility and the Storage Facility.

“Facility Energy” means the sum of Generating Facility Energy and Discharging Energy during any Settlement Interval or Settlement Period.

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

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

“Financing Milestone” means the date set forth on the Cover Sheet for Seller to demonstrate the Facility’s eligibility for the ITC.

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

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility or any outage on the Transmission System that prevents Seller from generating Energy or

making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.



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

“Future Environmental Attributes” shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include 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, (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any transaction(s) replacing this Agreement and the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement. Factors used in determining the economic benefit to a Party may include reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

“Generating Facility” means the renewable energy electricity generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and

associated facilities and equipment required to deliver Generating Facility Energy to (i) to the Delivery Point, and (ii) to the Storage Facility as Charging Energy; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities, Network Upgrades or any Interconnection Facilities except Seller’s Interconnection Facilities.

“Generating Facility Energy” means all Energy that is delivered from the Generating Facility, net of Station Use and subpart (a) of the definition of Electrical Losses, measured at the Generating Facility Metering Point by the Generating Facility Meter.

“Generating Facility Meter” means the CAISO-approved revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Generating Facility Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Generating Facility Metering Point” means the location or locations of the Generating Facility Meter shown on Exhibit R.

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

“Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of 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 Generating Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet. [REDACTED]

“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 Efficiency Rate” means the guaranteed Efficiency Rate of the Storage Facility throughout the Delivery Term, as set forth on the Cover Sheet.

“Guaranteed Energy Production” means an amount of Energy, as measured in MWh, equal to the total aggregate Expected Energy for the applicable Performance Measurement Period multiplied by [REDACTED]

[REDACTED]

“Guaranteed Storage Availability” has the meaning set forth in Section 4.8(a).

“Guarantor” means, with respect to Seller, any Person that (a) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (b) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s or has a tangible net worth of at least [REDACTED] (c) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (d) executes and delivers a Guaranty for the benefit of Buyer.

“Guaranty” means a guaranty from a Guarantor provided for the benefit of Buyer substantially in the form attached as Exhibit L.

“Hour” has the meaning set forth in Exhibit P.

“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.

“Import Capability” means that portion of the Maximum Import Capability allocated by the CAISO at the appropriate intertie that is necessary to support the importation of Resource Adequacy Benefits from the Facility into the CAISO market in an amount equal to the Guaranteed RA Amount.

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

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


“Installed Battery Capacity” means the maximum dependable operating capability of the Storage Facility to discharge Energy at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

“Installed Capacity” means the sum of (x) the Installed Generating Capacity and (y) the Installed Battery Capacity.

“Installed Generating Capacity” means the actual generating capacity of the Generating Facility, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto. For the avoidance of doubt, if generating equipment installed at the Generating Facility could theoretically generate more than the Guaranteed Capacity at the Delivery Point, the Installed Generating Capacity shall equal the Guaranteed Capacity because the Generating Facility will be operated to not exceed the Interconnection Capacity Limit.

“Interconnected Control Area Operating Agreement” means the operating agreement between the balancing authority where Facility is located and the CAISO, which governs the pseudo tie arrangement.

“Interconnection Agreement” means the interconnection agreement or agreements entered into by Seller or an Affiliate of 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 the 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, or any successor U.S. federal tax credits based on investment in electrical energy generating or storage facilities.

[“Joint Powers Act”<sup>2</sup> means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).]

[“Joint Powers Agreement”<sup>3</sup> 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.]

“kW” means kilowatts in alternating current, unless expressly stated in terms of direct current.

“kWh” means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

“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 and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations, and/or (iii)

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2 For Ava only  
3 For Ava only

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



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

“Local Capacity Area Resource” 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 (a) if Buyer is the Non-Defaulting Party, the positive difference between the present value of the payments that would be required to be made by Buyer under any transaction(s) replacing this Agreement and the present value of the payments required to be made by Buyer during the remaining Contract Term of this Agreement and (b) if Seller is the Non-Defaulting Party, the positive difference between the present value of the payments required to be made to Seller during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made to, or that would otherwise be received by, Seller under any 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, in the case of Seller as the Non-Defaulting Party, the value of any Renewable Energy Incentives and Tax Credits, determined on an after-tax basis.

“Lost Output” means the amount of Generating 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, or Buyer Default.

“Major Subcontractors” means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of One Million Dollars (\$1,000,000) for performance of any part of the work at the Site.

“Maximum Charging Capacity” has the meaning set forth in Exhibit A.

“Maximum Discharging Capacity” has the meaning set forth in Exhibit A.

“Maximum Import Capability” has the meaning set forth in the CAISO Tariff, and includes any replacement or successor method implemented by the CAISO with respect to the ability of generating units that are external to the CAISO balancing authority area to provide Resource Adequacy Benefits.

“Maximum Stored Energy Level” has the meaning set forth in Exhibit O.

“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.

“Minimum Efficiency Rate” means the percentage specified on the Cover Sheet.

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

“Monthly Storage Availability” has the meaning set forth in Exhibit P.

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

“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 Real-Time Market LMP at the Facility’s PNode is less than Zero Dollars (\$0).

“Negative LMP Costs” has the meaning set forth in Exhibit C.

“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 email.

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

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

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

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

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

“Partial Cycle” means a quantity of Discharging Energy (in MWh) that is less than one hundred percent (100%) of the Storage Contract Output.

“Participating Generator Agreement” has the meaning set forth in the CAISO Tariff.

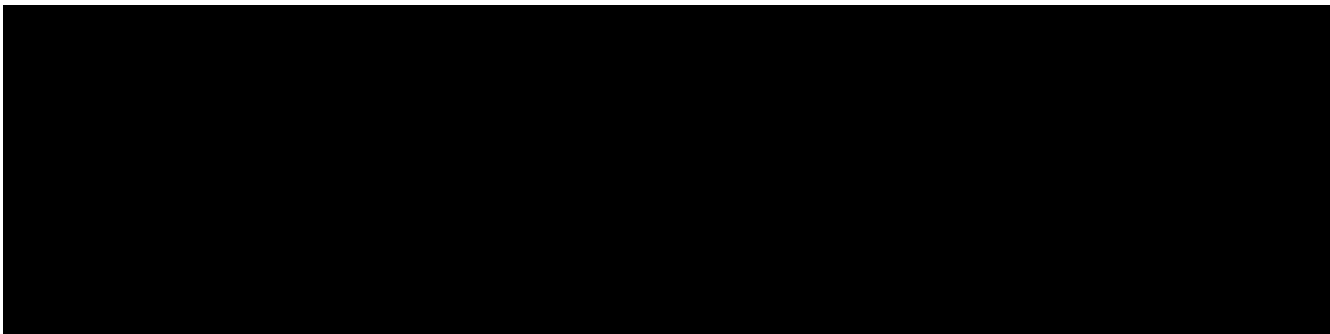
“Participating Transmission Owner” or “PTO” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes 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, (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:



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

“Planned Outage” has the meaning set forth in Section 4.6(a).

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

“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 power industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage 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 energy storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

“Pseudo-Tie” has the meaning set forth in the CAISO Tariff.

“Pseudo-Tie Resource” means a generating facility that is party to a FERC-approved Pseudo-Tie Participating Generator Agreement with the CAISO which allows for Capacity Attributes from the generating facility to be imported into the CAISO as “unit-specific” or “resource specific” import RA Capacity pursuant to applicable decisions of the CPUC.

“PTC” means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986, or any successor U.S. federal tax credits based on Energy production.

“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.

“RA Guarantee Date” means the date that is sixty (60) days after Commercial Operation Date.

“RA Shortfall Amount” shall be determined by first, calculating the difference of the Guaranteed RA Amount *minus* the Delivered RA for each hour of the Relevant Day in the applicable Showing Month and, second, selecting the highest hourly difference for any hour of the Relevant Day in the applicable Showing Month as determined pursuant to step one of this calculation, which such highest hourly value shall be the “RA Shortfall Amount” for purposes of calculating an RA Deficiency Amount under Section 3.8 for such Showing Month; provided, if the CPUC adopts another methodology for calculating a load serving entity’s procurement deficiencies in Resource Adequacy Benefits for purposes of the Resource Adequacy Requirements, the Parties shall cooperate in good faith to amend this definition to conform to such new methodology in order to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this definition as of the Effective Date. If the result of the calculation is a negative number, the RA Shortfall Amount shall be deemed to be zero MW for such Showing Month.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8, 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, Storage 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.

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

“Recurring Certificate Transfers” has the meaning set forth in Section 4.11(a).

“Relevant Day” means the peak day(s) of the month, or such other time period, as established by the CPUC for purposes of determining compliance with Resource Adequacy Requirements, including Slice of Day.

“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.

“Renewable Rate” has the meaning set forth on the Cover Sheet.



“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 all respects, including, as applicable, Resource Category and Flexible Capacity Category, and any successor criteria applicable to the Facility, including pursuant to Slice of Day, unless Buyer consents to accept Replacement RA from another facility that provides non-equivalent Resource Adequacy Benefits.

“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, to the extent applicable to the Facility.

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

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

“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.

“Resource ID” has the meaning set forth in the CAISO Tariff.

“Resource Specific Import RA” means a resource that is listed on the CPUC’s Net Qualifying Capacity list and is either Pseudo-Tied or Dynamic Resource-Specific System Resource into the Day-Ahead Market and Real-Time Market, and which satisfies all other

applicable requirements under the Resource Adequacy Rulings, including CPUC Decisions 05-10-042 and 20-06-028.

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

[“San José Clean Energy”<sup>4</sup> is the City of San José’s community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.]

“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.

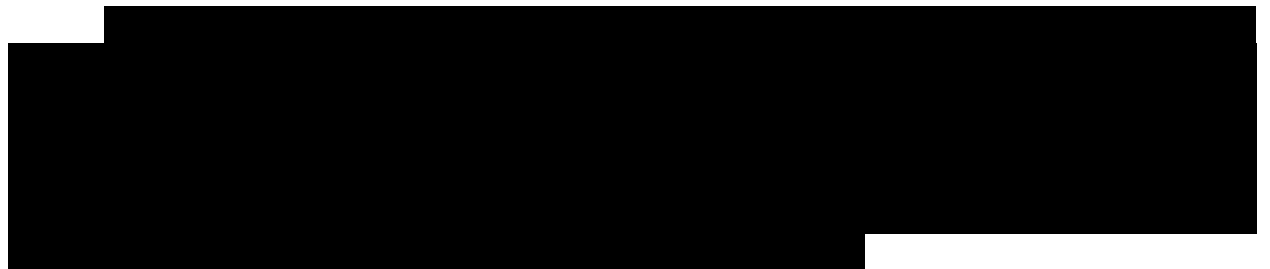
“Self-Schedule” has the meaning set forth in the CAISO Tariff.

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

“Seller Pre-COD Liability Cap” has the meaning set forth in Section 11.7.

“Seller’s Interconnection Facilities” means the Interconnector’s Interconnection Facilities as set forth in the Interconnection Agreement.

“Seller’s WREGIS Account” has the meaning set forth in Section 4.11(a).



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4 For SJCE only

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

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

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

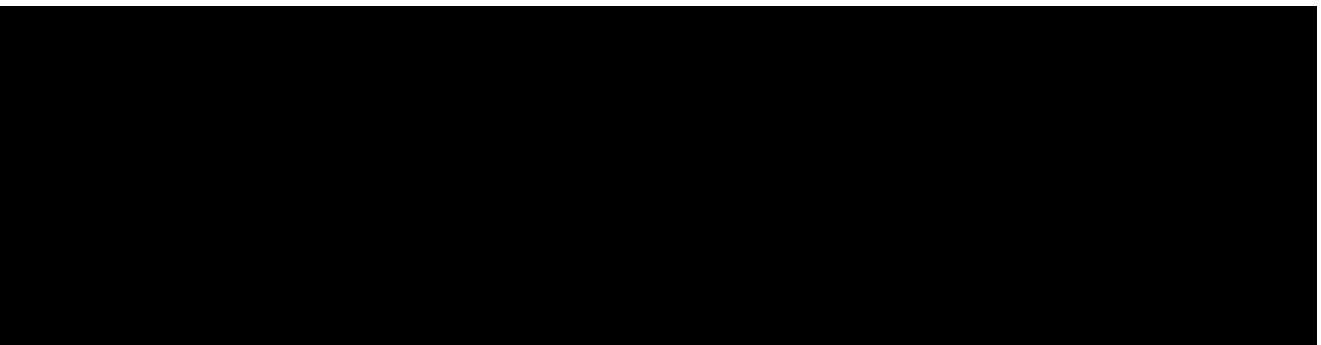
“Shared Facilities” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of Energy from the Facility (which is excluded from Shared Facilities) to the point of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

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

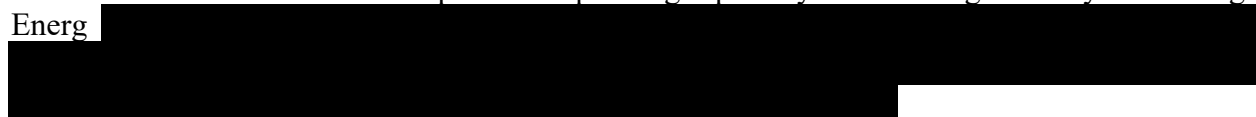
“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer.

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

“Station Use” means:



“Storage Capacity” means (a) the maximum dependable operating capability of the Storage Facility to discharge Energy that can be sustained for four (4) consecutive hours and (b) any other products that may be developed or evolve from time to time during the Contract Term that the Storage Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge Energy



“Storage Capacity Test” or “SCT” means any test or retest of the capacity of the Storage Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

“Storage Contract Capacity” means the total capacity (in MW) of the Storage Facility initially equal to the amount set forth on the Cover Sheet, as the same may be reduced pursuant to Section 5(b) of Exhibit B.

“Storage Contract Output” means the product of the Storage Contract Capacity multiplied by four (4) hours, represented in MWh, initially equal to the amount set forth on the Cover Sheet.

“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including the Energy Management Software and mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Interconnection Facilities (other than Seller’s Interconnection Facility), Network Upgrades and Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

“Storage Facility Meter” means the CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

“Storage Facility Metering Point” means the location or locations of the Storage Facility Meter shown on Exhibit R.

“Storage Product” means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services, if any, in each case arising from or relating to the Storage Facility.

“Storage Rate” has the meaning set forth on the Cover Sheet.

“Stored Energy Level” means, at a particular time, the amount of Energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

“Supplementary Storage Capacity Test Protocol” has the meaning set forth in Part II.I of Exhibit O.

“System Emergency” means (x) 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) preserve Transmission System reliability, or (y) a “System Emergency” or any equivalent term, as defined by CAISO or by the PTO.

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

“Test Energy Rate” has the meaning set forth in Section 3.6.

“Transformer Failure” means failure of all or part of the main power transformer that results in the Facility being unable to generate Energy during such failure, and such failure was not caused by Seller and could not have been avoided through the exercise of Prudent Operating Practice. Seller may claim a Transformer Failure only once during the Contract Term, and the claimed delay associated with such Transformer Failure shall not exceed twelve (12) months.

“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 or the PTO, now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Ultimate Parent” [REDACTED]

“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 4.11(e).



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(m) “or” is not necessarily exclusive; and

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

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

### **2.1 Contract Term.**

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein (“Contract Term”); provided, however, that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

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

(a) Seller has delivered to Buyer (i) a 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;

(b) A Participating Generator Agreement or Pseudo-Tie Participating Generator Agreement, as applicable, , and a Meter Service Agreement between Seller and CAISO

shall have been executed and delivered and are in full force and effect, and a copy of each such agreement delivered to Buyer;

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

(d) An Interconnected Control Area Operating Agreement or equivalent agreement required, if any, as a condition to pseudo-tie operations has been executed and is in full force and effect, and a copy of such agreement delivered to Buyer to the extent available to Seller or otherwise provide evidence reasonably satisfactory to Buyer that such agreement or its equivalent is in place;

(e) If firm transmission service is required for the Facility to deliver Energy from the Interconnection Point to the Delivery Point, agreements for such transmission service shall have been executed and delivered to Buyer.

(f) Copies of executed agreements demonstrating Site Control shall have been delivered to Buyer; provided Seller will be permitted to redact any confidential information contained therein;

(g) 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 [REDACTED]) 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;

(h) 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~~ [REDACTED] days from the Commercial Operation Date);

(i) 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;

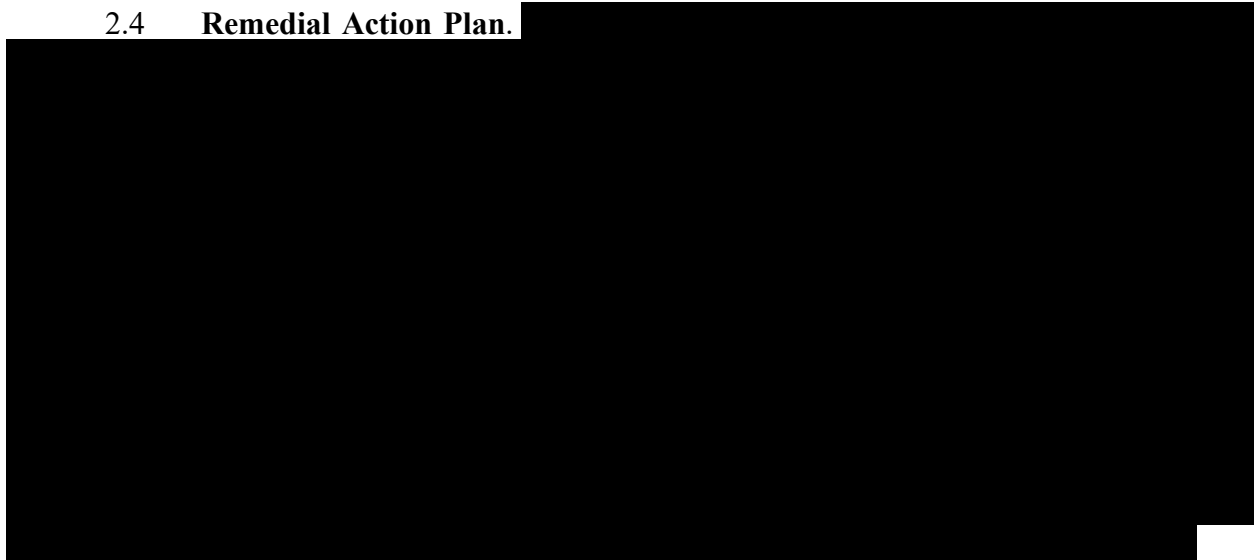
(j) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(k) 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 telephonic or video-conferenced meetings (unless otherwise agreed to by the Parties) between representatives of Buyer and Seller to review such quarterly or 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 reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

**2.4 Remedial Action Plan.**



**2.5 Reserved.**

**ARTICLE 3  
PURCHASE AND SALE**

**3.1 Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion but subject to Section 5.2, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product that is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, a Curtailment Order, if applicable, the curtailment of any transmission required to deliver

Facility Energy to the Delivery Point, or any other curtailment that is not a Buyer Bid Curtailment or Buyer Curtailment Order.

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

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be allocated to the Buyer.

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

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility to reduce Generating Facility Energy or to operate the Storage Facility inconsistent with the Operating Restrictions unless the Parties have agreed on all necessary terms and conditions relating to such alteration or changes in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or changes in operation, if any.

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

### 3.6 **Test Energy.**

### 3.7 **Capacity Attributes.**

(a) Prior to the Delivery Term, Seller shall either (i) obtain Full Capacity Deliverability Status with the CAISO pursuant to the CAISO's New Resource Implementation process (as defined in the CAISO Tariff) or (ii) qualify the Facility as a Pseudo-Tie Resource with the CAISO pursuant to the CAISO's New Resource Implementation process (as defined in the CAISO Tariff). As between Buyer and Seller, Seller shall be responsible for all costs associated with satisfying the requirements of this Section 3.7(a).

(b) Seller shall maintain throughout the Delivery Term, as applicable, either (i) Full Capacity Deliverability Status for the Facility or (ii) the Facility as a Pseudo-Tie Resource in compliance with the CAISO Tariff.

(c) If Seller establishes and maintains the Facility as a Pseudo-Tie Resource, Buyer shall obtain and maintain Import Capability throughout the Delivery Term and so long as Seller maintains the Facility as a Pseudo-Tie Resource. Seller shall use commercially reasonable efforts to support Buyer in obtaining such Import Capability. To the extent Buyer fails to obtain or maintain Import Capability as required above for reasons other than a Seller failure under this Agreement, the Capacity Attributes that are not capable of being delivered due to the lack of Import Capability shall constitute Deemed Delivered RA.

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

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

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

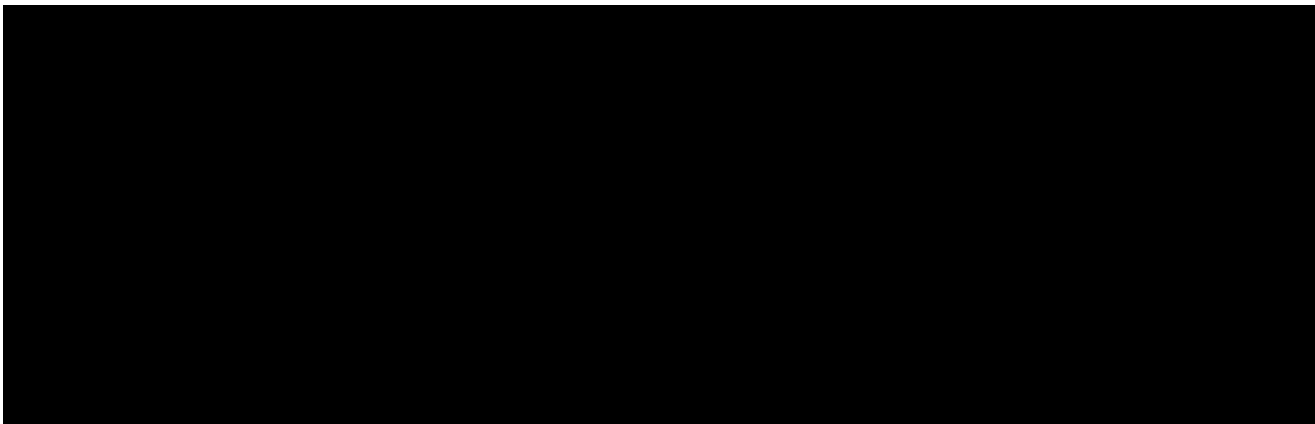
(g) During the Delivery Term, Seller shall not sell or attempt to sell to any other Person the Capacity Attributes, if any, and Seller shall not report to any person or entity that the Capacity Attributes, if any, belong to anyone other than Buyer.

(h) At least thirty (30) days prior to the Compliance Showing Deadline corresponding to each Showing Month of the Delivery Term, Seller shall submit, or cause the Facility's Scheduling Coordinator to submit, Supply Plans to identify and confirm the Resource

Adequacy Benefits provided to Buyer for each Showing Month. Resource Adequacy Benefits are delivered and received when the CIRA Tool shows that the Supply Plans have been accepted by the CAISO. If CAISO rejects either the Supply Plans or Buyer's Resource Adequacy Plans with respect to any part of the Resource Adequacy Benefits in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plans or Resource Adequacy Plans for validation before the applicable Notification Deadline for the relevant Showing Month.

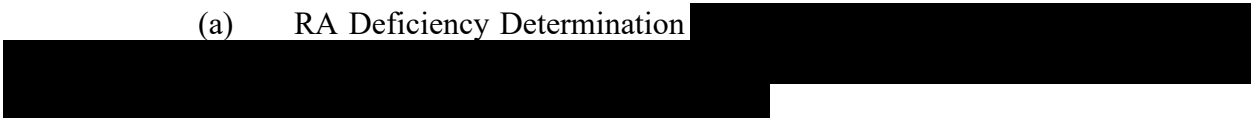
(i) Without limiting Seller's obligations above, at Buyer's request Seller shall: (i) execute such documents and instruments as may be reasonably required to effect recognition and transfer of the Capacity Attributes, if any, to Buyer and (ii) cooperate reasonably with Buyer in order that Buyer may satisfy the Resource Adequacy requirements. 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.

(j) If, after the Effective Date, the PTO or CAISO requires installation of meters and power electronics not required as of the Effective Date so that Ancillary Services and Capacity Attributes may be provided from the Facility to Buyer that would not have been required for the Facility to provide Ancillary Services or Capacity Attributes as of the Effective Date, Seller will provide notice to Buyer thereof, including an estimate of costs. At Buyer's written request, Seller shall install such meters and power electronics, provided, that the cost of such equipment and the installation thereof shall be considered a Compliance Action under Section 3.12 and Seller's obligation to pay for such meters and power electronics shall be subject to the Compliance Expenditure Cap.



3.8 **Resource Adequacy Failure.**

(a) RA Deficiency Determination



(b) RA Deficiency Amount Calculation. [REDACTED]

(c) Reserved.

(d) Reserved.

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 **CPUC Mid-Term Reliability Requirements.**

(a) The Parties acknowledge that Buyer is entering into this Agreement to satisfy a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decision ("D.") 21-06-035. Upon Buyer's written request received by Seller no later than thirty (30) days before an engineering assessment is required to be submitted to the CPUC to demonstrate compliance of a storage facility on a 5-hour (rather than 4-hour) basis, Seller shall cooperate with Buyer at Buyer's cost to provide information about the Storage Facility reasonably available to Seller for Buyer to commission an engineering assessment. In addition, Seller represents and warrants to Buyer that:

(i) The Product includes the exclusive right to claim the Capacity Attributes of the Facility [ ]<sup>5</sup>for purposes of CPUC Decision 21-06-035;

(ii) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 to any other person or entity during the Delivery Term; and

(iii) Seller will provide additional information and documentation reasonably available to Seller to Buyer if necessary to support Buyer in filings it makes related to the procurement mandates set forth in CPUC Decision 21-06-035.



- (iv) The Generating Facility shall have zero on-site emissions;
- (v) The Facility shall be comprised of a generation resource paired with storage;
- (vi) The Facility shall be designed to be capable of delivering 6energy during the 5 p.m. to 10 p.m. period (the beginning of hour ending 1800 and the end of hour ending 2200), Pacific Time; and
- (vii) In furtherance of Buyer's compliance and reporting obligations related to the foregoing, and without limiting Seller's obligations under any other provision of this Agreement, Seller agrees to cooperate in good faith with Buyer to provide documentation reasonably requested by Buyer in connection with such compliance obligations, including engineering assessments or contractual support required or requested by the CPUC pursuant to CPUC D.21-06-035 demonstrating that the Facility satisfies the foregoing requirements.

### 3.11 **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 Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.12. [STC 6].

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

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

### 3.12 Compliance Expenditure Cap.

(a) The Parties acknowledge that an essential purpose of this Agreement is to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard and 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 subject to this Section 3.12 to cooperate with respect to any future requested changes, modification or amendments 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 (i) obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to [REDACTED] 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 [REDACTED]

(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 3.12 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 and Seller shall have no further obligation to take, and no liability for any failure to take, the Compliance Actions that are the subject of the Notice for the remainder of the Contract Term.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as

agreed upon by the Parties and Buyer shall 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.

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.

## **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 without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, 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 without limitation transmission costs and transmission line losses and imbalance charges, and all costs of obtaining and maintaining Import Capability pursuant to Section 3.7(c). 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.

(a) 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 Generating Facility 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.

(b) 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 Generating Facility Energy, Available Generating Capacity and Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("Monthly Delivery Forecast").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) Storage Capacity and (iii) 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 Storage Capacity and (iii) the hourly expected Generating Facility 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 best estimate based on information reasonably available to Buyer.

(d) 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) Storage Capacity or (iii) hourly expected Generating Facility 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 rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Generating Facility 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, Storage 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 best 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.

(e) 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.

(f) 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.


(g) 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 solely in the case of a Buyer Curtailment Order, 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 and, solely in the case of a Buyer Curtailment Order, to the extent inconsistent with a written directive or order from CAISO or the PTO; and further provided that, if permitted by the CAISO Tariff, Buyer shall use commercially reasonable efforts to cause all Energy that would be curtailed from the Generating Facility to be used as Charging Energy.

(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 all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the Renewable Rate in accordance with Exhibit C.

(c) 



(d) 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.

#### 4.5 Charging Energy Management.

(a) Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy from the Generating Facility or the grid to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility or the grid to the Storage Facility. Except as expressly set forth in this Agreement, including Section 4.5(c) and Section 4.9(b), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility.

(b) Charging Notices. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices

is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Seller shall comply with all Charging Notices, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Contract Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. Subject to Seller's obligations to comply with the CAISO Tariff and CAISO directives, including Curtailment Orders, Charging Notices from CAISO and Discharging Notices from CAISO, Seller may provide notice to Buyer or Buyer's SC that it must adjust a Charging Notice from Buyer to the extent necessary to maintain compliance with the Operating Restrictions and upon Buyer's receipt of such notice, a Charging Notice from Buyer will be deemed to have been adjusted as provided in such notice. If, during the Contract Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (ii) charges the Storage Facility in violation of the first two sentences of this Section 4.5(c) or (iii) charges the Storage Facility on its own initiative, then (x) Seller shall be responsible for all Energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such Energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such Energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Discharging Notices. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions. Seller shall comply with all Discharging Notices, subject to the requirements and limitations set forth in this Agreement. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) No Unauthorized Discharging. Seller shall not discharge the Facility during the Delivery Term other than pursuant to a valid Discharging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. Seller may provide notice to Buyer or Buyer's SC that it must adjust a Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions and upon Buyer's receipt of such notice, a Charging Notice from Buyer will be deemed to have been adjusted as provided in such notice. If, during the Contract Term, Seller (i) discharges the Storage Facility other than as provided for in the Discharging Notice or (ii) discharges the Storage Facility in violation of the first two sentences of this Section 4.5(c), then (x) Seller shall be responsible for all Energy costs associated with such discharging of the Storage Facility, (y) Buyer shall not be required to pay for the discharging of such Energy (i.e., Discharging Energy), and (z) Buyer shall be entitled to all of the benefits (including Storage Product) associated with such discharge. If at any time the sum of the Generating Facility Energy and the Discharging Energy would exceed the Interconnection Capacity Limit, the applicable Discharging Notice shall

be deemed to be modified to reduce the amount of Discharging Energy so that the total Facility Energy does not exceed the Interconnection Capacity Limit.

(f) Grid Charging. During the Delivery Term, the Storage Facility will be capable of receiving Charging Energy from the Generating Facility and in the form of grid Energy. If Buyer elects to provide Charging Energy from a source other than the Generating Facility, including grid Energy, Buyer will be responsible for all costs relating to the charging of the Storage Facility from a source other than the Generating Facility, including the cost of Energy used to charge the Storage Facility.

(g) The Storage Facility is able to provide the Ancillary Services available in CAISO markets subject to the Operating Restrictions, the Interconnection Agreement and the Interconnection Capacity Limit. Seller will dispatch the Storage Facility in response to signals from Buyer or Buyer's Scheduling Coordinator, subject to the Operating Restrictions, Interconnection Agreement and the Interconnection Capacity Limit.

(h)

[REDACTED]

[REDACTED]

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.

[REDACTED]



██████████ Seller shall not schedule non-emergency maintenance that reduces the generating capacity or storage capability 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 months of June through September, (iii) such outage is required in accordance with Prudent Operating Practice, or (iv) the Parties agree otherwise in writing (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 in accordance with Sections 4.3(d) and (e).

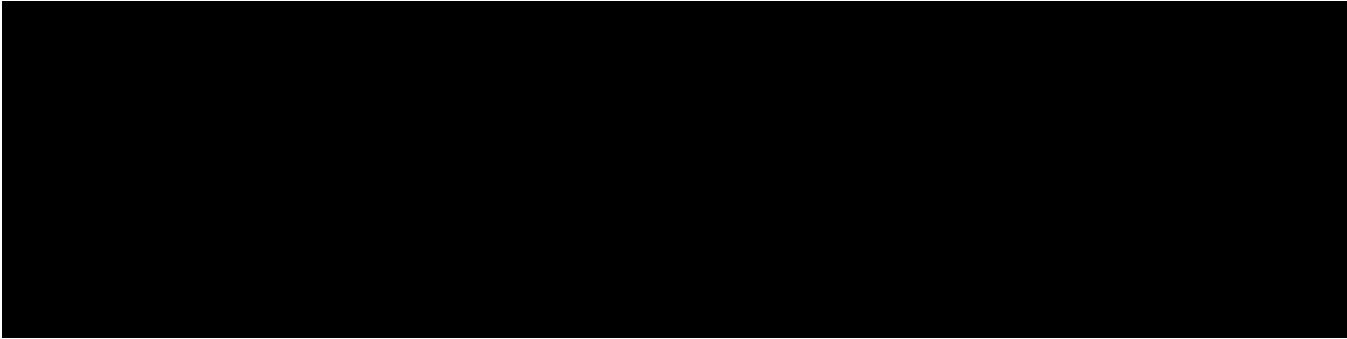
(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period or Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement, the CAISO Tariff or applicable PTO 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**. Seller shall achieve the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, in addition to all Generating Facility Energy, 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.

4.8 **Storage Availability and Efficiency**. During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no ██████████ ██████████ which Monthly Storage Availability shall be calculated in accordance with Exhibit P.



4.9 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete

a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Alternatively, to the extent that any Storage Capacity Tests are done remotely, and no representatives are needed on Site, Seller shall arrange for both Parties to have access to all data and other information arising out of such tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. For any Storage Capacity Tests initiated by Seller, Seller shall (i) not be entitled to the Renewable Rate for associated Charging Energy, (ii) be liable for all CAISO costs and charges for associated Charging Energy, and (iii) be entitled to any CAISO revenues associated with Discharging Energy. For any Storage Capacity Tests initiated by Buyer, Buyer shall (x) pay Seller the Renewable Rate for associated Charging Energy, (y) be liable for all CAISO costs and charges for associated Charging Energy, and (z) be entitled to any CAISO revenues associated with associated Discharging Energy. No Charging Notices or Discharging Notices shall be issued during any Storage Capacity Test except as reasonably requested by Seller or Buyer to implement the applicable test. Buyer shall (i) comply with all reasonable and notified Seller health and safety policies and procedures and instructions while present at the Site, and (ii) shall conduct itself in a manner that will not unreasonably interfere with the operation of the Facility or other activities of Seller and its subcontractors on the Site. Buyer acknowledges that it will be escorted at all times while on the Site.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then current Storage Capacity and/or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to a Storage Capacity Test (not to exceed the Storage Contract Capacity) shall become the new Storage Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

(d) It is acknowledged that Seller shall have the right and option in its sole discretion to install Facility capacity in excess of the Storage Contract Capacity; *provided*, for all purposes of this Agreement the amount of Installed Battery Capacity and Storage Capacity shall never be deemed to exceed the Storage Contract Capacity, and (for the avoidance of doubt) (i) Buyer shall have no rights to instruct Seller to (A) charge or discharge the Facility at an instantaneous rate (in MW) in excess of the lesser of the Storage Contract Capacity or the Storage Capacity or (B) charge the Facility to a level (in MWh) in excess of the lesser of the Storage Contract Capacity or Storage Capacity times four (4) hours, (ii) Buyer shall have no obligation to dispatch such excess capacity on behalf of Seller, or to make payment to Seller for such excess capacity, (iii) Seller shall not attempt to dispatch such excess Facility capacity to any third party (including CAISO) unless Seller installs and maintains separate metering and a separate resource ID for such excess capacity, and is able to deliver such excess capacity without use of the Dedicated Interconnection Capacity, and (iv) for purposes of calculating the Monthly Storage Availability of the Facility, the unavailability of such excess capacity will not be considered in such calculations.

4.10 **Station Use**. Seller will be responsible for procuring and paying for all necessary

retail electricity required to provide Station Use for the Facility. For the avoidance of doubt, any Energy provided from the Generating Facility for Station Use shall not be considered Generating Facility Energy.

4.11 **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 the Generating Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.11(c), provided that Seller fulfills its obligations under Sections 4.11(a) through (f) below. In addition:

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

(b) Seller shall cause Recurring Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Generating 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 Generating Facility Energy for such calendar month.

(d) Due to the fourteen (14) 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 4.11. 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 Generating Facility Energy that qualifies for, or would have qualified but for Seller's error or omission inconsistent with its requirements hereunder, for a WREGIS Certificate for the same calendar month ("Deficient Month") caused by an error or omission of Seller. [REDACTED]



(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 4.11 after the Effective Date, the Parties promptly shall modify this Section 4.11 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 Generating Facility Energy in the same calendar month.

4.12 **Interconnection Capacity.** Seller shall have and maintain interconnection capacity under the Interconnection Agreement available or allocable to the Facility in a quantity that is no less than the Guaranteed Capacity that enables the Facility to interconnect with the PTO and fulfill its obligations under this Agreement during the Test Energy period and throughout the Delivery Term (the "Dedicated Interconnection Capacity"). Seller shall be responsible for all costs of interconnecting the Facility to the Transmission System.

4.13 **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.

5.3 **Ownership.** Seller shall be the owner of the Facility for federal income tax purposes and, as such, Seller (or its Affiliates or Lenders) shall be entitled to all depreciation deductions associated with the Facility and to any and all Tax Credits or other tax benefits associated with the Facility, including any such tax credits or tax benefits under the Code and all Renewable Energy Incentives. The Parties intend this Agreement to be a “service contract” within the meaning of Section 7701(e)(3) of the Code. The Parties will not take the position on any tax return or in any other filings suggesting that it is anything other than a purchase of the Product from the Seller or that this agreement is anything other than a “service contract” within the meaning of Section 7701(e)(3) of the Code.

## 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 batteries, and solar panels. Subject to providing Buyer thirty (30) days’ prior Notice, Seller has the right to replace or augment existing batteries and other equipment for purposes associated with maintaining the Storage Contract Capacity or Storage Contract Output, provided that any discretionary replacement or augmentation shall not occur during the summer months (June through September) unless (i) such replacement or augmentation activity will not cause Storage Capacity to be less than the Storage Contract Capacity, (ii) Seller can demonstrate to Buyer’s reasonable satisfaction that the replacement or augmentation will not materially affect ongoing operations, or (iii) the Parties otherwise mutually agree.

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 or Discharging 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 Shared Facilities Agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder, including providing the Dedicated Interconnection Capacity equal to the Interconnection Capacity Limit, (ii) continue to provide for separate metering and a separate Resource ID for each of the Generating Facility and the Storage Facility, and (iii) shall not allow any Affiliate of Seller or third party to use the Dedicated Interconnection Capacity if such use would have an adverse impact on Buyer's dispatch rights of the Facility. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs or losses from CAISO or under the Agreement resulting from a third party's use of the Dedicated Interconnection Capacity.

#### 6.4 **Storage Operations and Maintenance.**

(a) Buyer shall at all times during the Delivery Term retain operational control of the Storage Facility and be responsible for dispatching and coordinating charging of the Storage Facility consistent with the terms and conditions of this Agreement.

(b) Seller shall at all times retain all other aspects of operation and maintenance of the Storage Facility in accordance with Prudent Operating Practices and applicable Law and adhering to all operational data, interconnection and telemetry requirements applicable to the Storage Facility.

### **ARTICLE 7 METERING**

#### 7.1 **Metering.**

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 0, the Facility shall have a separate Resource ID for each of the Generating Facility and the Storage Facility, Seller shall measure the amount of Generating Facility Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, including CAISO's rules for Pseudo-Tie Resources, the Generating Facility Meter and Storage Facility Meter shall be programmed to adjust for Electrical Losses and Station Use in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the metering diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each Generating Facility Meter and Storage Facility 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.

(b) Section 7.1(a) is based on the Parties' mutual understanding as of the Effective Date that (i) the CAISO requires the configuration of the Facility to include, as the sole meters for the Facility, the Generating Facility Meter and the Storage Facility Meter, (ii) the CAISO requires the Generating Facility Meter and the Storage Facility Meter to be programmed for Electrical Losses as set forth in the definition of Electrical Losses in this Agreement, and (iii) the automatic adjustments to Charging Notices and Discharging Notices as set forth in the definitions of Charging Notice and Discharging Notice in this Agreement will not result in Seller violating, or incurring any costs, penalties or charges under, the CAISO Tariff. If any of the foregoing mutual understandings in (i), (ii), or (iii) between the Parties is or becomes incorrect during the Delivery Term, the Parties shall cooperate in good faith to make any amendments and modifications to the Facility and this Agreement as are reasonably necessary to conform this Agreement to the CAISO Tariff and avoid, to the maximum extent practicable, any CAISO charges, costs or penalties that may be imposed on either Party due to non-conformance with the CAISO Tariff, such agreement not to be unreasonably delayed, conditioned or withheld.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests subject to the terms and conditions of Section 4.9(b). If a meter is inaccurate, it shall be promptly repaired or replaced.

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer within [REDACTED] after the end of the prior monthly delivery period. Each invoice shall (a) include 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 Facility Energy, Generating Facility Energy, Charging Energy, Discharging Energy, and Replacement RA delivered to Buyer (if any), the calculation of Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Settlement Point and Delivery Point (for each Settlement Interval, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) reflect 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 specified by Buyer, 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, 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 in accordance with Exhibit N.

8.2 **Payment.** Buyer shall make payment to Seller for Product and any other amounts due hereunder by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder. Buyer shall pay undisputed invoice amounts within [REDACTED] 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, but no more often than three (3) times per Contract Year without a reasonable basis for such request, 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 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 Ten Thousand Dollars (\$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 pursuant to a Storage Capacity Test, 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



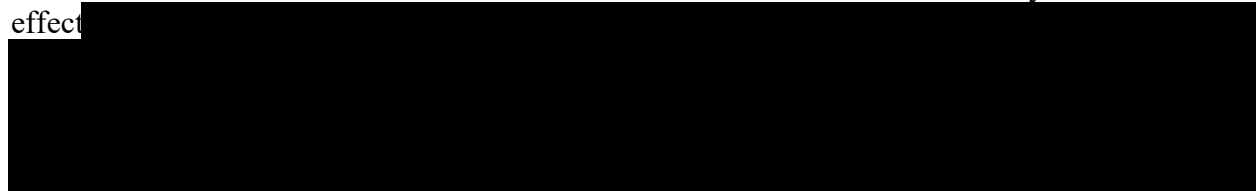
to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state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

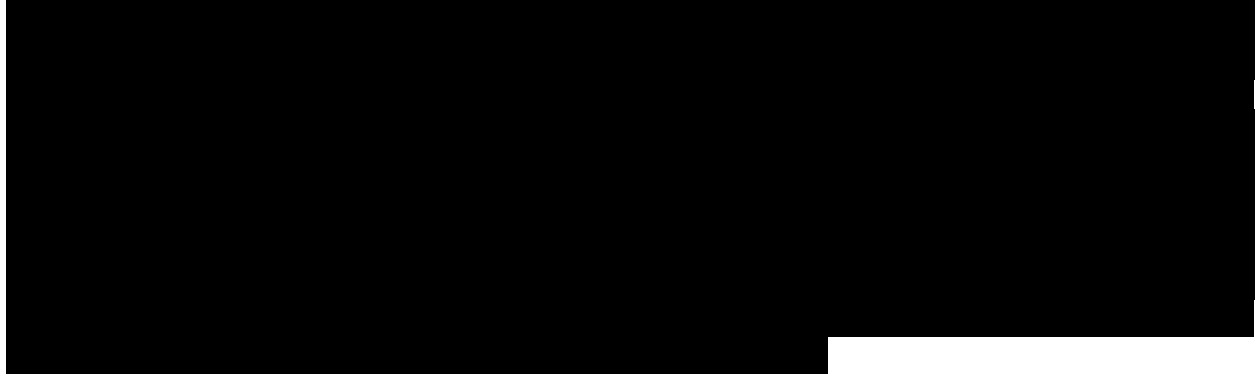
8.6 **Netting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing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

8.7 **Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect



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





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

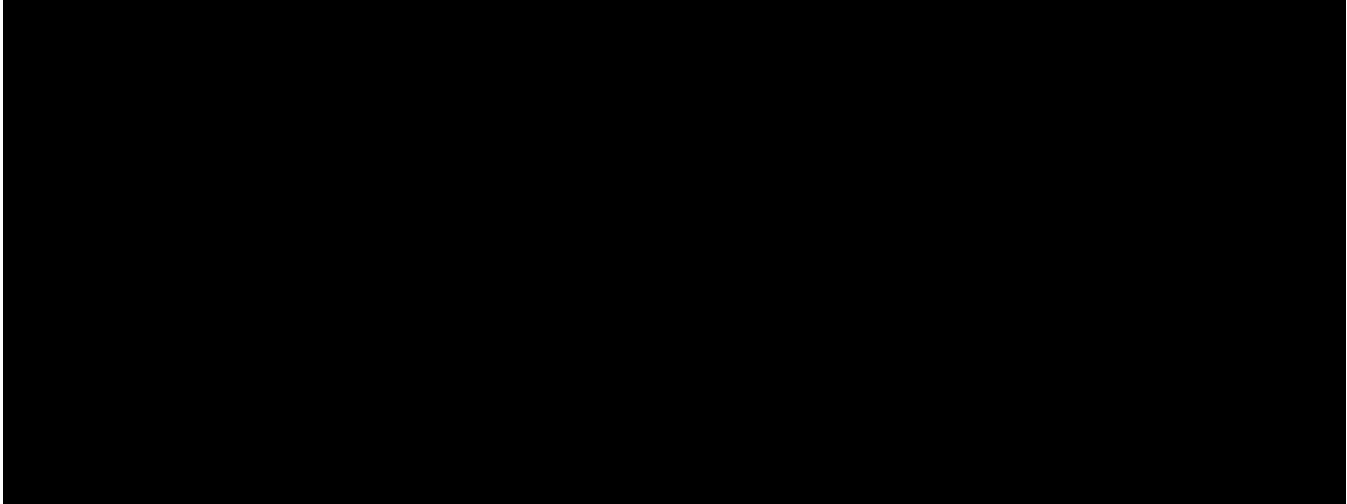
Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security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

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

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller’s obligations under this Agreement (Seller remains liable for any amounts owing 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 **Seller’s 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 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 (unless the sender receives an automated message that the email has not been delivered to the recipient), 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.

**10.3 Notice for Force Majeure.** Within two (2) Business Days of obtaining knowledge 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; *provided* that the failure of the claiming Party to notify the other Party within such two- (2-) Business Day period will not preclude the claiming Party from claiming a Force Majeure hereunder but for any Force Majeure notification provided after the two- (2-) Business Day period, the Force Majeure will be deemed to have commenced as of the date of such notice. 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 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 Article 14; or

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

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

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

[REDACTED]

(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;

[REDACTED]

(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;

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

(xiii) 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.

(xiv) 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 A- by S&P or A3 by Moody's;

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

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

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less [REDACTED] 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 (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 remedy for any Terminated Transaction and the Event of Default related thereto[; and, provided further that if Buyer is the Defaulting Party, any remedy is a limited obligation payable solely from the Designated Fund.]<sup>7</sup>

**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. 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 or Damage Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to

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<sup>7</sup> For SJCE only.

the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, 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 or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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

11.6 **Rights And Remedies Are Cumulative.** Except where an express and exclusive remedy or measure of 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, PART OF AN ARTICLE 16 INDEMNITY CLAIM, INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM A PARTY'S 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 BY STATUTE, IN TORT OR CONTRACT. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

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.

THE VALUE OF ANY RENEWABLE ENERGY INCENTIVES AND TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES AND TAX CREDITS, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 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 limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and is qualified to conduct business in the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

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

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

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

(e) The Facility is located in the State of Arizona.

(f) Seller will be responsible for obtaining, or causing to be obtained, all permits necessary to construct and operate the Facility.

(g) Seller shall maintain Site Control of the Facility throughout the Delivery Term.

(h) The Delivery Point shall be (i) within the CAISO Balancing Authority Area (BAA) or (ii) Pseudo-Tied into the CAISO BAA in accordance with the applicable requirements of the CAISO Tariff, including Appendix N to the CAISO Tariff. If the Facility is not interconnected with the CAISO BAA, Seller shall be responsible for taking all actions at its sole cost and expense required to effectuate the delivery of Facility Energy as a Pseudo-Tie Resource, including securing and maintaining such arrangements with CAISO and any Transmission Provider as are necessary in connection therewith.

(i) Seller warrants that no firm transmission service is required for the Facility to deliver Energy from the Interconnection Point to the Delivery Point and, if such transmission service is required at any time during the Delivery Term, including for participation in CAISO markets at the Delivery Point, Seller will secure such transmission service at no cost to the Buyer.

(j) Seller shall comply with all CAISO Tariff requirements applicable to the Facility throughout the Delivery Term, including, as applicable, the requirements for Pseudo-Tie Resources set forth in the CAISO Tariff and Appendix N thereto.

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.]<sup>8</sup> [Buyer is a California municipal corporation 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 the City of San Jose. 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 applicable Law.]<sup>9</sup>

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

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

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

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8 For Ava only.  
9 For SJCE only.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted in Law and under the Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment;[ provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.)]<sup>10</sup>

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

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations 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 **Additional Seller Covenants.**<sup>11</sup>

(a) **Nondiscrimination/Non-Preference.** Seller shall comply with all laws and agrees to not discriminate against or grant preferential treatment to any person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring, demotion, layoff, termination, compensation, fringe benefits, advancement, training, apprenticeship and other terms, conditions, or privileges of employment, subcontracting and purchasing. Seller will include in each subcontract with a Major Subcontractor entered into after the Effective Date of this Agreement these same obligations. This prohibition is not intended to preclude Seller from providing a reasonable accommodation to a person with a disability.

(b) **Conflict of Interest.** Seller represents that it is familiar with the local and state conflict of interest laws, and agrees to comply with those laws in performing this Agreement. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting a conflict of interest. Seller shall avoid all conflicts of interest in performing this Agreement. Seller has the obligation of determining if the manner in which it performs any part

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11 For SJCE only.

of this Agreement results in a conflict of interest, and shall immediately notify the Buyer in writing if it becomes aware of any facts giving rise to a conflict of interest. Seller's violation of this subsection (b) is a material breach.

(c) Gifts Prohibited. Chapter 12.08 of the San José Municipal Code prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08.

(d) Disqualification of Former Employees. Chapter 12.10 of the San José Municipal Code prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

13.5 Prevailing Wage. Seller shall 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 in which the Facility is located in accordance with the prevailing wage requirements for eligibility for increased tax credits under Sections 45(b)(6)-(7) or Sections 48(a)(9)-(10), as applicable, of the United States Internal Revenue Code of 1986, or any successor statute. To the extent applicable to the construction of the Facility, Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws.

13.6 Workforce Development and Community Investment. Seller shall perform the obligations related to workforce development and community investment set forth in Exhibit S. 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 in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as provided in this Article 14, 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, which consent shall not be unreasonably withheld. Any assignment made in violation of the conditions to assignment set out in this Article 14 shall be null and void. Buyer shall 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. Seller shall be responsible for Buyer's reasonable costs, including without limitation reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any financing of the Facility or any assignment of this Agreement by Seller. Except as may be precluded by, or

would cause Buyer to be in violation of the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) or the regulations thereto, Cal. Government Code section 1090, Buyer's Conflict of Interest Code/Policy or any other conflict of interest Law, subject to not less than thirty (30) days' Notice, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to (i) an Affiliate, (ii) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law), provided such Person is a Permitted Transferee, or (iii) a Permitted Transferee. Neither (A) the transfer or assignment of this Agreement through foreclosure by any Lender on the assets of Seller or on the direct or indirect ownership interests in Seller nor (B) the transfer or assignment of this Agreement or such ownership interests in Seller to any Lender in lieu of such foreclosure (including any transfer or assignment of this Agreement or such ownership interests in Seller to a Permitted Transferee subsequent to such foreclosure or transfer or assignment in lieu of foreclosure) shall require Buyer's consent

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right, without the consent of Buyer, to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lenders to agree upon a consent to collateral assignment of this Agreement ("Collateral Assignment Agreement"). Each Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and the applicable Lender, such agreement not to be unreasonably withheld. Buyer will not be subject to obligations under more than one Collateral Assignment Agreement at any time. Each Collateral Assignment Agreement must include, among others, the following provisions unless otherwise agreed to by Buyer, Seller and the applicable Lender:

(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 any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Lender will have the right to cure an Event of Default on behalf of Seller if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) 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 such Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or, in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default, an additional reasonable period of time to complete such proceedings and effect such cure not to exceed one hundred eighty (180) days without the written consent of Buyer, which consent shall not be unreasonably withheld), provided that if Lender is prohibited by any court order or bankruptcy or insolvency proceedings from curing the Event of Default or from commencing or prosecuting foreclosure proceedings, the foregoing time periods shall be extended by the period of such prohibition;

(c) Following an Event of Default by Seller under this Agreement, Buyer may



require Seller (or Lender, if Lender has provided the notice set forth in subsection (b) above) 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;

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

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

(f) If this Agreement is transferred to Lender pursuant to subsection (b) above, Lender must assume all of Seller's obligations arising under this Agreement on and after the date of such assumption; 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 transfer date (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings, to representations and warranties made by Seller or to Seller's failure to perform obligations under other agreements, or which are otherwise personal to Seller) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings, to representations and warranties made by Seller or to Seller's failure to perform obligations under other agreements, or which are otherwise personal to Seller), or

(ii) Not assume this Agreement.

(g) If Lender elects to transfer this Agreement, then Lender must cause the transferee to assume all of Seller's obligations arising under this Agreement arising after the date of such assumption as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee;

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender or its designee shall have the right to elect within ninety (90) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility 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 substantially 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), if such designee is not an entity that meets the definition of Permitted Transferee then such designee shall be subject to the prior written approval of Buyer, such approval not to be unreasonably withheld.

(i) If requested by Lender, Buyer will make all payments due to Seller under this Agreement to an account designated by Lender in writing; and

(j) Lender shall not have any liability or obligation under this Agreement as a result of exercising its rights under the Collateral Assignment Agreement, and Lender shall not be obligated or required to perform any of Seller's obligations under this Agreement, except if this Agreement is transferred to Lender pursuant to subsection (b) above or Lender is a counterparty to a replacement agreement entered into pursuant to subsection (h) above.

14.3 **Permitted Assignment by Buyer.** Buyer may make a limited assignment of Buyer's right to receive all or a portion of the Product that would otherwise be delivered to Buyer hereunder to an entity ("Limited Assignee") that has, or provides a parent guaranty, in form and substance reasonably acceptable to Seller from an entity with an Investment Grade Credit Rating of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement, at any time upon not less than thirty (30) days' Notice by delivering a written request for such assignment. In connection with any such assignment, Buyer and Seller agree to execute a limited assignment agreement substantially in the form attached hereto as Exhibit T. For the avoidance of doubt, Buyer will remain responsible for all its obligations under this Agreement related to such assigned Product, including (i) the obligation to pay for such Product to the extent the assignee thereof does not do so and (ii) any damages associated with such assignee's failure to take any such Product. Buyer shall be responsible for Seller's reasonable costs, including without limitation reasonable attorneys' fees, associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Buyer.

## 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. [STC 17] 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<sup>12</sup>][County of Santa Clara<sup>13</sup>], California.

15.2 **Dispute Resolution.** [In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the authorized 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, 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. To the fullest extent permitted under applicable Law, any statute of limitations applicable to a dispute that is mediated by the Parties pursuant to this Agreement shall toll during any period in which such dispute is being mediated in accordance with this Section 15.2.<sup>14</sup>]

[In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the parties shall submit the dispute to 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.<sup>15</sup>]

## ARTICLE 16 INDEMNIFICATION

### 16.1 **Indemnification.**

(a) Seller (the "Indemnifying Party") agrees to defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, employees and representatives (each an

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<sup>12</sup> Ava

<sup>13</sup> SJCE

<sup>14</sup> SCJE's Section 15.2

<sup>15</sup> Ava's Section 15.2

“Indemnified Party” and collectively, the “Indemnified Group”) from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys’ and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, “Indemnifiable Losses”).

(b) Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts, or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligations to pay claims consistent with the provisions of a valid insurance policy. Upon the Buyer’s written request, the Seller, at its own expense, must defend any suit or action that is subject to the Seller’s indemnity obligations. The Seller’s indemnity obligations survive the expiration or earlier termination of the Agreement.

16.2 **Notice of Claim.** Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, Buyer will promptly provide Notice to Seller in writing of any damage, claim, loss, liability or expense which Buyer 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 Buyer regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice.** A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure.

16.4 **Defense of Claims.** If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Seller pursuant to Section 16.2, Buyer receives Notice from Seller that Seller has elected to assume the defense of such Claim, Seller will not be liable for any legal expenses subsequently incurred by Buyer in connection with the defense thereof; provided, however, that if Seller fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Buyer that Buyer believes Seller has failed to take such steps, or if Seller has not undertaken fully to indemnify Buyer in respect of all Indemnifiable Losses relating to the matter, Buyer may assume its own defense, and Seller will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of Buyer, Seller 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 Buyer for which Buyer is not entitled to indemnification hereunder; provided, however, that Seller may accept any settlement without the consent of Buyer if such settlement provides a full release to Buyer and no requirement that Buyer 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 Buyer for which Buyer is not entitled to indemnification hereunder and Seller desires to accept and agrees to such offer, Seller will give Notice to Buyer to that effect. If Buyer fails to

consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Buyer may continue to contest or defend such Claim and, in such event, the maximum liability of Seller to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Buyer up to the date of such Notice.

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

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

## ARTICLE 17 INSURANCE

### 17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of [REDACTED] per occurrence, and an annual aggregate of not less than [REDACTED] endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement (subject to policy terms and conditions) and including Buyer as an additional insured; and (ii) [REDACTED] Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) **Employer's Liability Insurance.** If Seller has employees, Employers' liability insurance shall not be less than [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] will apply to each employee.

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

(d) **Business Auto Insurance.** Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of [REDACTED] per occurrence. Such insurance shall cover liability arising out of [REDACTED]

Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

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

(f) 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 [REDACTED] per occurrence and in the aggregate, naming the Seller (and Lender if any) as additional named insured.

(g) Property Insurance. On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard "all risk" property insurance coverage in amounts that are not less than the actual replacement value of the Project, provided, however, with respect to property insurance for natural catastrophes, Seller shall maintain limits equivalent to a "probable maximum loss" amount determined by a firm with experience providing such determinations and where commercially available.

(h) 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).

(i) 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 except ten (10) days for nonpayment of premium. 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 7920 et seq.). The provisions of this Article 18 shall survive and shall continue to be binding upon the Parties for period of one (1) year following the date of termination of this Agreement.

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 and its Affiliate’s members, employees and officers, 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) or is otherwise bound by a duty of confidentiality.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press

release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. A Party's consent shall not be unreasonably withheld, conditioned or delayed.

## ARTICLE 19 MISCELLANEOUS

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

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

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

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender or indemnified party pursuant to Article 16.

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.**<sup>16</sup> 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.

19.10 **Designated Fund; Limited Obligations.**<sup>17</sup>

(a) **Designated Fund.** Buyer is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in this Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) Buyer has created and set aside a designated operating fund for San José Clean Energy as further described in Section 4.80.4050 of the City of San José Municipal Code (the “Designated Fund”) for payment of its obligations under this Agreement, (ii) as set forth in Section 4.80.4060 of the City of San José Municipal Code, all monies derived from operation of San José Clean Energy, including revenues

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<sup>16</sup> For Ava only

<sup>17</sup> For SJCE only.

from sale of electricity, payments from other entities, and any financing proceeds associated with San José Clean Energy will be deposited in the Designated Fund, and (iii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy's obligations, Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Buyer's payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.

(b) **Limited Obligations.** Buyer's payment obligations under this Agreement are special limited obligations of the Buyer payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the City of San José.

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.

**SUN POND, LLC**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**[AVA COMMUNITY ENERGY  
AUTHORITY, a California joint powers  
authority**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Approved as to form:**

\_\_\_\_\_] ]  
Inder Khalsa, Interim General Counsel

**[CITY OF SAN JOSE, a California  
municipal corporation**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**Approved as to form:**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_]



including receiving and processing data from the CAISO ADS and CMRI systems (or such successor systems). This shall include the ability to receive such operating instructions from the CAISO using a security-based certificate as may be installed in the energy management system (i.e., Seller can install an CAISO security certificate and therefore be able to receive and process set point operating instructions received directly from the CAISO systems).19

**Operating Characteristics of Storage Facility:** +0.95/-0.95 at Installed Battery Capacity at Delivery Point; set point control +0.90/-0.90.

**Operating Restrictions of Storage Facility:** See Exhibit Q.

**Guaranteed Capacity:** 42.5 MW, as may be adjusted pursuant to Section 5(a) of Exhibit B

**Storage Contract Capacity:** 42.5 MW, as may be adjusted pursuant to Section 5(b) of Exhibit B

**Maximum Facility Output:** 42.5 MW

**Maximum Charging Capacity:** 42.5 MW

**Maximum Discharging Capacity:** 42.5 MW

**Interconnection Point:** [REDACTED]

**Settlement Point:** [REDACTED]

**Delivery Point:** [REDACTED]

**Generating Facility Meter:** See Exhibit R.

**Storage Facility Meter Location:** See Exhibit R.

**PNode:** [REDACTED]

**Participating Transmission Owner:** [REDACTED]: Arizona Public Service Company, The City of Los Angeles by and through the Department of Water and Power, El Paso Electric Company, Public Service Company of New Mexico, Salt River Project Agricultural Improvement and Power District, Southern California Public Power Authority, and Southern California Edison

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[REDACTED]

**EXHIBIT B**

**CONSTRUCTION START AND COMMERCIAL OPERATION**

1. **Construction Start.**

- 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 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.



2. **Commercial Operation of the Facility.** “Commercial Operation” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and 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; provided that Buyer will provide a response to Seller’s notice

of Commercial Operation within five (5) Business Days of receipt thereof or will be deemed to have agreed that Commercial Operation has been achieved. The “Commercial Operation Date” shall be the later of (i) thirty (30) days prior to the Expected Commercial Operation Date, unless otherwise agreed by the Parties, or (ii) the date on which Commercial Operation is achieved.

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.

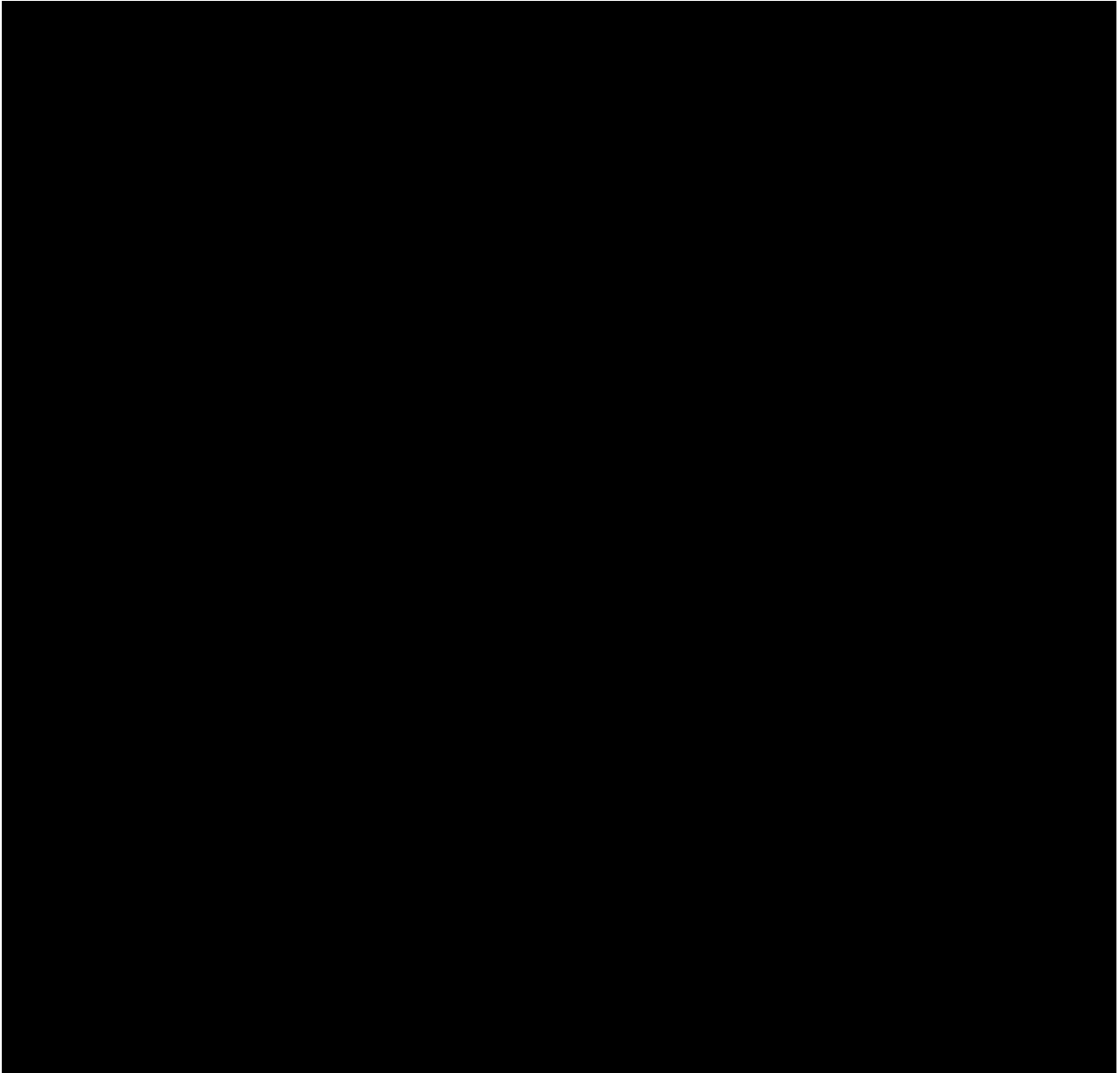
b. If Seller achieves Commercial Operation for the Facility by the Guaranteed Commercial Operation Date (excluding any paid extensions of the Guaranteed Commercial Operation Date under Section 2(c) below), all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.

c.



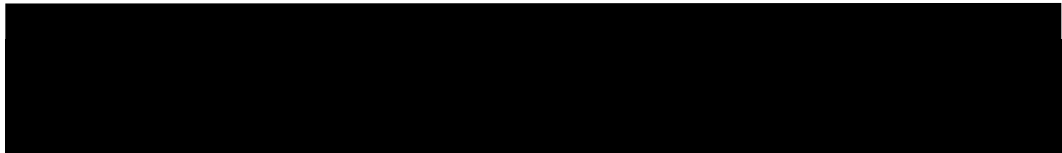


4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall both, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "Development Cure Period") due to:

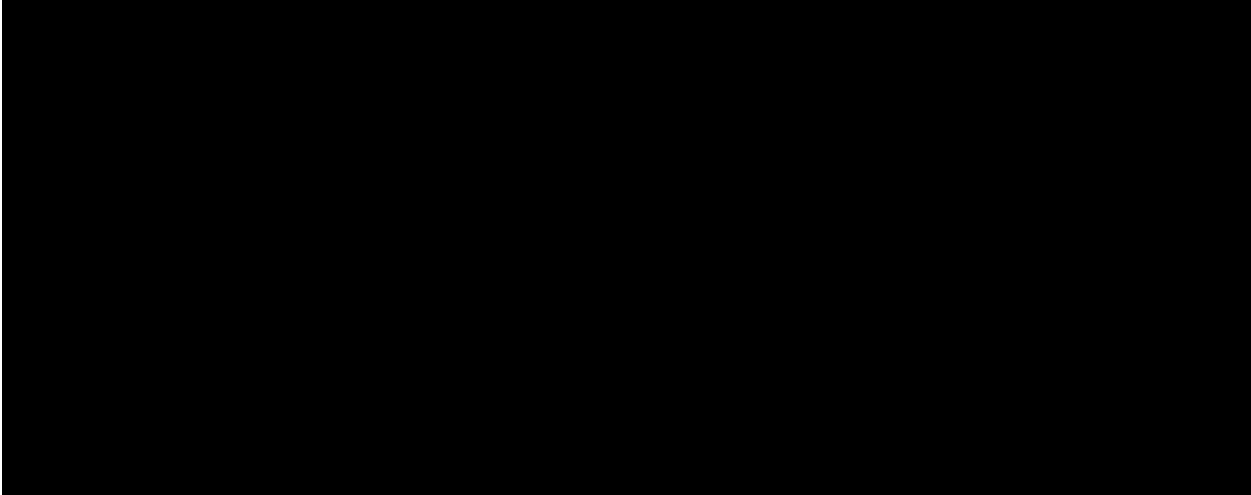
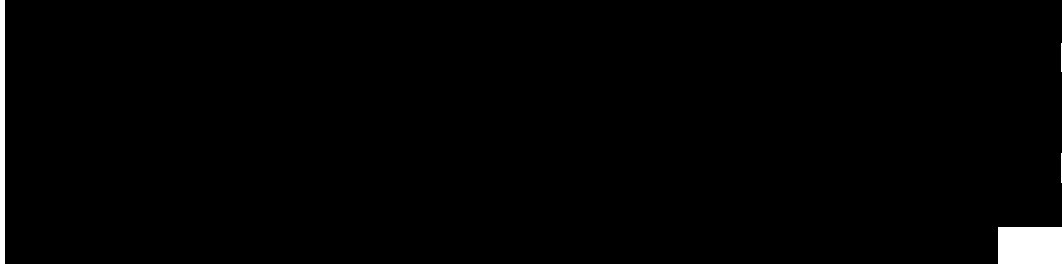


5. **Failure to Reach Guaranteed Capacity or Storage Contract Capacity.**

- a.



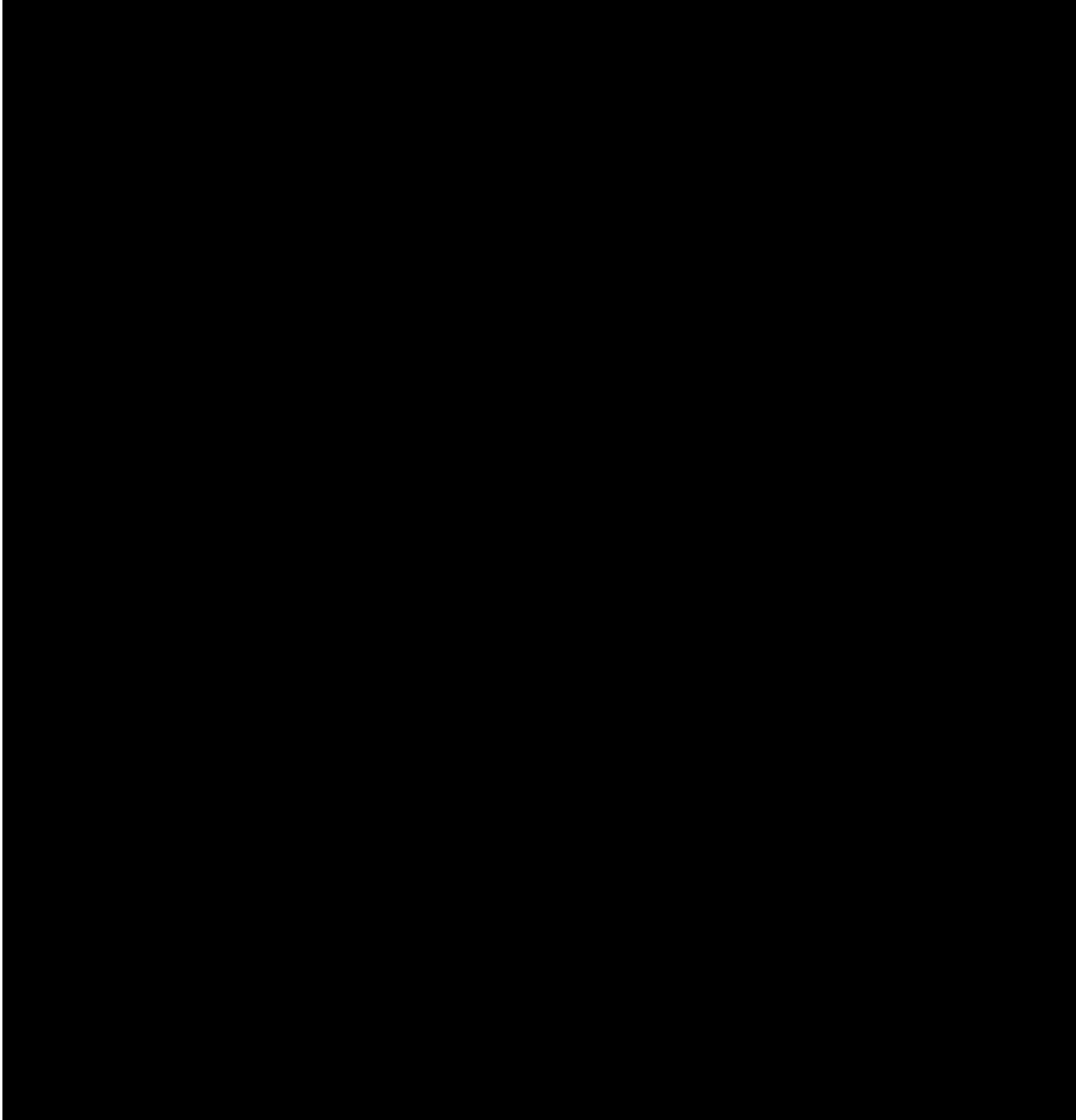




**EXHIBIT C**  
**COMPENSATION**

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

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Generating Facility Energy, [REDACTED]



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

(h) Tax Credits. The Parties agree that neither the Renewable Rate, the Storage Rate 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. 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.

**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. Buyer shall cause its Scheduling Coordinator to reasonably cooperate with Seller during the testing and commissioning of the Facility prior to the Commercial Operation Date. Buyer (or its SC) shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Buyer as the Scheduling Coordinator for the Facility. Seller, as owner of the Facility, shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as applicable to Seller as owner of the Facility, including, as applicable, CAISO's rules for Pseudo-Tie Resources. Seller shall ensure that Buyer (as SC) has all necessary data access or reporting, as applicable, to the extent necessary to satisfy any applicable CAISO requirements, including, as applicable, CAISO's rules for updating ETags for Pseudo-Tie Resources.

(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, must offer waiver forms, inability to follow CAISO dispatches or directives, and any other notice or update required of a Generating Facility or a Non-Generator Resource. Seller will cooperate with Buyer to provide such notices and updates promptly, with standard notices to be provided to Buyer with sufficient time for the Buyer to notify the CAISO and meet CAISO timelines. 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 be responsible for and reimburse Buyer for any and all CAISO costs, charges or sanctions incurred by Buyer as a result of Seller's failure to perform its obligations under this Agreement. 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 the Seller and for Seller's account, except to the extent any such Non-Availability Charges are incurred due to Buyer or Buyer's SC's failure to perform its duties as Scheduling Coordinator for the Facility, including a failure to perform its must offer requirements under Section 40.6 of the CAISO Tariff, in which case, such Non-Availability Charges shall be the responsibility of Buyer and for Buyer's account. In addition, if during the Delivery Term, the CAISO implements any sanction or penalty related to scheduling, outage reporting, energy storage facility operation, or generating facility 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, including Curtailment Orders, Charging Notices and Discharging Notices, 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 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; Master Resource Database.

The Parties will collaborate to comply with the applicable deadlines for filing and updating the information for the Facility in the Master Resource Database and Master Data File. Seller shall provide the data 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 at least five (5) Business Days before the deadline for submission to CAISO and Buyer (as SC) shall promptly provide such data to CAISO. Seller shall provide the data that is required for the CPUC's Master Resource Database for the Facility consistent with this Agreement to Buyer for review and approval at least five (5) Business Days before the deadline for submission of such to the CPUC. Neither Party shall change such CAISO or CPUC data without the other Party's prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) and CPUC's Master Resource Database for this Facility remains consistent with the actual operating characteristics of the Facility and provide such information to Buyer for review at least five (5) Business Days prior to submission to the CAISO or CPUC as applicable.

(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 if 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. Any other documentation reasonably requested by Buyer.

**EXHIBIT F-1**

**FORM OF AVERAGE EXPECTED ENERGY REPORT**

[Average Expected Energy, MWh Per Hour]

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

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



**EXHIBIT F-2**

**FORM OF MONTHLY AVAILABLE GENERATING CAPACITY REPORT**

[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**

The table contains approximately 10 rows of data. Each row is almost entirely obscured by a large black redaction box. Only the leftmost portion of each row is visible, showing the start of the data entries. The redactions are consistent across all rows, preventing any numerical or textual information from being read.

**EXHIBIT H****FORM OF COMMERCIAL OPERATION DATE CERTIFICATE**

This certification (“Certification”) of Commercial Operation is delivered by [Licensed Professional Engineer] (“Engineer”) to [Ava Community Energy Authority, a California joint powers authority][City of San José, a California municipal corporation] (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [date] (“Agreement”) by and between [Name of Seller] (“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 Generating Facility and the Storage Facility are fully operational, and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
4. Seller has commissioned all equipment in accordance with its respective manufacturer’s specifications.
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 Agreement and the CAISO.
6. The Generating 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 Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
7. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Capacity and receiving instructions to charge, store and discharge Energy, all within the operational constraints and subject to the applicable Operating Restrictions.
8. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.
9. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.

10. The PTO has provided notification supporting Commercial Operation, in accordance with the PTO Tariff, as applicable.
11. Seller shall have caused the Generating Facility and the Storage Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of each of the Generating Facility and Storage 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 [Ava Community Energy Authority, a California joint powers authority][City of San José, a California municipal corporation] (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [*date*] (“Agreement”) by and between [*Name of Seller*] (“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 Generating 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 Generating Capacity”);
- (b) The Storage Capacity Test demonstrated a maximum operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of \_\_ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “Installed Battery Capacity”); and
- (c) The sum of (a) and (b) is \_\_ MW AC and shall be 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 [*Name of Seller*] (“Seller”) to [Ava Community Energy Authority, a California joint powers authority][*City of San José, a California municipal corporation*] (“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 \_\_\_\_\_ (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 this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[SELLER ENTITY]

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

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

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

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**

PRINTED ON LETTERHEAD OF ISSUING BANK

DATE OF ISSUE:

IRREVOCABLE STANDBY DOCUMENTARY CREDIT NO. :

BENEFICIARY:

[AVA COMMUNITY ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY][CITY OF SAN JOSÉ, A CALIFORNIA MUNICIPAL CORPORATION]

[ADDRESS]

[ATTN: ---]

APPLICANT:

[NAME]

[ADDRESS]

ADVISING BANK:

IF APPLICABLE

AMOUNT: [-]

DATE AND PLACE OF EXPIRY: [-]

AT COUNTER OF ISSUING BANK

BY THE ORDER OF \_\_\_\_\_ (“APPLICANT”), WE, HSBC BANK USA, N.A., GLOBAL TRADE AND RECEIVABLES FINANCE (GTRF) TRANSACTION SERVICES, 452 FIFTH AVENUE, NEW YORK, NY 10018 (“ISSUER”) HEREBY ISSUE OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX] (THE “LETTER OF CREDIT”) IN FAVOR OF [AVA COMMUNITY ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY][CITY OF SAN JOSÉ, A CALIFORNIA MUNICIPAL CORPORATION] (“BENEFICIARY”), FOR AN AMOUNT NOT TO EXCEED THE AGGREGATE SUM OF U.S. \$[XXXXXX] (UNITED STATES DOLLARS [XXXXX] AND 00/100), PURSUANT TO THAT CERTAIN RENEWABLE POWER PURCHASE AGREEMENT DATED AS OF \_\_\_\_\_ AND AS AMENDED (THE “AGREEMENT”) BETWEEN APPLICANT AND BENEFICIARY. THIS LETTER OF CREDIT SHALL BECOME EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON [INSERT DATE] WHICH IS ONE YEAR AFTER THE ISSUE DATE OF THIS LETTER OF CREDIT, OR ANY EXPIRATION DATE EXTENDED IN ACCORDANCE WITH THE TERMS HEREOF (THE “EXPIRATION DATE”).

FUNDS UNDER THIS LETTER OF CREDIT ARE AVAILABLE TO BENEFICIARY BY VALID PRESENTATION ON OR BEFORE THE EXPIRATION DATE OF A DATED STATEMENT PURPORTEDLY SIGNED BY YOUR DULY AUTHORIZED REPRESENTATIVE, IN THE FORM ATTACHED HERETO AS EXHIBIT A, CONTAINING ONE OF THE TWO ALTERNATIVE PARAGRAPHS SET FORTH IN PARAGRAPH 2 THEREIN, REFERENCING OUR LETTER OF CREDIT NO. [XXXXXXX] (“DRAWING CERTIFICATE”).

THE DRAWING CERTIFICATE MAY BE PRESENTED BY (A) PHYSICAL DELIVERY, (B) FACSIMILE TO BANK FAX NUMBER (718) 488-4909. TRANSMITTAL BY FACSIMILE (“FAX”) SHALL BE DEEMED DELIVERED WHEN RECEIVED. FAX DRAWING WILL NOT CONSTITUTE A COMPLYING PRESENTATION UNTIL YOU CONFIRM BY TELEPHONE OUR RECEIPT OF SUCH FAX DRAWING BY CALLING US AT TELEPHONE NUMBER (866) 327-0763; PROVIDED THAT SUCH FAX PRESENTATION IS RECEIVED ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT IN ACCORDANCE WITH THE TERMS AND CONDITIONS OF THIS LETTER OF CREDIT, IT BEING UNDERSTOOD THAT ANY

SUCH FAX PRESENTATION SHALL BE CONSIDERED THE SOLE OPERATIVE INSTRUMENT OF DRAWING.

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 ISSUED SUBJECT TO THE RULES OF THE 'INTERNATIONAL STANDBY PRACTICES 1998', INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98") AND, AS TO MATTERS NOT ADDRESSED BY ISP98, SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF STATE OF CALIFORNIA.

PLEASE ADDRESS ALL CORRESPONDENCE REGARDING THIS LETTER OF CREDIT TO HSBC BANK USA, N.A. GTRF TRANSACTION SERVICES, 452 FIFTH AVENUE, NEW YORK NY, 10018, ATTN: STANDBY UNIT, REFERRING SPECIFICALLY TO ISSUER'S LETTER OF CREDIT NO. [XXXXXXX]. FOR TELEPHONE ASSISTANCE, PLEASE CONTACT ISSUER'S STANDBY LETTER OF CREDIT DEPARTMENT AT (866) 327-0763 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: [AVA COMMUNITY ENERGY AUTHORITY][CITY OF SAN JOSÉ], [ADDRESS]. 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.

PLEASE SEND ALL CLAIMS AND CORRESPONDENCE AS PER SBLC TERMS AND CONDITIONS TO FOLLOWING ADDRESS:

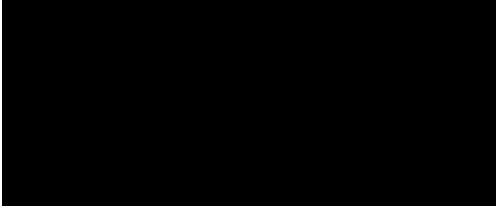




EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

DRAWING CERTIFICATE



LADIES AND GENTLEMEN:

THE UNDERSIGNED, A DULY AUTHORIZED REPRESENTATIVE OF [AVA COMMUNITY ENERGY AUTHORITY, A CALIFORNIA JOINT POWERS AUTHORITY][CITY OF SAN JOSÉ, A CALIFORNIA MUNICIPAL CORPORATION], AS BENEFICIARY (THE "BENEFICIARY") OF THE IRREVOCABLE LETTER OF CREDIT NO. [XXXXXXX] (THE "LETTER OF CREDIT") ISSUED BY HSBC BANK USA, N.A. (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 [AVA COMMUNITY ENERGY AUTHORITY][CITY OF SAN JOSÉ] 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 [AVA COMMUNITY ENERGY AUTHORITY][CITY OF SAN JOSÉ] BY WIRE TRANSFER IN IMMEDIATELY AVAILABLE FUNDS TO THE FOLLOWING ACCOUNT:

PAYEE BANK: [INSERT NAME]

PAYEE BANK ABA ROUTING NUMBER: [INSERT NUMBER]

BENEFICIARY'S NAME: [INSERT NAME]

BENEFICIARY'S ACCOUNT NO: [INSERT NUMBER]

[AVA COMMUNITY ENERGY AUTHORITY][CITY OF SAN JOSÉ]

\_\_\_\_\_  
NAME AND TITLE OF AUTHORIZED REPRESENTATIVE

DATE \_\_\_\_\_

**EXHIBIT L**

**FORM OF GUARANTY**

This Guaranty (this “Guaranty”) is entered into as of [\_\_\_\_\_] (the “Effective Date”) by and between [\_\_\_\_\_] a [\_\_\_\_\_] (“Guarantor”), and [Ava Community Energy Authority, a California joint powers authority][City of San José, a California municipal corporation] (together with its successors and permitted assigns, “Buyer”).

Recitals

- A. Buyer and [SELLER ENTITY], a Delaware limited liability company (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [\_\_\_\_], 202\_.
- B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
- C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
- D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. **Guaranty**. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed \_\_\_\_\_ Dollars (\$\_\_\_\_\_). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.
2. **Demand Notice**. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such

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

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier 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, without limitation, statute of frauds and accord and satisfaction;

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

4. **Waivers by Guarantor.** Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the 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 9, 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 7.

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 County of , California.

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

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

*[Signature on next page]*



IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[\_\_\_\_\_]

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

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

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


## EXHIBIT M


## FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by [*Name of Seller*] (“Seller”) to [Ava Community Energy Authority, a California joint powers authority][City of San José, a California municipal corporation] (“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 3.7(k) of the Agreement, Seller hereby provides the below Replacement RA product information:

**Unit Information<sup>1</sup>**

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		

<sup>1</sup> To be repeated for each unit if more than one.

[SELLER ENTITY]

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

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

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

**EXHIBIT N**  
**NOTICES**

[REDACTED] (“Seller”)	[Ava Community Energy Authority][City of San José] (“Buyer”)
<b>All Notices:</b> Street: [REDACTED]	<b>All Notices:</b> Street: City: Attn: Phone: Email:
<b>Reference Numbers:</b> Duns: [REDACTED] Federal Tax ID Number: [REDACTED]	<b>Reference Numbers:</b> Duns: Federal Tax ID Number:
<b>Invoices:</b> Attn: [REDACTED]	<b>Invoices:</b> Attn: Phone: Email:
<b>Scheduling:</b> Attn: [REDACTED]	<b>Scheduling:</b> Attn: Phone: Email:
<b>Confirmations:</b> Attn: [REDACTED]	<b>Confirmations:</b> Attn: Phone: Email:
<b>Payments:</b> Attn: [REDACTED]	<b>Payments:</b> Attn: Phone: Email:
<b>Wire Transfer:</b> BNK: [REDACTED] ABA: [REDACTED] ACCT: [REDACTED]	<b>Wire Transfer:</b> BNK: ABA: ACCT:
<b>With additional Notices of an Event of Default to:</b> Attn: [REDACTED]	<b>With additional Notices of an Event of Default to:</b> Attn: Phone: Email:
<b>Emergency Contact:</b> Attn: [REDACTED]	<b>Emergency Contact:</b> Attn: Phone: Email:

## EXHIBIT O

### STORAGE CAPACITY TESTS

#### Storage Capacity Test Notice and Frequency

A. Commercial Operation Date Storage Capacity Tests. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete the Storage Capacity Tests prior to the Commercial Operation Date. Such initial Storage Capacity Tests shall be performed in accordance with this Exhibit O and Section 4.9 and shall establish the initial Storage Contract Capacity and Efficiency Rate hereunder based on such Storage Capacity Tests.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, once each Contract Year, Seller will perform the Storage Capacity Test and will give Buyer ten (10) Business Days prior Notice of such test. At least twice per Contract Year, Buyer shall have the right to require Seller to schedule and complete the Storage Capacity Tests. In addition, Buyer shall have the right to require retests of the Storage Capacity Tests at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity or Efficiency Rate has varied materially from the results of the most recent Storage Capacity Tests. Seller shall have the right to run a retest of any Storage Capacity Tests upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity and Efficiency Rate. No later than eight (8) Business Days following any Storage Capacity Tests, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement and Part II(J) and Part II(K) below, the Efficiency Rate and Storage Capacity (up to, but not in excess of, the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) pursuant to Exhibit B) determined pursuant to a Storage Capacity Tests shall become the new Efficiency Rate and Storage Capacity at the beginning of the first day of the next calendar month following the completion of the test for all purposes under this Agreement, including Seller compensation pursuant to Exhibit C.

#### Storage Capacity Test Procedures

##### PART I. GENERAL.

Each of the Storage Capacity Tests (including the initial Storage Capacity Tests and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT". Buyer or its representative may be present for or remotely observe the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

##### PART II. REQUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

- A. Purpose of Test. Each SCT shall:
- (1) Determine an updated Storage Contract Capacity (MW and MWh);
  - (2) Determine the amount of Energy required to fully charge and discharge the Storage Facility;
  - (3) Determine the Storage Facility Ramp Rate;
  - (4) Determine an updated Efficiency Rate.
- B. Test Elements. Each SCT shall include the following test elements:
- The measurement of charging energy exclusive of Station Use [(for clarity, Station Use during any test shall not be subject to the carveout for energy consumed by end uses during charging or discharging) and Electrical Losses, as measured by the Storage Facility Meter or other mutually agreed meter,]<sup>20</sup> that is required to charge the Storage Facility until the Stored Energy Level reaches 100% SOC as indicated by the SCADA (“Energy In”);

The measurement of discharging energy exclusive of Station Use [(for clarity, Station Use during any test shall not be subject to the carveout for energy consumed by end uses during charging or discharging) and Electrical Losses, as measured by the Storage Facility Meter]<sup>21</sup> until the Stored Energy Level reaches zero usable MWh or 0% SOC as indicated by the SCADA (“Energy Out”);

- The measurement of discharging power during a four-hour period as measured by the Storage Facility Meter (as adjusted for Electrical Losses to the Delivery Point and Station Use) (“Storage Capacity”)
- C. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility and provided by the energy management system, at one (1) second. If any below items are available to the SCADA at a different resolution, such item shall be reported at its available resolution:
- (1) discharge time (seconds);
  - (2) charging energy (MWh);
  - (3) discharging energy (MWh);
  - (4) Stored Energy Level (MWh);

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<sup>20</sup> Buyer NTD: Parties to discuss bracketed language.

<sup>21</sup> Buyer NTD: Parties to discuss bracketed language.

- (5) charging power (MW);
  - (6) discharging power (MW)
  - (7) min and max enclosure ambient temperatures across the Storage Facility;
  - (8) min and max cell temperatures across the Storage Facility; and
  - (9) availability status of inverters and battery racks.
- D. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals using instrumentation positioned at or near the Storage Facility:
- (1) Relative humidity (%);
  - (2) Barometric pressure (inches Hg) ; and
  - (3) Ambient air temperature (°F).
- E. Test Showing. Each SCT must demonstrate that the Storage Facility:
- (1) successfully started;
  - (2) operated for at least four (4) consecutive hours at least at Maximum Charging Capacity as measured at the Storage Facility Meter (MW) (as adjusted for Electrical Losses from the Delivery Point). [Parties will collaborate to best represent the charging profile in the CAISO Master File no later than 60 days after Seller executes a BESS supply agreement]; and
  - (3) is able to deliver discharging energy to the Storage Facility Meter (as adjusted for Electrical Losses to the Delivery Point) for four (4) consecutive hours at a rate at least at Maximum Discharging Capacity, or as otherwise reflected in the test results.
- F. Test Conditions.
- (i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).
  - (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.G below.

- (iii) Instrumentation and Metering. Seller shall provide all instrumentation, CAISO metering and data collection equipment required to perform the SCT. The instrumentation, CAISO metering and data collection equipment shall be calibrated in accordance with CAISO requirements and Prudent Operating Practice.
  
- G. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.
  
- H. Final Report. Within eight (8) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:
  - (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
  - (2) the measured data for each parameter set forth in Part II, including copies of the raw data taken during the test;
  - (3) the level of Storage Capacity, Energy In, Energy Out, Efficiency Rate, Ramp Rate and Maximum Charging Capacity, determined by the SCT, including supporting calculations; and
  - (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.G.

- I. Storage Capacity Test Protocol. No later than 60 days prior to the Commercial Operation Date, Seller shall develop and deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to Part III of this Exhibit O that contains supplementary details, procedures and requirements that will be used by the person(s) performing the Storage Capacity Tests to implement the Storage Capacity Test requirements consistent with the Exhibit O ("Storage Capacity Test Protocol") as part of the Agreement. Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended



updates to the then current Storage Capacity Tests Protocol. The subsequent Storage Capacity Tests Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

- J. Adjustment to Storage Capacity. The total amount of Discharging Energy measured by the Storage Facility Meter (expressed in MWh<sub>AC</sub>) during each of the first four (4) hours at the Maximum Discharging Capacity (up to, but not in excess of, the product of (i) the original Storage Contract Capacity set forth on the Cover Sheet, as such original Storage Contract Capacity on the Cover Sheet may have been adjusted (if at all) under this Agreement, multiplied by (ii) four (4) hours), shall be divided by four (4) hours to determine the Storage Capacity, which shall be expressed in MW<sub>AC</sub>, and shall be the new Storage Capacity in accordance with Section 4.9(c) of the Agreement until updated pursuant to a subsequent Storage Capacity Test.
- K. Efficiency Rate. The total amount of Energy Out (as reported in Part II.B above) divided by the total amount of Energy In (as reported in Part II.B above) shall be the “Efficiency Rate” and shall be used for all purposes under the Agreement, including the calculation of liquidated damages (if any) under Exhibit C until updated pursuant to a subsequent Storage Capacity Test.

### Part III. STORAGE CAPACITY TEST PROTOCOL

- A. Conditions Precedent to SCT.
- Control System Functionality: The Storage Facility control system shall be successfully configured to receive data from the battery system, exchange data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.
  - Communications: Remote Terminal Unit (RTU) testing should be successfully completed prior to SCT. The interface between Buyer’s RTU and the Storage Facility SCADA system should be fully tested and functional prior to starting testing. This includes verification of data transmission pathway between the Buyer’s RTU and Seller’s control system interface and the ability to record SCADA data.
  - Commissioning Checklist: Commissioning Checklist shall be successfully completed on all installed facility equipment, including verification that all controls, set points, and instruments of the control system are configured. Commissioning certificates shall be provided upon Buyer’s request.
- B. Storage Capacity Test. Seller will perform each Storage Energy Capacity Test in the following manner and utilizing the following steps:
1. Seller may conduct any pre-capacity test activities required or recommended by the Storage Facility equipment suppliers, including charging or discharging the Storage

Facility, prior to commencing step 2 below. During commissioning or re-commissioning after repairs, Seller to complete any battery balancing activities recommended by equipment supplier prior to commencing step 2;

2. Seller will charge the Storage Facility up to the Maximum Stored Energy Level so that it is in a state that it is made commonly and typically available to Buyer as fully charged and dispatchable. Depending on the equipment supplier, this figure may be when the SoC is at or near 100% as indicated by SCADA;
3. Seller shall select the appropriate operating mode on the Storage Facility matching normal, dispatchable operation.
4. Seller will discharge the Storage Facility at the Storage Contract Capacity Rating or if unable to achieve the Storage Contract Capacity rating, the highest power rating it can achieve, over a duration of four (4) consecutive hours. In the event discharging must be stopped early due to the Storage Contract Capacity rating having been fully discharged or due to any of the following conditions: critically low SoC, or other safety and stability reasons, Seller will have been deemed to fail the test and must make appropriate changes to run a re-test;
5. Seller will add the quantity of MWh produced by the Storage Facility as measured at the Storage Facility Meter (as adjusted for Electrical Losses to the Delivery Point and Station Use) during the four (4) consecutive hours to produce a sum quantity of MWh for the four (4) consecutive hours full discharge of the Storage Facility
6. Seller will divide the sum quantity of MWh produced over the four (4) consecutive hours full discharge of the Storage Facility by four (4) to produce a value that will become the Storage Contract Capacity rating until the Storage Capacity is next determined pursuant to a Storage Capacity Test performed in accordance with this Exhibit.

Example:

Hour 1 Discharge = 25 MWh

Hour 2 Discharge = 25 MWh

Hour 3 Discharge = 25 MWh

Hour 4 Discharge = 25 MWh

Duration = 4 hour discharge

Sum quantity of MWh produced:  $25 + 25 + 25 + 25 = 100$  MWh

Storage Capacity =  $100 \text{ MWh} / 4 \text{ hours} = 25 \text{ MW}$

C. Efficiency Rate Test

As commercially reasonable, Seller will combine the Storage Capacity Test and the

Efficiency Rate Test. Seller will perform each Efficiency Rate Test in the following manner and utilizing the following steps:

1. Seller may conduct any pre-capacity test activities required or recommended by the Storage Facility equipment suppliers, including charging or discharging the Storage Facility, prior to commencing step 2 below. During commissioning or re-commissioning after repairs, Seller to complete any battery balancing activities recommended by equipment supplier prior to commencing step 2.
2. Seller will fully discharge the Storage Facility to the minimum Stored Energy Level or recommended SoC. Depending on the equipment supplier, this figure may be when the SoC is at or near 0% as indicated by SCADA;
3. Select appropriate operating mode on the Storage Facility matching normal, dispatchable operation.
4. Charge the Storage Facility to the maximum Stored Energy Level or recommended SoC. This is dependent on the equipment manufacturer specifications but typically when the SoC is at 100% as indicated in the SCADA. Complete any specified Storage Facility rest period in accordance with equipment manufacturer specifications.
5. Review the Storage Facility Meter data, and determine and record the “Energy In”, which is the amount of energy used to charge the Storage Facility from minimum Stored Energy Level to maximum Stored Energy Level. This is dependent on the equipment manufacturer specification but typically when the SoC is 0% and 100% respectively.
6. Discharge the Storage Facility according to the Storage Capacity Test procedures at the Storage Power Capacity rating for the full four (4) hours. Do not cease discharging at the four (4) hours, but instead discharge shall be stopped at the same SoC as step 2.
7. Complete any Storage Facility rest period based on equipment manufacturer specifications.
8. Review the Storage Facility Meter data, and determine and record the “Energy Out”, which is the amount of energy used to discharge the Storage Facility from maximum Stored Energy Level to minimum Stored Energy Level. This is dependent on the equipment manufacturer specification but typically when the SoC is 100% and 0% respectively.

D. Storage Ramp Rate Test

As commercially reasonable, Seller will combine the Storage Capacity Test and the Storage Ramp Rate Test. Seller will perform each Storage Ramp Rate Test in the following manner and utilizing the following steps:

1. Storage Facility shall be at a SoC between 20% and 80%.
2. Seller selects the appropriate operating mode in the Storage Facility SCADA. The Storage Facility will be dispatched in accordance with the following:
  - i. Starting Setpoint: 0 MW.
  - ii. Ending Setpoint: Discharging at full Storage Power Capacity Rating.
  - iii. Measure the time elapsed to ramp power output between the Starting Setpoint and the Ending Setpoint.
  - iv. The “Storage Ramp Rate” is determined by dividing the change in power by the time elapsed. The start of the timing shall begin when the Storage Facility Meter registers a power change of a minimum percentage of two percent (2%) of the Ending Setpoint. The timing shall stop when the Storage Facility Metering Point registers a power that is at least ninety-eight percent (98%) of the Ending Setpoint value.

## EXHIBIT P

## STORAGE AVAILABILITY

**Monthly Storage Availability**

**Calculation of Monthly Storage Availability.** Seller shall calculate the “**Monthly Storage Availability**” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{MNTHHRS}_m - \text{UNAVAILHRS}_m]}{[\text{MNTHHRS}_m]}$$

where:

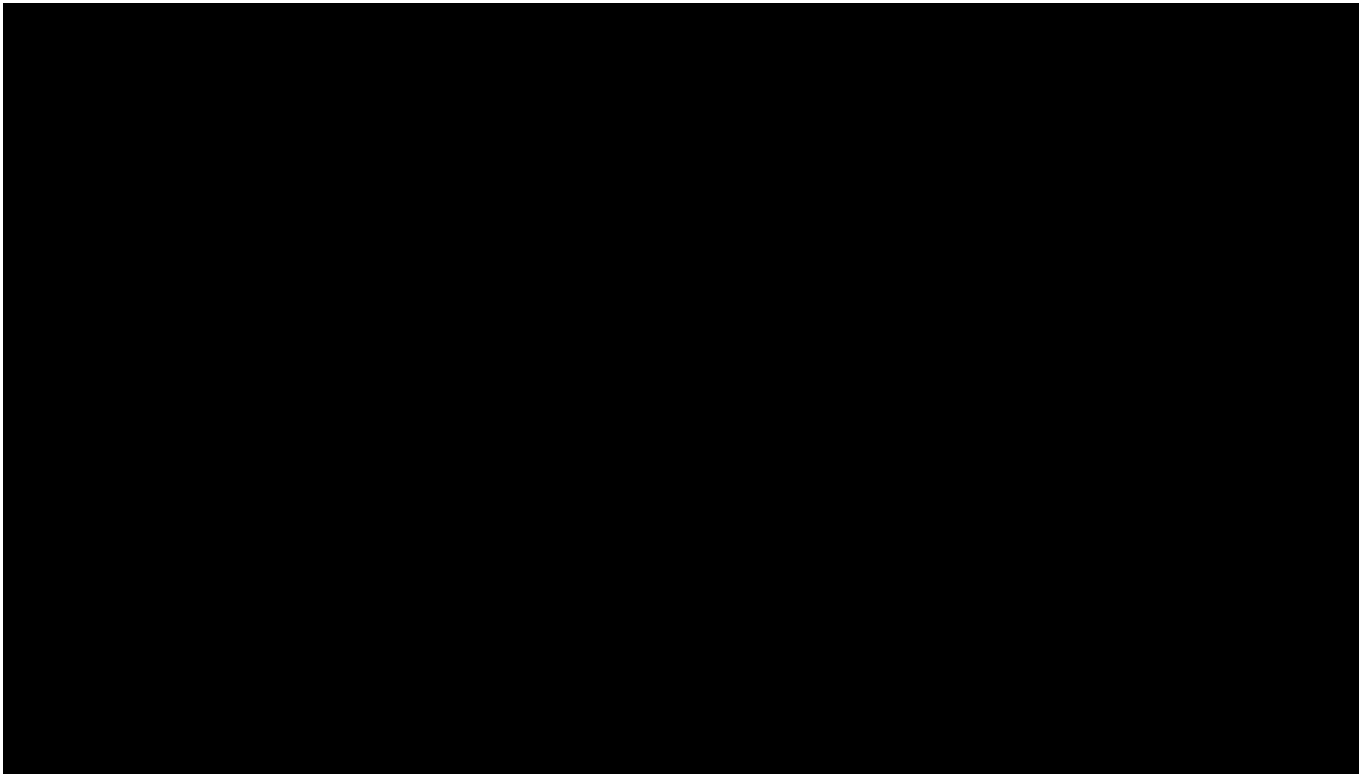
$m$  = relevant month “m” in which availability is calculated;

MNTHHRS<sub>m</sub> is the total number of Hours for the month;

UNAVAILHRS<sub>m</sub>, is the total number of Hours in the month during which the Storage Facility was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event, Curtailments, Buyer Default, Storage Capacity Tests, System Emergencies, or Planned Outage (up to one hundred (100) hours per Contract Year) or the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in UNAVAILHRS<sub>m</sub> for such month. Any other event that results in unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Storage Facility is available, but for less than the full amount of the then effective Storage Contract Capacity, the UNAVAILHRS<sub>m</sub> for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Storage Contract Capacity.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.



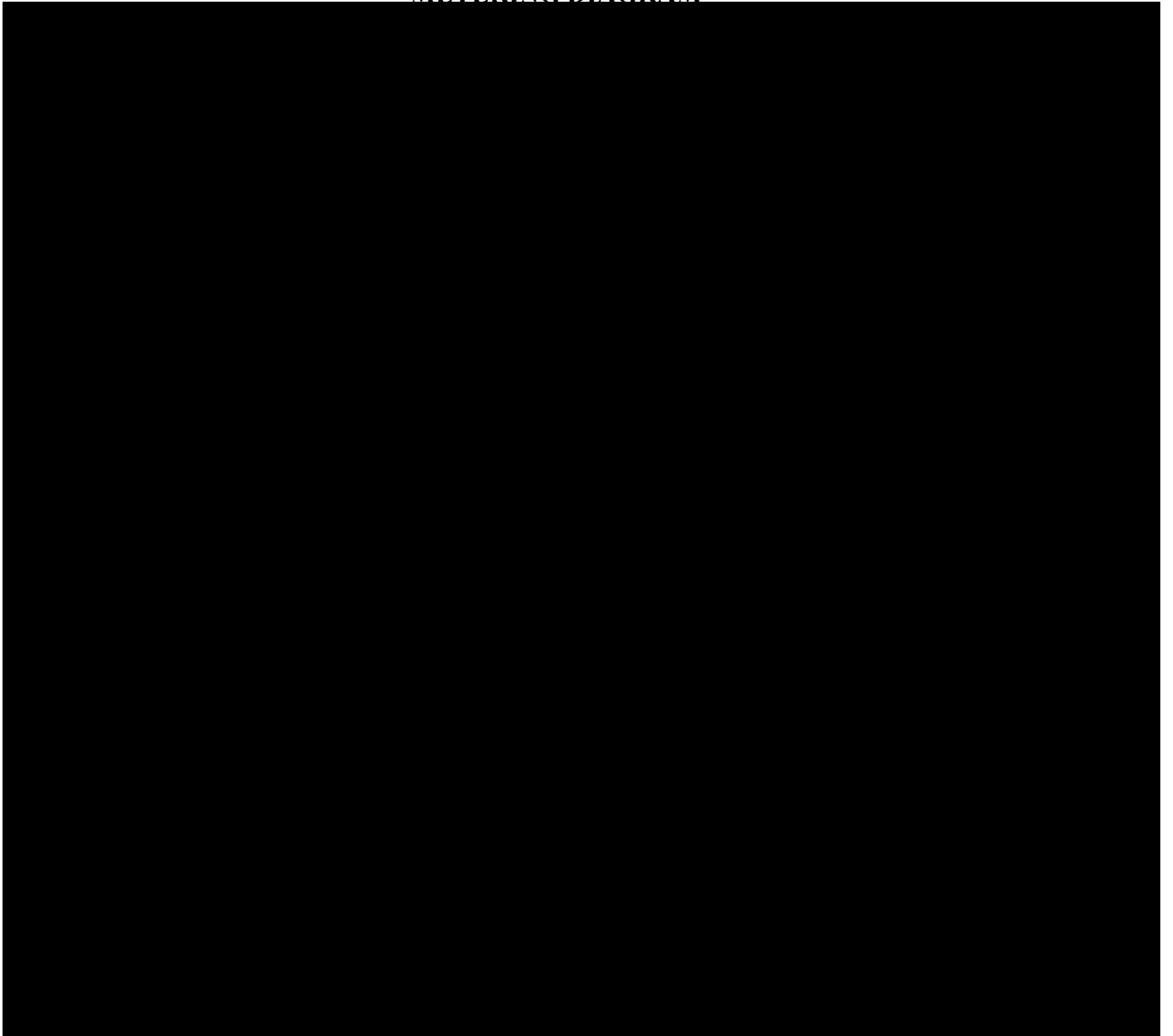


<b>Ramp Rate:</b>	[REDACTED]
<b>Annual Cycles:</b>	[REDACTED]
<b>Daily Dispatch Limits:</b>	[REDACTED]
<b>Maximum Time at less than 10% SOC:</b>	[REDACTED]
<b>Maximum Time at more than 90% SOC:</b>	[REDACTED]
<b>Grid Charging of Storage Facility:</b>	[REDACTED]
<b>Other Operating Limits:</b>	[REDACTED]
<b>Ancillary Services Capability:</b>	[REDACTED]



**EXHIBIT R**

**METERING DIAGRAM**

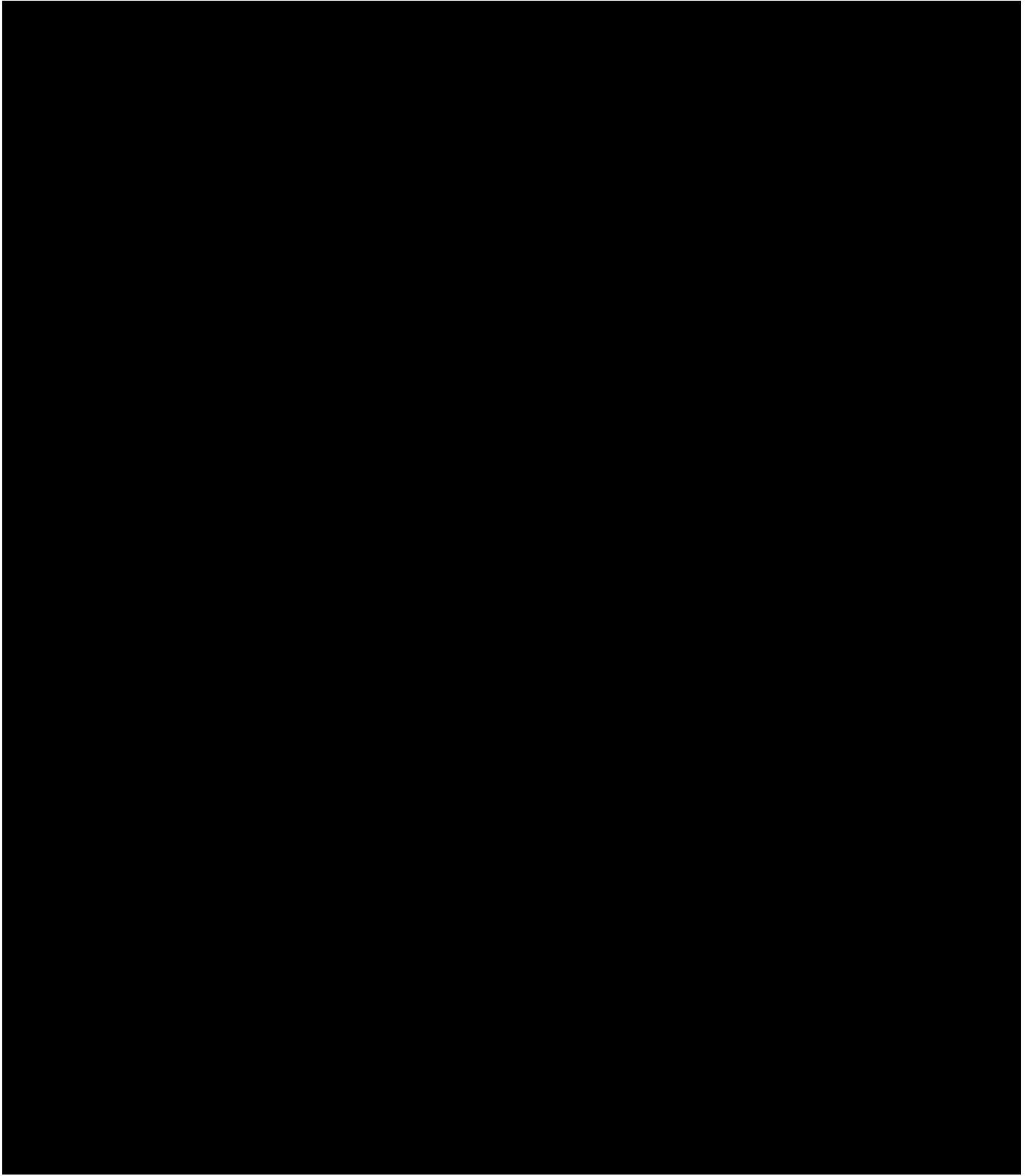


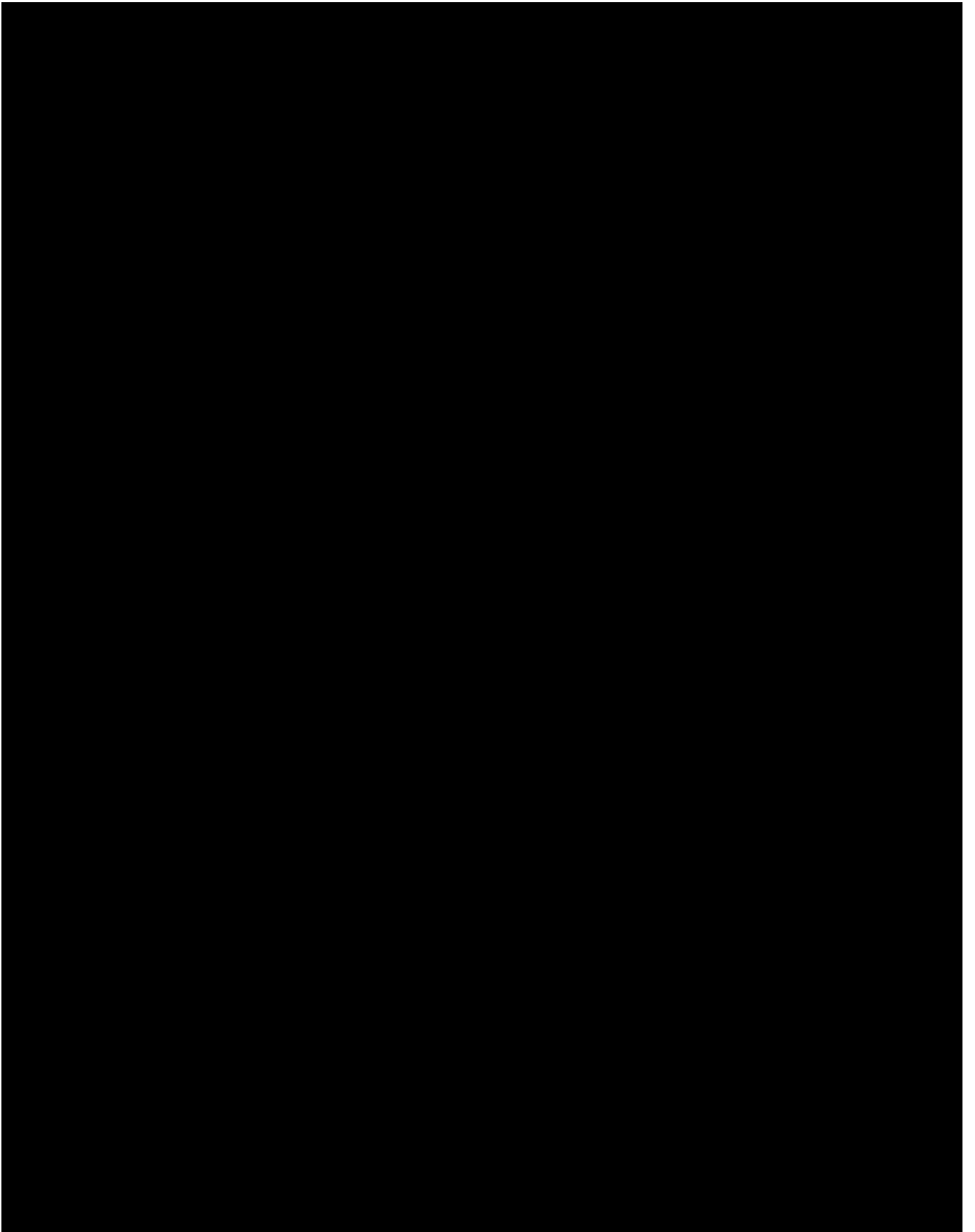
**EXHIBIT S**

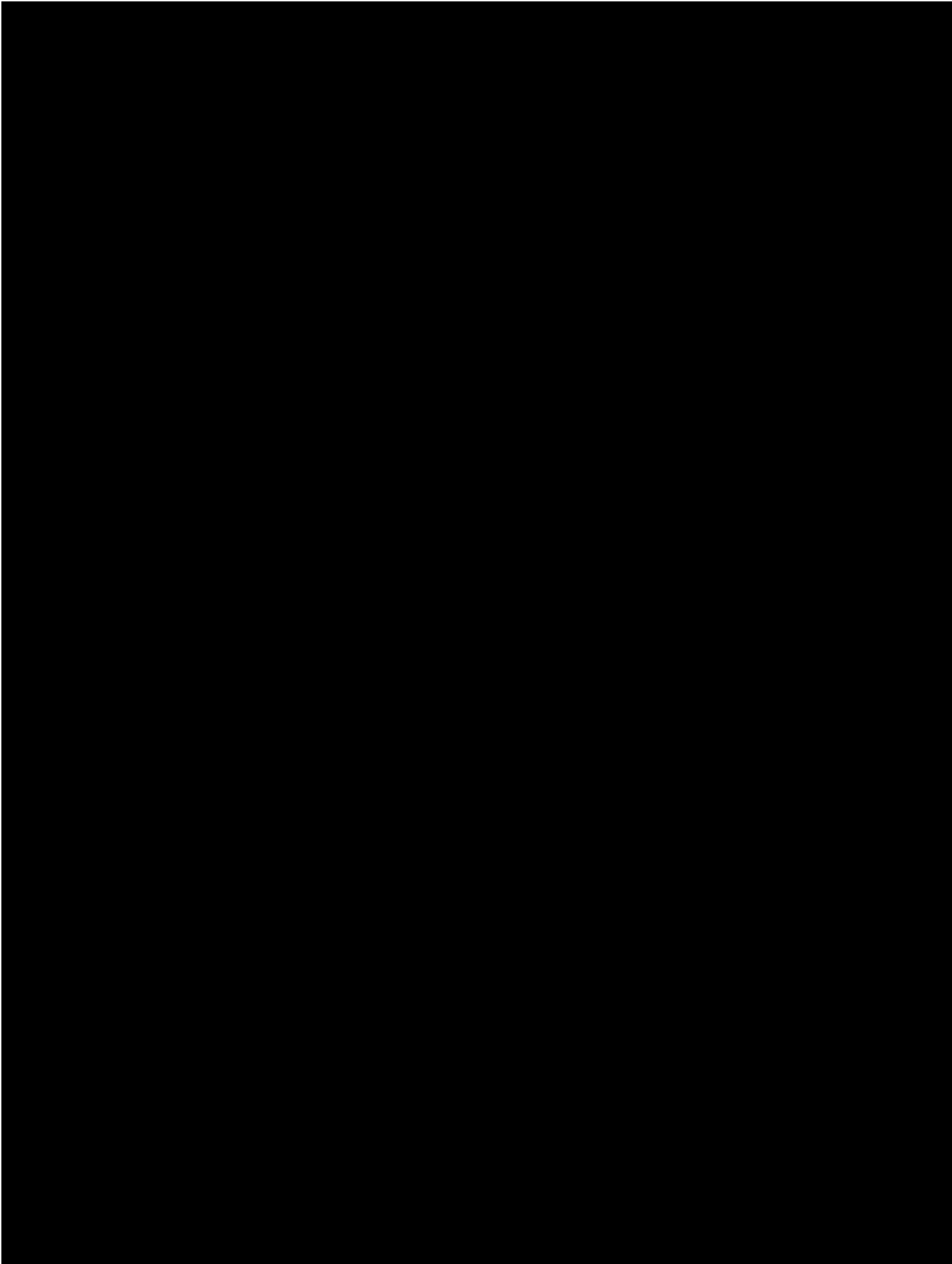
**WORKFORCE DEVELOPMENT AND COMMUNITY INVESTMENT**

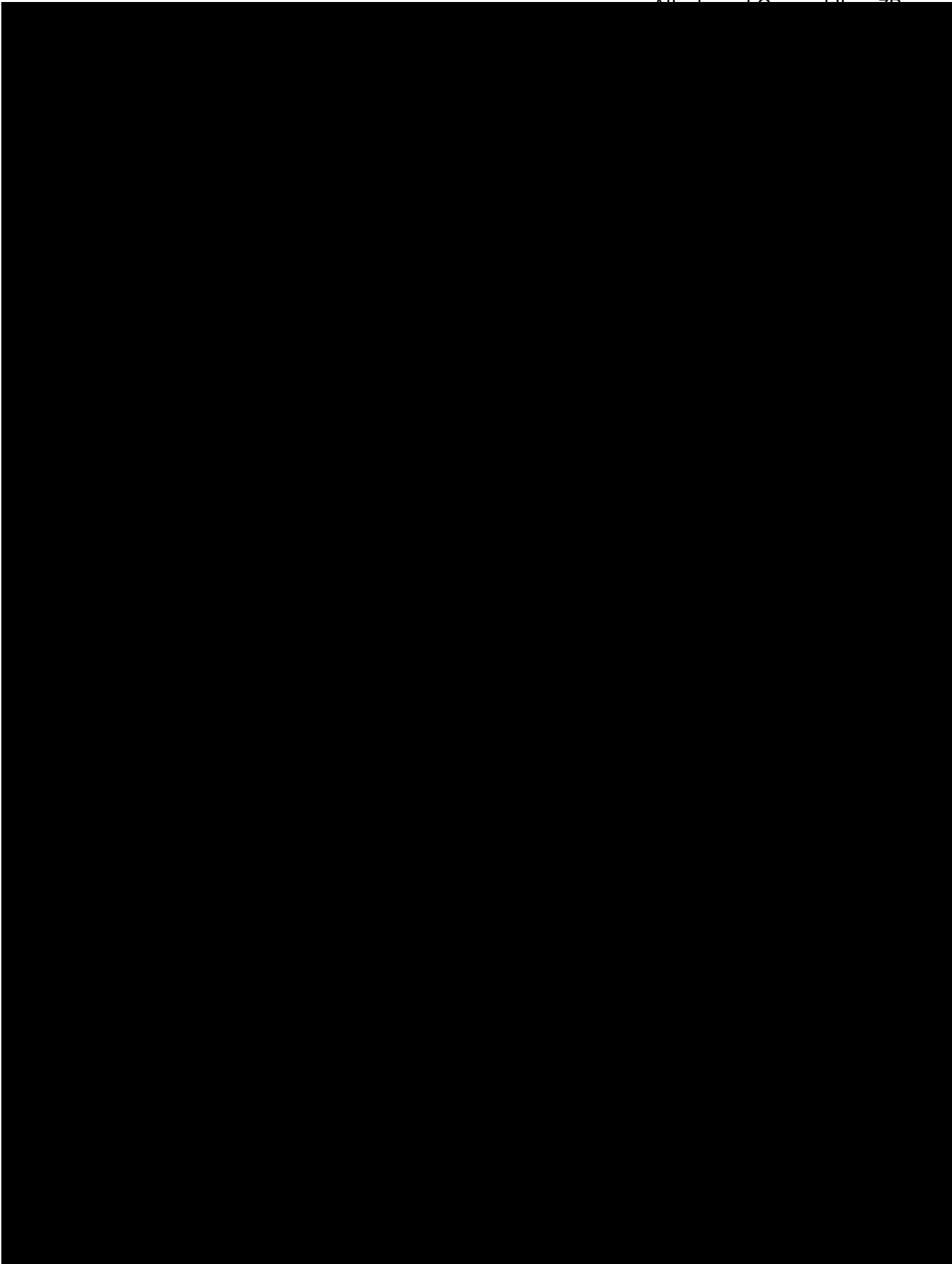


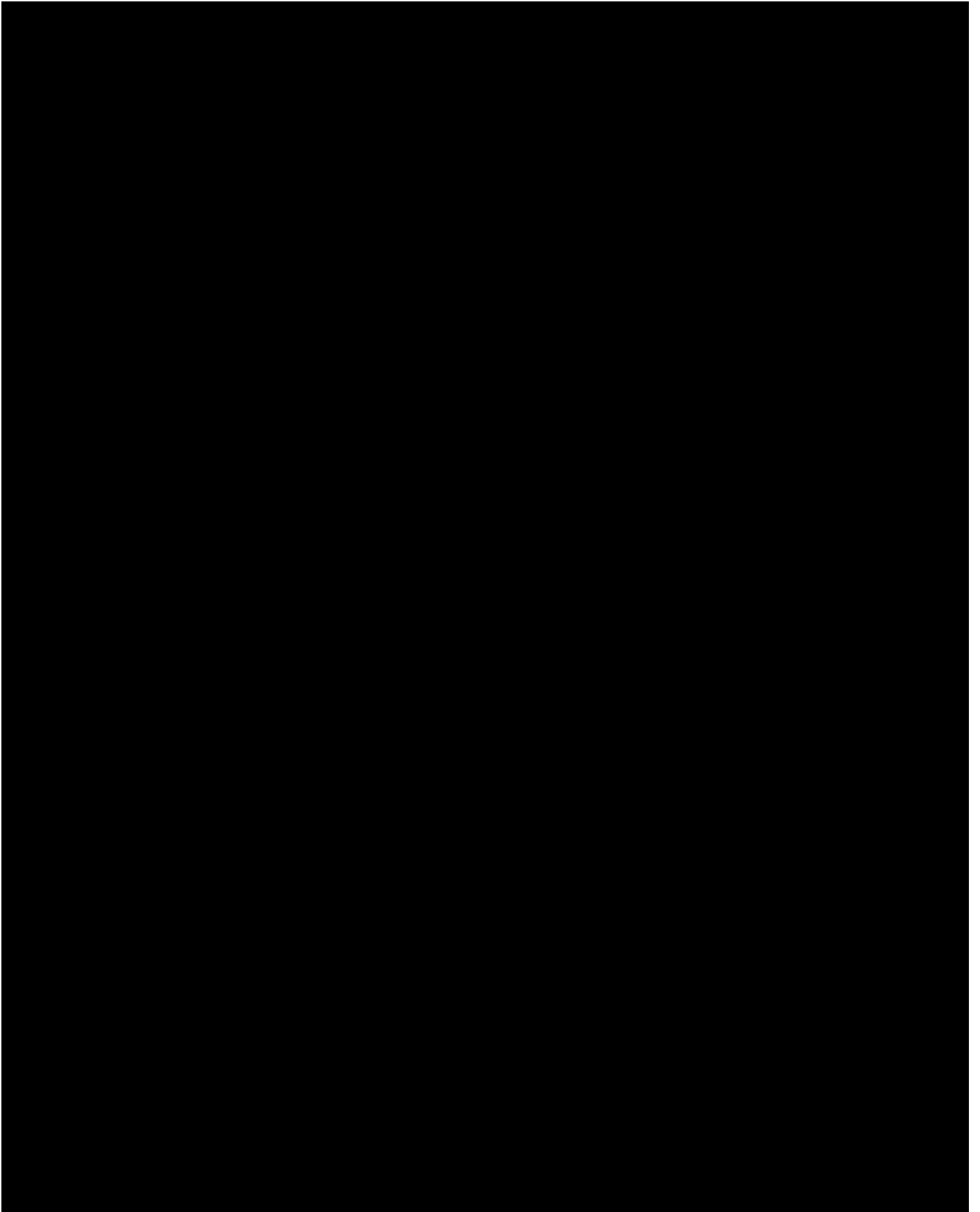
**EXHIBIT T**  
**FORM OF LIMITED ASSIGNMENT AGREEMENT**

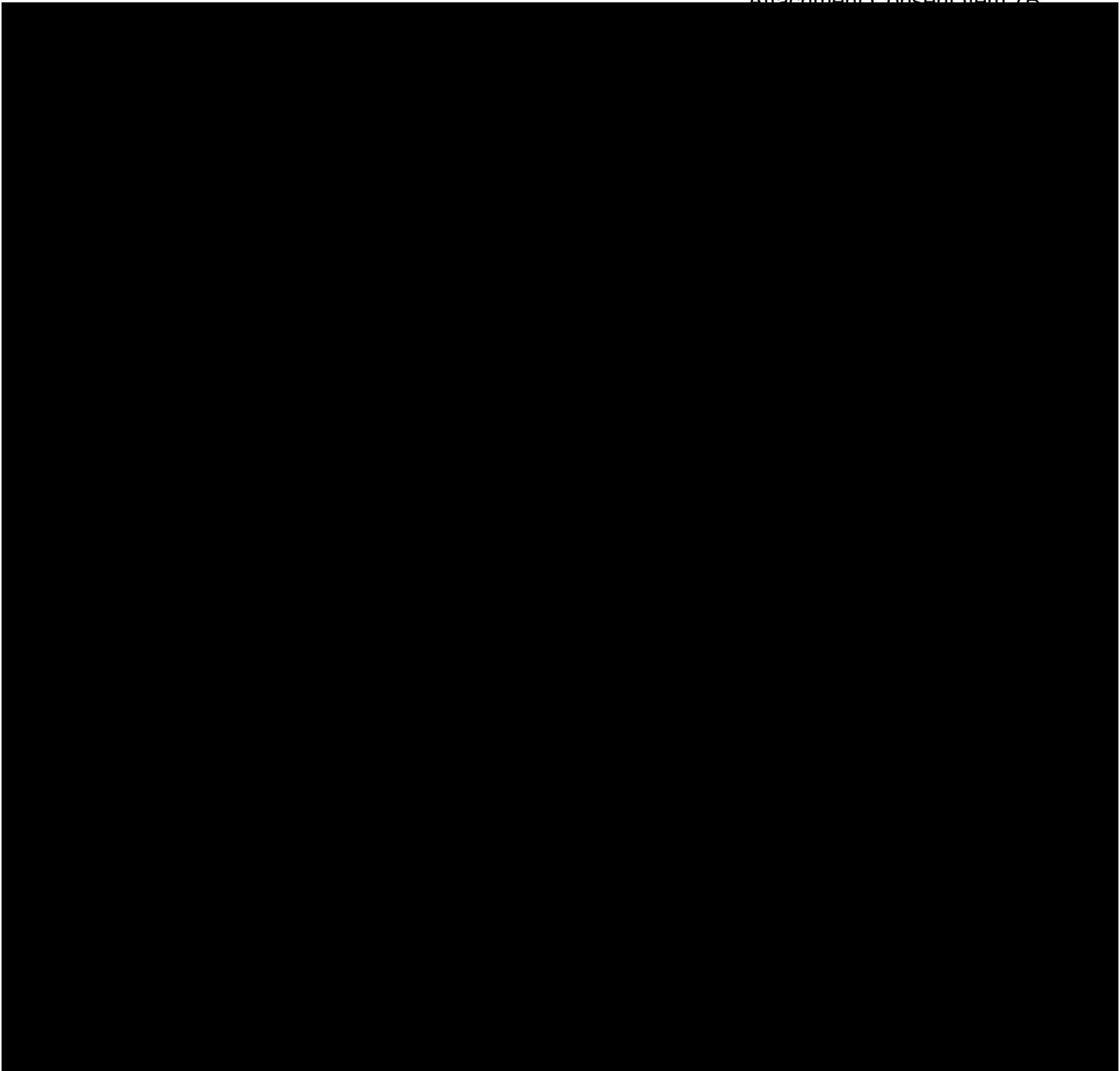




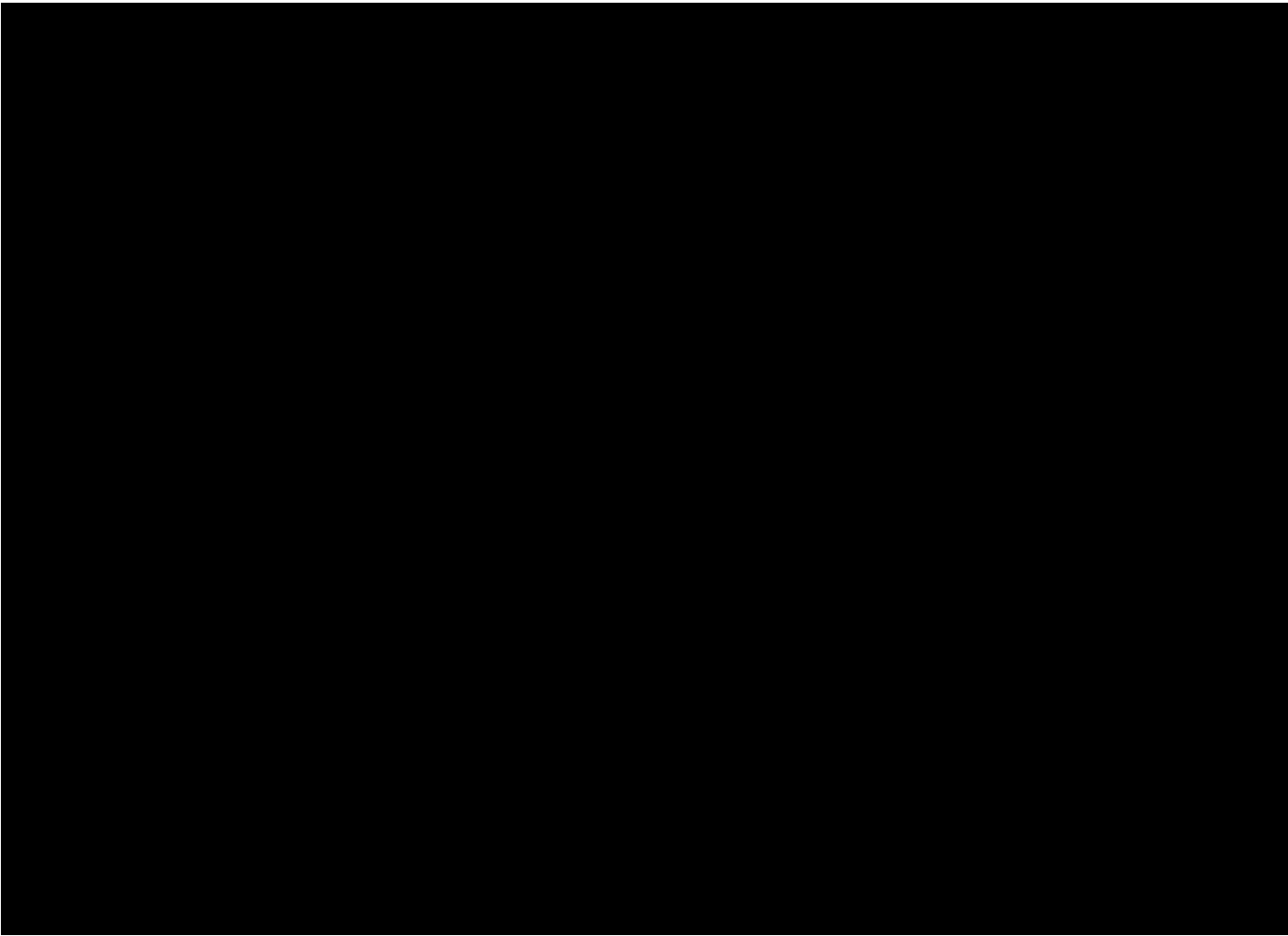












**EXHIBIT U**  
**[RESERVED.]**



### CEO Report Item 8

**TO:** Ava Community Energy (formally East Bay Community Energy) Board of Directors

**FROM:** Nick Chaset, Chief Executive Officer

**SUBJECT:** CEO Report (Informational Item)

**DATE:** November 15, 2023

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#### **Recommendation**

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

#### **Executive Committee Meeting**

An Executive Committee meeting was held on Wednesday, November 1, 2023. Members were provided with an overview of Ava's Solar Bill Plan Proposal. The next Executive Committee Meeting will be held on Wednesday, December 6, 2023 at 9am.

#### **Financial, Administrative and Procurement Subcommittee Meeting**

A Financial, Administrative and Procurement Subcommittee Meeting was held on Wednesday, November 8, 2023. Members discussed Workforce Guidelines and Policy and given an overview of Ava Energy's Risk Management Program. Members also reviewed the results of the FY 2022-23 Financial Audit and discussed the budget surplus waterfall and contribution to reserve funds for FY 22-23. The next Financial, Administrative and Procurement Subcommittee Meeting will be held on Wednesday, January 10, 2023 at 1pm.

#### **New Staff**

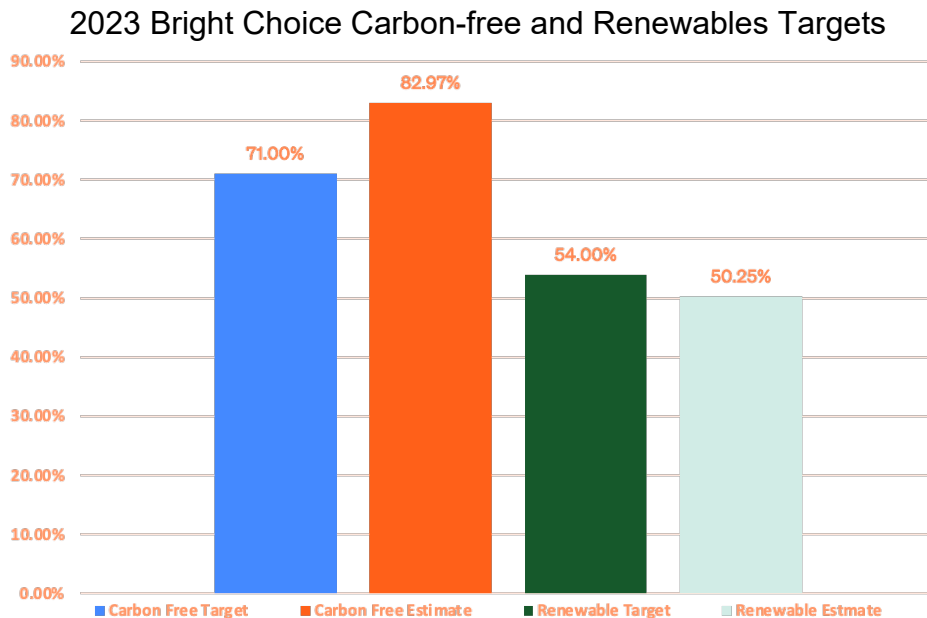
##### **Joanie Brooke – Power Resources Contract Manager**

Joanie joined Ava on 10/17/23 as a Contracts Manager on the Power Resources Team, and is responsible for managing long-term Power Purchase Agreements. Before joining

Ava, Joanie spent over 20 years in the construction industry for both public and private sectors, including PG&E and the CPUC. Most recently, she served on Borrego Solar's leadership team, executing utility and commercial-scale Solar EPC Contracts. Joanie holds a BS in Civil Engineering and MS in Construction Management from UC Berkeley College of Engineering, and an MPP From the Goldman School of Public Policy at UC Berkeley.

### **2023 Procurement Update**

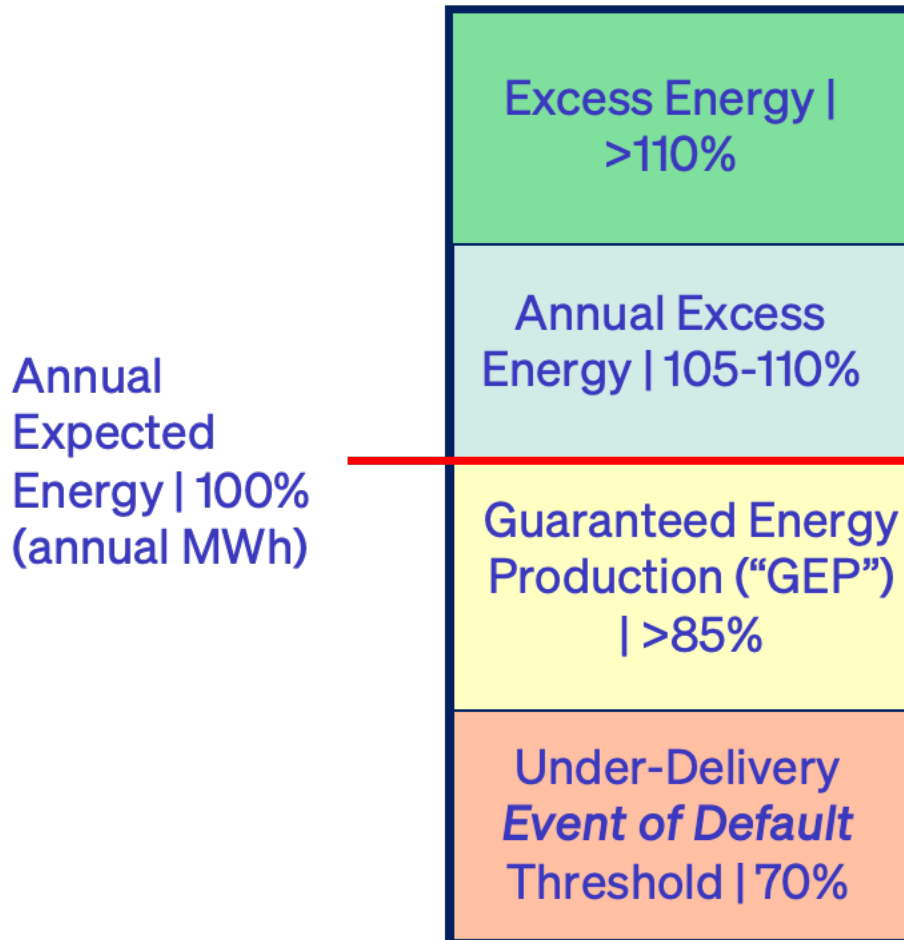
As the 2023 procurement year comes to a close, Ava staff have been evaluating our renewable energy and carbon energy procurement levels and find ourselves in a position where we have significantly higher than expected overall carbon-free energy due to higher than forecast deliveries of large hydro resulting from heavy rains. While also finding that our renewables have underdelivered their forecast - largely due to heavy rains in the first six months of the year which reduced overall solar energy production.



The overall effect of these findings is – if no last minute changes are made to our procurement plans - that Ava's Bright Choice customers will benefit from lower carbon content and higher levels of clean energy than target levels but slightly lower levels of renewable energy.

With two months left in the year, there are limited renewable resources that can be procured to fill the gap, and those resources that are available are priced at historically high levels. Ava staff estimate that the cost to procure the 3.75% that is currently forecast to be deficient would be \$10m to \$15m.

As such, Ava staff plan to stay the course with the current Bright Choice procurement trajectory as it would result in more than a 10% increase in carbon-free energy relative to target levels. In early 2024, Ava will evaluate the actual deliveries of carbon-free and renewable energy – and their associated costs – and present to the Board a quantification of the cost savings associated with the current Bright Choice procurement trajectory and a proposal for how these funds could be allocated to support local clean energy projects.





## Staff Report Item 10

**TO:** Ava Community Energy Authority  
**FROM:** Jason Bartlett, Senior Finance Manager  
**SUBJECT:** Audited Financial Statements for Fiscal Year 2022-2023  
**DATE:** November 15, 2023

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### Recommendation

Accept and file the audited financial statements for fiscal year 2022-2023

### Background and Discussion

EBCE hires an independent auditor to verify the annual financial statements each year. In June of 2019, EBCE selected Pisenti & Brinker, LLP (P&B) as the Authority's auditor through a formal RFP. They were EBCE's auditor the previous year and their familiarity with EBCE and CCA finance space made them the best choice.

This year's audit focuses on EBCE's financial activities of the fiscal year dating from July 1, 2022, to June 30, 2023.

P&B engaged with an ad-hoc committee of board members throughout the audit process and was assisted by EBCE staff.

The final audited financial statements provide and independently verified, accurate portrait of EBCE's financial position as of June 30, 2023. These financial statements include EBCE's financial activities related to:

- Net Position
- Revenues, Expenses, and Changes in Net Position
- Cash Flows
- Accompanying Notes and Subsequent Activities

Highlights from the Statements for the fiscal year include:

## **Auditor's Report**

The auditors were able to conclude the following about Ava's financial statements:

- Free from material misstatement
- Present fairly, in all material respects, Ava's financial position as of June 30, 2023
- Changes in financial position and cash flows are in accordance with generally accepted accounting principles (GAAP)
- Management operated within Ava's defined internal controls.

## **Statements of Net Position (Balance Sheet)**

- Total Assets increased from \$344.8MM to \$505.5MM
  - Primarily as increase in cash and equivalents, accrued revenue, and account receivables
  - GASB-62 fund was increased to \$53.0MM of deferred revenues
- Total Liabilities decreased from \$96.5MM to \$85.0MM primarily due to a reduction in security deposits held for energy suppliers
- Total Net Position increased from \$232.5MM to \$362.7MM as driven by the changes mentioned above for assets and liabilities
  - $\text{Net Position} = \text{Assets} - \text{Liabilities} - \text{Deferred Revenue}$
- No debt was issued in the fiscal year

## **Statements of Revenue, Expenses, and Changes in Net Position (Income Statement)**

- Net Operating Revenue was approximately \$817.9MM, with \$37.2MM deferred for rate stabilization, and \$6.2MM from power purchase agreement reparations
- Operating Expenses were approximately \$693.8MM, with \$658.2MM in Cost of Electricity (94.8% of total operating costs)
- EBCE received \$5.98MM from non-operating activities as related to grant payment, interest earned on holdings, and interest paid on commitments
- Change in Net Position was \$130.1MM
  - $\text{Change in Net Position} = \text{Total Operating Revenue} - \text{Total Operating Expenses} + \text{Net Non-operating Activities}$

## **Fiscal Impact**

This report has no fiscal impact.

## **Committee Recommendation**

The audited financial statements were reviewed by the Finance, Administrative, and Procurement subcommittee on November 8, 2023.

## **Attachments**

- A. EBCE Audited Financial Statements for Fiscal Year 2022-2023
- B. Presentation from the Auditor, Pisenti & Brinker





THE EAST BAY'S PUBLIC POWER AGENCY

# Financial Statements

Years ended June 30, 2023 and 2022  
with Independent Auditor's Report

## Contact us

customer-support@ebce.org  
1-833-699-EBCE (3223)

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## Languages

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**中文** [ebce.org/cn](https://ebce.org/cn)

*At right: EBCE's Scott Haggerty  
Wind Energy Center in  
Livermore, CA*



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## Independent Auditor's Report

To the Board of Directors  
East Bay Community Energy Authority  
Oakland, California

## Report on the Audits of the Financial Statements

### Opinion

We have audited the accompanying financial statements of East Bay Community Energy Authority (EBCE), as of and for the years ended June 30, 2023 and 2022, and the related notes to the financial statements, which collectively comprise EBCE's basic financial statements as listed in the table of contents.

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of EBCE as of June 30, 2023 and 2022, and the changes in financial position and cash flows for the years then ended in accordance with accounting principles generally accepted in the United States of America.

### Basis for Opinion

We conducted our audits in accordance with auditing standards generally accepted in the United States of America (GAAS). Our responsibilities under those standards are further described in the Auditor's Responsibilities for the Audits of the Financial Statements section of our report. We are required to be independent of EBCE and to meet our other ethical responsibilities, in accordance with the relevant ethical requirements relating to our audits. We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

### Responsibilities of Management for the Financial Statements

Management is responsible for the preparation and fair presentation of the financial statements in accordance with accounting principles generally accepted in the United States of America, and for the design, implementation, and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

In preparing the financial statements, management is required to evaluate whether there are conditions or events, considered in the aggregate, that raise substantial doubt about EBCE's ability to continue as a going concern for 12 months beyond the financial statement date, including any currently known information that may raise substantial doubt shortly thereafter.

**Independent Auditor's Report** (continued)

**Auditor's Responsibilities for the Audits of the Financial Statements**

Our objectives are to obtain reasonable assurance about whether the financial statements as a whole are free from material misstatement, whether due to fraud or error, and to issue an auditor's report that includes our opinion. Reasonable assurance is a high level of assurance but is not absolute assurance and therefore is not a guarantee that an audit conducted in accordance with GAAS will always detect a material misstatement when it exists. The risk of not detecting a material misstatement resulting from fraud is higher than for one resulting from error, as fraud may involve collusion, forgery, intentional omissions, misrepresentations, or the override of internal control. Misstatements are considered material if there is a substantial likelihood that, individually or in the aggregate, they would influence the judgment made by a reasonable user based on the financial statements.

In performing an audit in accordance with GAAS, we:

- Exercise professional judgment and maintain professional skepticism throughout the audits.
- Identify and assess the risks of material misstatement of the financial statements, whether due to fraud or error, and design and perform audit procedures responsive to those risks. Such procedures include examining, on a test basis, evidence regarding the amounts and disclosures in the financial statements.
- Obtain an understanding of internal control relevant to the audits in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of EBCE's internal control. Accordingly, no such opinion is expressed.
- Evaluate the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluate the overall presentation of the financial statements.
- Conclude whether, in our judgment, there are conditions or events, considered in the aggregate, that raise substantial doubt about EBCE's ability to continue as a going concern for a reasonable period of time.

We are required to communicate with those charged with governance regarding, among other matters, the planned scope and timing of the audits, significant audit findings, and certain internal control-related matters that we identified during the audits.

**Independent Auditor's Report** (continued)

**Required Supplementary Information**

Accounting principles generally accepted in the United States of America require that management's discussion and analysis be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

*Presenti & Brinku LLP*

Santa Rosa, California  
October 30, 2023

**EAST BAY COMMUNITY ENERGY AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
YEARS ENDED JUNE 30, 2023 AND 2022**

The Management's Discussion and Analysis provides an overview of East Bay Community Energy Authority's (EBCE) financial activities as of and for the years ended June 30, 2023 and 2022. The information presented here should be considered in conjunction with the audited financial statements.

**BACKGROUND**

The formation of EBCE was made possible in 2002 by the passage of California Assembly Bill 117, enabling communities to purchase power on behalf of their residents and businesses and creating competition in power generation.

EBCE was created as a California Joint Powers Authority (JPA) effective December 1, 2016, and was established to provide electric power at competitive costs as well as provide other benefits within Alameda County, including reducing greenhouse gas emissions related to the use of power, procuring energy with a priority on the use and development of local renewable resources, stimulating local job creation through various programs and development, promoting personal and community ownership of renewable resources, as well as promoting long-term electric rate stability and energy reliability for residents and businesses. Governed by a board of directors (Board) consisting of elected representatives from each jurisdiction, EBCE has the rights and powers to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations. EBCE is responsible for the acquisition of electric power for its service area.

In June 2018, EBCE began providing service to its first approximately 55,000 customer accounts as part of its initial enrollment phase. This initial phase included municipal and business accounts. The next major enrollment of residential accounts began in November 2018, which added approximately 500,000 accounts. In April 2021, EBCE expanded its service territory by adding approximately 80,000 accounts. As of June 30, 2023, EBCE had approximately 640,000 customers enrolled.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**Financial reporting**

EBCE presents its financial statements as an enterprise fund under the economic resources measurement focus and accrual basis of accounting, in accordance with Generally Accepted Accounting Principles (GAAP) for proprietary funds, as prescribed by the Governmental Accounting Standards Board (GASB).

**Contents of this report**

This report is divided into the following sections:

- Management's discussion and analysis, which provides an overview of the financial operations.
- The basic financial statements:
  - The *Statements of Net Position* include all of EBCE's assets, liabilities, deferred inflows, and net position, and provides information about the nature and amount of resources and obligations at a specific point in time.
  - The *Statements of Revenues, Expenses, and Changes in Net Position* report all of EBCE's revenues and expenses for the years shown.
  - The *Statements of Cash Flows* report the cash provided and used by operating activities, as well as other sources and uses, such as capital asset acquisitions and non-capital financing activities.
  - The notes to the Basic Financial Statements provide additional details and information related to the basic financial statements.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**FINANCIAL HIGHLIGHTS**

The following table is a summary of EBCE's assets, liabilities, and net position, and a discussion of significant changes for the years ended June 30:

	<u>2023</u>	<u>2022</u>	<u>2021</u>
Current assets	\$ 441,433,975	\$ 319,677,508	\$ 218,280,050
Noncurrent assets			
Capital assets, net of depreciation	9,600,031	8,760,016	115,816
Other noncurrent assets	54,436,185	16,356,858	22,855,208
Total noncurrent assets	<u>64,036,216</u>	<u>25,116,874</u>	<u>22,971,024</u>
Total assets	<u>505,470,191</u>	<u>344,794,382</u>	<u>241,251,074</u>
Current liabilities	85,012,415	96,450,766	53,525,550
Noncurrent liabilities	4,787,500	-	-
Total liabilities	<u>89,799,915</u>	<u>96,450,766</u>	<u>53,525,550</u>
Deferred inflows of resources	<u>53,014,000</u>	<u>15,814,000</u>	<u>15,814,000</u>
Net position			
Invested in capital assets	9,600,031	8,760,016	115,816
Restricted for collateral	1,000,000	9,000,000	10,000,000
Unrestricted	352,056,245	214,769,600	161,795,708
Total net position	<u>\$ 362,656,276</u>	<u>\$ 232,529,616</u>	<u>\$ 171,911,524</u>

**Current Assets**

Current assets were approximately \$441,434,000 at the end of 2023 and are mostly comprised of cash of \$291,035,000, accounts receivable of \$84,199,000, accrued revenue of \$45,767,000, and prepaid expenses of \$18,388,000. The current asset accounts increased in 2023 as a result of operating surpluses generated from customer rate increases.

**Capital Assets**

Capital assets are reported net of depreciation. EBCE does not own assets used for electricity generation or distribution. In September 2021, EBCE purchased an office building at 251 8<sup>th</sup> Street in Oakland with the original intent to use it as its future headquarters. The cost of the building and land was approximately \$8,500,000. Presently, the cost of the building and land is classified on the Statements of Net Position as "land and construction-in-progress".



**EAST BAY COMMUNITY ENERGY AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**Other Noncurrent Assets**

Other noncurrent assets include \$53,014,000 as of June 30, 2023, in its Rate Stabilization Fund to defer revenue for later years when financial results may not be as strong or are stressed. By postponing revenue recognition to future years, EBCE will be positioned to avoid sudden rate increases to address unanticipated spikes in energy costs and other unforeseen circumstances. EBCE contributed \$37,200,000 to this fund for the year ended June 30, 2023.

**Current Liabilities**

Current liabilities consist mostly of the cost of electricity delivered to customers that is not due to be paid by EBCE until after year-end. Other components include trade accounts payable, taxes and surcharges due to other governments, and various other accrued liabilities.

Current liabilities decreased from 2022 to 2023 primarily due to a decrease in security deposits. Accrued cost of electricity increased in 2023 due to rising prices fueled by volatility in the energy market. Current liabilities increased significantly from 2021 to 2022 due and increase in security deposits received and an increase in accrued cost of electricity. Changes in both these items were a result of the increased customer load and contracts required to serve that load.

**Deferred Inflows of Resources**

Included in deferred inflows of resources as of June 30, 2023, is \$53,014,000 in a Rate Stabilization Fund. The contribution to the Rate Stabilization Fund was \$37,200,000 during 2023, which accounts for the increase compared to 2022. No contribution was made for the year 2022.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**Revenues and expenses**

The following table is a summary of EBCE's results of operations and a discussion of significant changes for the years ended June 30:

	<u>2023</u>	<u>2022</u>	<u>2021</u>
Operating revenues	\$ 817,931,312	\$ 555,332,546	\$ 423,502,860
Nonoperating revenues	4,050,916	7,901,267	-
Investment income	<u>2,609,002</u>	<u>221,757</u>	<u>636,395</u>
Total income	824,591,230	563,455,570	424,139,255
Operating expenses	693,785,891	501,933,974	401,160,053
Nonoperating expenses	<u>678,679</u>	<u>903,504</u>	<u>869,612</u>
Total expenses	<u>694,464,570</u>	<u>502,837,478</u>	<u>402,029,665</u>
Change in net position	<u>\$ 130,126,660</u>	<u>\$ 60,618,092</u>	<u>\$ 22,109,590</u>

**Operating Revenues**

In April 2021, EBCE expanded its service territory to include an additional 80,000 customer accounts. The year ended June 30, 2022, is the first full year with the expanded customer accounts and is the main reason for the increase in operating revenues in that year. The customer base held fairly stable from 2022 to 2023. The increase in revenue during 2023 was the direct result of increases to customer rates.

**Nonoperating Revenues**

The nonoperating revenue increase is primarily the result of grant income from the California Arrearage Payment Plan (CAPP) that was received in 2023 and 2022. This grant first became available in 2022.

**Investment Income**

Investment income fluctuated each year due to changes in market interest rates as well as the amount available to be invested.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
YEARS ENDED JUNE 30, 2023 AND 2022**

### **Operating Expenses**

EBCE's largest expense each year was the purchase of electricity delivered to customers. EBCE procures energy from a variety of sources and focuses on maintaining a balanced renewable power portfolio at competitive costs to its customers. Expenses for staff compensation, contract services, and other general and administrative expenses increased each year as the organization continued to grow to support its business demands. EBCE had sufficient revenues each year to meet its operating expense obligations.

The cost of electricity increased each year as a result of service territory expansion and overall higher market prices.

### **Nonoperating expenses**

Nonoperating expenses represent interest and fees related to letters of credit and the unused portion of the credit facility.

### **ECONOMIC OUTLOOK**

California Independent System Operator (CAISO) system power prices experienced volatility through the year ended June 30, 2023. Intra-year variability was somewhat consistent with year-to-year historical variability that occurs due to seasonal and annual weather changes and was also characterized by carrying over a marked increase in energy prices above historical levels from the previous year. This was due to more extreme weather events, energy infrastructure capacity constraints in CAISO, and geopolitical considerations in the natural gas industry.

Russia's invasion of Ukraine continued to cause an increase in global energy prices. Although occurring in Europe, this conflict disrupts global natural gas distribution, supply, and demand, and as such influenced California markets, where high volatility and prices persisted in the second half of 2022 since the conflict began in February 2022. In 2023, we have seen natural gas prices revert to historical averages.

Infrastructure supply development remain somewhat constrained due to lingering supply chain disruptions and California interconnection bottlenecks. These constraints are driven by the increased demand for renewable resources as urban electrification processes compete with technology data center artificial intelligence processing needs.

Hedges EBCE has in place offset much of the immediate price spike impacts, but we are currently experiencing a rising energy price environment for the foreseeable future. As rates are currently set as a discount to PG&E, EBCE expects to continue to remain competitive, and is seeing a significant increase in revenues.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
MANAGEMENT'S DISCUSSION AND ANALYSIS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**ECONOMIC OUTLOOK (continued)**

While the COVID-19 pandemic is still considered ongoing, energy loads were in line with forecasts and budget and in general energy use activity has returned to pre-pandemic patterns. Customer account aging has stabilized and recovery efforts through State and Federal funding have reduced overall aging impacts from shelter-in-place policies.

We closely monitored the banking sector disruptions due to the collapse of Silicon Valley Bank. While EBCE's cash holdings were not at risk, we have diversified where we hold deposits and are actively evaluating our treasury management practices and investment policy in light of rising interest rates.

EBCE has in place a formal risk management policy that includes guidance on target hedge levels. Energy hedging is intended to reduce the financial risk of unexpected price surges by procuring a significant portion of future energy at fixed prices. The target hedge percentages depend on factors including time and the hedge pricing relative to historical energy costs. In general, EBCE targets hedging 60-100% of its exposure in energy products on a short-duration basis of under a year and aims to hedge greater than 80% of its exposure going into any particular month. EBCE has complied with its risk management policy and regulations.

Year-over-year, EBCE has retained a strong customer and revenue base with low opt-out levels. EBCE continues to be actively engaged on legislative and regulatory matters that can impact EBCE's energy procurement requirements and, therefore, energy-related expenditures. This provides some level of additional certainty on EBCE revenues.

**REQUEST FOR INFORMATION**

This financial report is designed to provide EBCE's customers and creditors with an overview of the organization's finances and to demonstrate EBCE's accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to 1999 Harrison Street, Suite 2300, Oakland, CA 94612.

Respectfully submitted,

Nick Chaset, Chief Executive Officer

**BASIC FINANCIAL STATEMENTS**

**EAST BAY COMMUNITY ENERGY AUTHORITY**  
**STATEMENTS OF NET POSITION**  
**AS OF JUNE 30, 2023 AND 2022**

	<b>2023</b>	<b>2022</b>
<b>ASSETS</b>		
Current assets		
Cash and cash equivalents - unrestricted	\$ 291,035,233	\$ 152,215,061
Accounts receivable, net of allowance	84,198,659	79,814,399
Accrued revenue	45,767,329	47,590,010
Market settlements receivable	807,102	-
Other receivables	90,568	6,302,352
Prepaid expenses	18,388,084	8,728,326
Deposits	147,000	16,027,360
Restricted cash	1,000,000	9,000,000
Total current assets	441,433,975	319,677,508
Noncurrent assets		
Unrestricted cash and cash equivalents in Rate Stabilization Fund	53,014,000	15,814,000
Deposits	931,164	42,858
Loan receivable	491,021	500,000
Capital assets:		
Land and construction-in-progress	9,386,864	8,605,533
Capital assets, net of depreciation	213,167	154,483
Total capital assets	9,600,031	8,760,016
Total noncurrent assets	64,036,216	25,116,874
Total assets	505,470,191	344,794,382
<b>LIABILITIES</b>		
Current liabilities		
Accrued cost of electricity	65,136,135	60,283,371
Accounts payable	4,295,566	2,824,571
Other accrued liabilities	5,930,936	1,631,542
User taxes and energy surcharges due to other governments	7,404,678	5,846,282
Security deposits - energy suppliers	2,245,100	25,865,000
Total current liabilities	85,012,415	96,450,766
Noncurrent liabilities		
Supplier security deposits	4,787,500	-
Total liabilities	89,799,915	96,450,766
<b>DEFERRED INFLOWS OF RESOURCES</b>		
Rate Stabilization Fund	53,014,000	15,814,000
<b>NET POSITION</b>		
Investment in capital assets	9,600,031	8,760,016
Restricted for collateral	1,000,000	9,000,000
Unrestricted	352,056,245	214,769,600
Total net position	\$ 362,656,276	\$ 232,529,616

**EAST BAY COMMUNITY ENERGY AUTHORITY**  
**STATEMENTS OF REVENUES, EXPENSES**  
**AND CHANGES IN NET POSITION**  
**YEARS ENDED JUNE 30, 2023 AND 2022**

	<u>2023</u>	<u>2022</u>
<b>OPERATING REVENUES</b>		
Electricity sales, net	\$ 847,306,890	\$ 538,713,401
Revenue deferred to Rate Stabilization Fund	(37,200,000)	-
Liquidated damages	6,150,378	14,658,400
Grant revenue	1,498,666	1,614,597
Other operating revenues	175,378	346,148
Total operating revenues	<u>817,931,312</u>	<u>555,332,546</u>
<b>OPERATING EXPENSES</b>		
Cost of electricity	658,204,854	474,633,255
Contract services	18,104,240	16,611,808
Staff compensation	12,950,359	7,887,849
Other operating expenses	4,435,677	2,738,461
Depreciation	90,761	62,601
Total operating expenses	<u>693,785,891</u>	<u>501,933,974</u>
Operating income	<u>124,145,421</u>	<u>53,398,572</u>
<b>NONOPERATING REVENUES (EXPENSES)</b>		
Grant revenue	4,050,916	7,901,267
Interest income	2,609,002	221,757
Financing expense	(678,679)	(903,504)
Nonoperating revenues (expenses), net	<u>5,981,239</u>	<u>7,219,520</u>
<b>CHANGE IN NET POSITION</b>	130,126,660	60,618,092
Net position at beginning of year	<u>232,529,616</u>	<u>171,911,524</u>
Net position at end of year	<u>\$ 362,656,276</u>	<u>\$ 232,529,616</u>

**EAST BAY COMMUNITY ENERGY AUTHORITY**  
**STATEMENTS OF CASH FLOWS**  
**YEARS ENDED JUNE 30, 2023 AND 2022**

	<u>2023</u>	<u>2022</u>
<b>CASH FLOWS FROM OPERATING ACTIVITIES</b>		
Receipts from customers	\$ 878,374,195	\$ 503,810,291
Other operating receipts	12,650,524	18,603,247
Receipts from supplier security deposit	8,602,600	26,123,000
Payments to suppliers for electricity	(618,685,214)	(451,271,876)
Payments for other goods and services	(21,223,125)	(21,925,338)
Deposits and collateral paid	(51,689,464)	(25,901,650)
Payments for staff compensation	(12,694,993)	(7,748,575)
Tax and surcharge payments to other governments	(32,070,485)	(18,648,636)
Net cash provided by operating activities	<u>163,264,038</u>	<u>23,040,463</u>
<b>CASH FLOWS FROM NON-CAPITAL FINANCING ACTIVITIES</b>		
Principal payments received on loan receivable	8,979	-
Grant revenue	4,050,916	7,901,267
Financing expense payments	(899,099)	(683,084)
Net cash provided by non-capital financing activities	<u>3,160,796</u>	<u>7,218,183</u>
<b>CASH FLOWS FROM CAPITAL AND RELATED FINANCING ACTIVITIES</b>		
Payments to acquire capital assets	<u>(1,011,413)</u>	<u>(8,613,048)</u>
<b>CASH FLOWS FROM INVESTING ACTIVITIES</b>		
Interest income received	2,606,751	221,757
Loan issued	-	(500,000)
Net cash provided (used) by investing activities	<u>2,606,751</u>	<u>(278,243)</u>
Net change in cash and cash equivalents	168,020,172	21,367,355
Cash and cash equivalents at beginning of year	177,029,061	155,661,706
Cash and cash equivalents at end of year	<u>\$ 345,049,233</u>	<u>\$ 177,029,061</u>
<b>Reconciliation to the Statement of Net Position</b>		
Unrestricted cash and cash equivalents (current)	\$ 291,035,233	\$ 152,215,061
Restricted cash and cash equivalents (current)	1,000,000	9,000,000
Unrestricted cash and cash equivalents (noncurrent)	53,014,000	15,814,000
Cash and cash equivalents	<u>\$ 345,049,233</u>	<u>\$ 177,029,061</u>



**EAST BAY COMMUNITY ENERGY AUTHORITY  
STATEMENTS OF CASH FLOWS (CONTINUED)  
YEARS ENDED JUNE 30, 2023 AND 2022**

**RECONCILIATION OF OPERATING INCOME TO NET  
CASH PROVIDED BY OPERATING ACTIVITIES**

	<u>2023</u>	<u>2022</u>
Operating income	\$ 124,145,421	\$ 53,398,572
Adjustments to reconcile operating income to net cash provided by operating activities		
Depreciation expense	90,761	62,601
(Increase) decrease in:		
Accounts receivable	(4,384,259)	(35,903,077)
Market settlements receivable	(807,102)	5,025,941
Other receivables	6,214,035	(5,594,164)
Accrued revenue	1,822,681	(19,637,803)
Prepaid expenses	(9,659,760)	(2,480,999)
Deposits	14,992,053	(14,441,650)
Increase (decrease) in:		
Accrued cost of electricity	4,852,765	21,468,127
Accounts payable	1,772,053	(754,456)
Other accrued liabilities	313,794	139,274
Deferred revenue	3,985,600	742,083
User taxes due to other governments	1,558,396	1,989,136
Security deposits from energy suppliers	(18,832,400)	19,026,878
Rate Stabilization Fund	37,200,000	-
Net cash provided by operating activities	<u>\$ 163,264,038</u>	<u>\$ 23,040,463</u>

**EAST BAY COMMUNITY ENERGY AUTHORITY  
NOTES TO THE BASIC FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES**

**REPORTING ENTITY**

East Bay Community Energy Authority (EBCE) is a California joint powers authority created on December 1, 2016. As of June 30, 2023, parties to its Joint Powers Agreement consist of the following local governments, plus one representative (non-voting) from the Community Advisory Committee (CAC):

<b>County</b>	<b>Cities</b>	
Alameda	Albany	Oakland
	Berkeley	Piedmont
	Dublin	Pleasanton
	Emeryville	San Leandro
	Fremont	Stockton
	Hayward	Tracy
	Livermore	Union City
	Newark	

EBCE is separate from, and derives no financial support from, its members. EBCE is governed by a Board of Directors whose membership is composed of elected officials representing the member governments.

A core function of EBCE is to provide electric service that includes the use of renewable sources under the Community Choice Aggregation Program under California Public Utilities Code Section 366.2.

EBCE began its energy delivery operations in June 2018. Electricity is acquired from electricity suppliers and delivered through existing physical infrastructure and equipment managed by Pacific Gas and Electric Company.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
NOTES TO THE BASIC FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

**BASIS OF ACCOUNTING**

EBCE's financial statements are prepared in accordance with generally accepted accounting principles (GAAP). The Governmental Accounting Standards Board (GASB) is responsible for establishing GAAP for state and local governments through its pronouncements.

EBCE's operations are accounted for as a governmental enterprise fund and are reported using the economic resources measurement focus and the accrual basis of accounting – similar to business enterprises. Accordingly, revenues are recognized when they are earned, and expenses are recognized at the time liabilities are incurred. Enterprise fund-type operating statements present increases (revenues) and decreases (expenses) in total net position. Reported net position is segregated into three categories – investment in capital assets, restricted and unrestricted.

When both restricted and unrestricted resources are available for use, it is EBCE's policy to use restricted resources first, and then unrestricted resources as they are needed.

**CASH AND CASH EQUIVALENTS**

For purposes of the Statements of Cash Flows, EBCE has defined cash and cash equivalents to include cash on hand, demand deposits, and short-term investments with an original maturity of three months or less. For the purpose of the Statements of Net Position, restricted cash balances are presented separately. Restricted cash reported on the Statements of Net Position includes collateral on a credit facility, as well as a required minimum balance to be maintained in one of its bank accounts.

**MARKET SETTLEMENTS RECEIVABLE**

EBCE receives generation scheduling and other services from a registered California Independent System Operator (CAISO) scheduling coordinator.

**PREPAID ENERGY PURCHASES AND DEPOSITS**

Various energy contracts entered into by EBCE require EBCE to provide the supplier with a security deposit. The deposits are generally held for the term of the contract. Deposits are classified as current or noncurrent assets depending on the length of the time the deposits will be held. While these energy contract-related deposits make up the majority of this item, other components include deposits for regulatory and other operating purposes.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
NOTES TO THE BASIC FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

**CAPITAL ASSETS AND DEPRECIATION**

EBCE's policy is to capitalize furniture and equipment valued over \$1,000 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment, seven years for furniture and seven years for leasehold improvements, unless limited by the length of the original lease term. EBCE does not own any electric generation assets.

**SECURITY DEPOSITS – LIABILITY**

Various energy contracts entered into by EBCE require the supplier to provide EBCE with a security deposit. Often this security is held by EBCE for the duration of the contract or until certain milestones are met. Deposits are classified as current or noncurrent depending on the length of time the deposits will be held.

**RATE STABILIZATION FUND**

EBCE created a Rate Stabilization Fund to allow EBCE to defer revenue in years when financial results are strong to be used in future years when financial results are stressed. In accordance with GASB Statement No. 62 and GASB Statement No. 65, the amount recognized as an addition to the fund is shown as a reduction of operating revenues and reported on the statements of net position as a deferred inflow of resources.

EBCE directed revenue of \$37,200,000 and \$0 to the Rate Stabilization Fund for the years ended June 30, 2023 and 2022, respectively.

**NET POSITION**

Net position is presented in the following components:

*Investment in capital assets:* This component of net position consists of capital assets, net of accumulated depreciation and reduced by outstanding borrowings that are attributable to the acquisition, construction, or improvement of those assets. EBCE did not have any such borrowings outstanding as of June 30, 2023 and 2022.

*Restricted:* This component of net position consists of constraints placed on net asset use through external constraints imposed by creditors (such as through debt covenants), grantors, contributors, or laws or regulations of other governments or constraints imposed by law through constitutional provisions or enabling legislation.

*Unrestricted:* This component of net position consists of net position that does not meet the definition of "investment in capital assets" or "restricted."

**EAST BAY COMMUNITY ENERGY AUTHORITY  
NOTES TO THE BASIC FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

**OPERATING AND NONOPERATING REVENUES**

Operating revenues include revenues derived from the provision of energy to end-use retail customers and grant revenue earned from the delivery of program activities. Operating revenues are affected by amounts directed to or from the Rate Stabilization Fund.

Investment income is considered “nonoperating revenue.” Certain grant revenue, such as from the California Arrearage Payment Program (CAPP), is also considered “nonoperating revenue.”

**REVENUE RECOGNITION**

EBCE recognizes revenue on an accrual basis. This includes invoices issued to customers during the reporting period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will be uncollectible. Accordingly, an allowance for uncollectible accounts has been recorded.

**OPERATING AND NONOPERATING EXPENSES**

Operating expenses include the costs of sales and services, administrative expenses, and depreciation on capital assets. Expenses not meeting this definition are reported as nonoperating expenses.

**ELECTRICAL POWER PURCHASED**

During the normal course of business, EBCE purchases electrical power from numerous suppliers. Electricity costs include the cost of energy and capacity arising from bilateral contracts with energy suppliers as well as generation credits, and load and other charges arising from EBCE’s participation in CAISO’s centralized market. The cost to acquire electricity and capacity is recognized as “Cost of Electricity” in the Statements of Revenues, Expenses and Changes in Net Position.

To comply with the State of California’s Renewable Portfolio Standards (RPS) and self-imposed benchmarks, EBCE acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy Generation Information System. EBCE obtains Certificates with the intent to retire them and does not sell or build surpluses of Certificates with a profit motive. EBCE recognizes an expense on a monthly basis that corresponds to the volume sold to its customers for its various renewable and carbon-free products. This expense recognition increases accrued cost of electricity reported on the Statements of Net Position until the time the payment has been made to the supplier.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
NOTES TO THE BASIC FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**1. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)**

**ELECTRICAL POWER PURCHASED (continued)**

EBCE purchases capacity commitments from qualifying electricity generators to comply with the California's Resource Adequacy Program. The goals of the Resource Adequacy Program are to provide sufficient resources to CAISO to ensure the safe and reliable operation of the electrical grid in real-time and to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future.

**STAFFING COSTS**

EBCE pays employees semi-monthly and fully pays its obligation for health benefits and contributions to its defined contribution retirement plan monthly. EBCE is not obligated to provide post-employment healthcare or other fringe benefits, and accordingly, no related liability is recorded in these financial statements. EBCE provides compensated absences, and the related liability is recorded in these financial statements.

**INCOME TAXES**

EBCE is a joint powers authority under the provision of the California Government Code and is not subject to federal or state income or franchise taxes.

**ESTIMATES**

The preparation of financial statements in conformity with GAAP requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

**RECLASSIFICATIONS**

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements. These reclassifications did not result in any change in previously reported net position.

**EAST BAY COMMUNITY ENERGY AUTHORITY**  
**NOTES TO THE BASIC FINANCIAL STATEMENTS**  
**YEARS ENDED JUNE 30, 2023 AND 2022**

## 2. CASH AND CASH EQUIVALENTS

EBCE maintains its cash in both interest-bearing and non-interest-bearing accounts at River City Bank headquartered in Sacramento, California as well as U.S. Bank headquartered in Minneapolis, Minnesota. EBCE's deposits are subject to California Government Code Section 16521, which requires that banks collateralize public funds in excess of the Federal Deposit Insurance Corporation limit of \$250,000 by 110%. EBCE has no deposit or investment policy that addresses a specific type of risk that would impose restrictions beyond this code. Accordingly, the amount of risk is not disclosed. EBCE monitors its risk exposure to its banks on an ongoing basis.

## 3. ACCOUNTS RECEIVABLE

Accounts receivable were as follows as of June 30:

	<u>2023</u>	<u>2022</u>
Accounts receivable from customers	\$117,017,715	\$101,011,756
Allowance for uncollectible accounts	(32,819,056)	(21,197,357)
Net accounts receivable	<u>\$ 84,198,659</u>	<u>\$ 79,814,399</u>

The majority of account collections occur within the first few months following customer invoicing. EBCE estimates that a portion of the billed accounts will not be collected. EBCE continues collection efforts on accounts in excess of *de minimis* balances regardless of the age of the account. Although collection success generally decreases with the age of the receivable, EBCE continues to have success collecting older accounts. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current and prior fiscal years. During the year ended June 30, 2023, EBCE received CAPP funds (see Note 6) that helped offset previously written off accounts receivable.

## 4. CAPITAL ASSETS

Capital asset activity for the years ended June 30, 2023 and 2022, was as follows:

	<b>Furniture &amp; Equipment</b>	<b>Land and Construction-in- Progress</b>	<b>Accumulated Depreciation</b>	<b>Total</b>
Balances at June 30, 2021	\$ 231,105	\$ -	\$ (115,289)	\$ 115,816
Additions	101,268	8,605,533	(62,601)	8,644,200
Balances at June 30, 2022	332,373	8,605,533	(177,890)	8,760,016
Additions	149,445	781,331	(90,761)	840,015
Balances at June 30, 2023	<u>\$ 481,818</u>	<u>\$ 9,386,864</u>	<u>\$ (268,651)</u>	<u>\$ 9,600,031</u>

**EAST BAY COMMUNITY ENERGY AUTHORITY  
NOTES TO THE BASIC FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**5. DEBT**

In January 2020, EBCE entered into an amended revolving credit agreement with Barclays Bank. The available credit line under this agreement is \$80,000,000. The credit agreement enhances EBCE's overall liquidity for potential working capital needs and collateral requirements.

In October 2022, EBCE closed its revolving credit agreement with Barclays Bank and entered into a new agreement with Union Bank. The available credit line under the new agreement is \$200,000,000. The credit agreement enhances EBCE's overall liquidity for potential working capital needs and collateral requirements. This agreement terminates in October 2025. The borrowing rate on the credit facility is 1.4%.

EBCE had no debt outstanding under either line of credit agreement at June 30, 2023 or 2022. However, EBCE did issue Standby Letters of Credit secured by the line of credit agreement. At June 30, 2023 and June 30, 2022, these Letters of Credit reduce the available portion of the line by approximately \$39,770,000 and \$13,147,000, respectively, but are not considered debt to EBCE.

In February of 2023, Union Bank was acquired by US Bank. Under the deal of the acquisition, all established promissory agreements would be upheld and unaltered through their maturity.

**6. GRANTS**

EBCE administers a grant from the California Arrearage Payment Program (CAPP) that offers financial assistance for California energy utility customers to help reduce past due energy bill balances that increased during the COVID-19 pandemic. In 2022 this program was funded through the federal American Rescue Plan Act (ARPA) with Coronavirus State and Local Fiscal Recovery Funds. The program was funded by the State of California in 2023.

EBCE also administers a grant from the California Public Utilities Commission (CPUC) for the Disadvantaged Communities Green Tariff (DAC-GT). This grant provides for bill discounts to eligible customers.

In addition to the two grants mentioned above, EBCE also administers several small grants generally aimed at energy efficiency measures.

The following is a summary grant revenue for the years ended June 30:

	<u>2023</u>	<u>2022</u>
CAPP	\$ 4,050,916	\$ 7,901,267
DAC-GT	1,228,613	1,614,597
Miscellaneous	270,053	-
Total grant revenue	<u>\$ 5,549,582</u>	<u>\$ 9,515,864</u>



**EAST BAY COMMUNITY ENERGY AUTHORITY  
NOTES TO THE BASIC FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**7. DEFINED CONTRIBUTION RETIREMENT PLAN**

The East Bay Community Energy Authority 401(a) Plan (the Plan) is a defined contribution retirement plan administered by LT Trust. As of June 30, 2023, there were 88 plan members. EBCE is required to contribute a match up to 6% of annual covered payroll to the Plan and contributed \$1,456,000 and \$929,000 during the years ended June 30, 2023 and 2022, respectively. EBCE has elected out of the Social Security system for employees eligible for the Plan. As part of this election, EBCE makes required “replacement” contributions to the Plan. Plan provisions are established and may be amended by the Board of Directors.

**8. RISK MANAGEMENT**

EBCE is exposed to various risks of loss related to torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, EBCE purchased insurance policies from investment-grade commercial carriers to mitigate risks that include those associated with earthquakes, theft, general liability, errors and omissions, and property damage. Deductible limits range from \$0 to \$1,000. Settled claims have not exceeded coverage in the last two years. There were no significant reductions in coverage compared to the prior year. From time to time, EBCE may be party to various pending claims and legal proceedings. Although the outcome of such matters cannot be forecasted with certainty, it is the opinion of management and EBCE’s legal counsel that the likelihood is remote that any such claims or proceedings will have a material adverse effect on EBCE’s financial position or results of operations.

EBCE maintains risk management policies, procedures and systems that help mitigate credit, liquidity, market, operating, regulatory and other risks that arise from participation in the California energy market. Credit guidelines include a preference for transacting with investment-grade counterparties, evaluating counterparties’ financial condition and assigning credit limits as applicable. These credit limits are established based on risk and return considerations under terms customarily available in the industry. In addition, EBCE enters into netting arrangements whenever possible and where appropriate obtains collateral and other performance assurances from counterparties.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
NOTES TO THE BASIC FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022**

## 9. PURCHASE COMMITMENTS

In the ordinary course of business, EBCE enters into various power purchase agreements in order to acquire renewable and other energy and electric capacity. The price and volume of purchased power may be fixed or variable. Variable pricing is generally based on the market price of either natural gas or electricity at the date of delivery. Variable volume is generally associated with contracts to purchase energy from as-available resources such as solar, wind, and hydroelectric facilities.

The following table details the obligations on existing energy, renewable, and resource adequacy (RA) contracts as of June 30, 2023:

Year ending June 30,	
2024	\$ 724,800,000
2025	798,400,000
2026	897,100,000
2027	1,005,400,000
2028	1,031,500,000
2029-2043	18,392,900,000
Total	<u>\$ 22,850,100,000</u>

## 10. LEASE

In July 2023, EBCE entered into two lease agreements, one a sublease and one a main lease, for its office premises. Both agreements are for the same office space and each lease runs in succession over the period September 1, 2023 through October 31, 2032. The sublease will be in effect until April 2025 when the main lease becomes active. Rental expense for EBCE's office space was \$519,000 and \$442,000 for the years ended June 30, 2023, and 2022, respectively.

**EAST BAY COMMUNITY ENERGY AUTHORITY  
NOTES TO THE BASIC FINANCIAL STATEMENTS  
YEARS ENDED JUNE 30, 2023 AND 2022**

**11. FUTURE GASB PRONOUNCEMENTS**

The requirements of the following GASB Statements are effective for years ending after June 30, 2023:

GASB has approved GASB Statement No. 100, *Accounting Changes and Error Corrections – An Amendment of GASB Statement No. 62*, and GASB Statement No. 101, *Compensated Absences*. When they become effective, application of these standards may restate portions of these financial statements.

**12. SUBSEQUENT EVENTS**

**NEW MEMBER**

In September 2023, EBCE approved the City of Lathrop as a member. EBCE anticipates electric deliveries in this new territory will begin in 2025.

**NAME CHANGE**

In October 2023, EBCE changed its name to Ava Community Energy (Ava).



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*East Bay Community Energy  
Report to the Board of Directors  
November 15, 2023*

# Introduction

- Brett Bradford, CPA
  - Audit Partner
  - 20 years in public accounting and performing audits of government entities
  - Currently working with several CCA's throughout California
- Aliandra Schaffer
  - Engagement Manager
  - 4 years in public accounting and performing audits of governments (CCA's)

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# Results of current year audit:

- The audit is complete. We have reported the following:
  - Unmodified opinion – Based on our audit, the financial statements are materially accurate.
  - No significant deficiencies or material weakness in internal control have been identified.

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# Audit of the year ended June 30, 2023

## Financial Statements

Attachment Staff Report Item 10B

### Relative Roles & Responsibilities

- **Management** is responsible for preparing the Financial Statements and establishing a system of internal control.
- **Auditor** is responsible for auditing the Financial Statements
  - Considering risks of material misstatement in the Financial Statements
  - Considering internal controls relevant to the Financial Statements
  - Performing tests of year-end balances based on risk assessment
  - Evaluating adequacy of disclosures

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**RSM**



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# Risk Assessment for the year ended June 30, 2023

Attachment Staff Report Item 10B

## Significant areas of focus

- Revenue recognition
  - Accounts receivable and accrued revenue
    - Test a sample of customer billings
    - Relate total cash received during the year to revenue
    - Review revenue recognition through year-end and method for determining (accrued revenue)
- Cash
  - Confirmations sent to financial institutions

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# Risk Assessment for the year ended June 30, 2023

Attachment Staff Report Item 10B

## Significant areas of focus

- Accrued Cost of Electricity
  - Review subsequent bills from electricity providers and cash payments
- Accrued REC expense
- Supplier Security Deposits
  - Reviewed contracts and determined completeness of amounts recorded
- Financial Statement Note Disclosures – Complete and without bias

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# Required Board Communications

- The significant accounting policies adopted by EBCE throughout the periods audited appeared appropriate and consistently applied.
- No alternative treatments of accounting principles for material items in the financial statements were discussed with management.

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# Required Board Communications (continued)

- We did not propose any adjustments to the financial statements.
- We did not identify any significant or unusual transactions or applications of accounting principles where a lack of authoritative guidance exists.

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# Required Board Communications (continued)

- There were no disagreements with management concerning the scope of our audit, the application of accounting principles, or the basis for management's judgments on any significant matters.
- We did not encounter any difficulties in dealing with management during the performance of our audit.

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# Questions?

Brett Bradford: 707-577-1582



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## Staff Report Item 11

**TO:** Ava Community Energy Authority

**FROM:** Jason Bartlett, Senior Finance Manager

**SUBJECT: Budget Surplus & Reserve Allocation**

**DATE:** November 15, 2023

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### **Recommendation**

Adopt a Resolution to confirm and finalize the approved amounts allocated to each waterfall component based on the 2022-2023 fiscal year budget surplus.

### **Background and Discussion**

#### **Budget Surplus**

On June 15, 2022, the Board of Directors (BOD) approved the Fiscal Year 2022-2023 budget by resolution R-2022-19. This Resolution was passed based on the presentation given as Item 14 which provided the detailed plan on how to allocate the projected budget surplus. This proposed allocation is a waterfall approach that fills up priority needs first then continues to next priority items. The priority list and amounts presented are as follows:

- First \$50MM is allocated to Working Capital
- Next \$75MM is allocated to Reserve Funds
- Excess above \$125MM is split 50/50 to:
  - Incremental long-term renewable energy/clean storage investments
  - One-time on-bill credits to customers

These allocations were noted to be made after the end of the fiscal period ending June 30, 2023. With the completion of the annual audit, the contributable amounts can now be confirmed as actual and accurate.

A summary comparison of the approved budget to actuals is shown below. This shows a decrease in the net expected surplus amount by about \$10.2MM. In addition, only a portion of the Local Development allocation was actualized. For purposes of preserving the intent of funding local programs, the unrealized portion of the Local Development allocation is retained first before the waterfall allocations. The net budget surplus available for the waterfall is \$146,009,674.

<b>BUDGET COMPARISON</b>	<b>FY 2022-23 Budget</b>	<b>FY 2022-23 Actual</b>	<b>FY 2022-23 Variance</b>	
<b>Operating Revenue</b>				
<b>Total Revenue</b>	<b>769,953,000</b>	<b>857,683,762</b>	<b>87,730,762</b>	<i>A</i>
<b>Operating Expenses</b>				
<b>Total Energy Operations</b>	<b>535,241,000</b>	<b>669,498,547</b>	<b>134,257,547</b>	<i>B</i>
<b>Total Overhead Operations</b>	<b>27,432,000</b>	<b>20,625,089</b>	<b>(6,806,911)</b>	<i>C</i>
<b>Total Non-Operating Expenses</b>	<b>30,728,000</b>	<b>1,164,041</b>	<b>29,563,959</b>	<i>D</i>
<b>Net Increase</b>	<b>176,552,000</b>	<b>166,396,085</b>	<b>(10,155,915)</b>	<i>E = A-B-C-D</i>
Local Development Funding Retention	-	20,386,411	20,386,411	<i>F</i>
<b>Net Increase Available for Waterfall</b>	<b>176,552,000</b>	<b>146,009,674</b>	<b>(30,542,326)</b>	<i>G = E-F</i>
<b>Waterfall</b>				
Working Capital	50,000,000	50,000,000	-	<i>H</i>
Reserves	75,000,000	75,000,000	-	<i>I</i>
Available for 50/50 Split	51,552,000	21,009,674	(30,542,326)	<i>J = G-H-I</i>
Investment in LT Renewables	25,776,000	10,504,837	(15,271,163)	<i>K = J/2</i>
On-bill Credits	25,776,000	10,504,837	(15,271,163)	<i>L = K</i>

The allocations provided in the waterfall above are materially consistent with the presentation and intent of approval from the June 15, 2022 BOD Resolution of the fiscal year budget.

### Reserve Fund Allocation

June 20, 2018, the BOD approved by resolution R-2018-26 to adopt a financial reserve policy. This policy established targets as well as minimum and maximum contribution limits based on revenues and made allocations to multiple reserve accounts.

January 20, 2021, the BOD approved by resolution R-2021-2 to amend the reserve policy to a single reserve account. In addition, this simplified methodology, aligned with industry standards and other CCA's, and set a target of 50% of annual operating costs, with ranges of 25-75% to account for variation of need. This policy also formalized the use of reserves funds requires BOD approval.

June 15, 2022, the BOD pre-established a contribution of \$75 million in the surplus waterfall towards Reserves. With this contribution, the reserve fund is \$230,873,400, which is 31.5.% of this year’s operating costs.

The chart below shows fiscal year reserve contributions and withdraws, account balance, operating expenses to cover, and the percent of operating expenses covered to relate to the 50% and ranged target. No contribution was made in 2020-2021 due to insufficient available net position.

<b>Fiscal Year</b>	<b>Contribution</b>	<b>Withdraws</b>	<b>Balance</b>	<b>OpEx to Cover</b>	<b>PctOps</b>
2018-2019	40,513,687	-	40,513,687	410,686,000	9.9%
2019-2020	49,704,640	-	90,218,327	383,045,000	23.6%
2020-2021	-	-	90,218,327	471,897,000	19.1%
2021-2022	65,655,073	-	155,873,400	562,667,000	27.7%
2022-2023	75,000,000	-	230,873,400	732,885,000	31.5%
2023-2024*	100,000,000	-	330,873,400	912,066,000	36.3%

\*Approved contribution with projected operating expenses to cover as of 10/1/2023

**Fiscal Impact**

Approving this item formally allocates \$75MM to the reserve fund, releases approximately \$10.5MM to be redistributed to customers, and retains approximately \$10.5MM for long-term renewable energy or clean storage investments. A recommendation with potential options for the renewable energy or storage investment will be brought forward to the board for approval in 2024.

These allocations will not impact normal operations and continues Ava’s firm commitment to financial security.

**Committee Recommendation**

This item was reviewed in the Finance, Administrative, and Procurement subcommittee on November 8, 2023

**Attachments**

- A. Presentation
- B. Resolution to Approve Allocation of Funds from the Fiscal Year 2022-2023 Budget Surplus



# Budget Surplus & Reserve Allocation from 2022-23 FY

Board of Directors

November 15, 2023



- June 15, 2022, the BOD approved the FY 2022-23 Budget by resolution R-2022-19
- The Budget proposed a waterfall allocation for surplus revenues:
  - The first \$50 million is to be retained for working capital needs
  - The next \$75 million is to go to the Reserve Fund
  - The remaining amount is to be split 50/50 to:
    - One-time on-bill credits to customers
    - Incremental long-term renewable energy/clean storage investments
- This presentation presents the budget performance, discusses the waterfall allocations, and confirms the amounts



# Budget Performance Comparison

- Revenue from Operations was \$87.7MM above budget from rising rate environment and other income from contractual recovery of damages
- Cost of Energy was \$134.2MM above budget from rising cost environment
- Overhead was \$6.8MM below budget from delays in staffing, reduced contracting, and delayed marketing costs
- Non-Operating activity was \$29.6MM below budget due to
  - Offsets from investment income from rising interest rates
  - Unrealized capital costs with new building
  - \$20.4MM in Local Development costs are yet unrealized
- Net change was \$10.2MM below budget
- \$30.5MM below budget for waterfall

BUDGET COMPARISON	FY 2022-23 Budget	FY 2022-23 Actual	FY 2022-23 Variance	
<b>Operating Revenue</b>				
Total Revenue	769,953,000	857,683,762	87,730,762	A
<b>Operating Expenses</b>				
Total Energy Operations	535,241,000	669,498,547	134,257,547	B
Total Overhead Operations	27,432,000	20,625,089	(6,806,911)	C
<b>Total Non-Operating Expenses</b>	<b>30,728,000</b>	<b>1,164,041</b>	<b>29,563,959</b>	<b>D</b>
<b>Net Increase</b>	<b>176,552,000</b>	<b>166,396,085</b>	<b>(10,155,915)</b>	<b>E = A-B-C-D</b>
Local Development Funding Retention	-	20,386,411	20,386,411	F
<b>Net Increase Available for Waterfall</b>	<b>176,552,000</b>	<b>146,009,674</b>	<b>(30,542,326)</b>	<b>G = E-F</b>
<b>Waterfall</b>				
Working Capital	50,000,000	50,000,000	-	H
Reserves	75,000,000	75,000,000	-	I
Available for 50/50 Split	51,552,000	21,009,674	(30,542,326)	J = G-H-I
Investment in LT Renewables	25,776,000	10,504,837	(15,271,163)	K = J/2
On-bill Credits	25,776,000	10,504,837	(15,271,163)	L = K



# Budget Surplus & Reserve Allocation

- June 15, 2022, the BOD established an allocation methodology with a waterfall treatment of the budget surplus, which is net of an allocation to Local Development Funding
  - \$50 million contribution to working capital to manage variable cash flow throughout the year and energy markets volatility
  - \$75 million contribution to Reserves, which requires Board action to access and utilize
  - ~\$10.5 million to customer on-bill credits, anticipated to be released in Dec/Jan timeframe
  - ~\$10.5 million to incremental long-term renewable energy/clean storage investments. Staff will present and seek Board approval on utilization of these funds in the future.

<b>BUDGET COMPARISON</b>	<b>FY 2022-23 Budget</b>	<b>FY 2022-23 Actual</b>
<b>Net Increase Available for Waterfall</b>	<b>176,552,000</b>	<b>146,009,674</b>
<b>Waterfall</b>		
Working Capital	50,000,000	50,000,000
Reserves	75,000,000	75,000,000
Available for 50/50 Split	51,552,000	21,009,674
Investment in LT Renewables	25,776,000	10,504,837
On-bill Credits	25,776,000	10,504,837



- June 20, 2018, the BOD approved by resolution R-2018-26 to adopt a financial reserve policy
  - Established targets as well as minimum and maximum contribution limits based on revenues
- January 20, 2021, the BOD approved by resolution R-2021-2 to amend the reserve policy to a single sum reserve
  - Simplified methodology, aligned with industry standards, and set target ranges of 25-75% of annual operating costs
  - Use of reserves funds requires BOD approval
- June 15, 2022, the BOD pre-established a contribution of \$75 million in the surplus waterfall towards Reserves



# Annual Contributions

- With this year's contribution, the balance of the reserve fund will be \$230,873,400, which is 31.5% of this year's operating costs
- No contribution was made in 2020-2021 due to insufficient net position

<b>Fiscal Year</b>	<b>Contribution</b>	<b>Withdraws</b>	<b>Balance</b>	<b>OpEx to Cover</b>	<b>PctOps</b>
2018-2019	40,513,687	-	40,513,687	410,686,000	9.9%
2019-2020	49,704,640	-	90,218,327	383,045,000	23.6%
2020-2021	-	-	90,218,327	471,897,000	19.1%
2021-2022	65,655,073	-	155,873,400	562,667,000	27.7%
2022-2023	75,000,000	-	230,873,400	732,885,000	31.5%
2023-2024*	100,000,000	-	330,873,400	912,066,000	36.3%

\*Approved contribution with projected operating expenses to cover as of 10/1/2023



# Thank you!



Online

[AvaEnergy.org](https://AvaEnergy.org)

Phone

+1 833.699.3223

Email

[customer-support@AvaEnergy.org](mailto:customer-support@AvaEnergy.org)

Social

[PoweredWithAva](#)

**RESOLUTION NO. R-2023-xx**  
**A RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF AVA COMMUNITY ENERGY AUTHORITY APPROVING THE ALLOCATION OF FUNDS**  
**FROM THE FISCAL YEAR 2022-2023 BUDGET SURPLUS**

**WHEREAS** The Ava Community Energy Authority (“Ava”) 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 Ava and parties to the JPA in March of 2020. The city of Stockton, located in San Joaquin County was added as a member of Ava and party to the JPA in September of 2022. The city of Lathrop, located in San Joaquin County, was added as a member to Ava and party to the JPA in October of 2023. On October 24, 2023, the Authority legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

**WHEREAS** on June 15, 2022, the Board of Directors approved the Fiscal Year 2022-2023 Budget by Resolution R-2022-19 based on the presentation with the proposed allocations of the budget surplus,

**WHEREAS** the presented allocations were a waterfall approach of budget surplus that resourced the first \$50 million to be retained for working capital for the next fiscal year, the next \$75 million to be allocated to the reserve fund balance, and the excess above \$125 million to be split fifty-fifty with investments in long-term renewable or clean energy projects and a one-time on-bill credit return to customers, and

**WHEREAS** with the completion of the annual audit, the budget surplus amount is known to be actual and accurate and after retention of local program funding intentions, the amount of budget surplus available for the waterfall allocations is \$146,009,674.

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

Section 1. The Board of Directors hereby approves the retention of \$50 million from budget surplus for working capital purposes.

Section 2. The Board of Directors hereby approves the contribution of \$75 million from budget surplus to the reserve fund balance.

Section 3. The Board of Directors hereby approves the investment of \$10,504,837 from budget surplus for long-term renewable and clean energy projects.



Section 4. The Board of Directors hereby approves the return of \$10,504,837 from budget surplus to customers as on-bill credits.

ADOPTED AND APPROVED this 15<sup>th</sup> day of November, 2023.

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Elisa Márquez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board



# California's New Campaign Contribution Regulations: What Local Governments Need to Know

Inder Khalsa  
November 15, 2023

Ava Community Energy



# Government Code Section 84308 (Levine Act of 1982)

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- Anti-corruption law intended to curb pay-to-play schemes
- The new law “**closes the loophole**” that previously allowed directly elected officials, and not appointed officials, to take action on matters that affected contributors when the elected received donations for a political campaign

# Legislative Changes

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## **Former Government Code Section 84308** (applies to contributions made and proceedings participated in prior to Jan. 1, 2023)

- Only impacted appointed, non-elected local or state agency officers
- Fundraising ban for post-proceeding contributions over \$250 was limited to 3 months after the final decision

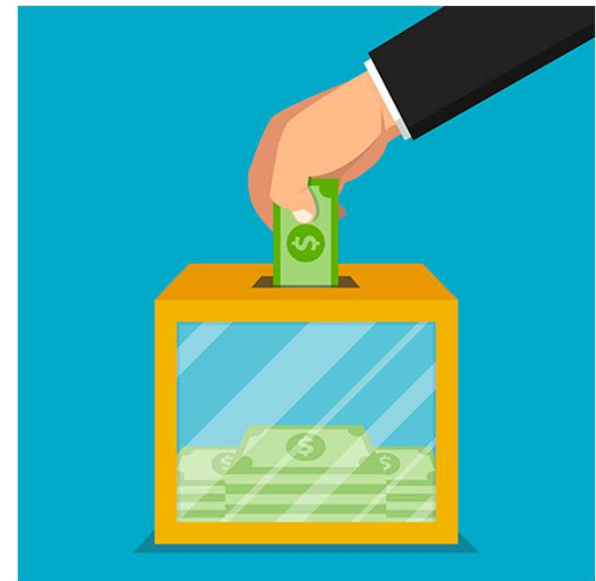
## **Amended Government Code Section 84308** (new prohibitions and requirements are effective as of Jan. 1, 2023)

- Broadened fundraising prohibitions and recusal requirements to include local elected officers
- Fundraising ban for post-proceeding contributions over \$250 was extended to 12 months after the final decision

# 1. Disclosure and Recusal Requirements

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- An officer cannot **make, participate in making, or attempt to use their official position to influence the decision** if they **“willfully or knowingly”** received a contribution from the **party, participant, or agent** with a **financial interest**
- An officer who received contributions of more than \$250 from a party, “participant” (who the officer knows has a financial interest), or their agent in the 12 months prior to rendering a decision must:
  - (1) disclose the fact on the record and**
  - (2) recuse**



# What is the “willful and knowing” receipt of a disqualifying contribution?



- Actual knowledge
- Aware of facts establishing other reasons to know of contribution (someone has informed officer, party or participant previously made 2 or more \$250+ contributions, personal solicitation, personal acceptance)
- Party to a proceeding before the agency involving the license, permit, or use entitlement discloses the contribution made on behalf of himself *or his agent* within the preceding 12 months as required pursuant to Government Code 84308(e)
- **Not actual knowledge:** Contribution reporting alone

## Slide 5

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**IB5** add comma after participant  
Irina Berman, 11/9/2023

## 2. Fundraising Ban

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- An officer cannot “accept, solicit, or direct” a contribution over \$250 from any party, participant, or their agent (if the officer “knows or has reason to know” that the participant has a financial interest), **while a proceeding involving a license, permit, or other use entitlement is pending and for 12 months following the final decision**





# What types of proceedings are covered?

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License, permit, or other entitlement for use proceedings

- “All business, professional, trade, and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts, and all franchises”
- Exceptions: Competitively bid, labor, and personal employment contracts
- Examples for Ava Board members: Professional services agreements, energy supplier contracts, non-competitively IB6d programmatic agreements

## Slide 7

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**IB6** competitive ?  
Irina Berman, 11/9/2023

# When is a proceeding “pending”?

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A proceeding has commenced and is pending for a local officer when:

- The decision is before officer’s consideration as an item on a public meeting agenda; or
- The officer knows, or has reason to know, the proceeding is before the agency’s jurisdiction for its decision and it is reasonably foreseeable that decision will come before the officer



# Who is a “participant” with a financial interest in a proceeding?

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- A “participant” lobbies, testifies in person, or otherwise communicates with an officer or employee of the agency for the purpose of influencing the decision-making and has a financial interest in a decision
- If an officer is aware that the individual has a financial interest in a decision, the officer is required to disclose contributions of more than \$250 in the past 12 months and recuse themselves

## Financial Interest

- The officer must have actual knowledge of the “participant’s” financial interest or the “participant” reveals facts during the proceeding that make that person’s financial interest apparent (giving the officer a “reason to know” about the financial interest):
  - Property interest within 500 feet of real property at issue in the proceeding
  - Economic interest in a business entity that may see a significant increase or decrease in customers as a result of the proceeding
  - A business relationship with the applicant that may result in additional services provided to the applicant
  - Not an economic interest in the general vicinity of a business entity or real property at issue in the proceeding

# Can officers cure violations?

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- Did the officer receive the contribution prior to knowing or having reason to know the proceeding involving the party commenced? → **Yes**
- Did the officer receive the contribution from a participant prior to knowing or having reason to know of the participant's financial interest in the matter? → **Yes**
- **Solution:** Return the excess portion of the contribution within 30 days from the time the officer knows or should have known about the contribution and proceeding, allowing the officer to participate, and do not solicit or accept a contribution for at least 12 months after the decision



# Can officers cure a **post-proceeding** violation?

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- Did the officer knowingly and willfully accept, solicit, or direct the contribution during the 12 months after the date of a final decision in a proceeding? → **No**
- If an officer unknowingly accepts, solicits, or directs a disqualifying contribution during the 12 months post-proceeding, the officer may cure violation by returning excess portion within 14 days of accepting, soliciting, or directing contribution (whichever is latest)
- Pre-Decision Violation: The period to cure the violation begins within 30 days after the officer learns about the contribution and the participant's financial interest in the proceeding
- Post-Decision Violation: Within 14 days of accepting the contribution only if the officer did not knowingly and willfully accept the prohibited contribution

# Example 1

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On **April 1, 2023**, CCA Board of Directors Member Arthur Arkin received a **\$500** campaign contribution from Charlotte Evans, the CEO of a solar energy company that responded to an RFO for development of solar panels the **next day**. Charlotte has personally donated to Board Member Arkin's campaign several times over the years in amounts over \$250. Board Member Arkin's campaign treasurer was given the most recent check at an in-person fundraising event. On **April 10, 2023**, the Board of Directors received a local online newsletter featuring an article about the solar energy company's new projects and application before the agency for the development of new solar panels. On **April 17, 2023**, the posted Board of Directors agenda for the **April 20, 2023** meeting shows an item to consider the company's application.

**If Board Member Arkin participates in making the governmental decision in which Charlotte's company is a party, would that violate Government Code Section 84308?**

# How should Board Member Arkin proceed?

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- Option 1: Disclose the contribution and recuse himself from the proceeding
- Option 2: Participate in the public proceeding prior to returning the contribution provided that the following conditions are met:
  - 1. Board Member Arkin has known about the public proceeding for **fewer than 30 days** (here, arguably 3 or 10 days)
  - 2. Board Member Arkin must disclose the disqualifying contribution on the record of the proceeding before taking part in any further discussion or decision
  - 3. Board Member Arkin must confirm that he will return the amount within 30 days from the time he knew or should have known about both the contribution and the proceeding
  - 4. Board Member Arkin must finally return the contribution or excess portion of the contribution **within 30 days of April 17, 2023 (assuming that is the date he knew or should have known about the proceeding and donation)**

Note: In an abundance of caution, Arkin should consider returning the contribution sooner since he may have had reason to know that the proceeding was before the agency's jurisdiction and it may have been reasonably foreseeable that the decision would come before the officer earlier on April 10 when the article was circulated, or even earlier since this repeat donor had previously applied before this agency.



**Slide 13**

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**IB11** delete 'earlier'  
Irina Berman, 11/10/2023

## Example 2 - Participants

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During the proceeding on the solar company's application, a public speaker discloses the following:

- Mr. Portman, a local shop owner, reminds Board Member Arkin that he has voted for him at every election, hosted a fundraiser at his home for the Board Member in February 2023, and personally donated \$1,000 to his campaign at that event. Mr. Portman speaks in favor of the solar company's application as he believes that his shop may see an increase in customers as a result of increased construction activity in the area.

**How does this non-party disclosure affect Board Member Arkin under Government Code Section 84308?**

# Best Practices/ Recommendations

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- Campaign committees should carefully monitor contributions and consider limiting contributions to \$250 or less annually for purposes of both the fundraising ban and the recusal requirement
- Committees should also ensure that multiple small donations from a repeat donor do not amount to over \$250 within a 12-month period
- Officials should consider whether it is practical to compile lists of donors above \$250
- Make sure to publicly disclose and return excess portion of prohibited contributions in a timely manner (consider whether your contributions have been “knowingly” received or whether you have sufficient information to establish knowledge of a participant’s financial interest)

# Government Code Section 84308: (Summary)

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- Disclosure & Recusal Requirement: Prior to participating in a decision, an officer who received a contribution of more than \$250 in the previous 12 months from a party, participant, or agent must disclose and recuse
- Fundraising Ban: While a proceeding is pending, and for 12 months after a final decision, an officer may not accept, solicit or direct a contribution of more than \$250 from a party, participant with a financial interest, or participant's agent
- Curing Provisions: Officers have the opportunity to cure some violations within a specified time frame. There are ways to lawfully participate
- Party's Disclosure Obligation: A party to a proceeding who made a contribution of more than \$250 to an officer in the previous 12 months must disclose that contribution on the record of the proceeding
- Parties, participants, and agents may not make contributions of more than \$250 to officers in the 12 months following the date of an agency decision



THANK YOU!

Inder Khalsa, General Counsel



### Staff Report Item 13

**TO:** Ava Community Energy Authority Board of Directors

**FROM:** Jim Dorrance, Power Resources Manager

**SUBJECT:** SunZia Wind Project Expansion

**DATE:** November 15, 2023

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#### **Recommendation**

Adopt a Resolution authorizing the Chief Executive Officer to execute an amendment to an Agreement with contracting entity SunZia Wind PowerCo, LLC expanding the size of the SunZia Wind Project to 250 MW.

#### **Background**

The 2023 Long-Term Resource Request for Offers (RFO) is Ava Community Energy's (Ava) fourth long-term contract solicitation. The RFO was launched in March 2023. The RFO is seeking several hundred megawatts (MW) of contracts with renewable energy and battery storage projects with a preference for projects located in California, and more preferentially, those located in Alameda or San Joaquin County. Ava's objective is to drive investments in new renewable and energy storage projects within our jurisdiction and throughout California, while securing affordable resources to manage future power price risk. Ava is currently evaluating the responses and negotiating agreements with some of the offer submittals. Ava administered the RFO and completed analysis using internal tools and the cQuant valuation platform to calculate the net present value of proposed projects and determine the optimal portfolio to meet the objectives of the RFO. All of these contracts will be used to hedge Ava against price fluctuation in the California Independent System Operator (CAISO) energy markets and they will contribute to procurement mandates issued by the California Public Utilities Commission (CPUC).

At the October 2023 Board of Directors (Board) Meeting staff presented the first of several projects from the 2023 RFO to the Board to authorize the Chief Executive Officer to execute an Agreement for the SunZia Wind Project ("Project"), which was approved. Ava was later presented with the opportunity

to potentially increase the project size from the 150 MW that was originally presented to the Board to a larger 250 MW slice of the larger project. The Project contract is for a 15-year agreement and would require Board approval to increase the size to a 250 MW share of the overall 3,515 MW RFO project, an increase of 100 MW from the 150 MW approved for the Project by the Board at the October Board Meeting. The Project is located in New Mexico and will provide renewable wind energy and Resource Adequacy to the state of California with an expected online date in September of 2026. The Project will provide renewable energy for Ava customers, reliability to the California grid from the Project capacity through Resource Adequacy and the energy will benefit Ava as a hedge against price changes in the CAISO energy markets. During Ava's contract term, the Project may be financially restructured into two separate wind farms. If this happens, Ava's contract would be assigned and turned into two separate agreements containing the same terms as those in the original document.

**Attachment**

- A. Resolution Authorizing the Chief Executive Officer to Execute an Amendment to an Agreement with Contracting Entity SunZia Wind PowerCo, LLC Expanding the Size of the SunZia Wind Project
- B. Presentation

**RESOLUTION NO. R-2023-XX**

**A RESOLUTION OF THE BOARD OF DIRECTORS**

**OF THE AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF EXECUTIVE OFFICER TO EXECUTE AN AMENDMENT TO AN AGREEMENT WITH CONTRACTING ENTITY SUNZIA WIND POWERCO, LLC EXPANDING THE SIZE OF THE SUNZIA WIND PROJECT TO 250 MW**

**WHEREAS** The Ava Community Energy Authority (“Ava”) 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 Ava and parties to the JPA in March of 2020. The City of Stockton, located in San Joaquin County was added as a member of Ava and party to the JPA in September of 2022. The City of Lathrop, located in San Joaquin County, was added as a member to Ava and party to the JPA in October of 2023. On October 24, 2023, the Authority legally adopted the name Ava Community Energy Authority, where it had previously used the name East Bay Community Energy Authority since its inception.

**WHEREAS** Ava issued the 2023 Long-Term Resources Request For Offers (RFO) in March 2023;

**WHEREAS** at the October 18<sup>th</sup>, 2023, Board of Directors Meeting the Chief Executive Officer (CEO) was authorized to execute an Agreement for 150 MW of wind, which may later be assigned into two Agreements, with contracting entity SunZia Wind PowerCo, LLC for the SunZia Wind Project (“Project”);

**WHEREAS** the Project is expected to be operational by September 30, 2026, and will provide renewable wind energy and associated environmental attributes and Resource Adequacy for the term of fifteen years; and

**WHEREAS** Ava was offered another 100 MW from the larger project to increase the Ava Project size to 250 MW from the 150 MW that was approved by the Board.

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



Section 1. The CEO is hereby authorized to execute an amendment to an Agreement with contracting entity SunZia Wind PowerCo, LLC expanding the size of the SunZia Wind Project to 250 MW.

ADOPTED AND APPROVED this 15<sup>th</sup> day of November, 2023.

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Elisa Márquez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board



# 2023 Long-Term Resource RFO: Overview & Update

November 15, 2023



# Agenda

- Solicitation Overview
- Participation
- Evaluation Process
- Challenges in Marketplace
- Next Steps
- Reminder: Portfolio Summary

# Solicitation Overview

## Goals & Objectives

- Secure a portfolio of contracts to provide EBCE customers with affordable renewable and clean energy sources;
- Meet IRP Near- and Mid-Term Resource Adequacy Reliability Procurement mandates;
- Meet current and future CPUC compliance obligations;
- Create new renewable energy projects to deliver PCC1 RECs
- Contract low-cost energy hedges to compliment existing portfolio
- Partner with SJCE for efficiency, to minimize expenses, and lead the market in contract terms.

## Project Characteristics

### Facilities:

- Location: Projects may be within or outside of California. All energy must be deliverable to CAISO & must provide RA
- Construction Status: Energy and related products may come from new resources or add incremental capacity to existing resources.

### Capacity:

- Minimum Contract Capacity: 5 MW
- Maximum Contract Capacity: none

### Delivery Date:

- Energy and RPS attribute delivery must be within calendar years 2024 through 2030 with a preference for projects that begin delivery earlier within this window.

### Contract Duration:

- 10-20 year durations

### Technology:

- Renewables, Large Hydro
- Storage – short or long duration; any technology

## Actions

- Issued a broad, open, competitive solicitation to ensure wide array of opportunities considered;
- Evaluated combinations of projects to achieve desired volume targets;
- Typically prioritize project risk, location, workforce development, economics, and other characteristics; limited ability to do so in this RFO due to limited offers in earlier years;
- Encouraged RFO participants to be creative and provide proposal variations on individual projects and include battery storage.

# Solicitation Overview - Eligible Products

Product #	Product Name	Description	Example
Product 1	As-Available RPS Product	New or incremental capacity to an existing stand-alone PCC1-eligible generating resource	solar, wind, geothermal, small hydro or ocean (thermal, wave, or current)
Product 2	As-Available RPS plus Energy Storage	New or incremental capacity to an existing stand-alone PCC1-eligible generating resource with co-located energy storage	Same as above plus storage with 2-hr, 4-hr, or 4-hr+ duration capability
Product 3	Firm or Shaped RPS Product	New PCC1-eligible generating resources; likely paired with energy storage	Energy delivered during specific hours
Product 4	Stand-Alone Energy Storage Toll or RA-Only offer	Energy storage may offer a full product “tolling” structure contract. RA-only offers <i>not</i> accepted in this RFO	Any storage technology with 2-hr, 4-hr, or 4-hr+ duration capability

# 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 and NPV.**
  - Each item has 100 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 55%.
    - The Net Present Value was calculated based on simulations on 6 different forward curves
    - For each forward curve we took a weighted average of the P5 (50%), P50 (30%), and P95 (20%); and then took a simple average across the 6 curves
    - We normalized this number on a \$/MW basis and the projects were then assigned a 0-55 score based on the NPV distribution
    - Other factors considered in qualitative evaluation were Counterparty Execution Risk (20 points), Development Status Risk (20 points) and Local Business Enterprise (4 points) and Small Business Enterprise (1 point)
- **Scoring and rubric were similar to the selection process for previous RFOs**
  - Previous RFOs used 3 forward curves, this RFO featured 6 curves each representing a unique scenario
  - Minor changes were made to weighting of local projects, including addition of points for small businesses

# Challenges in the Marketplace

- Ongoing supply chain disruption & delays
- Uncertainty related to future tariffs for core components
- Result: suppliers of core components pricing using Index structure; many Project Developers unwilling to take on price risk thus requiring pricing using index also or extreme mark-ups in price to cover risk
- General: prices for generation and storage resources have increased 30-40% since ~2020.
- Rising interest rates create risks

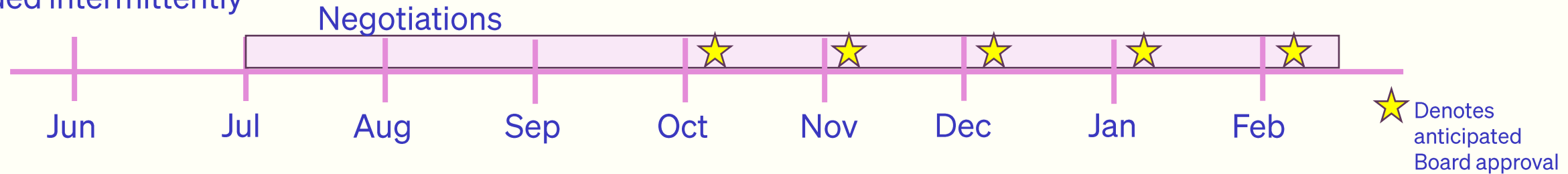
# Overview of Planned Procurement

- Procurement targets:
  - Generation: up to 1000 MW of nameplate capacity
  - Storage (paired &/or stand-alone): up to 500 MW of nameplate capacity
- Online Dates: 2025 - 2030



# Status of Negotiations

Project Shortlisting  
Began; add'l projects  
added intermittently



- Limited number of Projects have dropped from shortlist, including the only in-territory shortlisted project
- Interest rate increases create pressure and uncertainty for developers. High likelihood of credit defaults in coming months.
  - “A perfect storm or rising interest rates, bleaker economic outlook, weakening credit quality, are setting the stage for speculative-grade downgrades and defaults in the year ahead” – Moody’s Investors Service
- Strong competition among buyers for most desirable projects

# Projects Proposed for Execution

Seeking approval for 1 contracts:

Wind power purchase agreement (PPA) submitted into EBCE and SJCE's joint 2023 Long-Term Resource RFO

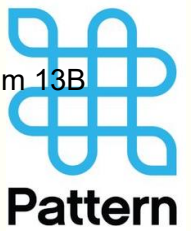
- 15-year, 100 MW contract for energy, environmental attributes, and resource adequacy from a wind facility in New Mexico with Pattern Energy. Expected to be operational September, 2026. This is in addition to the 150 MW approved by Ava's Board in October, 2023

# Pattern Energy Project Details



- Selected via the 2023 EBCE-SJCE Long-Term Resource RFO
- Contract for 100 MW of nameplate capacity including energy, environmental attributes, and Resource Adequacy from wind facility in Lincoln, Torrance, & San Miguel counties, New Mexico
- Total project size is 3,515 MW
- Ava total contracted volume will be 250 MW
- 15-year contract
- Expected Commercial Operation Date is September 30, 2026
- Project has an executed interconnection agreement and site control
- Committed toward paying prevailing wages and seeks union labor to the extent available in New Mexico
- The contracting entity under SunZia Wind PowerCo LLC.

# Pattern Energy - Company Overview



- Pattern Energy is one of the world's largest privately-owned developers and operators of wind, solar, transmission, and energy storage projects
- Founded in 2009, Pattern's operational portfolio includes 30 renewable energy facilities that use proven, best-in-class technology with operating capacity of 6 GW in the United States, Canada, and Japan
- Pattern has a strong track record in CA and experience with CCAs, including EBCE. Projects include:
  - Tecolote Wind, New Mexico with EBCE (100 MW)
  - Duran Mesa Wind, New Mexico with SVCE and CCCE (200 MW)
  - Grady Wind, New Mexico with CCCE and SMUD (220 MW)
  - Hatchet Ridge Wind, Shasta County with PG&E (101 MW)
  - Ocotillo Wind, Imperial County with SDG&E (265 MW)

# Next Steps

- Complete negotiations of projects under consideration. Anticipate presentations to Board through winter
- Assess projects as they hit key milestones and mature further.
- Update filing to CPUC on status of 2021-2023 and 2023-2026 Electric Reliability Requirements due December 1, 2023.
- CPUC's 2024 IRP cycle provides formal opportunity for portfolio review and analysis of open position, cost and risk. Further engagement with board and community as part of IRP process.

# Portfolio Summary

Project Name 1	Project Name 2	Developer	Type	Nameplate Capacity	COD	Term (Years)	Technology	County	State
Altamont	SHWEC	Greenbacker	RPS	57.5	7/2/2021	20	Wind	Alameda	CA
Rosamond Central	Golden Fields	Clearway	RPS	112	12/22/2020	15	Solar	Kern	CA
Pattern	Tecolote	Pattern	RPS, no RA	100	12/20/2021	10	Wind	Guadalupe & Torrance	NM
Luciana	Tulare	Idemitsu	RPS	56	4/30/2022	15	Solar	Tulare	CA
Henrietta D	Henrietta	Convergent	Storage	10	12/2/2021	15	Storage	Kings	CA
Daggett South	Daggett	Clearway	RPS+Storage	50	9/5/2023	15	Solar + Storage	San Bernadino	CA
RE Scarlet	Sonrisa	EDPR	RPS+Storage	100	12/15/2023	20	Solar+Storage	Fresno	CA
Oberon	Oberon	Intersect	RPS+Storage	125	1/1/2024	15	Solar	Riverside	CA
Edwards Solar II	Edwards	Terra Gen	RPS	100	Q2 2024	15	Solar	Kern	CA
Sanborn	Sanborn	Terra Gen	Storage	47	Q2 2024	12	Storage	Kern	CA
Tumbleweed	Tumbleweed	REV Renewables	Storage	50	6/1/2024	15	Storage	Kern	CA
Kola	Kola	NextEra	Storage	125	4/1/2025	20	Storage	San Joaquin	CA
Fervo	Corsac Station	Fervo	RPS	40	2/1/2030	15	Geothermal	Churchill	NV



