



**Community Advisory Committee Meeting**

Tuesday, February 20, 2024

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:**

4563 Meyer Park Circle, Fremont, CA 94536  
3602 Thornton Ave. Fremont, CA 94536  
Castro Valley Starbucks: 2720 Castro Valley Blvd. Castro Valley, CA 94546  
Starbucks at 1857 11th St. Tracy, CA 95376  
500 metros Este del Canopy, Calle, Montezuma-Delicias Rd, Provincia de  
Puntarenas, Montezuma, 60111, Costa Rica

**Via Zoom:**

<https://us02web.zoom.us/j/84794506189>

**Or join by phone:**

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 +1 312 626 6799 or 877 853 5257 (Toll Free)  
Webinar ID: 847 9450 6189

*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 Committee, please email it to the clerk by 5:00 pm the day prior to the meeting.*

**C1. Welcome & Roll Call**

**C2. Public Comment**

*This item is reserved for persons wishing to address the Committee 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 Committee are customarily limited to three minutes per speaker and must complete an electronic [speaker slip](#). The Committee Chair may increase or decrease the time allotted to each speaker.*

**C3. Approval of Minutes from January 16, 2024**

**C4. CAC Chair Report**

**C5. Selection of Chair and Vice-Chair, and Term Assignments (CAC Action Item)**

**C6. Resilience Hubs (CAC Informational Item)**

Informational update about resilience hubs

**C7. Long-Term Contracts for Approval (CAC Action Item)**

Requesting Intersect Easley PPA Approval

**C8. Disadvantaged Communities - Green Tariff / Community Solar Green Tariff Power Purchase Agreement (CAC Action Item)**

DAC-GT/CSGT PPA approval

**C9. CAC Member and Staff Announcements including requests to place items on future CAC agendas**

**C10. Adjourn**

The next Community Advisory Committee meeting will be held on Monday, March 18, 2024 at 6:00 pm.

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



**Draft Minutes**

**Community Advisory Committee Meeting**

Tuesday, January 16, 2024

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**In Person:**

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**C1. (12:00) Welcome & Roll Call**

**Present: Members: Landry, Lakshman, Souza, Kaur, Vice-Chair Hernandez and Chair Eldred**

**Not Present: Members Hu, Swaminathan, Pacheco, and Lutz**

***Please note that Joel Liu is no longer a member of the CAC.***

**C2. Public Comment**

*This item is reserved for persons wishing to address the Committee 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 Committee are customarily limited to three minutes per speaker and must complete an electronic [speaker slip](#). The Committee Chair may increase or decrease the time allotted to each speaker.*

**(17:16) Public Comment – Jessica Tovar** noted that the Ava has provided notice on the website that applications to join the Community Advisory Committee are being accepted. She stated that the February 2<sup>nd</sup> application deadline should be extended to accommodate applicants who are returning from the holidays.

**C3. (37:07) Approval of Minutes from December 18, 2023**

**Member Landry moved to approve the minutes. Vice-Chair Hernandez seconded the motion, which was approved 6/0/4:**

**Yes: Members: Landry, Lakshman, Souza, Kaur, Vice-Chair Hernandez and Chair Eldred**

**Not Present: Members Hu, Swaminathan, Pacheco and Lutz**

**C4. (18:50) CAC Chair Report**

**CAC Chair Eldred** reported on the following:

- At the December 20, 2023 BOD meeting, the Board supported the Community Choice Aggregation Workforce and Environmental Justice Alliance resolution, although concerns were raised about the removal of language from the original resolution related to community engagement and environmental stewardship, and about shortcomings with engagement with underserved communities.
- At the December 20, 2023 BOD meeting, a motion in support of the staff recommendation for CAC reappointments was approved with the following changes:
  - a) CAC members who move out of Ava's service area may continue serving on the CAC if they return and re-establish residency in the service area within six (6) months.
  - b) In accordance with the CAC's regional seat allocation structure, the Board of Directors authorize the transition of the City of Stockton's

interim seat to an additional, allocated seat of the San Joaquin Service Area Region, resulting in the South Service Area losing an allocated seat.

- c) To facilitate the efficient appointment of the CAC's At-Large members, and to ensure they represent Ava's growing service area in San Joaquin County, the CAC Guide will be updated so At-Large member appointments will be made by Ava's Board of Directors, instead of the Alameda County Mayors' Conference; individual members/Service Area Regions may not serve more than two (2) consecutive terms; and current At-Large member reappointments will re-start at the first term;
  - d) To fill vacant CAC seats in a timely and efficient manner, the CAC Guide will be updated to require vacancies be filled on a semi-annual basis, unless required to achieve a quorum
  - e) To stagger the CAC's appointment cycle, approximately half of the Committee's seats will be assigned to be one (1)- or two (2)-year terms. Current members whose seats are assigned a one (1)-year term will be eligible to serve for an additional two (2)-year term.
  - f) To reflect updates to Ava staff contacts and previous decisions by the Board of Directors, such as the name/brand transition from EBCE to Ava Community Energy, corresponding administrative updates will be made to the CAC Guide.
  - g) The Board invites the Community Advisory Committee to provide an evaluation of this resolution for future policy alteration or improvement.
- At the December 20, 2024 BOD meeting, sponsorship of Oakland Roots and Soul was discussed and passed.
  - **Chair Eldred** announced that she would of stepping down from the Community Advisory Committee. This would mean that, in addition to selecting a new Chair, recruitment will need to begin for a candidate for the North region.

**Vice-Chair Hernandez (26:49)** and **Member Landry (29:30)** thanked **Chair Eldred** for her service and contribution to the Community Advisory Committee.

#### **C5. (38:37) Long-Term Contracts for Approval (CAC Action Item)**

Approval of multiple long-term contracts/offtake agreements from 2023 RFO and bilateral negotiations

**Marie Fontenot**, Ava's VP of Power Resources, presented 5 potential long-term electricity procurement contracts for approval - one from Ava's 2023 RFO and four offered bilaterally outside that process. The contracts aim to help new renewable generation and storage projects gain deliverability status and grid

interconnection through CAISO before the February 14 deadline.

**(1:05:48) CAC Chair Eldred** inquired about the specifics of prevailing wage payments related to the construction of a Mexico wind farm and a transmission line, to which **Marie Fontenot** clarified that Mexican local prevailing wages would be paid for the wind farm construction, and IBW prevailing wages for the transmission line construction, potentially based on San Diego local standards.

**(1:11:58) Public Comment – Jessica Tovar**, representing East Bay Clean Power Alliance, spoke in opposition to contracting clean energy in Mexico, stating that the project was not in alignment with Ava's mandate to produce local, community-based renewable energy. Jessica Tovar stated that Ava should refocus its efforts on local opportunities like rooftop solar rather than expand outside of California.

**(1:14:17) Member Souza** inquired about the continuation of project processes halted in December 2021 and how current projects contribute towards achieving 100% clean energy by 2025. **Marie Fontenot** explained the challenges with the CAISO interconnection process, citing a significant backlog of projects nationwide and efforts to improve the process, but acknowledged ongoing issues. She also detailed the strategic importance of diversifying energy resources and incorporating storage to shift clean energy use, while noting that increasing demand from community electrification efforts complicates the calculation towards 100% clean energy goals.

**(1:19:54) Member Landry** spoke in favor of focusing on local energy projects in Alameda County and asked about the challenges of finding more local renewable energy projects. **Marie Fontenot** explained the loss of a local Alameda County wind farm project due to land ownership issues with another entity and described the difficulties of developing wind farms in the Altamont Pass. She also noted the challenges and opportunities for solar development in Ava's service territory, including new areas like Stockton and San Joaquin County.

**(1:28:27) Vice-Chair Hernandez** summarized Marie Fontenot's presentation and discussed the importance of bridging the gap between local job creation and energy procurement from distant projects. **Marie Fontenot** agreed with Vice-Chair Hernandez's summary and added that diversity in energy sources is crucial for grid reliability, the creation of varied and complementary generation profiles and the ability to obtain competitive prices in the CAISO system.

**(1:33:35) Chair Eldred** asked about the total number of procurement projects, including those planned for the future. **Marie Fontenot** confirmed 15 executed contracts with more expected to be presented to the board. Chair Eldred then expressed concern about the level of investment in local projects versus those abroad. Chair Eldred also criticized the prevailing wage standards in Mexico and

discussed the ethical implications of resource extraction in the context of bilateral and regional trade agreements.

**(1:50:21) Public Comment – Lisa Hu** commended Marie Fontenot for her presentation and spoke in support of Marie's comments about prevailing wages and the strategic navigation of CAISO deliverability challenges. However, she voiced concerns that the proposal diverges from Ava's core mission of prioritizing local benefits, decision-making, and community needs. Lisa suggested that even if local generation is costlier, it warrants exploration to fulfill Ava's commitment to its local communities. She encouraged the exploration of creative options to support local generation such as providing seed funding to help local projects compete.

**(1:49:22) Vice Chair Hernandez moved to approve the staff recommendation but to exclude the Mexico project until further notice. Member Lakshman seconded the motion, which failed 3/2/1/4: Yes: Members Lakshman, Kaur and Vice-Chair Hernandez No: Member Souza and Chair Eldred Abstain: Member Landry Not Present: Members Hu, Swaminathan, Pacheco and Lutz**

**C6. (1:58:03) Workforce and EJ Project Selection Criteria (CAC Action Item)**

Approval of a Policy regarding Workforce and Environmental Justice Project Selection Criteria

The CAC discussed the Workforce and Environmental Justice (EJ) Project Selection Criteria, with **Cait Cady** presenting Ava's proposed criteria developed in collaboration with the CCA Workforce and Environmental Justice Standards Alliance. This document outlines Ava's commitment to workforce and environmental justice in project selection, including goals for local workforce development, innovation, project location preferences, and environmental stewardship.

**(2:04:32) Public Comment – Jessica Tovar** spoke in support of the Workforce and Environmental Justice Project Selection Criteria, stating that the policy is in alignment with the values and priorities of the State Environmental Justice Alliance, particularly around community engagement. She advocated for not allowing solar projects to be built on undeveloped desert lands and spoke in support of alternative methods of incorporating solar energy. Jessica Tovar also called for ongoing collaboration between Ava Community Energy, the East Bay Clean Power Alliance, and other environmental justice organizations to further address energy equity and investment in historically underserved communities.

**(2:07:43) Public Comment – Lisa Hu** expressed strong support for the intent and specific language of the Workforce and Environmental Justice (EJ) Project

Selection Criteria, stating that it demonstrates meaningful community engagement as outlined by Ava's commitments. Lisa Hu spoke about the need for Ava to actively help low-income and environmental justice communities overcome barriers to accessing public investments, resources and education. She also spoke in support of the creation for accessible, relevant and creative opportunities for community engagement in the energy transition.

**(2:09:46) Member Landry moved to approve the Workforce and Environmental Justice (EJ) Project Selection Criteria. Member Souza seconded the motion which passed 6/0/4:**

**Yes: Members: Landry, Lakshman, Souza, Kaur, Vice-Chair Hernadez and Chair Eldred**

**Not Present: Members Hu, Swaminathan, Pacheco and Lutz**

**C7. (2:11:53) Fiscal Year Budget Surplus (CAC Action Item)**

Approve allocation of Budget surplus among a few options

**Jason Bartlett** presented options for allocating Ava Community Energy's fiscal year budget surplus. The options included retaining the original 50/50 split between renewables and on-bill credits, allocating the entire surplus to renewable development, or supporting incentives for the net billing tariff to stimulate rooftop solar development. The Financial, Administrative and Procurement subcommittee recommended a new split, with 60% for on-bill credits (further divided between residential and CARE/FERA customers) and 40% for net billing tariff projects.

**(2:22:36) Public Comment – Jessica Tovar**, on behalf of the Eastbay Clean Power Alliance, spoke in support of allocating budget surplus funds to local development, specifically for resilience hubs with microgrids. She stated that the request for local investment in energy resilience dates back at least to September 9, 2020, a day marked by power shut offs caused by heat waves and large fires. Jessica Tovar stated that the current discussion about the budget surplus allocation overlooks the needs of a large community in Ava's service territory.

**(2:26:05) Public Comment – Lisa Hu** praised the presentation on Ava's budget surplus and encouraged strategic decision-making to benefit local communities. She expressed support for investing in local generation projects even at higher costs and sought clarification on which groups qualify as customers for on-bill support. Lisa also proposed using the surplus as seed funding for local partners to leverage federal investments and to support demonstration projects such as resilience hubs.

**(2:32:02) Member Souza** spoke in support of Option C and for investing in storage, microgrids and initiatives for community education and resilience.



**(2:39:49) Member Landry** spoke in support of reallocating \$15 million of the budget surplus towards community resilience hubs for environmental justice and low-income communities. She also suggested the need for a more permanent investment in resilience and requested that this proposal be considered at a future meeting.

**(2:38:36) Vice-Chair Hernandez** asked about the distribution of Ava's budget surplus between business and residential accounts, and whether funds previously allocated to a specific project were still available. Jason Bartlett clarified that the surplus funds from the previous fiscal year were either added to the renewable energy balance or returned to customers via on-bill credits. Vice-Chair Hernandez suggested exploring the allocation's impact on business versus residential accounts and potentially adjusting the distribution to support resilience hubs.

*Member Lakshman left the meeting at 8:43pm.*

**(2:46:52) Chair Eldred motioned to support the following:**

- **the 20% allocation to CARE/FERA and medical baseline customers;**
- **the investment of at least \$15 million into resilience hubs and limited to the criteria provided in the Local Clean Energy Alliance letter<sup>1</sup>;**
- **either Option B - with funding restricted to local development only, or Option C.**

**Member Landry seconded the motion, which did not pass for lack of quorum (5/0/5):**

**Yes: Members Landry, Souza, Kaur, Vice-Chair Hernandez and Chair Eldred.**

**Not Present: Members: Hu, Swaminathan, Lakshman, Pacheco, Lutz**

## **C8. Selection of CAC Chair and Vice-Chair, and Term Assignments**

**(2:56:00) Due to the loss of quorum, the Selection of the CAC Chair and Vice-Chair was moved to the February 20, 2024 CAC meeting.**

**The clerk stopped recording minutes at 8:56pm.**

## **C9. CAC Member and Staff Announcements including requests to place items on future CAC agendas**

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<sup>1</sup> Please note that the Local Clean Energy Alliance letter is attached as Exhibit 1. The letter is also available on the Ava Community Energy website at <https://cdn.sanity.io/files/pc49kbjr/production/3764262c2bc3acea9310978d0f73098d71fddfa5.pdf>

## **C10. Adjourn**

The next Community Advisory Committee meeting will be held on Tuesday, February 20, 2024 at 6:00 pm.

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# Ava Solar+Storage Program for Resilience Hubs





# Program to deliver 100s of Community Resilience Hubs + solar market support

## Community Grant (\$300k)

3-year grant term with CBO

- Case studies
- Best practices
- Resilience hub definition
- Community engagement
- Ongoing site identification
- Feedback on value and scope of technical assistance

## Technical Assistance (\$2M)

5-year term, multiple parties

- Resilience hub site constraints
- Site review
- Preliminary system designs
- Bid reviews
- Grant writing assistance

## Solar + Storage Incentive [\$40M]+

- Budget from 2023 surplus + savings from transition from NEM2.0 to Net Billing Tariff. Incentive levels TBC
  - Upfront incentive
  - Ongoing incentive for batteries w/ ongoing monitoring through DERMS platform
- Residential & Non-Residential
- Higher incentives for CARE/Resilience Hubs

Issue RPFs in March, Initiate work in ~July

April BOD Approval





**CAC Item C7  
Staff Report Item 16**

**TO:** Ava Community Energy Authority

**FROM:** Karen Lee, Power Resources Manager

**SUBJECT:** Intersect Easley (IP Easley, LLC and IP Easley II, LLC) Contracts Approval (Action Item)

**DATE:** February 21, 2024

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**Recommendation**

Adopt a Resolution authorizing the Chief Executive Officer to negotiate and execute ten-year power purchase agreements with contracting entities IP Easley, LLC and IP Easley II, LLC, each for a 75 megawatt (MW) solar project in Riverside County, California, developed by Intersect Power.

**Background and Discussion**

The 2023 Long-Term Resource Request for Offers (RFO) was Ava's fourth long-term contract solicitation. The RFO was launched in March 2023. The RFO sought several hundred MWs 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 was 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 received a very healthy response to its RFO both in volume and quality of projects and proposals. Ava 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.

Each contract is a 10-year agreement for renewable energy and environmental attributes from a 75 MW solar project. The IP Easley, LLC contract is for 75 MW from a 175 MW solar project paired with a 100 MW/400 megawatt hour (MWh) Lithium-Ion

battery located in Riverside County, California. Similarly, the IP Easley II, LLC contract is for 75 MW from a 175 MW solar project paired with a 100 MW/400 MWh Lithium-Ion battery located in the same project complex in Riverside County, California. The projects have a planned commercial operation date of March 31, 2027, developed by Intersect Power. Intersect Power is an experienced developer with a focus on the development and operation of utility-scale solar and battery storage energy projects in California and Texas. It has successfully brought online 2.2 gigawatts (GW) of solar projects and 1.4 gigawatt hour (GWh) of co-located storage. The contracting entities are limited liability companies established by Intersect Power for its internal financial purposes: IP Easley, LLC and IP Easley II, LLC.

#### **Attachments**

- A. Resolution Authorizing the CEO to Negotiate and Execute Power Purchase Agreements with IP Easley, LLC and IP Easley II, LLC
- B. PowerPoint Presentation
- C. Redacted draft of contract with IP Easley, LLC
- D. Redacted draft of contract with IP Easley II, LLC

**RESOLUTION NO. R-2024-XX**  
**A RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CEO TO**  
**NEGOTIATE AND EXECUTE POWER PURCHASE AGREEMENTS WITH IP**  
**EASLEY, LLC AND IP EASLEY II, 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** IP Easley, LLC and IP Easley II, LLC, limited liability companies established by Intersect Power for its internal financial purposes, each proposed 75 megawatts (MW) of renewable energy and environmental attributes from a 175 MW solar photovoltaic and 100 MW/400 megawatt hour (MWh) battery project in Riverside County, CA developed by Intersect Power;

**WHEREAS** the projects are expected to be operational by March 31, 2027 and will deliver renewable energy and environmental attributes for a term of ten years; and

**WHEREAS** Ava staff considers Intersect Power’s proposal a competitive proposal based on submissions to the 2023 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, in consultation with staff and legal counsel, to negotiate and execute a ten-year agreement with IP Easley, LLC for a 75 MW solar project in Riverside County, CA. The final agreement shall include the key terms outlined in the Staff Report associated with this resolution.

Section 2. The CEO is hereby authorized, in consultation with staff and legal counsel, to negotiate and execute a ten-year agreement with IP Easley II, LLC for a 75

MW solar project in Riverside County, CA. The final agreement shall include the key terms outlined in the Staff Report associated with this resolution.

ADOPTED AND APPROVED this 21<sup>st</sup> day of February, 2024.

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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

February 21, 2024



# Agenda

- 2023 Long-Term Resource Solicitation Overview
- Challenges in Marketplace
- Bilateral Projects Offered
- Discussion of Project Proposed for February Board Approval
- Reminder: Portfolio Summary

# Solicitation Overview

## Goals & Objectives

- Secure a portfolio of contracts to provide Ava 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	Energy storage may offer a full product “tolling” structure contract. RA-only offers not 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

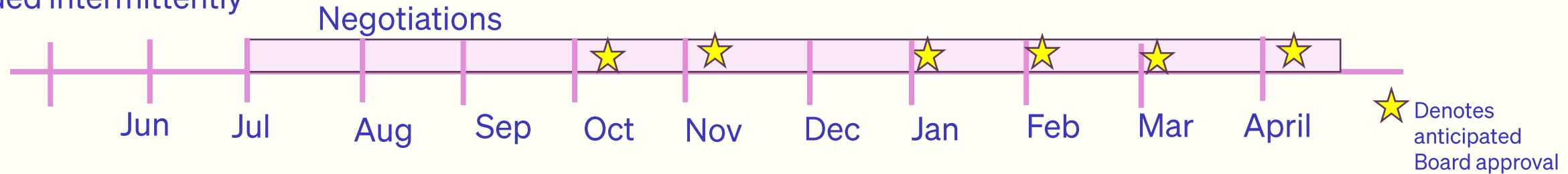
- Ongoing supply chain disruption & delays
- Uncertainty related to future tariffs for core components
- Result: suppliers of core components pricing using Index structure; many Project Developers unwilling to take on price risk thus requiring pricing using index also or extreme mark-ups in price to 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



# Intersect Power – Company Overview

- Intersect Power was founded in 2016 by former executives of Recurrent Energy, and focuses on the development and operation of utility-scale solar and battery energy storage projects and green hydrogen projects in California and Texas.
- Intersect has brought four major projects to commercial operation, comprised of 2.2 GW solar and 1.4 GWh co-located storage.
- Intersect’s development portfolio includes over 8.5 GW of solar and 8.0 GWh storage projects.
- Intersect supports U.S. manufacturing by procuring key components domestically, such as solar panels and steel.
- Intersect has experience with CCAs, and owns one operational project with two CCA offtakers:
  - Oberon solar+storage reached COD in 2023, with two of the offtakers being Ava and San Diego Community Power (SDCP).

# Intersect Power – Solar Project Details

- Selected via the 2023 EBCE-SJCE Long-Term Resource RFO
- Contract for 150 MW of nameplate capacity for energy and environmental attributes from Easley Solar (75MW from IP Easley, LLC and another 75MW from IP Easley II, LLC)
- Facility in Riverside County
- 10-year contract
- Expected Commercial Operation Date is March 31, 2027
- Project has firm site control, and will execute the interconnection agreement by end of 2024.
- Committed to paying prevailing wages and executing a 5-craft Project Labor Agreement (PLA), and making good faith efforts to meeting Ava's workforce goals of apprentice to journeyperson hours, using Local Hires and a Targeted Hire Program, and contracting with Small, Local, or Emerging Businesses
- The contracting entities are IP Easley, LLC and IP Easley II, LLC

# 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
Sunpond	Sunpond	Longroad	RPS+Storage	42.5	4/1/2026	20	Solar+Storage	Maricopa	AZ
SunZia	SunZia	Pattern	RPS	250	9/30/2026	15	Wind	Lincoln, Torrance, San Miguel	NM
Zeta	Zeta	Longroad	RPS+Storage	37.5	6/1/2027	20	Solar+Storage	Merced	CA
Fervo	Corsac Station	Fervo	RPS	40	2/1/2030	15	Geothermal	Churchill	NV





Community Energy



FEBRUARY 12, 2024

SELLER DRAFT

**RENEWABLE POWER PURCHASE AGREEMENT****COVER SHEET****Seller:** IP Easley, LLC (“**Seller**”)**Buyer:** Ava Community Energy Authority, a California joint powers authority (“**Buyer**”)**Description of Facility:** A 75 MW solar photovoltaic renewable energy generating facility located in Riverside County, in the State of California, and as further described in Exhibit A.**Milestones:**

<b>Milestones</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	████████
<b>Executed Interconnection Agreement</b>	████████
<b>CEC Pre-Certification Obtained</b>	████████
<b>Obtain Federal and State Discretionary Permits</b>	████████
<b>Network Upgrades Completed</b>	████████
<b>Procure Major Equipment</b>	████████
<b>Expected Construction Start Date</b>	████████
<b>Initial Synchronization</b>	02/28/2027
<b>Expected Commercial Operation Date</b>	03/31/2027
<b>Full Capacity Deliverability Status Obtained</b>	████████

**Delivery Term:** The period for Product delivery will be for ten (10) Contract Years.**Expected Energy:**

<b>Contract Years</b>	<b>Expected Energy</b>
1	████████████████████
2	
3	
4	

Contract Years	Expected Energy
5	
6	
7	
8	
9	
10	

**Guaranteed Capacity:** 75 MW

**Contract Price:** The Contract Price of the Product shall be:

Contract Years	Contract Price
1 – 10	

**Metering Arrangement:** SC Metered Entity

**Delivery Point:** [REDACTED]

**Product:**

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1) associated with Facility Energy
- ☐ Ancillary Services

**Scheduling Coordinator:** Seller or Seller Third Party

**Development Security and Performance Security:**

**Development Security:** [REDACTED]  
[REDACTED]

**Performance Security:** [REDACTED]  
[REDACTED]

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## 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, and operate the Facility; and

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

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

### ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

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

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

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Facility.

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

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

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

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

**“Buyer”** means Ava Community Energy Authority, a California joint powers authority.

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

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

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

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

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

**“CAISO Operating Order”** means the Operating Instruction or Dispatch 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 Damages”** has the meaning set forth in Exhibit B.

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

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

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

**“CEQA”** means the California Environmental Quality Act.

**“Change of Control”** means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least 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 at least 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 or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

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

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

[REDACTED]

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

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

**“Compliance Actions”** has the meaning set forth in Section 3.12.

**“Compliance Costs”** has the meaning set forth in Section 3.12.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.12.

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

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

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

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

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

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

**“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, Fitch or Moody’s.

[REDACTED]

**“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 (iii) any 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.

**"DA Price Floor"** means [REDACTED] or such lesser amount as specified by Buyer to Seller in writing, provided that such lesser amount be specified by Buyer at least 75 minutes prior to midnight of the operating day. For the avoidance of doubt, unless otherwise specified by Buyer, the DA Price Floor will be a single value that applies for each day of the month.

**"Damage Payment"** means the dollar amount equal to the amount of the Development Security set forth on the Cover Sheet.

**"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.

[REDACTED]

[REDACTED]

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

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

**“Delivery Point”** [REDACTED]

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

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

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

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

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

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

**“EIRP Forecast”** means the current CAISO forecast for intermittent resources using relevant Facility availability, weather, historical and other pertinent data for the applicable period of time.

**“Electrical Losses”** means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Facility Energy to the Delivery Point, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

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

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

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

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

**“Executed Interconnection Agreement”** means the execution of the Interconnection Agreement by Seller and the PTO.

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



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

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

**“Facility”** means the renewable energy 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 Facility Energy to the Delivery Point.

**“Facility Energy”** means the energy generated by the Facility during any Settlement Interval or Settlement Period and delivered to the Delivery Point, which is net of Electrical Losses and Station Use, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices.

**“Facility Meter”** means the CAISO Approved Meter that will measure all electric energy generated by Facility.

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

**“Fitch”** means Fitch Ratings Inc., or its successor.

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

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility that prevents Seller from generating Facility 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, Ancillary Services or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include Tax Credits or other financial benefits or incentives in the form of credits, reductions, transfers, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Gains”** means, with respect to any 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. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude

Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of electrical energy 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; and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits 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.

**“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”**

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

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

**“Guaranteed Energy Production”**

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

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

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

**“Installed Capacity”** means the actual generating capacity of the Facility, not to exceed the Guaranteed Capacity, 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.

**“Interconnection Agreement”**

**“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.

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

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

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

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

**“Investment Grade Credit Rating”** means a Credit Rating of [REDACTED] or higher by S&P or Fitch or Baa3 or higher by Moody’s.

**“Investment Tax Credit”** or **“ITC”** means the energy credit established pursuant to Section 48 of the Internal Revenue Code of 1986, as amended, as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to energy property placed in service for which Seller, as the owner of the Facility, is eligible.

**“JAMS”** has the meaning set forth in Section 15.2.

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

**“Joint Powers Agreement”** means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

**“Lender”** means, collectively, any Person (i) providing a letter of credit, bond or other credit support, senior or subordinated development, construction, interim, back leverage or long-term debt, working capital, equity, cash equity or tax equity financing, or any refinancing of any of the foregoing 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 or portfolio financing), equity (including cash equity or 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 Person directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

**“Letter(s) of Credit”** means



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

**“Limited Assignee”** has the meaning set forth in Section 14.3.

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

**“Losses”** means, with respect to any 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. Factors used in determining economic loss to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on

economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, as applicable, and must include the value of Green Attributes and Renewable Energy Incentives.

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

**“Market Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation of Facility Energy during a Settlement Period or Settlement Interval in which the LMP for the Day-Ahead Market at the Settlement Point for such Settlement Interval or Settlement Period is less than the DA Price Floor; provided that the Market Curtailment Period shall also include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

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

**“Milestones”** means the Milestones set forth on the Cover Sheet.

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

**“Monthly Settlement Amount”** has the meaning set forth in Exhibit C.

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

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

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

**“Negative LMP”** means, in any Settlement Period or Settlement Interval, the Day-Ahead Market or Real-Time Market at the Facility’s PNode is less than [REDACTED]

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

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

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

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

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

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

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

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

**“Performance Measurement Period”** means each period consisting of two (2) consecutive rolling Contract Years (i.e., Contract Years 1 and 2 shall comprise the first such period, Contract Years 2 and 3 shall comprise the second such period, etc.) during the Delivery Term, provided, however, that in no event shall any Performance Measurement Period be less than twenty-four (24) months.

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

**“Permitted Transferee”** means (i) an entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a)

[REDACTED]

(b)

[REDACTED]

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

**“Prevailing Wage Requirement”** has the meaning set forth in Section 13.5.

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

**“Production Tax Credit”** or **“PTC”** means the production tax credit pursuant to Section 45 of the Internal Revenue Code of 1986, as amended, as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Facility, is eligible.

**“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 applicable reliability criteria, and the standard of care, skill and diligence engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the results consistent with applicable Law, 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 in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

**“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 Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including PTCs, ITCs, and other credits under Sections 38, 45, 46, 48, 45Y, and 48E 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 benefit or incentive, including any transfers of certain credits pursuant to Section 6418 of Internal Revenue Code of 1986, as amended, relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

**“S&P”** means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

**“SC Metered Entity”** has the meaning of a “Scheduling Coordinator Metered Entity” as defined in the CAISO Tariff.

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

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

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

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

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

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

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



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

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

“**Settlement Point**” means the Facility PNode.

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

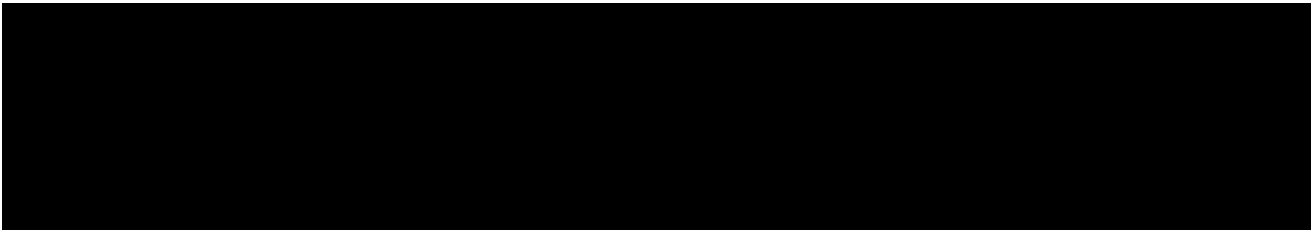
“**Shared Facilities**” means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point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

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



**“Site Control”** means that Seller (or, with respect to periods prior to the commencement of the Delivery Term, Seller or its Affiliate): (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns the Site; (b) is the lessee or has the option to lease the Site; (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; (d) with respect to periods prior to the commencement of the Delivery Term, is the holder of a serialized, first-in-line SF-299 application for a right-of-way grant with the United States Bureau of Land Management; or (e) has rights through ownership, lease, right-of-way grant or similar instrument, as the managing partner or other entity authorized to act in all manners relating to the control and operation of the Site.

**“Station Use”** means:



**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) preserve Transmission System reliability.

**“Tax”** or **“Taxes”** means all United States federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by any Governmental Authority, 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 PTCs, ITCs, and any other state, local or federal production or other tax credit, including any applicable successor tax credits, depreciation benefits, tax deductions or investment tax credits specific to the production, sale or storage of renewable energy from, or the operation or the ownership of, the Facility or any part thereof.

**“Terminated Transaction”** has the meaning set forth in Section 11.2(a).

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

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

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

**“Transformer Failure”** means failure of all or part of the main power transformer that results in the Facility being unable to generate, deliver or provide 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. [REDACTED]

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

**“Transmission System”** means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service within the CAISO grid 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 4.8(e).

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

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

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

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

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

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

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

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

supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

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

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

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

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

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

(l) 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 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent.** Subject to Exhibit B, the Delivery Term shall not commence until Seller completes each of the following conditions:

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

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

(c) An Interconnection Agreement among Seller (or Seller's Affiliate), the CAISO, and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) 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;

(e) Insurance requirements for the Facility pursuant to Article 17 have been met, with evidence provided in writing to Buyer;

(f)



(g) Seller has certified in writing to Buyer that Seller has complied with the Prevailing Wage Requirement set forth in Section 13.5, and provided reasonably requested documentation demonstrating such compliance;

(h) Seller has certified in writing to Buyer that Seller has satisfied the obligations related to workforce development set forth in Exhibit R, and provided reasonably requested documentation demonstrating such compliance;

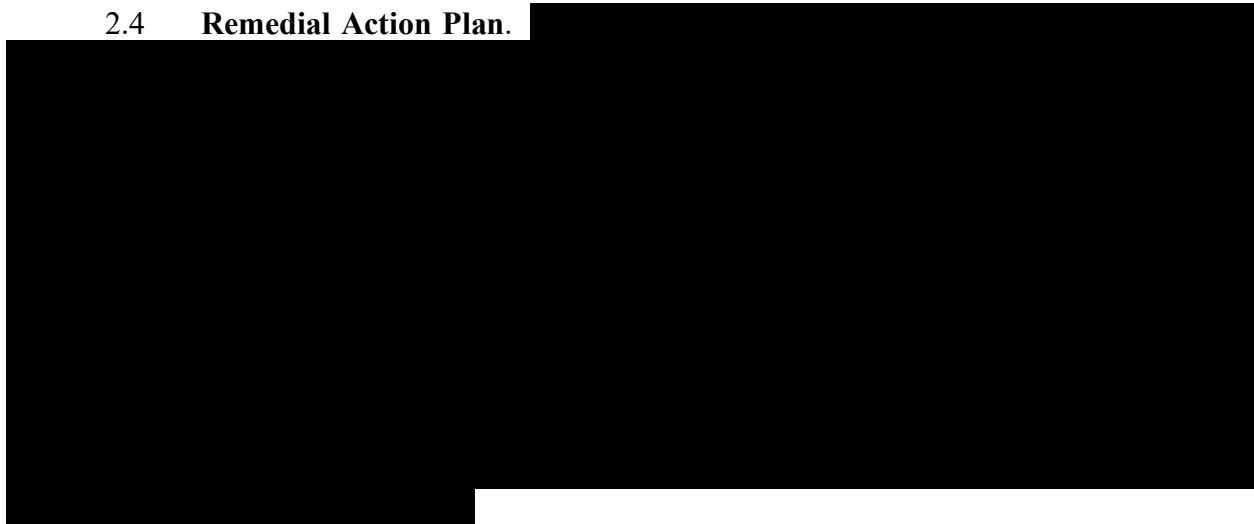
(i) Seller has certified in writing to Buyer that Seller has satisfied the community benefit-related obligations set forth in Exhibit Q, and provided reasonably requested documentation demonstrating such compliance;

(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 as of the Commercial Operation Date, if any, including Construction Delay Damages and COD Delay Damages.

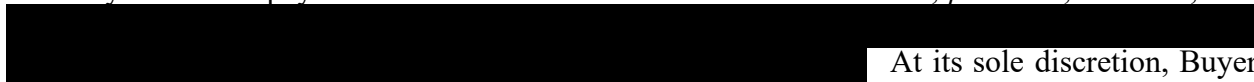
**2.3 Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each calendar month thereafter, Seller shall provide a Progress Report until the Commercial Operation Date to Buyer that (a) describes the progress towards meeting the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date. The form of the Progress Report is set forth in Exhibit E. Seller agrees to regularly scheduled meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. 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 from Buyer. For the avoidance of doubt, as between Seller and Buyer, 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.**



**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, Seller shall deliver to the Delivery Point all Facility Energy and Green Attributes associated with the Facility, and Buyer shall receive and accept at the Delivery Point and pay for such Product in accordance with Exhibit C; *provided, however, that*



At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any

of Seller's obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Section 3.6, Seller will retain title to, and is entitled, in its sole discretion, to sell, assign or transfer to any third party, and retain any revenues with respect to, any or all Products generated by or associated with the Facility prior to and following the Delivery Term.

Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller, and Seller has no obligation to supply and deliver to Buyer, any Facility Energy that is not or cannot be delivered to the Delivery Point as a result of a Force Majeure Event affecting Seller or the Facility, a System Emergency, a Curtailment Order, or any other permitted reduction set forth in Section 4.6.

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 associated with the Facility Energy generated by the Facility.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments or charges related to such Imbalance Energy shall be for the account of Seller.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. 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 and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to take any action or bear any costs, losses or liabilities, or alter the Facility or operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation on terms acceptable to Seller.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *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 **Reserved.**

3.8 **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 **Reserved.**

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

(a) **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].

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

(d) With respect to the immediately preceding paragraphs, (i) the reference in Section 3.11(a) to “first delivery under the contract” has the same meaning as “first delivery of Facility Energy under this Agreement”, (ii) the references in Section 3.11(c) to “Project” have the same meaning as “Facility”, (iii) the reference in Section 3.11(c)(ii) to “the Project’s output” has the same meaning as “Facility Energy”, and (iv) each reference in the last sentences of Section 3.11(b) and Section 3.11(c) to “commercially reasonable efforts” means efforts consistent with and subject to Section 3.12 below.

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

### 3.12 Compliance Expenditure Cap.

(a)



(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

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

(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 or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(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 for Seller to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(f) If (x) Buyer does not respond to a Notice given by Seller under this Section 3.12 within the time required by this Section 3.12, (y) Buyer does not pay, or refuses to pay, the Compliance Costs in excess of the Compliance Expenditure Cap, or (z) it is not possible for Seller to achieve compliance with its obligations hereunder, or a change in Law, as applicable, through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, and (ii) Seller shall not be subject to a reduction in payments under this Agreement to the extent arising from the failure to comply with such Compliance Actions.

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with 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, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s operations. The Facility Energy will be scheduled with the CAISO by Seller (or Seller’s designated Scheduling Coordinator) in accordance with **Exhibit D.**

(b) **Green Attributes.** All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Facility Energy, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

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

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

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

4.3 **Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer. 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 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 Commercial Operation Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Facility Energy, Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(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 forecast of (i) Available Generating Capacity and (ii) hourly expected Facility 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 forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Facility Energy. Except as otherwise agreed, Seller shall provide the Day-Ahead Forecast in the form of a CSV file or other mutually agreed file format delivered to Buyer and Buyer's File Transfer Protocol (FTP) site as set forth in Exhibit N.

(d) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Seller to submit Bids for the electric energy generated by the Facility. In addition, 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 CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Reserved.**

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

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

(a)



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

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

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

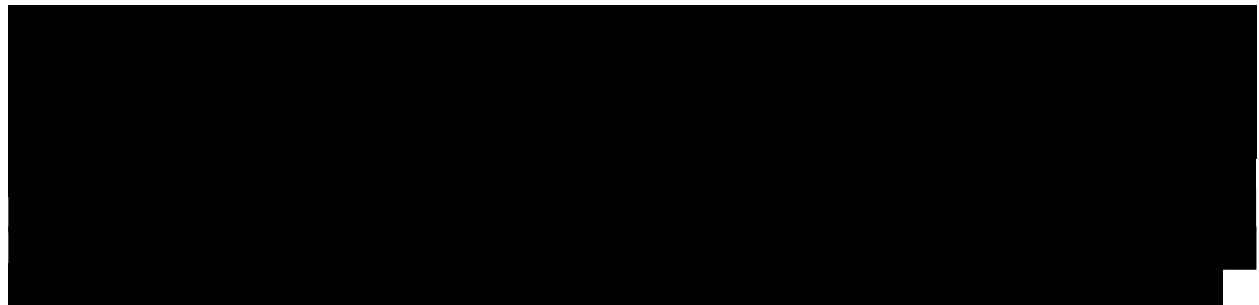
(e) **Buyer Default.** Seller shall be permitted to reduce deliveries of Product during any period in which there is Buyer Default.

(f) **Market Curtailment Periods.** Seller has the right, in its sole discretion, to curtail deliveries of Facility Energy during Market Curtailment Periods.

(g) **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





4.8 **WREGIS.** Seller shall, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

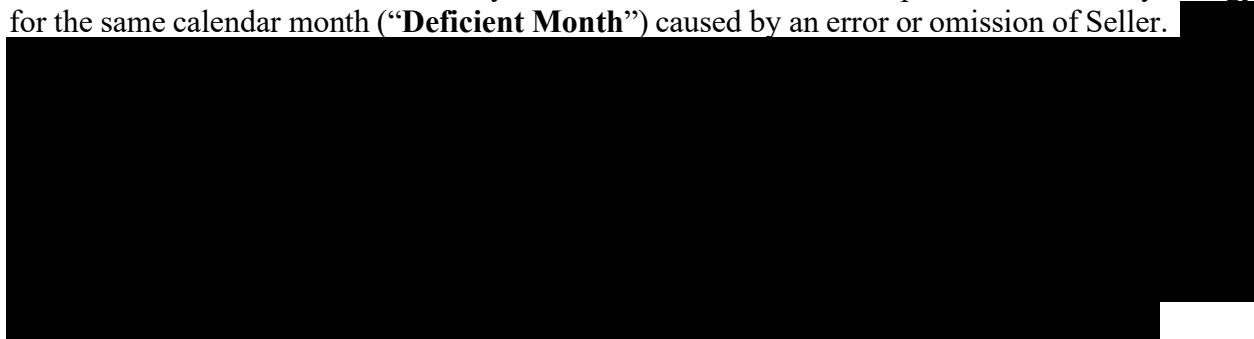
(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Recurring Certificate 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 Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

(d) Due to the 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 the timing of Section 8.2 notwithstanding that the WREGIS Certificates for such month may not have been formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller.



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

4.9 **Green-e Certification.** Seller shall execute all documents or instruments reasonably required by Buyer in order for the Facility to be eligible for Green-E certification.

4.10 **Interconnection Capacity.** Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under or through the Interconnection Agreement to interconnect the Facility with the CAISO Controlled Grid at a level that is no less than the Guaranteed Capacity, and to fulfill Seller’s obligations under this Agreement.

## 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 Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (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 Facility Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Facility Energy.

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities (including a transformer, substation and associated equipment and real property), and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and 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 interconnection capacity in accordance with Section 4.10, (ii) continue to provide for separate metering and a separate resource ID for the Facility, and (iii) subject to customary qualifications, shall not allow any Affiliate of Seller or third party to use such interconnection capacity if such use would have an adverse impact on Buyer's rights under this Agreement. 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 such interconnection capacity.

## ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter and associated infrastructure, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practice, including to account for



Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter or associated infrastructure as outlined in the CAISO-approved Settlement Quality Metering Data (SQMD) design basis document shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram to be set forth as Exhibit P, an updated version of which shall be provided by Seller to Buyer at least thirty (30) days prior to Commercial Operation. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the Facility Meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller or Seller's Scheduling Coordinator shall cooperate to allow Buyer to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the Facility Meter(s) at the Facility. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer.

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

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within [REDACTED] after, but not prior to, the end of each month of the Delivery Term. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Facility Energy produced by the Facility as read by the Facility Meter, the calculation of Facility Energy, [REDACTED], Lost Output, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Interval, and the Settlement Price and Monthly Settlement Amount applicable to such Product in accordance with Exhibit C; and (b) 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. Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access to any records, including invoices, real time data, settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Buyer to review and verify the accuracy of all invoices. The invoice shall be delivered by email in accordance with Exhibit N.

8.2 **Payment.** Buyer or Seller, as applicable, shall make payment of the Monthly Settlement Amount to the other Party for the Product by wire transfer or ACH payment to the bank account designated in Exhibit N, which may be updated by Notice hereunder; *provided, however,*

that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must be made in writing and delivered via email, and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Undisputed invoice amounts shall be paid within [REDACTED] after receipt of the invoice, or the end of the prior monthly billing 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. [REDACTED]

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated or payments made pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

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

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice, payment 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, payment 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 or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution

along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

8.7



8.8





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 or Performance Security, to the extent provided in the form of cash, and 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.

## ARTICLE 9 NOTICES

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered if sent by email, at the time indicated by the time stamp upon delivery without any bounce back or rejection, 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 email and shall be considered delivered upon successful completion of such transmission. Notices sent pursuant to Article 11 (Defaults; Remedies; Termination), 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 occurring after the Effective Date 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 commercially 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 and otherwise satisfy the requirements of a Force Majeure Event as defined above, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic; quarantine; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including 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, except to the extent caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force

Majeure Event; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2



10.3 **Notice.** Within [REDACTED] after the non-performing Party becomes aware of the impact of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within [REDACTED] after the non-performing Party becomes aware of the impact of a Force Majeure Event the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim. Failure to provide timely Notice as described in the preceding sentence constitutes a waiver of the Force Majeure Event claim. The suspension of performance due to a claim of Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4



**ARTICLE 11  
DEFAULTS; REMEDIES; TERMINATION**

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

[REDACTED]

(ii)

[REDACTED]

(iii)

[REDACTED]



(iv)

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

(vi)

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days 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 ■ by Fitch, ■ by S&P or ■ 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 honor a properly documented request to draw on such Letter of Credit;

(D) 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;

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

(F) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than ■ 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)(i) or 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 the Terminated Transaction and the Event of Default related thereto.

**11.3 Termination Payment.** The termination payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

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

11.7



## ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, OR RELATING TO OR CONSTITUTING LOST OR FOREGONE TAX CREDITS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

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

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

### **ARTICLE 13**

#### **REPRESENTATIONS AND WARRANTIES; AUTHORITY**

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

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

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

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

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

### 13.2 **Seller Covenants.**

(a) Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference, and conflict of interest.

(b) Seller shall maintain Site Control throughout the Delivery Term.

(c) Seller shall obtain any and all applicable permits and approvals, including without limitation, environmental clearance under CEQA, if applicable, or other environmental law, necessary to construct and operate the Facility. Seller acknowledges that Buyer is purchasing the Product under this Agreement and does not intend to be the lead agency for the Facility.

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

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

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

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted by 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.).

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

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals, and permits necessary 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.

13.5 **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 (“**Prevailing Wage Requirement**”). 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. Seller or its construction contractor for the Facility shall either (i) execute a project labor agreement with the appropriate building or construction trade unions for construction of the Facility or (ii) award the contract for construction to a union signatory entity which will employ a union workforce governed by that entity’s existing labor agreements.

13.6 **Workforce Development.** Seller shall perform the obligations related to workforce development set forth in Exhibit R.

13.7 **Community Investment.** Seller shall perform the obligations related to community investment set forth in Exhibit Q.

## 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; provided that a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is an Affiliate. 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 third party costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement or any part of its ownership interests in the Facility 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**”), and,

if requested by Seller in connection with any financing or refinancing by a Lender, one or more estoppel certificates or similar instrument with substantially similar provisions as reasonably requested by Seller or any such Lender. 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. Each Collateral Assignment Agreement must include, among others, the following provisions (with such changes as may be reasonably requested by a Lender and that are reasonably acceptable to Buyer) 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 cure periods of Lender 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) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure 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, if Lender has provided the notice set forth in subsection (b) above) 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 Lender or its assignee or transferee takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender or its assignee or transferee must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings, 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 are not reasonably capable of cure) or

(ii) Not assume this Agreement.

(g) If Lender or its assignee or transferee elects to sell or transfer the Facility (after Lender or its assignee or transferee directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's remaining obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to Lender's cure of any Events of Defaults under this Agreement in accordance with Section 14.2(f), if this Agreement is rejected in Seller's bankruptcy proceedings or is otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having substantially the same terms as this Agreement for the remaining term thereof.

**14.3 Buyer Limited Assignment Right.** Notwithstanding anything to the contrary, Buyer may make a limited assignment in connection with a municipal prepayment financing transaction to an entity ("Limited Assignee") that has an Investment Grade Credit Rating or that 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 in accordance with this Section 14.3.

This limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment by delivering a written request for assignment to Seller no less than thirty (30) days' prior to the proposed effective date of such assignment, which written request must include a proposed assignment agreement substantially in the form attached to this Agreement as Exhibit S. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies, and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer's and Seller's ability to make the representations and warranties contained therein. Upon written request from Seller, Buyer shall provide Seller with reasonable information and documentation with respect to Limited Assignee and the proposed municipal prepayment financing transaction. Buyer shall comply with all reasonable requests received from any Lender in connection with such limited assignment, including providing any requested acknowledgments in any Collateral Assignment Agreement.

14.4 **Permitted Assignment 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, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller or as described in Section 14.2.

## ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [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 Alameda County, 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 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 final and binding arbitration conducted in San Francisco, California, administered by Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") pursuant to its Comprehensive Arbitration Rules and Procedures:

(a) No arbitrator shall have any affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within thirty (30) days after notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed by JAMS.

(b) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents and to answer interrogatories.

(c) Except to the extent expressly permitted under this Agreement, the arbitrator shall have no authority to award consequential, punitive or exemplary damages or any other damages other than the remedies contemplated by this Agreement.

(d) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.

(e) During the pendency of dispute resolution proceedings as provided in this Section 15.2, the Parties shall continue to perform under this Agreement in accordance with its provisions.

(f) The terms of this Agreement requiring arbitration are self-executing. It is unnecessary for either Party to petition a court to compel arbitration in order to initiate arbitration. The Parties agree that any issues regarding the jurisdiction of the arbitrator, the agreement to arbitrate, and the arbitrability of any claims or disputes arising under, relating to, or in connection with this Agreement are issues solely for arbitrator, not a court, to decide. Each of the Parties expressly waives any right it may have to seek in court, including in enforcement proceedings, a determination on the jurisdiction of the arbitrator, the agreement to arbitrate, or the arbitrability of any claims or disputes; *provided, however*, that either Party may petition a court of appropriate jurisdiction, as described in Section 15.1, to enforce the mandatory arbitration provisions as described in this Section 15.2.

## ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification.** To the maximum extent permitted by applicable Law, each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, consultants, employees and representatives (each an “**Indemnified Party**”) 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 each other’s physical property or facilities or the property

of any third party to the extent arising out of, resulting from, or caused by the negligent or intentional and wrongful acts, error, or omissions of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, “**Indemnifiable Losses**”). Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of an Indemnified Party but the Indemnified Party’s liability to pay Indemnifiable Losses to the Indemnified Party shall be reduced in proportion to the percentage by which the indemnitees’ negligent or intentional acts, errors or omissions caused the Indemnifiable Losses. Neither Party shall be indemnified for its Indemnifiable Losses resulting from its sole negligence 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. In those circumstances in which Buyer acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party from and against Indemnifiable Losses arising out of or relating to or in any way connected with Buyer’s receipt of energy after the Delivery Point.

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

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

16.4 **Defense of Claims.** If, within thirty (30) Business Days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 16.2, the Indemnified Party receives Notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within thirty (30) Business Days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the

Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within thirty (30) calendar days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.5 **Amounts Owed.** Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a commercially reasonable effort by the Indemnified Party to obtain such insurance proceeds.

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

16.7 **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 sudden and accidental pollution coverage, products and completed operations and personal injury insurance, with 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 and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in a minimum amount of liability of [REDACTED]. Defense costs shall be provided as an additional benefit and not included with the limits of liability.

Such insurance shall contain standard cross-liability and severability of interest provisions. Insurance may be evidenced through primary and excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall be [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

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

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

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

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry a minimum of [REDACTED] general liability and/or umbrella liability insurance, and the same levels of insurance as Seller in Section 17.1(b)-(d). All 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 subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within sixty (60) days of the Effective Date and upon annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

## 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 pricing and other commercially sensitive terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other, and (c) information that would, under the circumstances, appear to a reasonable Person to be confidential or proprietary. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that Buyer intends to make publicly available a version of this Agreement with certain commercially sensitive provisions removed or redacted.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator 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. In the event that the Disclosing Party is unable to obtain a protective order or other appropriate remedy, or if it so directs the Receiving Party, the Receiving Party or its representatives shall furnish only that portion of the Confidential Information that the Receiving Party is advised by its counsel is required by Law to be furnished by it. The Parties acknowledge and agree that this Agreement, and information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.).

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

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. For the purposes of this section and to the extent the information is not prohibited by law from disclosure, press release does not include records released by Buyer, including annual comprehensive financial reports; memorandums or reports to Buyer's city council; documentations submitted to regulatory agencies; disclosures related to public financings; and production of records required by subpoena, court order, or under the California Public Records Act (Government Code Section 7920 et seq.).

## ARTICLE 19 MISCELLANEOUS

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

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

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

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer



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

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

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

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

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

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

members, Affiliates, equity holders, or the employees, directors, officers, consultants or advisors of Seller or its members, Affiliates or equity holders, in connection with this Agreement.

19.11 **Forward Contract**. The Parties intend 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.

**IP EASLEY, LLC**

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

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

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

## **EXHIBIT A**

### **FACILITY DESCRIPTION**

The Facility consists of a 75 MW, as measured at the Delivery Point, [REDACTED]

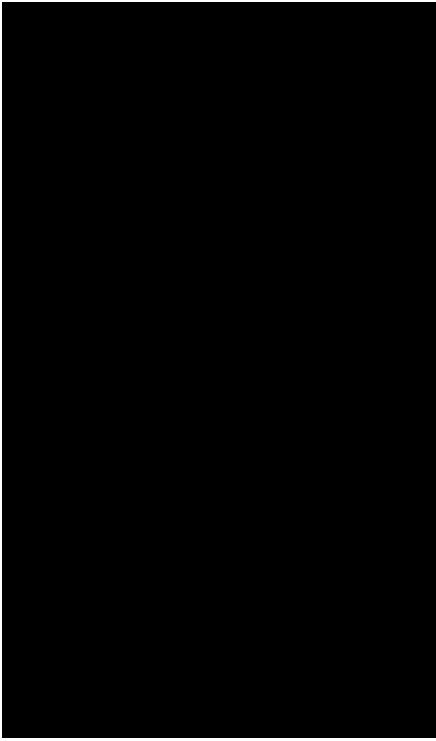
[REDACTED]

The Facility will be comprised of solar panels, inverters, collection lines and step-up transformers, switchyard, and approximately [REDACTED] to reach its point of interconnection (including Shared Facilities), but will not include the Additional Easley Facility or the Energy Storage Facility.

**Site Name:** [REDACTED]

**Site includes all or some of the following APNs:**

[REDACTED]



**County:** Riverside County, California

**CEQA Lead Agency:** Riverside County

**Type of Facility:** Solar photovoltaic electricity generating facility

**Operating Characteristics of Facility:**

**Guaranteed Capacity:** 75 MW

**Delivery Point:** [REDACTED]

**Facility Meter Locations:** See Exhibit P

**Facility Interconnection Point:** [REDACTED]

**Facility PNode:** [REDACTED]

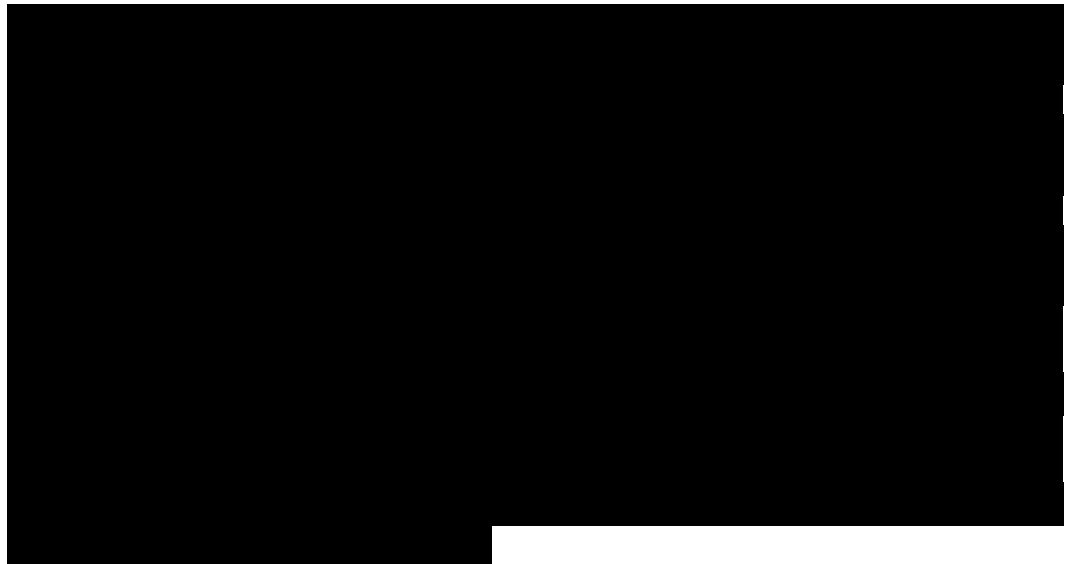
**Participating Transmission Owner:** [REDACTED]

**EXHIBIT B****FACILITY CONSTRUCTION AND COMMERCIAL OPERATION****1. Construction of the Facility.**

(a) **“Construction Start”** will occur once Seller has acquired all applicable regulatory authorizations, approvals and permits for the commencement of construction of the Facility, executed an engineering, procurement, and construction contract, or equipment supply agreement for solar modules and a balance of plant contract, or reasonably comparable contractual arrangements, and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and to begin physical construction (including, at a minimum, excavation for foundations or installation or erection of improvements) of the Facility at the Site, and provided evidence of the Prevailing Wage requirements set forth in Section 13.5. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) The **“Guaranteed Construction Start Date”** means the Expected Construction Start Date, subject to extensions on a day-for-day basis for the Development Cure Period.

(c)



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. The **“Commercial Operation Date”** shall be the date on

which Commercial Operation is achieved or the dispute resolution process has resulted in a determination that the Commercial Operation Date has been achieved; provided that Buyer must acknowledge to Seller in writing that Commercial Operation has been achieved, or provide written notice describing why Buyer does not agree that Commercial Operation has been achieved, within five (5) Business Days of receiving Seller's notice that Commercial Operation has been achieved. If Buyer fails to acknowledge or provide written notice disputing Commercial Operation within such five (5)-Business Day period, Buyer's right to acknowledge Commercial Operation shall be waived and Commercial Operation shall be deemed to have occurred as of the last day of such five (5)-Business Day period; provided that the Commercial Operation Date shall occur no earlier than September 30, 2026.

- (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)

[REDACTED]

(c)

[REDACTED]

3.

[REDACTED]

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 extended on a day-for-day basis due to

[REDACTED]

[REDACTED]

5.

[REDACTED]



**EXHIBIT C**  
**COMPENSATION**

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

(a) Settlement Price. “**Settlement Price**” shall have the following meaning:

(i)

[REDACTED]

(ii)

[REDACTED]

(iii)

[REDACTED]

(b) Monthly Settlement Amount. For each calendar month of the Delivery Term, subject to Section (e) of this Exhibit C, Seller shall calculate the “**Monthly Settlement Amount**,” which shall be a single amount due from Buyer to Seller, or from Seller to Buyer, as appropriate. The Monthly Settlement Amount shall equal the sum of:

(i)

[REDACTED]

(ii)

[REDACTED]

(c)

[REDACTED]

(d) Reserved.

(e)

(f)

(g)

(h) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. 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 price for and Seller's obligation to deliver Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

**EXHIBIT D****SCHEDULING COORDINATOR RESPONSIBILITIES**

(a) Seller as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point. Seller (as the Facility's SC) shall submit Bids 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, real time or other market basis that may develop after the Effective Date, as determined by Seller.

(b) CAISO Costs and Revenues. Seller (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy costs or 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 all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

(d) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

## **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, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter or month as applicable.
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. The utilization of union labor by Seller's principal EPC contractor.
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.

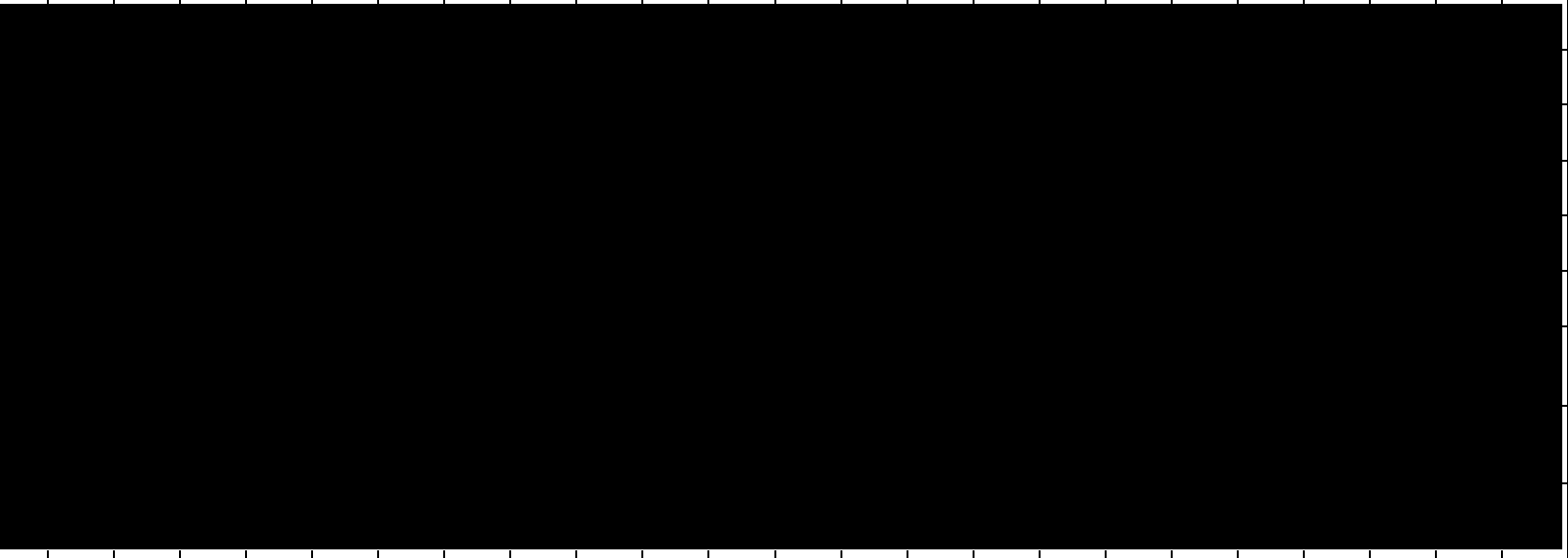
**EXHIBIT F-1****FORM OF AVERAGE EXPECTED ENERGY REPORT**

Average Expected Energy (in MWh)

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
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The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

**EXHIBIT F-2****FORM OF MONTHLY AVAILABLE CAPACITY FORECAST**Available Generating Capacity (in MWh) – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert a																								
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 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 (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] (“**Agreement**”) by and between IP Easley, LLC (“**Seller**”) and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [Date], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity measured at the Delivery Point.
3. Seller has commissioned substantially all equipment comprising the Facility in accordance with its respective manufacturer’s specifications.
4. The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
5. Seller has demonstrated functionality of the Facility’s communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider on [date].
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation on [date].
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [date].
9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of the Facility.

EXECUTED by [*Licensed Professional Engineer*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[*LICENSED PROFESSIONAL ENGINEER*]

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

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

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

## EXHIBIT I

### FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (“**Certification**”) of Installed Capacity is delivered by [*Licensed Professional Engineer*] (“**Engineer**”) to Ava Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] (“**Agreement**”) by and between IP Easley, LLC (“**Seller**”) and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify that the performance test for the Facility demonstrated peak electrical output of \_\_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test (“**Installed Capacity**”).

EXECUTED by [*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 IP Easley, LLC (“**Seller**”) to Ava Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
2. the Construction Start Date occurred on [Date] (the “**Construction Start Date**”); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: \_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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

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

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

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

Bank Ref.: \_\_\_\_\_

Amount: US\$ \_\_\_\_\_

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

Beneficiary:

Ava Community Energy Authority, a California joint powers authority

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Ava Community Energy Authority, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

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

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

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own immediately available funds by means of wire transfer in immediately

available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

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

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

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

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Ava Community Energy Authority, [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.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Ava Community Energy Authority, a California joint powers authority as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of \_\_\_\_\_ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) 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 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 by wire transfer in immediately available funds to the following account: [*Specify account information*]

Ava Community Energy Authority

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_

**EXHIBIT L**

**[RESERVED]**






**EXHIBIT M**

**[RESERVED]**

**EXHIBIT N****NOTICES**

<b>IP Easley, LLC</b>	<b>Ava Community Energy Authority</b>
<b>All Notices:</b> [REDACTED]	<b>All Notices:</b> 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Attn: Power Resources Phone: (510) 809-7458 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:legal@avaenergy.org">legal@avaenergy.org</a>
<b>Reference Numbers:</b> [REDACTED]	<b>Reference Numbers:</b> Duns: 08-110-3072 Federal Tax ID Number: 82-2262960
<b>Invoices:</b> [REDACTED]	<b>Invoices:</b> Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: <a href="mailto:ap@avaenergy.org">ap@avaenergy.org</a> ; <a href="mailto:powersettlements@avaenergy.org">powersettlements@avaenergy.org</a> ; <a href="mailto:settlements@ncpa.com">settlements@ncpa.com</a>
<b>Scheduling:</b> [REDACTED]	<b>Scheduling:</b> Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 Email: <a href="mailto:operations@avaenergy.org">operations@avaenergy.org</a>
<b>Confirmations:</b> [REDACTED]	<b>Confirmations:</b> Attn: Power Resources Phone: (510) 361-6247 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:powersettlements@avaenergy.org">powersettlements@avaenergy.org</a> ; <a href="mailto:confirmations@ncpa.com">confirmations@ncpa.com</a>
<b>Payments:</b> [REDACTED]	<b>Payments:</b> Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: <a href="mailto:ap@avaenergy.org">ap@avaenergy.org</a>
<b>Wire Transfer:</b> [REDACTED]	<b>Wire Transfer:</b> BNK: River City Bank 2485 Natomas Park Drive, Suite 100, Sacramento, CA 95833 ABA: 121133416 ACCT: xxxxxx7551

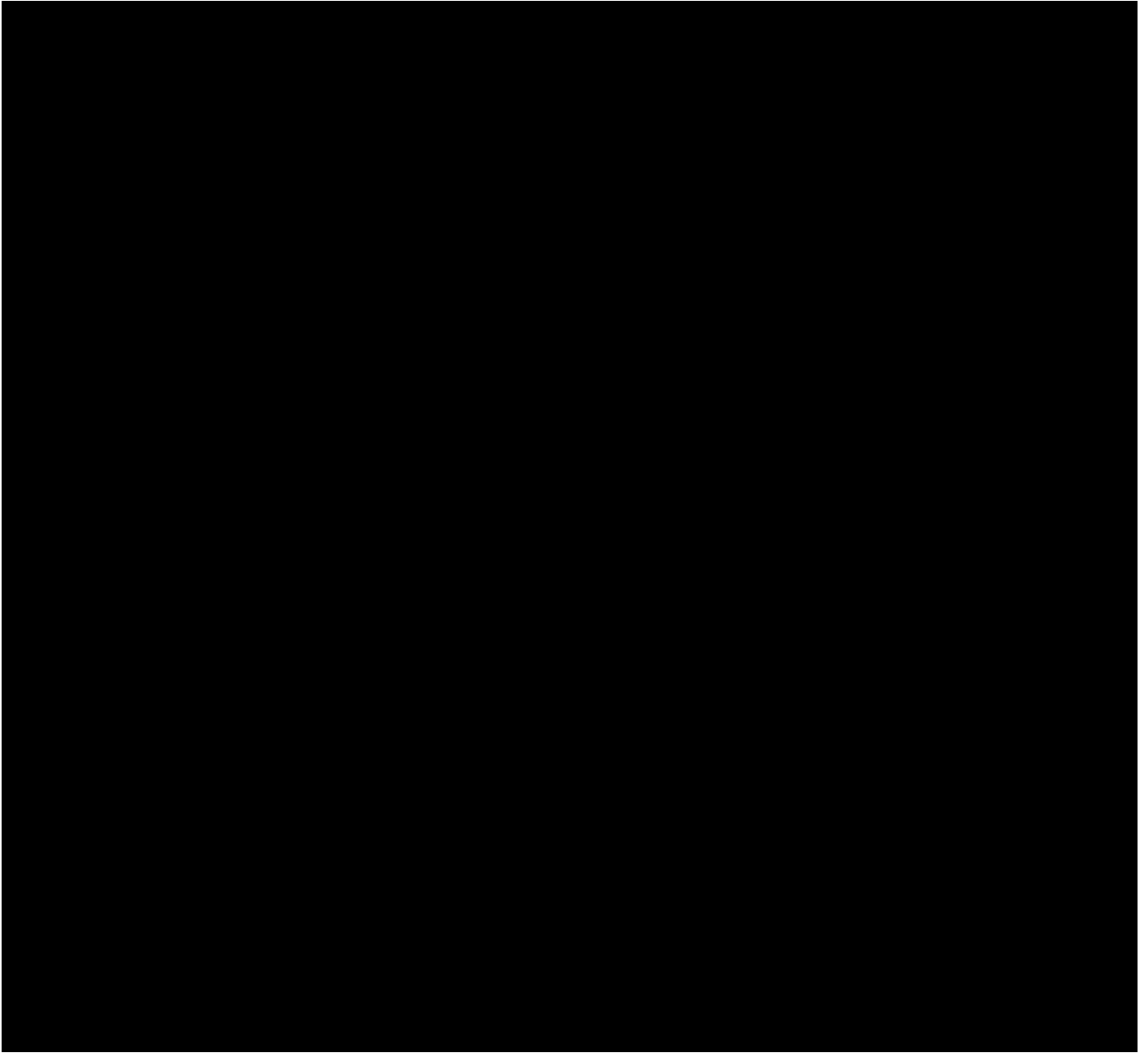
IP Easley, LLC	Ava Community Energy Authority
<b>Credit and Collections:</b> 	<b>Credit and Collections:</b> Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:powersettlements@avaenergy.org">powersettlements@avaenergy.org</a>
<b>With additional Notices of an Event of Default to:</b>   <b>With an additional copy to:</b> 	<b>With additional Notices of an Event of Default to:</b> Attn: Power Resources 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Phone: (510) 809-7458 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:legal@avaenergy.org">legal@avaenergy.org</a>  <b>With an additional copy to:</b> Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>

## **EXHIBIT O**

### **OPERATING RESTRICTIONS**

- Nameplate capacity of the Facility: 75 MW
- Minimum capacity: [REDACTED]
- Ramp rate: [REDACTED]

**EXHIBIT P**



**EXHIBIT Q**  
**COMMUNITY INVESTMENT**



## EXHIBIT R

### WORKFORCE DEVELOPMENT

Seller shall use good faith efforts in connection with the following workforce objectives related to the construction of the Facility:

- (a) Utilization of apprentices at the same ratio of apprentice hours to journeyperson hours as required for public works projects. Generally this is one apprentice hour per every 5 hours of journeywork per craft.
- (b) Demonstrated commitment to Local Hires and a Targeted Hire Program, including utilization of a multi-craft core curriculum (MC3) pre-apprenticeship program, or equivalent industry and state-recognized pre-apprenticeship certification, for outreach, preparation, support and referral of Targeted Hires.
- (c) Demonstrated commitment to subcontracting with Small, Local, or Emerging Businesses.

**“Local Hire”** means a resident within 125 miles of the Facility. Such radius will target a distance that is within reasonable daily commuting distance; or a resident within the county where the project is being constructed;

**“Targeted Hire Program”** means a pipeline program which: (a) Partners with a Multi-Craft Core Curriculum (MC3) pre-apprenticeship program or programs, or equivalent industry and state-recognized certificated career training and placement program that recruits, supports, and places Equity Priority Workers in skilled construction trades; and (b) Creates opportunities for an Equity Priority Worker to enter registered apprenticeship programs and/or obtain work hours needed to successfully complete their apprenticeship; or (c) Recruits and places income-qualified journeypersons.

**“Equity Priority Worker”** means a jobseeker who, at the time of hiring or within the last twelve months, satisfies at least one of the following categories:

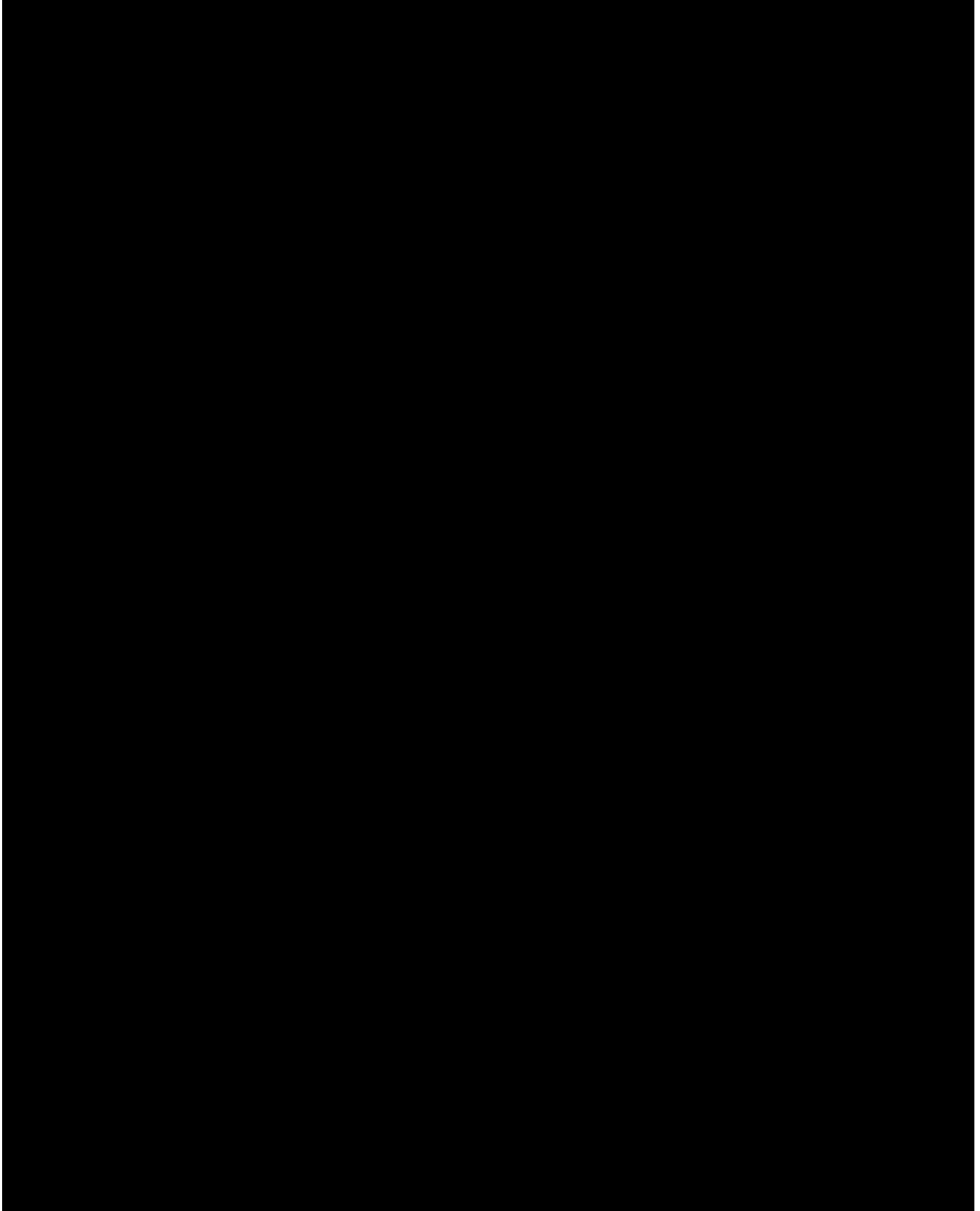
- a. Currently unhoused or at risk of homelessness
- b. Being a custodial single parent
- c. Currently receiving public assistance
- d. Lacking a GED or high school diploma
- e. Having been continuously unemployed or underemployed for the past 6 months
- f. Having been emancipated from the foster care system
- g. Being a veteran of the United States Military
- h. Being a member of a tribal community associated with indigenous people
- i. Having a previous incarcerated or justice involvement history
- j. At-Risk Youth: a person 18-24 years old who is disconnected from school and/or work
- k. Low income (household income is below the current HUD threshold for Low Income Households in their county of residence)

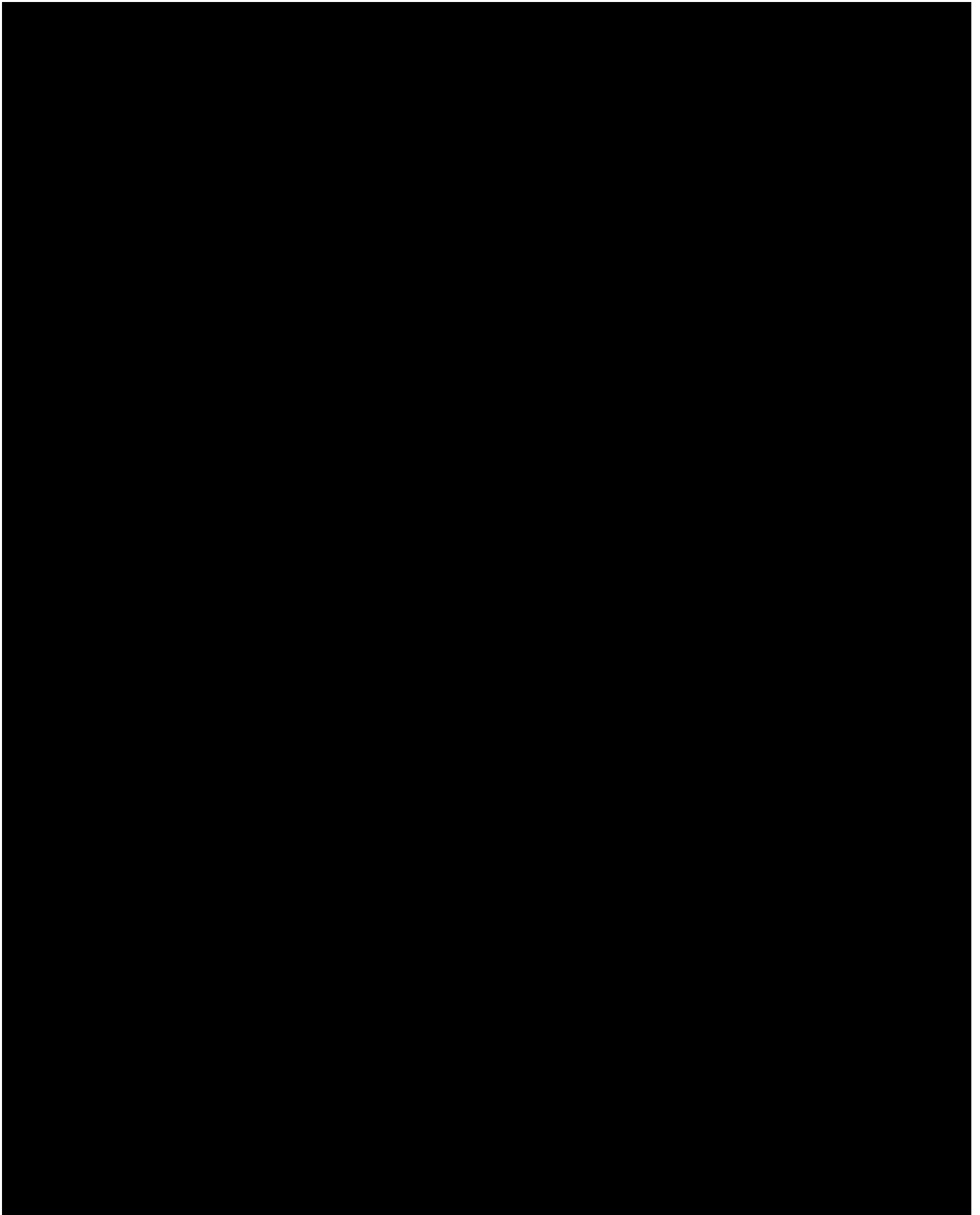
**“Small, Local, or Emerging Business”** means a business that is considered small, local, or emerging under the following requirements:

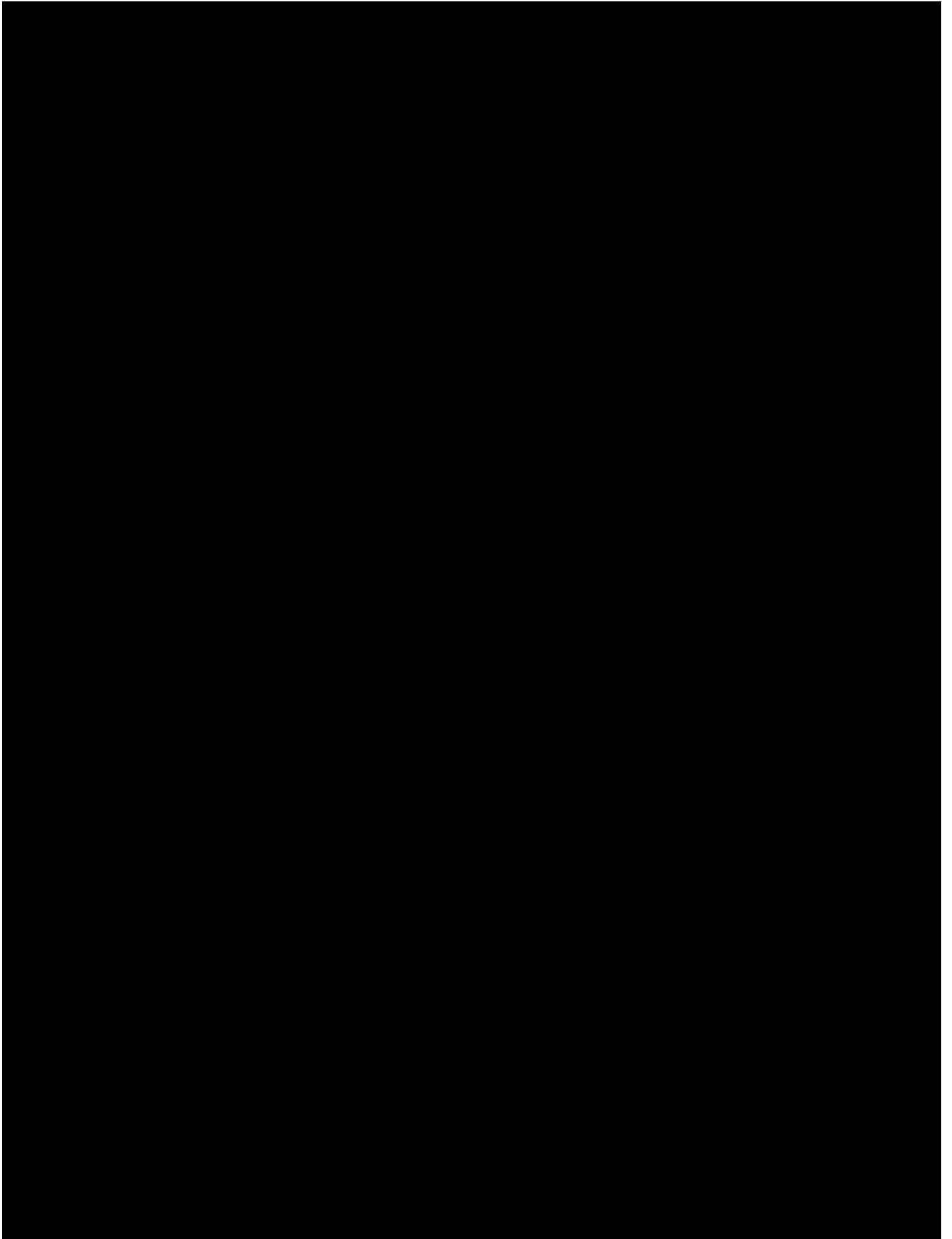
- a. Local Business - A business having a fixed office with a street address in Riverside County or Ava's service territory, and having a valid business license issued by a jurisdiction within Riverside County or Ava's service territory for at least 6 months.
- b. Small Business - A business which has been certified to meet the U.S. Small Business Administration (SBA) size standards for its classification.
- c. Emerging Business - A business which has been certified to meet less than one half the U.S. SBA size standards for its classification and has been in business less than 5 years.

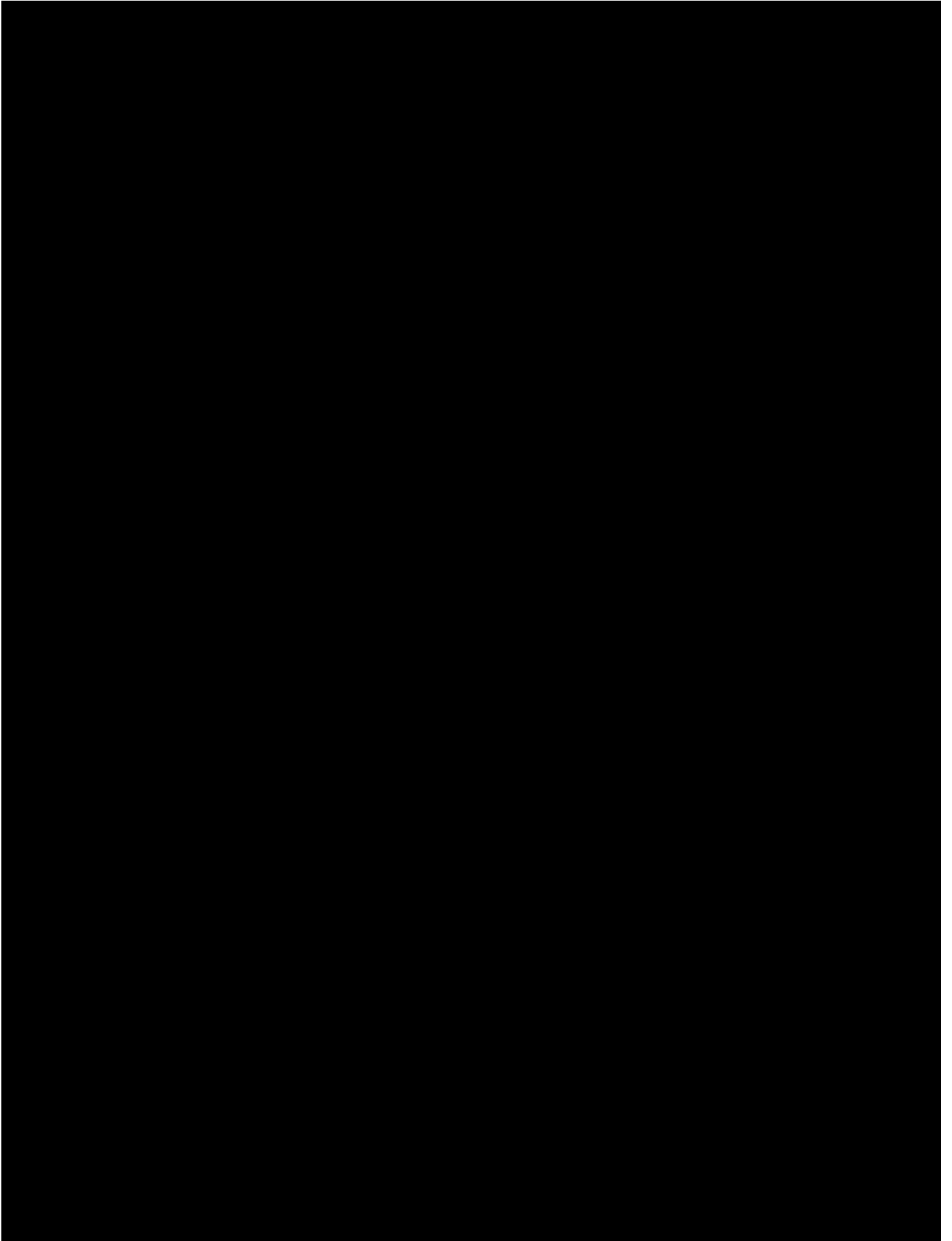


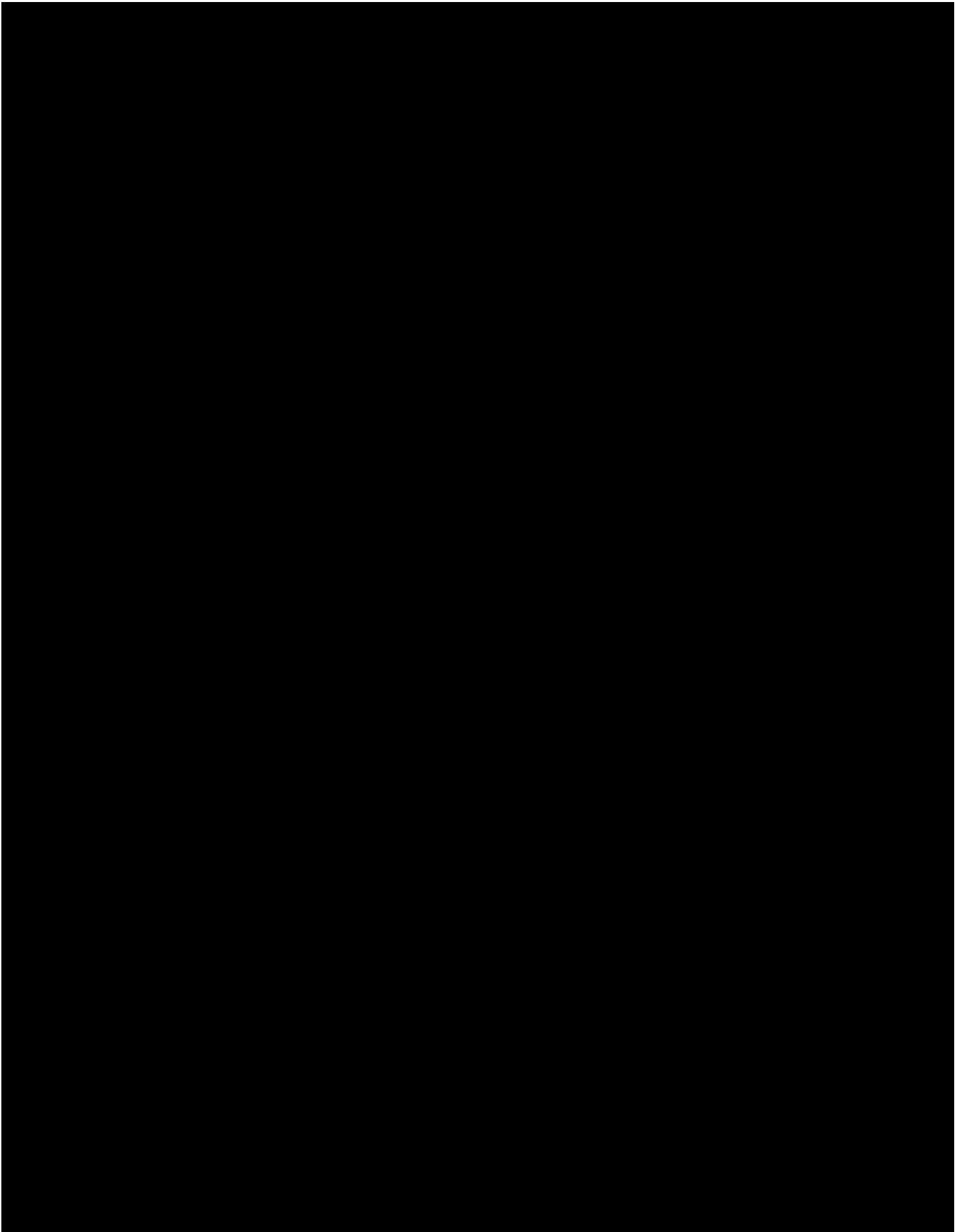
**EXHIBIT S**

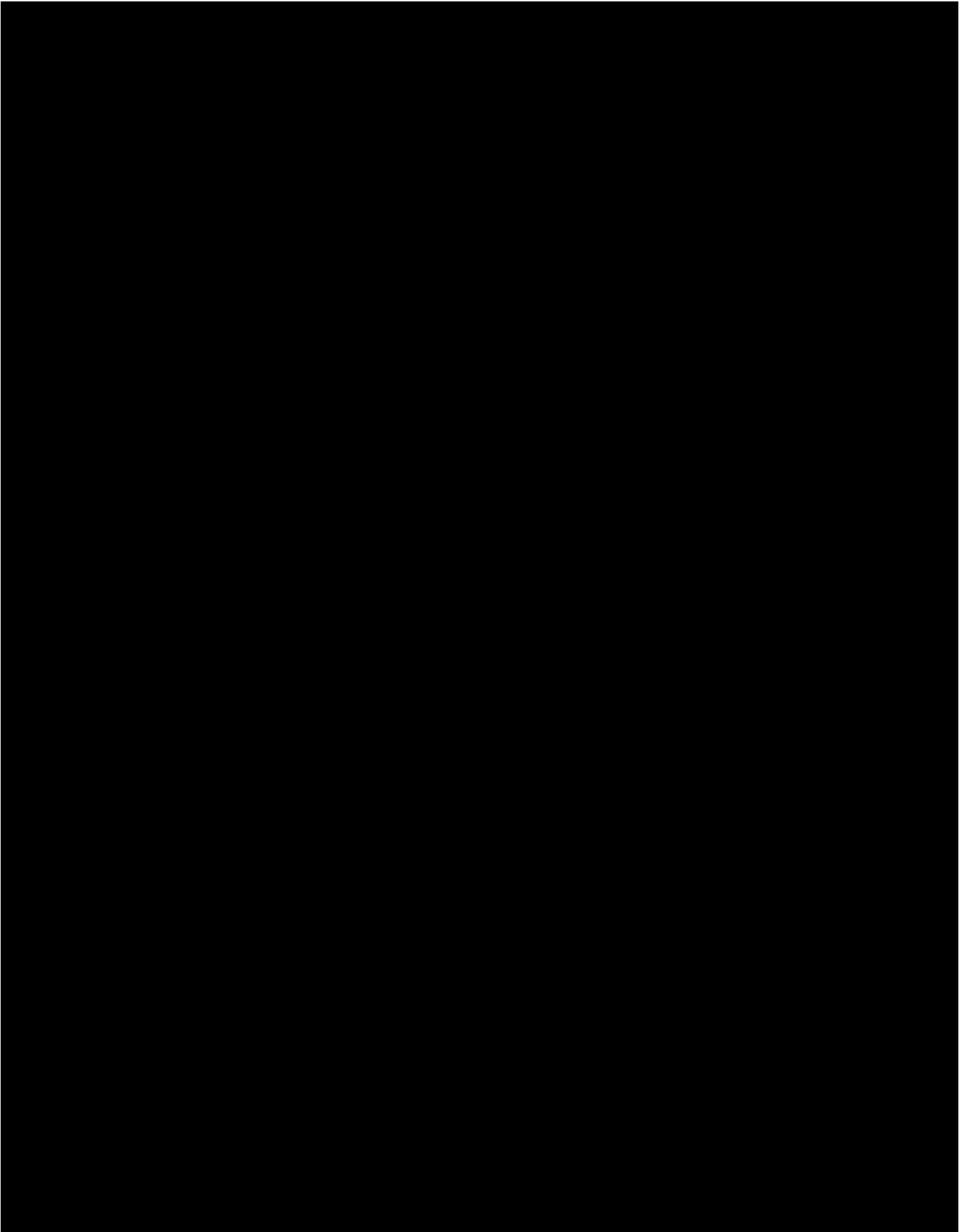












FEBRUARY 12, 2024

SELLER DRAFT

**RENEWABLE POWER PURCHASE AGREEMENT****COVER SHEET****Seller:** IP Easley II, LLC (“**Seller**”)**Buyer:** Ava Community Energy Authority, a California joint powers authority (“**Buyer**”)**Description of Facility:** A 75 MW solar photovoltaic renewable energy generating facility located in Riverside County, in the State of California, and as further described in Exhibit A.**Milestones:**

<b>Milestones</b>	<b>Date for Completion</b>
<b>Evidence of Site Control</b>	████████
<b>Executed Interconnection Agreement</b>	████████
<b>CEC Pre-Certification Obtained</b>	████████
<b>Obtain Federal and State Discretionary Permits</b>	████████
<b>Network Upgrades Completed</b>	████████
<b>Procure Major Equipment</b>	████████
<b>Expected Construction Start Date</b>	████████
<b>Initial Synchronization</b>	02/28/2027
<b>Expected Commercial Operation Date</b>	03/31/2027
<b>Full Capacity Deliverability Status Obtained</b>	████████

**Delivery Term:** The period for Product delivery will be for ten (10) Contract Years.**Expected Energy:**

<b>Contract Years</b>	<b>Expected Energy</b>
1	████████████████████
2	
3	
4	

Contract Years	Expected Energy
5	
6	
7	
8	
9	
10	

**Guaranteed Capacity:** 75 MW

**Contract Price:** The Contract Price of the Product shall be:

Contract Years	Contract Price
1 – 10	

**Metering Arrangement:** SC Metered Entity

**Delivery Point:** [REDACTED]

**Product:**

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1) associated with Facility Energy
- ☐ Ancillary Services

**Scheduling Coordinator:** Seller or Seller Third Party

**Development Security and Performance Security:**

**Development Security:** [REDACTED]

**Performance Security:** [REDACTED]



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## 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, and operate the Facility; and

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

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

### ARTICLE 1 DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.12.

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

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

“**Ancillary Services**” means all ancillary services, products and other attributes, if any, associated with the Facility.

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

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

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

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

**“Buyer”** means Ava Community Energy Authority, a California joint powers authority.

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

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

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

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

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

**“CAISO Operating Order”** means the Operating Instruction or Dispatch 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 Damages”** has the meaning set forth in Exhibit B.

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

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

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

“CEQA” means the California Environmental Quality Act.

“**Change of Control**” means, except in connection with public market transactions of equity interests or capital stock of Seller’s Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, at least 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 at least 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 or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller.

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

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

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

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

**“Compliance Actions”** has the meaning set forth in Section 3.12.

**“Compliance Costs”** has the meaning set forth in Section 3.12.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.12.

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

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

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

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

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

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

**“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, Fitch or Moody’s.

[REDACTED]

**“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 (iii) any 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.

**"DA Price Floor"** means [REDACTED] or such lesser amount as specified by Buyer to Seller in writing, provided that such lesser amount be specified by Buyer at least 75 minutes prior to midnight of the operating day. For the avoidance of doubt, unless otherwise specified by Buyer, the DA Price Floor will be a single value that applies for each day of the month.

**"Damage Payment"** means the dollar amount equal to the amount of the Development Security set forth on the Cover Sheet.

**"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.

[REDACTED]

[REDACTED]

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

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

**“Delivery Point”** [REDACTED]

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

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

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

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

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

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

**“EIRP Forecast”** means the current CAISO forecast for intermittent resources using relevant Facility availability, weather, historical and other pertinent data for the applicable period of time.

**“Electrical Losses”** means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with delivery of Facility Energy to the Delivery Point, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

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

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

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

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

**“Executed Interconnection Agreement”** means the execution of the Interconnection Agreement by Seller and the PTO.

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

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

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

**“Facility”** means the renewable energy 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 Facility Energy to the Delivery Point.

**“Facility Energy”** means the energy generated by the Facility during any Settlement Interval or Settlement Period and delivered to the Delivery Point, which is net of Electrical Losses and Station Use, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices.

**“Facility Meter”** means the CAISO Approved Meter that will measure all electric energy generated by Facility.

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

**“Fitch”** means Fitch Ratings Inc., or its successor.

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

**“Forced Facility Outage”** means an unexpected failure of one or more components of the Facility that prevents Seller from generating Facility 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, Ancillary Services or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility and its displacement of conventional energy generation. Future Environmental Attributes do not include Tax Credits or other financial benefits or incentives in the form of credits, reductions, transfers, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

**“Gains”** means, with respect to any 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. Factors used in determining the economic benefit to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude

Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes.

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation of electrical energy 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; and (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits 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.

**“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”** [REDACTED]

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

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

**“Guaranteed Energy Production”**

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

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

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

**“Installed Capacity”** means the actual generating capacity of the Facility, not to exceed the Guaranteed Capacity, 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.

**“Interconnection Agreement”**

**“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.

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

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

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

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

**“Investment Grade Credit Rating”** means a Credit Rating of [REDACTED] by S&P or Fitch or Baa3 or higher by Moody’s.

**“Investment Tax Credit”** or **“ITC”** means the energy credit established pursuant to Section 48 of the Internal Revenue Code of 1986, as amended, as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to energy property placed in service for which Seller, as the owner of the Facility, is eligible.

**“JAMS”** has the meaning set forth in Section 15.2.

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

**“Joint Powers Agreement”** means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

**“Lender”** means, collectively, any Person (i) providing a letter of credit, bond or other credit support, senior or subordinated development, construction, interim, back leverage or long-term debt, working capital, equity, cash equity or tax equity financing, or any refinancing of any of the foregoing 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 or portfolio financing), equity (including cash equity or 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 Person directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

**“Letter(s) of Credit”** means

[REDACTED]

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

**“Limited Assignee”** has the meaning set forth in Section 14.3.

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

**“Losses”** means, with respect to any 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. Factors used in determining economic loss to a Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on

economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, as applicable, and must include the value of Green Attributes and Renewable Energy Incentives.

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

**“Market Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation of Facility Energy during a Settlement Period or Settlement Interval in which the LMP for the Day-Ahead Market at the Settlement Point for such Settlement Interval or Settlement Period is less than the DA Price Floor; provided that the Market Curtailment Period shall also include the time required for the Facility to ramp down to implement such curtailment and ramp up following such curtailment in accordance with the Operating Restrictions.

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

**“Milestones”** means the Milestones set forth on the Cover Sheet.

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

**“Monthly Settlement Amount”** has the meaning set forth in Exhibit C.

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

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

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

**“Negative LMP”** means, in any Settlement Period or Settlement Interval, the Day-Ahead Market or Real-Time Market at the Facility’s PNode is less than [REDACTED]

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

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

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

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

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

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

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

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

**“Performance Measurement Period”** means each period consisting of two (2) consecutive rolling Contract Years (i.e., Contract Years 1 and 2 shall comprise the first such period, Contract Years 2 and 3 shall comprise the second such period, etc.) during the Delivery Term, provided, however, that in no event shall any Performance Measurement Period be less than twenty-four (24) months.

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

**“Permitted Transferee”** means (i) an entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

(a)

[REDACTED]

(b)

[REDACTED]

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

**“Prevailing Wage Requirement”** has the meaning set forth in Section 13.5.

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



**“Production Tax Credit”** or **“PTC”** means the production tax credit pursuant to Section 45 of the Internal Revenue Code of 1986, as amended, as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Facility, is eligible.

**“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 applicable reliability criteria, and the standard of care, skill and diligence engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the results consistent with applicable Law, 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 in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

**“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 Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including PTCs, ITCs, and other credits under Sections 38, 45, 46, 48, 45Y, and 48E 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 benefit or incentive, including any transfers of certain credits pursuant to Section 6418 of Internal Revenue Code of 1986, as amended, relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

**“S&P”** means the Standard & Poor’s Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

**“SC Metered Entity”** has the meaning of a “Scheduling Coordinator Metered Entity” as defined in the CAISO Tariff.

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

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

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

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

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

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

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



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

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

“**Settlement Point**” means the Facility PNode.

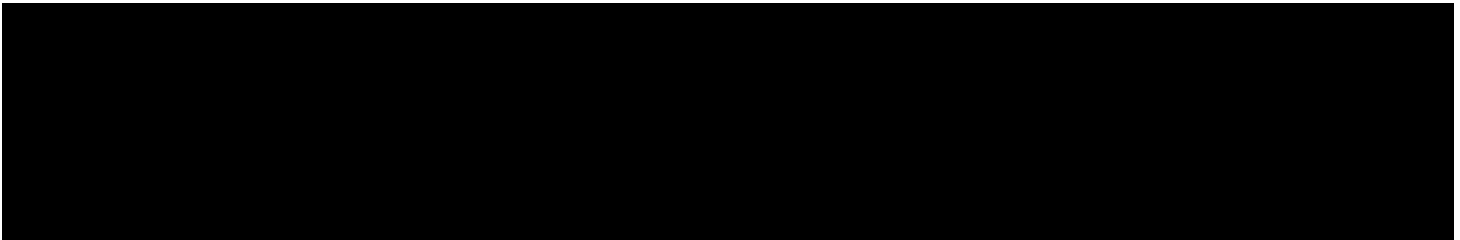
“**Settlement Price**” has the meaning set forth in Exhibit C.

“**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.

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

**“Site Control”** means that Seller (or, with respect to periods prior to the commencement of the Delivery Term, Seller or its Affiliate): (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns the Site; (b) is the lessee or has the option to lease the Site; (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; (d) with respect to periods prior to the commencement of the Delivery Term, is the holder of a serialized, first-in-line SF-299 application for a right-of-way grant with the United States Bureau of Land Management; or (e) has rights through ownership, lease, right-of-way grant or similar instrument, as the managing partner or other entity authorized to act in all manners relating to the control and operation of the Site.

**“Station Use”** means:



**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) preserve Transmission System reliability.

**“Tax”** or **“Taxes”** means all United States federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by any Governmental Authority, 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 PTCs, ITCs, and any other state, local or federal production or other tax credit, including any applicable successor tax credits, depreciation benefits, tax deductions or investment tax credits specific to the production, sale or storage of renewable energy from, or the operation or the ownership of, the Facility or any part thereof.

**“Terminated Transaction”** has the meaning set forth in Section 11.2(a).

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

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

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

**“Transformer Failure”** means failure of all or part of the main power transformer that results in the Facility being unable to generate, deliver or provide 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. [REDACTED]

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

**“Transmission System”** means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service within the CAISO grid 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 4.8(e).

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

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

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

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

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

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

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

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

supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

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

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

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

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

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

(l) 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 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

2.2 **Conditions Precedent.** Subject to Exhibit B, the Delivery Term shall not commence until Seller completes each of the following conditions:

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

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

(c) An Interconnection Agreement among Seller (or Seller's Affiliate), the CAISO, and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) 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;

(e) Insurance requirements for the Facility pursuant to Article 17 have been met, with evidence provided in writing to Buyer;

(f)



(g) Seller has certified in writing to Buyer that Seller has complied with the Prevailing Wage Requirement set forth in Section 13.5, and provided reasonably requested documentation demonstrating such compliance;

(h) Seller has certified in writing to Buyer that Seller has satisfied the obligations related to workforce development set forth in Exhibit R, and provided reasonably requested documentation demonstrating such compliance;

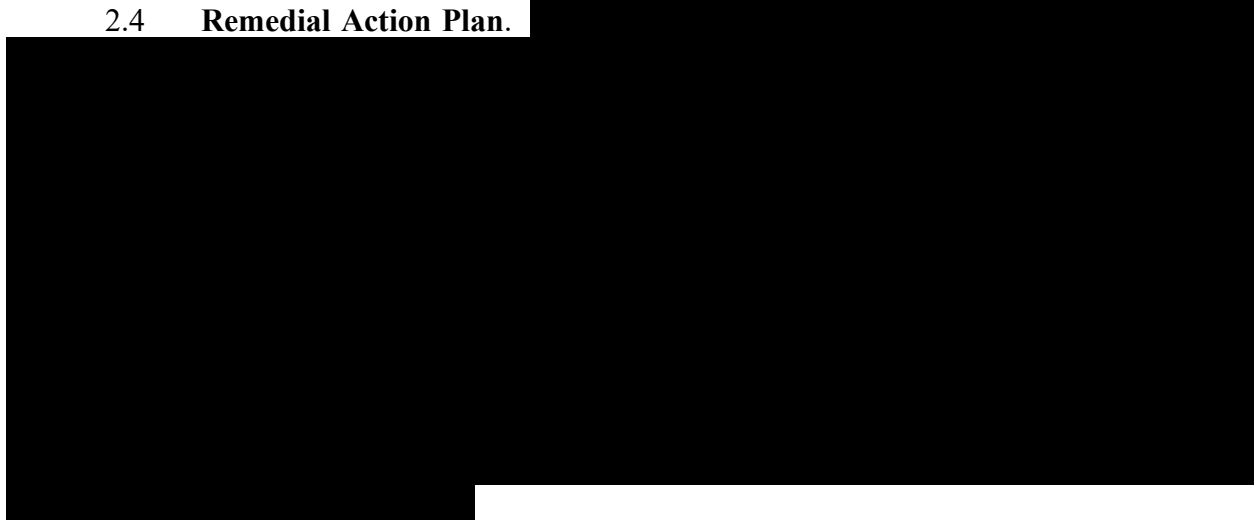
(i) Seller has certified in writing to Buyer that Seller has satisfied the community benefit-related obligations set forth in Exhibit Q, and provided reasonably requested documentation demonstrating such compliance;

(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 as of the Commercial Operation Date, 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 Expected Construction Start Date, and (ii) each calendar month thereafter, Seller shall provide a Progress Report until the Commercial Operation Date to Buyer that (a) describes the progress towards meeting the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date. The form of the Progress Report is set forth in Exhibit E. Seller agrees to regularly scheduled meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. 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 from Buyer. For the avoidance of doubt, as between Seller and Buyer, 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.**



**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, Seller shall deliver to the Delivery Point all Facility Energy and Green Attributes associated with the Facility, and Buyer shall receive and accept at the Delivery Point and pay for such Product in accordance with Exhibit C; *provided, however, that*



At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any

of Seller's obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Section 3.6, Seller will retain title to, and is entitled, in its sole discretion, to sell, assign or transfer to any third party, and retain any revenues with respect to, any or all Products generated by or associated with the Facility prior to and following the Delivery Term.

Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller, and Seller has no obligation to supply and deliver to Buyer, any Facility Energy that is not or cannot be delivered to the Delivery Point as a result of a Force Majeure Event affecting Seller or the Facility, a System Emergency, a Curtailment Order, or any other permitted reduction set forth in Section 4.6.

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 associated with the Facility Energy generated by the Facility.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments or charges related to such Imbalance Energy shall be for the account of Seller.

3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. 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 and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to take any action or bear any costs, losses or liabilities, or alter the Facility or operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation on terms acceptable to Seller.



(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *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 Reserved.**

**3.8 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 Reserved.**

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

(a) 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].

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

(d) With respect to the immediately preceding paragraphs, (i) the reference in Section 3.11(a) to “first delivery under the contract” has the same meaning as “first delivery of Facility Energy under this Agreement”, (ii) the references in Section 3.11(c) to “Project” have the same meaning as “Facility”, (iii) the reference in Section 3.11(c)(ii) to “the Project’s output” has the same meaning as “Facility Energy”, and (iv) each reference in the last sentences of Section 3.11(b) and Section 3.11(c) to “commercially reasonable efforts” means efforts consistent with and subject to Section 3.12 below.

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

### 3.12 Compliance Expenditure Cap.

(a)



(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

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

(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 or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “**Accepted Compliance Costs**”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(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 for Seller to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(f) If (x) Buyer does not respond to a Notice given by Seller under this Section 3.12 within the time required by this Section 3.12, (y) Buyer does not pay, or refuses to pay, the Compliance Costs in excess of the Compliance Expenditure Cap, or (z) it is not possible for Seller to achieve compliance with its obligations hereunder, or a change in Law, as applicable, through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, and (ii) Seller shall not be subject to a reduction in payments under this Agreement to the extent arising from the failure to comply with such Compliance Actions.

## ARTICLE 4 OBLIGATIONS AND DELIVERIES

### 4.1 **Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with 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, and any operation and maintenance charges imposed on Seller by the Transmission Provider directly relating to the Facility’s operations. The Facility Energy will be scheduled with the CAISO by Seller (or Seller’s designated Scheduling Coordinator) in accordance with Exhibit D.

(b) **Green Attributes.** All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes associated with the Facility Energy, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

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

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

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

4.3 **Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer. 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 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 Commercial Operation Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Facility Energy, Available Generating Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(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 forecast of (i) Available Generating Capacity and (ii) hourly expected Facility 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 forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the hourly expected Facility Energy. Except as otherwise agreed, Seller shall provide the Day-Ahead Forecast in the form of a CSV file or other mutually agreed file format delivered to Buyer and Buyer's File Transfer Protocol (FTP) site as set forth in Exhibit N.

(d) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Seller to submit Bids for the electric energy generated by the Facility. In addition, 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 CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Reserved.**

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

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

(a)



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

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

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

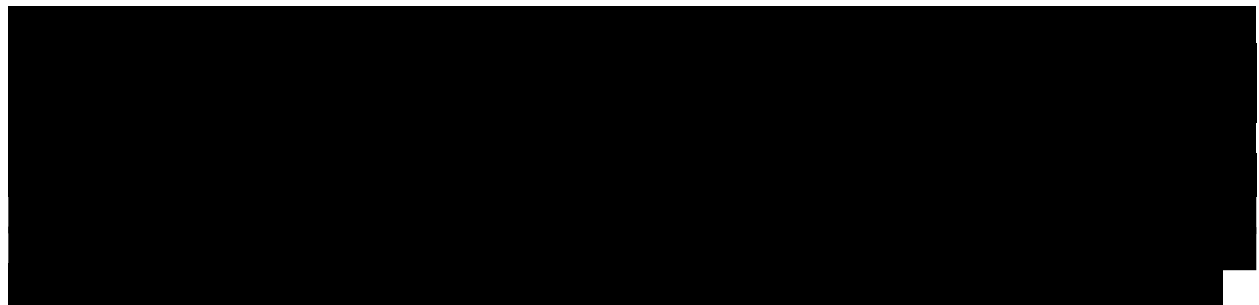
(e) **Buyer Default.** Seller shall be permitted to reduce deliveries of Product during any period in which there is Buyer Default.

(f) **Market Curtailment Periods.** Seller has the right, in its sole discretion, to curtail deliveries of Facility Energy during Market Curtailment Periods.

(g) **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





4.8 **WREGIS**. Seller shall, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. In addition:

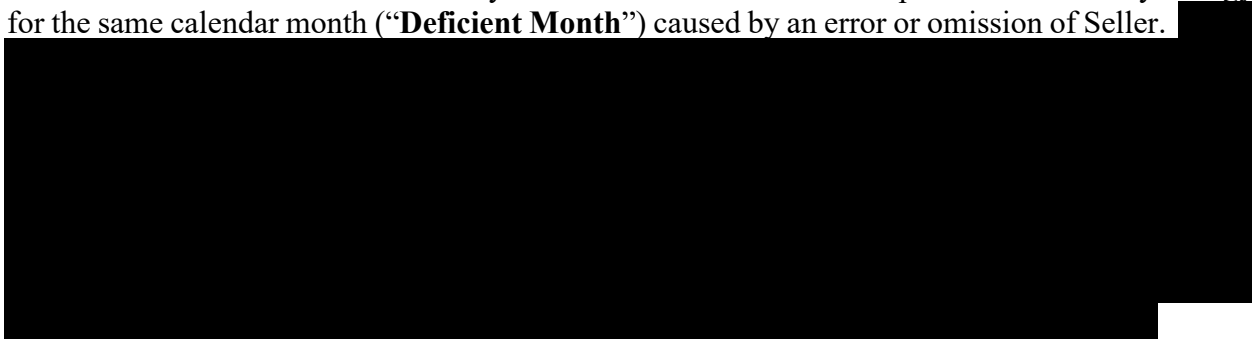
(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Recurring Certificate 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 Facility Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

(d) Due to the 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 the timing of Section 8.2 notwithstanding that the WREGIS Certificates for such month may not have been formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller.



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

4.9 **Green-e Certification.** Seller shall execute all documents or instruments reasonably required by Buyer in order for the Facility to be eligible for Green-E certification.

4.10 **Interconnection Capacity.** Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity and (b) Seller shall have sufficient interconnection capacity and rights under or through the Interconnection Agreement to interconnect the Facility with the CAISO Controlled Grid at a level that is no less than the Guaranteed Capacity, and to fulfill Seller’s obligations under this Agreement.

## 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 Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the Delivery Point (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 Facility Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Facility Energy.

## ARTICLE 6 MAINTENANCE OF THE FACILITY

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

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities (including a transformer, substation and associated equipment and real property), and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements ("**Shared Facilities Agreements**") to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and 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 interconnection capacity in accordance with Section 4.10, (ii) continue to provide for separate metering and a separate resource ID for the Facility, and (iii) subject to customary qualifications, shall not allow any Affiliate of Seller or third party to use such interconnection capacity if such use would have an adverse impact on Buyer's rights under this Agreement. 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 such interconnection capacity.

## ARTICLE 7 METERING

7.1 **Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter and associated infrastructure, which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practice, including to account for



Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter or associated infrastructure as outlined in the CAISO-approved Settlement Quality Metering Data (SQMD) design basis document shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram to be set forth as Exhibit P, an updated version of which shall be provided by Seller to Buyer at least thirty (30) days prior to Commercial Operation. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the Facility Meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller or Seller's Scheduling Coordinator shall cooperate to allow Buyer to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the Facility Meter(s) at the Facility. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer.

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

## ARTICLE 8 INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within [REDACTED] after, but not prior to, the end of each month of the Delivery Term. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Facility Energy produced by the Facility as read by the Facility Meter, the calculation of Facility Energy, [REDACTED], Lost Output, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Interval, and the Settlement Price and Monthly Settlement Amount applicable to such Product in accordance with Exhibit C; and (b) 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. Seller shall, and shall cause its Scheduling Coordinator to, provide Buyer with all reasonable access to any records, including invoices, real time data, settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Buyer to review and verify the accuracy of all invoices. The invoice shall be delivered by email in accordance with Exhibit N.

8.2 **Payment.** Buyer or Seller, as applicable, shall make payment of the Monthly Settlement Amount to the other Party for the Product by wire transfer or ACH payment to the bank account designated in Exhibit N, which may be updated by Notice hereunder; *provided, however,*

that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must be made in writing and delivered via email, and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. Undisputed invoice amounts shall be paid within [REDACTED] after receipt of the invoice, or the end of the prior monthly billing 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. [REDACTED]

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated or payments made pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds \$10,000.

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

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice, payment 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, payment 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 or payment dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution

along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

8.7



8.8



**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 or Performance Security, to the extent provided in the form of cash, and 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.

## **ARTICLE 9 NOTICES**

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered if sent by email, at the time indicated by the time stamp upon delivery without any bounce back or rejection, 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 email and shall be considered delivered upon successful completion of such transmission. Notices sent pursuant to Article 11 (Defaults; Remedies; Termination), 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 occurring after the Effective Date 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 commercially 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 and otherwise satisfy the requirements of a Force Majeure Event as defined above, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic; quarantine; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term **“Force Majeure Event”** does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including 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, except to the extent caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force

Majeure Event; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

10.2



10.3 **Notice.** Within [REDACTED] after the non-performing Party becomes aware of the impact of a Force Majeure Event, the non-performing Party shall provide the other Party with oral notice of the Force Majeure Event, and within [REDACTED] after the non-performing Party becomes aware of the impact of a Force Majeure Event the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure Event claim. Failure to provide timely Notice as described in the preceding sentence constitutes a waiver of the Force Majeure Event claim. The suspension of performance due to a claim of Force Majeure Event must be of no greater scope and of no longer duration than is required by the Force Majeure Event.

10.4



**ARTICLE 11  
DEFAULTS; REMEDIES; TERMINATION**

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

[REDACTED]

(ii)

[REDACTED]

(iii)

[REDACTED]

(iv)

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

(vi)

(vii) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days 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 ■ by Fitch, ■ by S&P or ■ 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 honor a properly documented request to draw on such Letter of Credit;

(D) 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;

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

(F) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than ■ 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)(i) or 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 the Terminated Transaction and the Event of Default related thereto.

**11.3 Termination Payment.** The termination payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party’s aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

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

11.7



## ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, OR RELATING TO OR CONSTITUTING LOST OR FOREGONE TAX CREDITS, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

12.2 **Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

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

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

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

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

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

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

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

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

### 13.2 **Seller Covenants.**

(a) Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference, and conflict of interest.

(b) Seller shall maintain Site Control throughout the Delivery Term.

(c) Seller shall obtain any and all applicable permits and approvals, including without limitation, environmental clearance under CEQA, if applicable, or other environmental law, necessary to construct and operate the Facility. Seller acknowledges that Buyer is purchasing the Product under this Agreement and does not intend to be the lead agency for the Facility.

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

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

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

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (provided that such court is located within a venue permitted by 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.).

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

(g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.

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

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

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations, approvals, and permits necessary 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.

13.5 **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 (“**Prevailing Wage Requirement**”). 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. Seller or its construction contractor for the Facility shall either (i) execute a project labor agreement with the appropriate building or construction trade unions for construction of the Facility or (ii) award the contract for construction to a union signatory entity which will employ a union workforce governed by that entity’s existing labor agreements.

13.6 **Workforce Development.** Seller shall perform the obligations related to workforce development set forth in Exhibit R.

13.7 **Community Investment.** Seller shall perform the obligations related to community investment set forth in Exhibit Q.

## 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; provided that a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is an Affiliate. 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 third party costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2 **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement or any part of its ownership interests in the Facility 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**”), and,

if requested by Seller in connection with any financing or refinancing by a Lender, one or more estoppel certificates or similar instrument with substantially similar provisions as reasonably requested by Seller or any such Lender. 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. Each Collateral Assignment Agreement must include, among others, the following provisions (with such changes as may be reasonably requested by a Lender and that are reasonably acceptable to Buyer) 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 cure periods of Lender 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) ten (10) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure 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, if Lender has provided the notice set forth in subsection (b) above) 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 Lender or its assignee or transferee takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender or its assignee or transferee must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured (other than any Events of Default which relate to Seller's bankruptcy or similar insolvency proceedings, 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 are not reasonably capable of cure) or

(ii) Not assume this Agreement.

(g) If Lender or its assignee or transferee elects to sell or transfer the Facility (after Lender or its assignee or transferee directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender shall cause the transferee or buyer to assume all of Seller's remaining obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to Lender's cure of any Events of Defaults under this Agreement in accordance with Section 14.2(f), if this Agreement is rejected in Seller's bankruptcy proceedings or is otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to cause Buyer to enter into a replacement agreement with Seller having substantially the same terms as this Agreement for the remaining term thereof.

**14.3 Buyer Limited Assignment Right.** Notwithstanding anything to the contrary, Buyer may make a limited assignment in connection with a municipal prepayment financing transaction to an entity ("**Limited Assignee**") that has an Investment Grade Credit Rating or that 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 in accordance with this Section 14.3.



This limited assignment shall be expressly subject to Limited Assignee's timely payment of amounts due under this Agreement. Buyer may make such assignment by delivering a written request for assignment to Seller no less than thirty (30) days' prior to the proposed effective date of such assignment, which written request must include a proposed assignment agreement substantially in the form attached to this Agreement as Exhibit S. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to (i) comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation, credit rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies, and (ii) promptly execute such assignment agreement and implement such assignment as contemplated thereby, subject only to the countersignature of Limited Assignee and Buyer's and Seller's ability to make the representations and warranties contained therein. Upon written request from Seller, Buyer shall provide Seller with reasonable information and documentation with respect to Limited Assignee and the proposed municipal prepayment financing transaction. Buyer shall comply with all reasonable requests received from any Lender in connection with such limited assignment, including providing any requested acknowledgments in any Collateral Assignment Agreement.

14.4 **Permitted Assignment 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, Seller may, without the prior written consent of Buyer, transfer or assign this Agreement, including through a Change of Control, to an Affiliate of Seller or as described in Section 14.2.

## ARTICLE 15 DISPUTE RESOLUTION

15.1 **Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [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 Alameda County, 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 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 final and binding arbitration conducted in San Francisco, California, administered by Judicial Arbitration and Mediation Services, Inc. ("**JAMS**") pursuant to its Comprehensive Arbitration Rules and Procedures:

(a) No arbitrator shall have any affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within thirty (30) days after notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator, the arbitrator shall be appointed by JAMS.

(b) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents and to answer interrogatories.

(c) Except to the extent expressly permitted under this Agreement, the arbitrator shall have no authority to award consequential, punitive or exemplary damages or any other damages other than the remedies contemplated by this Agreement.

(d) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.

(e) During the pendency of dispute resolution proceedings as provided in this Section 15.2, the Parties shall continue to perform under this Agreement in accordance with its provisions.

(f) The terms of this Agreement requiring arbitration are self-executing. It is unnecessary for either Party to petition a court to compel arbitration in order to initiate arbitration. The Parties agree that any issues regarding the jurisdiction of the arbitrator, the agreement to arbitrate, and the arbitrability of any claims or disputes arising under, relating to, or in connection with this Agreement are issues solely for arbitrator, not a court, to decide. Each of the Parties expressly waives any right it may have to seek in court, including in enforcement proceedings, a determination on the jurisdiction of the arbitrator, the agreement to arbitrate, or the arbitrability of any claims or disputes; *provided, however*, that either Party may petition a court of appropriate jurisdiction, as described in Section 15.1, to enforce the mandatory arbitration provisions as described in this Section 15.2.

## ARTICLE 16 INDEMNIFICATION

16.1 **Indemnification.** To the maximum extent permitted by applicable Law, each Party (the “**Indemnifying Party**”) agrees to defend, indemnify and hold harmless the other Party, its directors, officers, agents, attorneys, consultants, employees and representatives (each an “**Indemnified Party**”) 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 each other’s physical property or facilities or the property

of any third party to the extent arising out of, resulting from, or caused by the negligent or intentional and wrongful acts, error, or omissions of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, “**Indemnifiable Losses**”). Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. This indemnification obligation shall apply notwithstanding any negligent or intentional acts, errors or omissions of an Indemnified Party but the Indemnified Party’s liability to pay Indemnifiable Losses to the Indemnified Party shall be reduced in proportion to the percentage by which the indemnitees’ negligent or intentional acts, errors or omissions caused the Indemnifiable Losses. Neither Party shall be indemnified for its Indemnifiable Losses resulting from its sole negligence 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. In those circumstances in which Buyer acts as the Indemnifying Party, the Indemnifying Party agrees to defend, indemnify and hold harmless the Indemnified Party from and against Indemnifiable Losses arising out of or relating to or in any way connected with Buyer’s receipt of energy after the Delivery Point.

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

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

16.4 **Defense of Claims.** If, within thirty (30) Business Days after giving a Notice of Claim regarding a Claim to the Indemnifying Party pursuant to Section 16.2, the Indemnified Party receives Notice from the Indemnifying Party that the Indemnifying Party has elected to assume the defense of such Claim, the Indemnifying Party will not be liable for any legal expenses subsequently incurred by the Indemnified Party in connection with the defense thereof; provided, however, that if the Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within thirty (30) Business Days after receiving Notice from the Indemnified Party that the Indemnified Party believes the Indemnifying Party has failed to take such steps, or if the Indemnifying Party has not undertaken fully to indemnify the Indemnified Party in respect of all Indemnifiable Losses relating to the matter, the Indemnified Party may assume its own defense, and the Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys’ fees, paid or incurred in connection therewith. Without the prior written consent of the Indemnified Party, the Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder; provided, however, that the Indemnifying Party may accept any settlement without the consent of the

Indemnified Party if such settlement provides a full release to the Indemnified Party and no requirement that the Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of the Indemnified Party for which the Indemnified Party is not entitled to indemnification hereunder and the Indemnifying Party desires to accept and agrees to such offer, the Indemnifying Party will give Notice to the Indemnified Party to that effect. If the Indemnified Party fails to consent to such firm offer within thirty (30) calendar days after its receipt of such Notice, the Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of the Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by the Indemnified Party up to the date of such Notice.

16.5 **Amounts Owed.** Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's actual loss net of any insurance proceeds received by the Indemnified Party following a commercially reasonable effort by the Indemnified Party to obtain such insurance proceeds.

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

16.7 **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 sudden and accidental pollution coverage, products and completed operations and personal injury insurance, with 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 and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in a minimum amount of liability of [REDACTED]. Defense costs shall be provided as an additional benefit and not included with the limits of liability.

Such insurance shall contain standard cross-liability and severability of interest provisions. Insurance may be evidenced through primary and excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall be [REDACTED] for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the [REDACTED] policy limit will apply to each employee.

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

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

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

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry a minimum of [REDACTED] general liability and/or umbrella liability insurance, and the same levels of insurance as Seller in Section 17.1(b)-(d). All 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 subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Within sixty (60) days of the Effective Date and upon annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

## 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 pricing and other commercially sensitive terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other, and (c) information that would, under the circumstances, appear to a reasonable Person to be confidential or proprietary. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement. Notwithstanding the foregoing, the Parties acknowledge and agree that Buyer intends to make publicly available a version of this Agreement with certain commercially sensitive provisions removed or redacted.

18.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “**Receiving Party**”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator 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. In the event that the Disclosing Party is unable to obtain a protective order or other appropriate remedy, or if it so directs the Receiving Party, the Receiving Party or its representatives shall furnish only that portion of the Confidential Information that the Receiving Party is advised by its counsel is required by Law to be furnished by it. The Parties acknowledge and agree that this Agreement, and information and documentation provided in connection with this Agreement, including Confidential Information, may be subject to the California Public Records Act (Government Code Section 7920 et seq.).

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

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement. For the purposes of this section and to the extent the information is not prohibited by law from disclosure, press release does not include records released by Buyer, including annual comprehensive financial reports; memorandums or reports to Buyer's city council; documentations submitted to regulatory agencies; disclosures related to public financings; and production of records required by subpoena, court order, or under the California Public Records Act (Government Code Section 7920 et seq.).

## ARTICLE 19 MISCELLANEOUS

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

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

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

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer

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

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

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

19.7 **Counterparts; Electronic Signatures.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original. The Parties may rely on electronic or scanned signatures as originals.

19.8 **Electronic Delivery.** Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

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

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



members, Affiliates, equity holders, or the employees, directors, officers, consultants or advisors of Seller or its members, Affiliates or equity holders, in connection with this Agreement.

19.11 **Forward Contract.** The Parties intend 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.

**IP EASLEY II, LLC**

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

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

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

## **EXHIBIT A**

### **FACILITY DESCRIPTION**

The Facility consists of a 75 MW, as measured at the Delivery Point, [REDACTED]

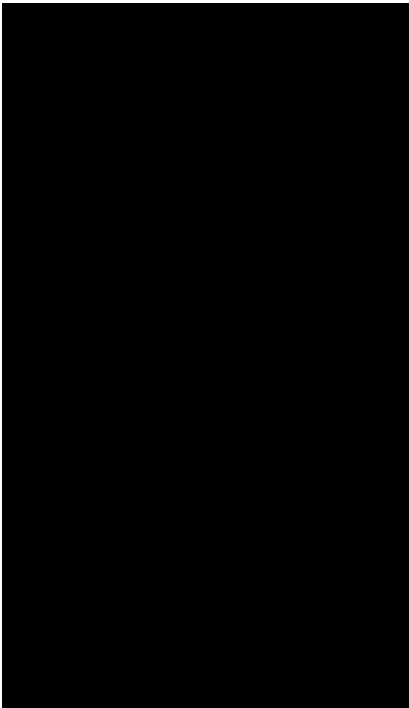
[REDACTED]

The Facility will be comprised of solar panels, inverters, collection lines and step-up transformers, switchyard, and approximately [REDACTED] to reach its point of interconnection (including Shared Facilities), but will not include the Additional Easley Facility or the Energy Storage Facility.

**Site Name:** [REDACTED]

**Site includes all or some of the following APNs:**

[REDACTED]



**County:** Riverside County, California

**CEQA Lead Agency:** Riverside County

**Type of Facility:** Solar photovoltaic electricity generating facility

**Operating Characteristics of Facility:**

**Guaranteed Capacity:** 75 MW

**Delivery Point:** [REDACTED]

**Facility Meter Locations:** See Exhibit P

**Facility Interconnection Point:** [REDACTED]

**Facility PNode:** [REDACTED]  
[REDACTED]

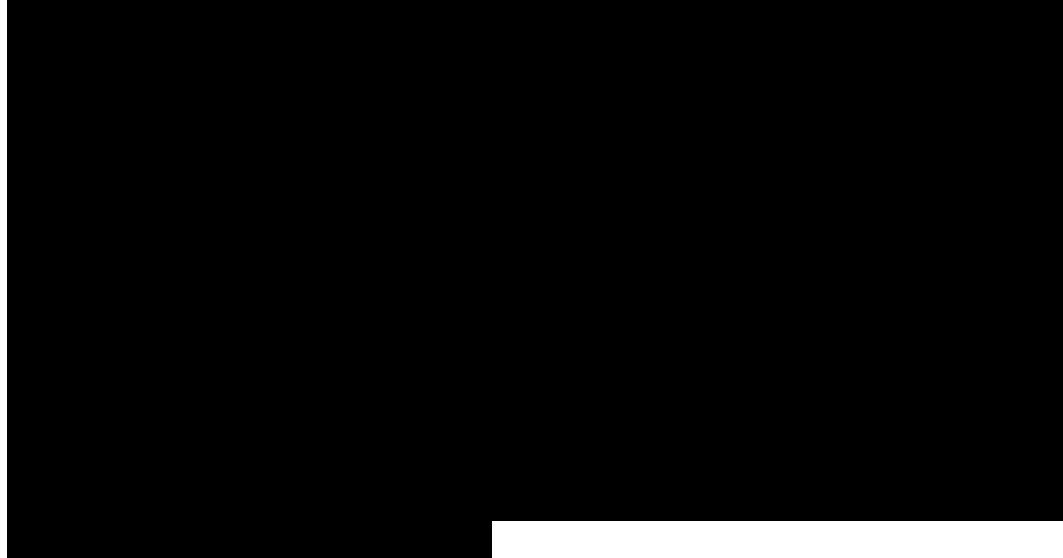
**Participating Transmission Owner:** [REDACTED]

**EXHIBIT B****FACILITY CONSTRUCTION AND COMMERCIAL OPERATION****1. Construction of the Facility.**

(a) **“Construction Start”** will occur once Seller has acquired all applicable regulatory authorizations, approvals and permits for the commencement of construction of the Facility, executed an engineering, procurement, and construction contract, or equipment supply agreement for solar modules and a balance of plant contract, or reasonably comparable contractual arrangements, and issued thereunder a full notice to proceed that authorizes the contractor to mobilize to Site and to begin physical construction (including, at a minimum, excavation for foundations or installation or erection of improvements) of the Facility at the Site, and provided evidence of the Prevailing Wage requirements set forth in Section 13.5. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the **“Construction Start Date.”** Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) The **“Guaranteed Construction Start Date”** means the Expected Construction Start Date, subject to extensions on a day-for-day basis for the Development Cure Period.

(c)



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. The **“Commercial Operation Date”** shall be the date on

which Commercial Operation is achieved or the dispute resolution process has resulted in a determination that the Commercial Operation Date has been achieved; provided that Buyer must acknowledge to Seller in writing that Commercial Operation has been achieved, or provide written notice describing why Buyer does not agree that Commercial Operation has been achieved, within five (5) Business Days of receiving Seller's notice that Commercial Operation has been achieved. If Buyer fails to acknowledge or provide written notice disputing Commercial Operation within such five (5)-Business Day period, Buyer's right to acknowledge Commercial Operation shall be waived and Commercial Operation shall be deemed to have occurred as of the last day of such five (5)-Business Day period; provided that the Commercial Operation Date shall occur no earlier than September 30, 2026.

- (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)

[REDACTED]

(c)

[REDACTED]

3.

[REDACTED]

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 extended on a day-for-day basis due to

[REDACTED]

[REDACTED]

5.

[REDACTED]

**EXHIBIT C**  
**COMPENSATION**

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

(a) Settlement Price. “**Settlement Price**” shall have the following meaning:

(i)

[REDACTED]

(ii)

[REDACTED]

(iii)

[REDACTED]

(b) Monthly Settlement Amount. For each calendar month of the Delivery Term, subject to Section (e) of this Exhibit C, Seller shall calculate the “**Monthly Settlement Amount**,” which shall be a single amount due from Buyer to Seller, or from Seller to Buyer, as appropriate. The Monthly Settlement Amount shall equal the sum of:

(i)

[REDACTED]

(ii)

[REDACTED]

(c)

[REDACTED]

(d) Reserved.



(e)

(f)

(g)

(h) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. 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 price for and Seller's obligation to deliver Product, shall be effective regardless of whether the sale of Product is eligible for, or receives Tax Credits during the Contract Term.

**EXHIBIT D****SCHEDULING COORDINATOR RESPONSIBILITIES**

(a) Seller as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point. Seller (as the Facility's SC) shall submit Bids 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, real time or other market basis that may develop after the Effective Date, as determined by Seller.

(b) CAISO Costs and Revenues. Seller (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy costs or 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 all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement. The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

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

(d) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

## **EXHIBIT E**

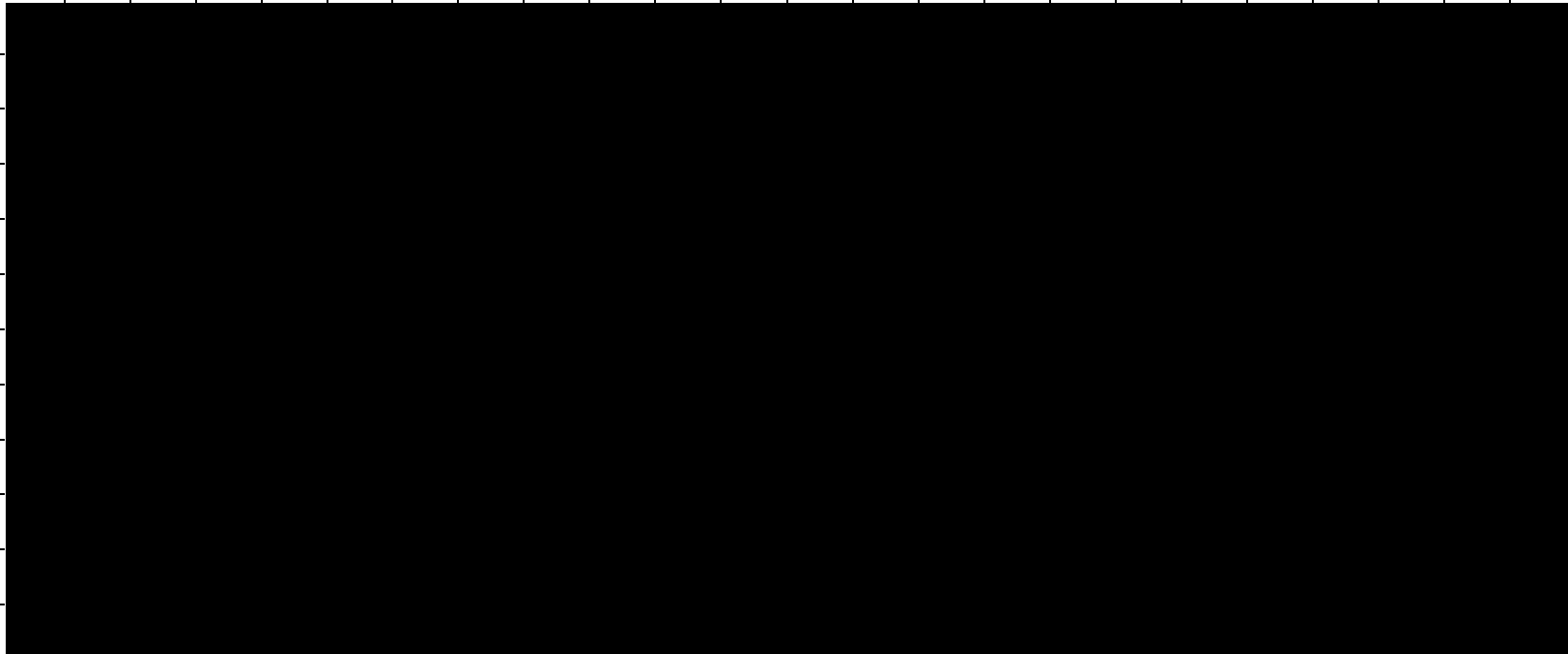
### **PROGRESS REPORTING FORM**

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, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter or month as applicable.
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. The utilization of union labor by Seller's principal EPC contractor.
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 (in MWh)

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

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

**EXHIBIT F-2****FORM OF MONTHLY AVAILABLE CAPACITY FORECAST**Available Generating Capacity (in MWh) – *[Insert Month]*

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert a																								
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**

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]



**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 ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] ("**Agreement**") by and between IP Easley II, LLC ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [Date], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity measured at the Delivery Point.
3. Seller has commissioned substantially all equipment comprising the Facility in accordance with its respective manufacturer's specifications.
4. The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
5. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.
6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider on [date].
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation on [date].
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on [date].
9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of the Facility.

EXECUTED by [*Licensed Professional Engineer*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.



[*LICENSED PROFESSIONAL ENGINEER*]

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

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

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

**EXHIBIT I**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [*Licensed Professional Engineer*] ("**Engineer**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] ("**Agreement**") by and between IP Easley II, LLC ("**Seller**") and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify that the performance test for the Facility demonstrated peak electrical output of \_\_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Capacity**").

EXECUTED by [*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 IP Easley II, LLC (“**Seller**”) to Ava Community Energy Authority, a California joint powers authority (“**Buyer**”) in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
2. the Construction Start Date occurred on [Date] (the “**Construction Start Date**”); and
3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: \_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

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

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

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

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

**EXHIBIT K**

**FORM OF LETTER OF CREDIT**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date: \_\_\_\_\_  
Bank Ref.: \_\_\_\_\_  
Amount: US\$ \_\_\_\_\_  
Expiration Date: \_\_\_\_\_

Beneficiary:

Ava Community Energy Authority, a California joint powers authority

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) in favor of Ava Community Energy Authority, a California joint powers authority (“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) as a PDF attachment to an email to [bank email address] or (c) facsimile to [bank fax number] confirmed by [email to [bank email address]]. Transmittal by facsimile or email shall be deemed delivered when received.

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

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer’s own immediately available funds by means of wire transfer in immediately

available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

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

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

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

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Ava Community Energy Authority, [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.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) 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 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 by wire transfer in immediately available funds to the following account: [*Specify account information*]

Ava Community Energy Authority

---

Name and Title of Authorized Representative

Date \_\_\_\_\_

**EXHIBIT L**

**[RESERVED]**




**EXHIBIT M**

**[RESERVED]**



**EXHIBIT N****NOTICES**

<b>IP Easley II, LLC</b>	<b>Ava Community Energy Authority</b>
<b>All Notices:</b> [REDACTED]	<b>All Notices:</b> 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Attn: Power Resources Phone: (510) 809-7458 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:legal@avaenergy.org">legal@avaenergy.org</a>
<b>Reference Numbers:</b> [REDACTED]	<b>Reference Numbers:</b> Duns: 08-110-3072 Federal Tax ID Number: 82-2262960
<b>Invoices:</b> [REDACTED]	<b>Invoices:</b> Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: <a href="mailto:ap@avaenergy.org">ap@avaenergy.org</a> ; <a href="mailto:powersettlements@avaenergy.org">powersettlements@avaenergy.org</a> ; <a href="mailto:settlements@ncpa.com">settlements@ncpa.com</a>
<b>Scheduling:</b> [REDACTED]	<b>Scheduling:</b> Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 Email: <a href="mailto:operations@avaenergy.org">operations@avaenergy.org</a>
<b>Confirmations:</b> [REDACTED]	<b>Confirmations:</b> Attn: Power Resources Phone: (510) 361-6247 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:powersettlements@avaenergy.org">powersettlements@avaenergy.org</a> ; <a href="mailto:confirmations@ncpa.com">confirmations@ncpa.com</a>
<b>Payments:</b> [REDACTED]	<b>Payments:</b> Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: <a href="mailto:ap@avaenergy.org">ap@avaenergy.org</a>
<b>Wire Transfer:</b> [REDACTED]	<b>Wire Transfer:</b> BNK: River City Bank 2485 Natomas Park Drive, Suite 100, Sacramento, CA 95833 ABA: 121133416 ACCT: xxxxxx7551

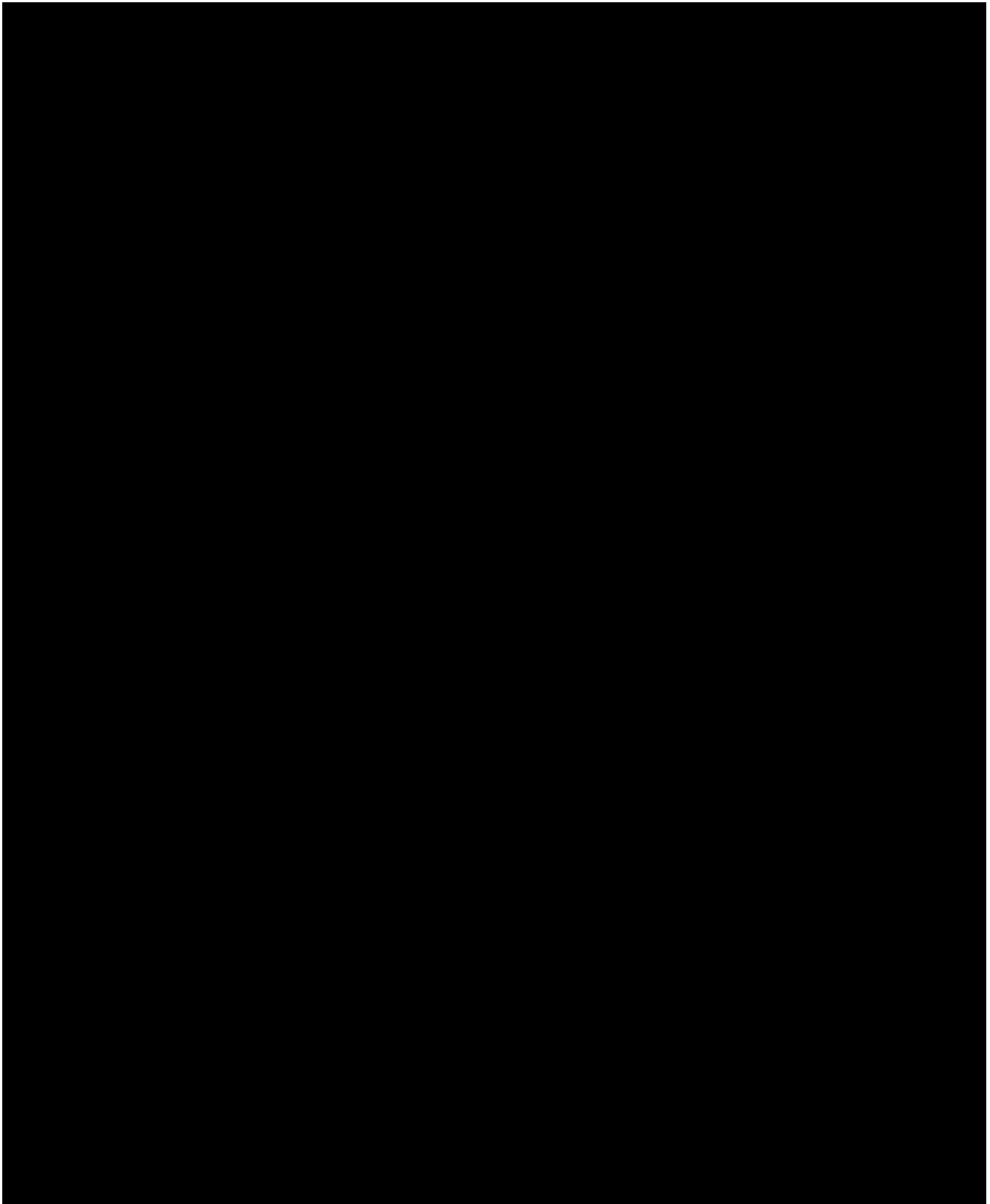
IP Easley II, LLC	Ava Community Energy Authority
<b>Credit and Collections:</b> 	<b>Credit and Collections:</b> Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:powersettlements@avaenergy.org">powersettlements@avaenergy.org</a>
<b>With additional Notices of an Event of Default to:</b>   <b>With an additional copy to:</b> 	<b>With additional Notices of an Event of Default to:</b> Attn: Power Resources 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Phone: (510) 809-7458 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:legal@avaenergy.org">legal@avaenergy.org</a>  <b>With an additional copy to:</b> Hall Energy Law PC Attn: Stephen Hall Phone: (503) 313-0755 Email: <a href="mailto:steve@hallenergylaw.com">steve@hallenergylaw.com</a>

## **EXHIBIT O**

### **OPERATING RESTRICTIONS**

- Nameplate capacity of the Facility: 75 MW
- Minimum capacity: [REDACTED]
- Ramp rate: [REDACTED]

**EXHIBIT P**



**EXHIBIT Q**  
**COMMUNITY INVESTMENT**



## EXHIBIT R

### WORKFORCE DEVELOPMENT

Seller shall use good faith efforts in connection with the following workforce objectives related to the construction of the Facility:

- (a) Utilization of apprentices at the same ratio of apprentice hours to journeyperson hours as required for public works projects. Generally this is one apprentice hour per every 5 hours of journeywork per craft.
- (b) Demonstrated commitment to Local Hires and a Targeted Hire Program, including utilization of a multi-craft core curriculum (MC3) pre-apprenticeship program, or equivalent industry and state-recognized pre-apprenticeship certification, for outreach, preparation, support and referral of Targeted Hires.
- (c) Demonstrated commitment to subcontracting with Small, Local, or Emerging Businesses.

**“Local Hire”** means a resident within 125 miles of the Facility. Such radius will target a distance that is within reasonable daily commuting distance; or a resident within the county where the project is being constructed;

**“Targeted Hire Program”** means a pipeline program which: (a) Partners with a Multi-Craft Core Curriculum (MC3) pre-apprenticeship program or programs, or equivalent industry and state-recognized certificated career training and placement program that recruits, supports, and places Equity Priority Workers in skilled construction trades; and (b) Creates opportunities for an Equity Priority Worker to enter registered apprenticeship programs and/or obtain work hours needed to successfully complete their apprenticeship; or (c) Recruits and places income-qualified journeypersons.

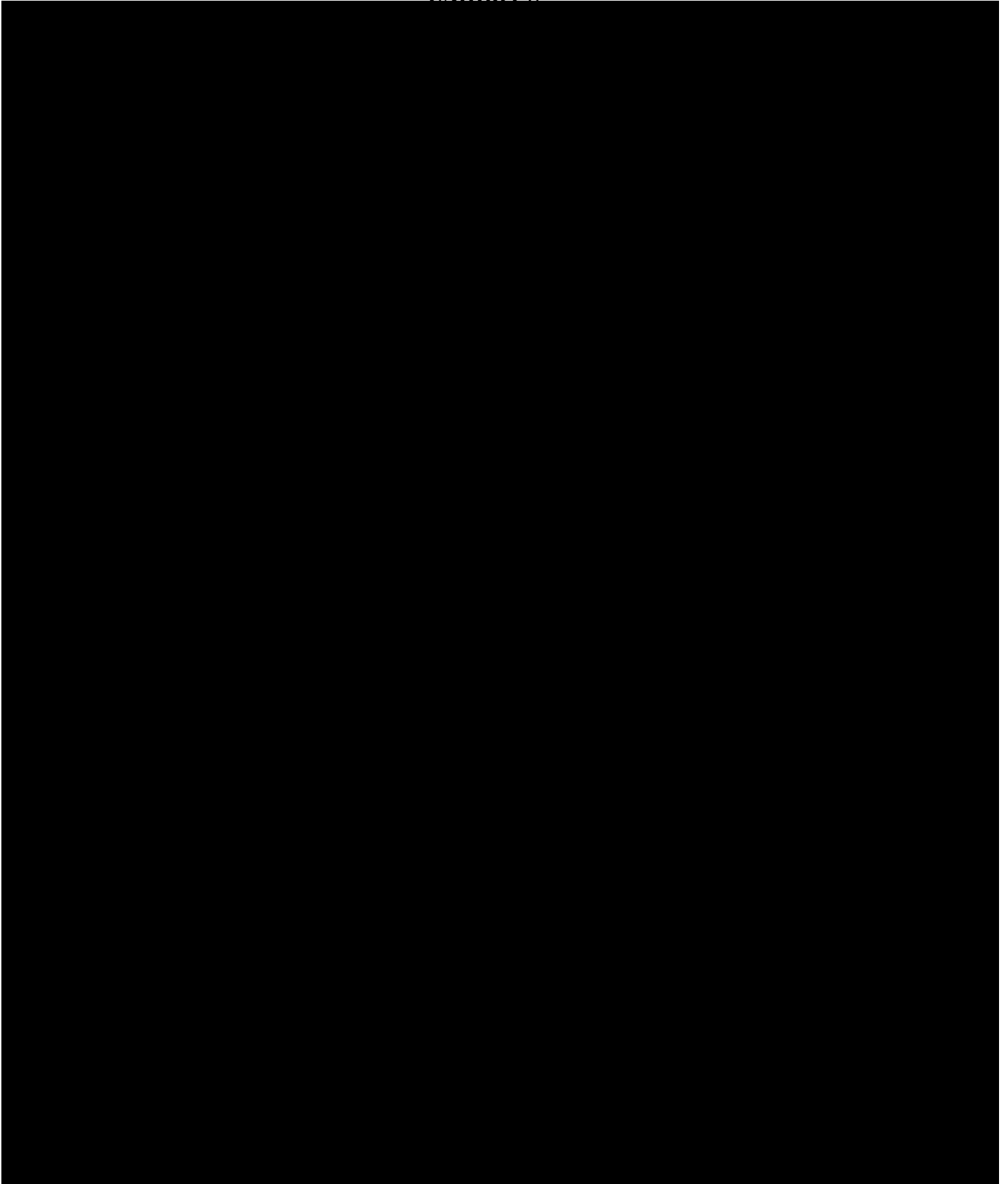
**“Equity Priority Worker”** means a jobseeker who, at the time of hiring or within the last twelve months, satisfies at least one of the following categories:

- a. Currently unhoused or at risk of homelessness
- b. Being a custodial single parent
- c. Currently receiving public assistance
- d. Lacking a GED or high school diploma
- e. Having been continuously unemployed or underemployed for the past 6 months
- f. Having been emancipated from the foster care system
- g. Being a veteran of the United States Military
- h. Being a member of a tribal community associated with indigenous people
- i. Having a previous incarcerated or justice involvement history
- j. At-Risk Youth: a person 18-24 years old who is disconnected from school and/or work
- k. Low income (household income is below the current HUD threshold for Low Income Households in their county of residence)

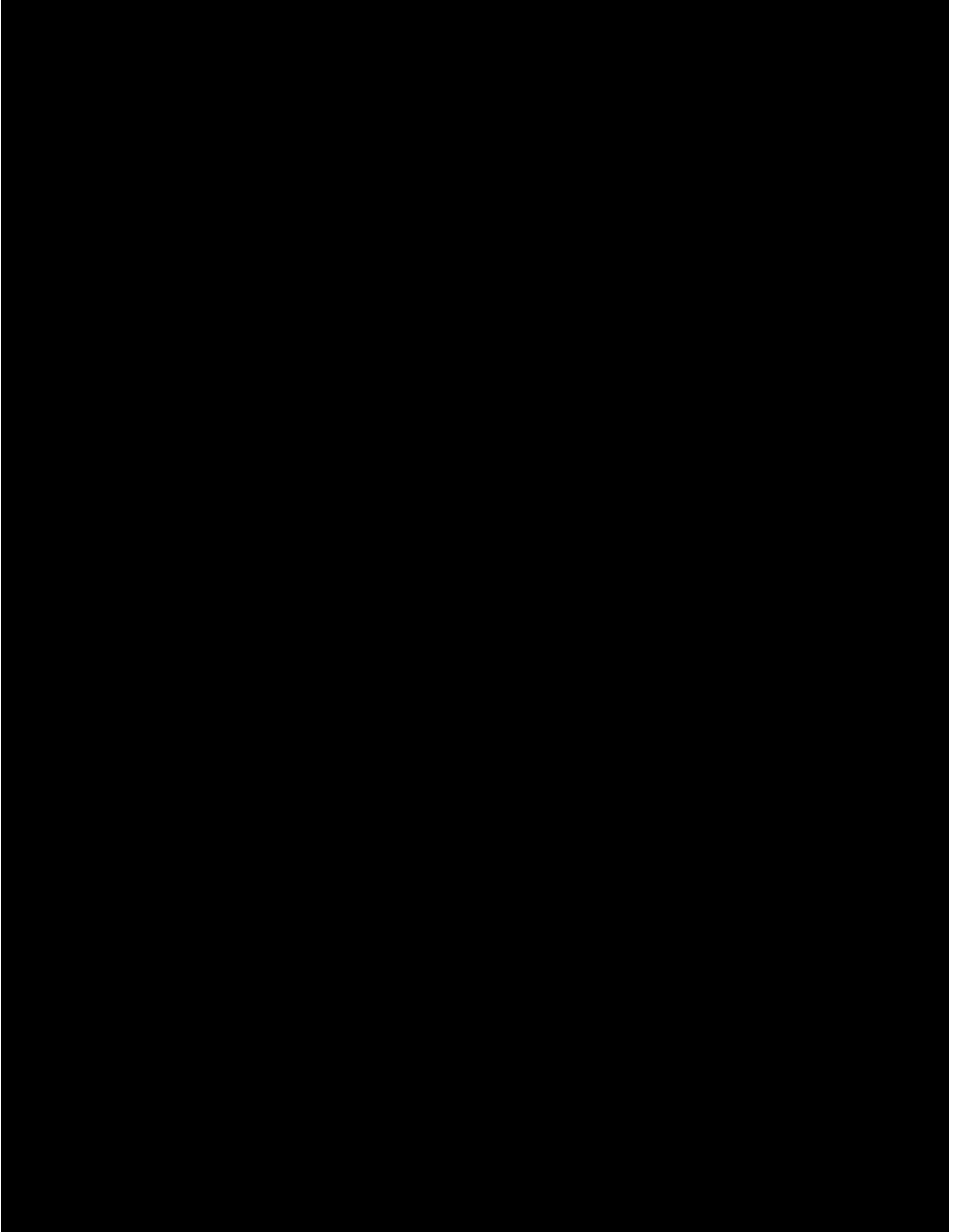
**“Small, Local, or Emerging Business”** means a business that is considered small, local, or emerging under the following requirements:

- a. Local Business - A business having a fixed office with a street address in Riverside County or Ava's service territory, and having a valid business license issued by a jurisdiction within Riverside County or Ava's service territory for at least 6 months.
- b. Small Business - A business which has been certified to meet the U.S. Small Business Administration (SBA) size standards for its classification.
- c. Emerging Business - A business which has been certified to meet less than one half the U.S. SBA size standards for its classification and has been in business less than 5 years.

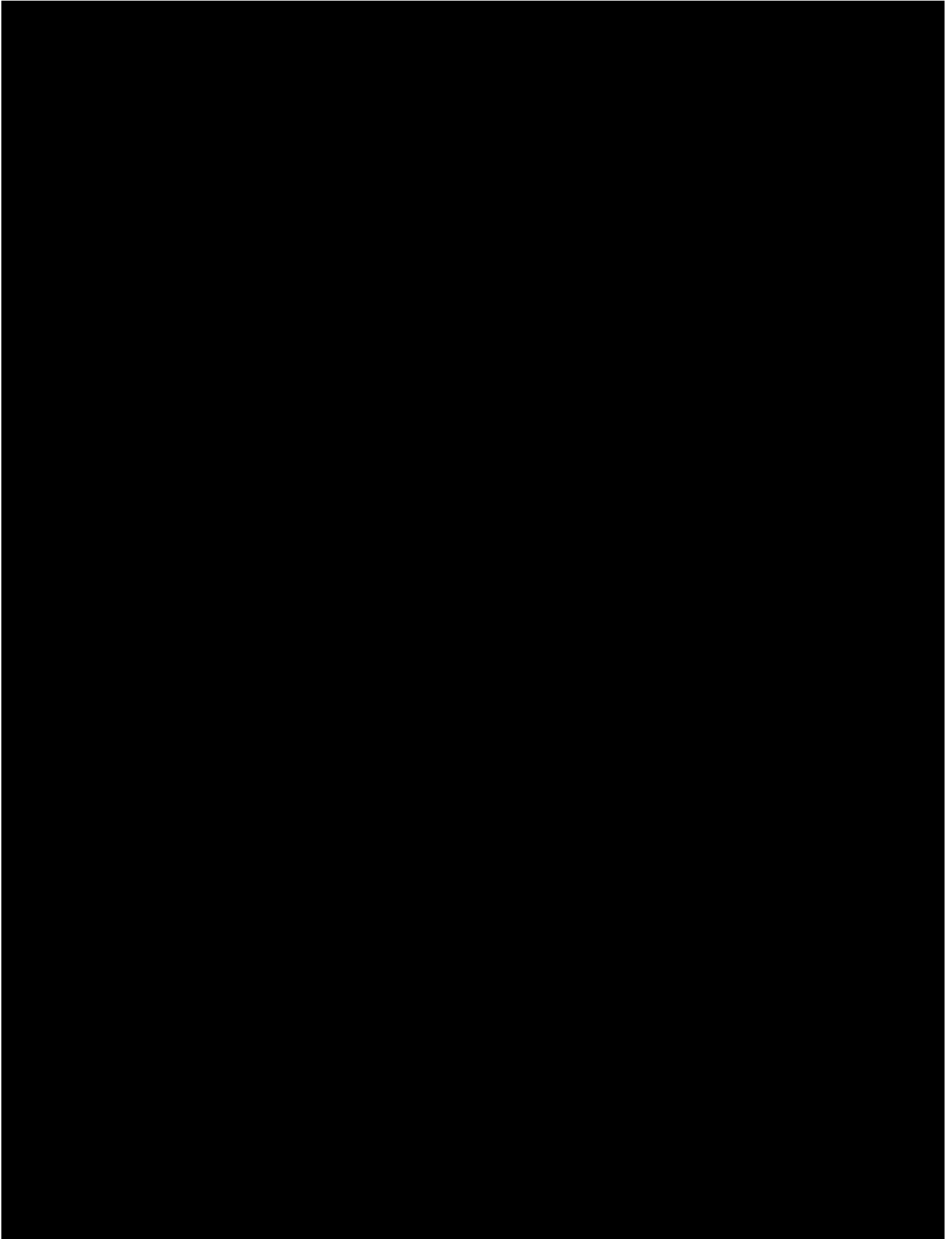
**EXHIBIT S**

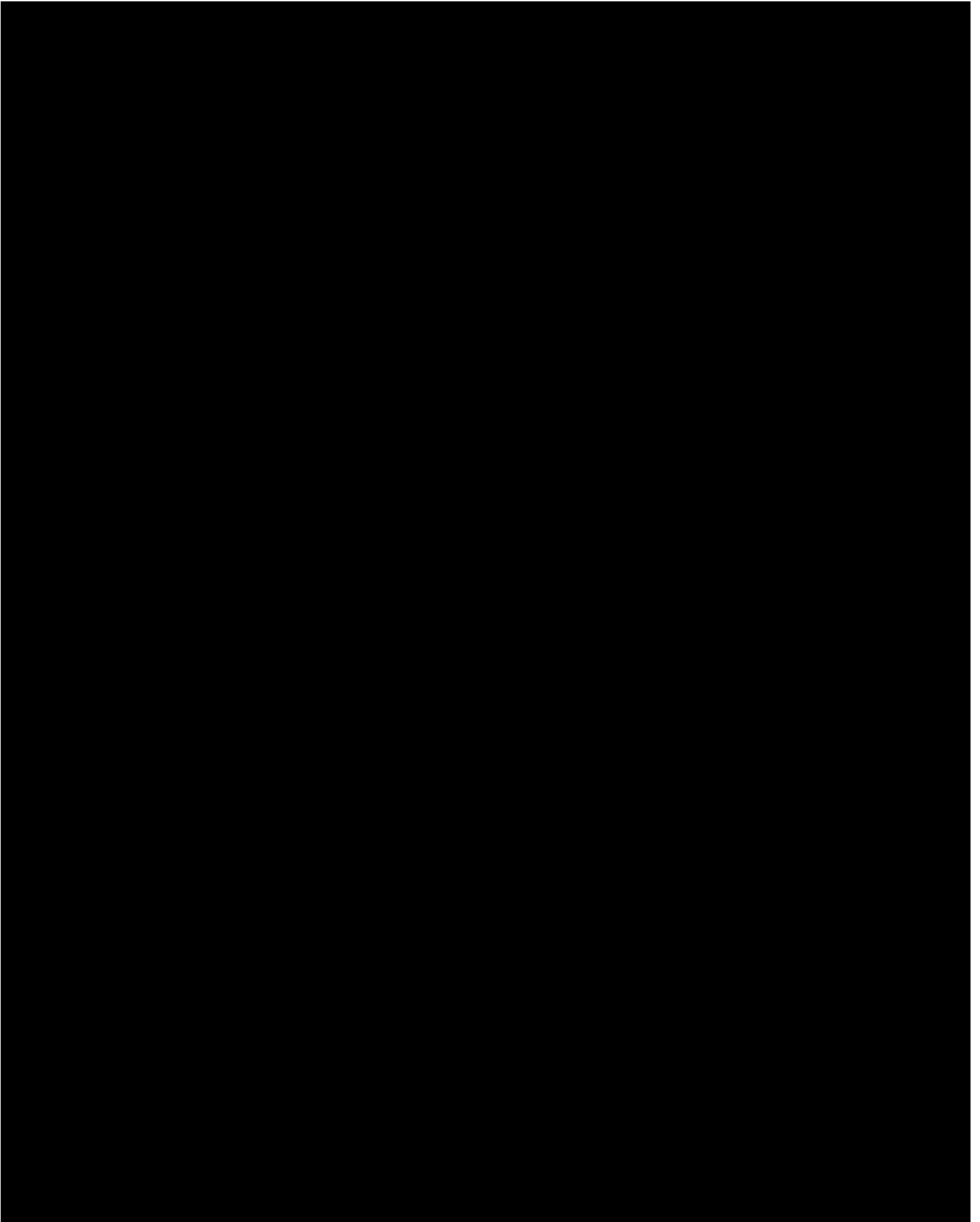


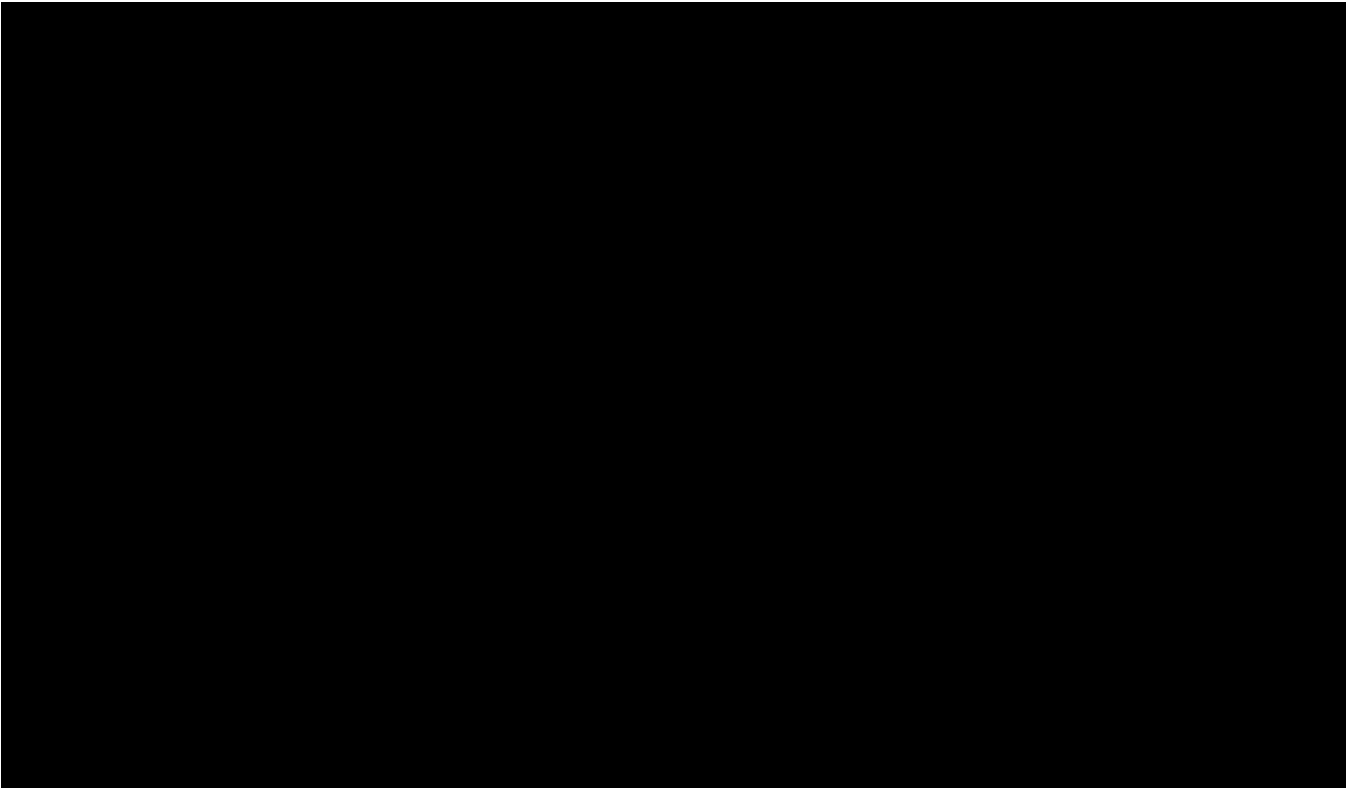














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**CAC Item C8  
Staff Report Item 17**

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

**FROM:** Eleanor Smith – Account Rates and Equity Manager  
Shannon Rivers - Virtual Power Plant Senior Manager

**SUBJECT:** Authorization of Chief Executive Officer to Negotiate and Execute Agreements for five solar projects for the Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT) programs (Action Item)

**DATE:** February 21, 2024

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**Recommendation**

Adopt five Resolutions authorizing the Chief Executive Officer to negotiate and execute Agreements for five projects awarded short listing through the 2022 Disadvantaged Communities Green Tariff and Community Solar Green Tariff Request for Offers (RFO): 2 solar projects located in Tracy and 3 solar projects located in Oakland, San Leandro, and Hayward. All five projects will be developed by Prologis. These projects will deliver renewable energy and Renewable Energy Credits (RECs):

- a. ESCA-PLD-TRACY9/Prologis Project (DAC-GT): 20-year, 3.0 mega-watts (MW) solar project in Tracy, expected to be operational in June 2026, contingent on California Public Utilities Commission ("CPUC") approval of the fully executed contract.
- b. ESCA-PLD-TRACY16/Prologis Project (DAC-GT): 20-year, 2.0 MW solar project in Tracy, expected to be operational in June 2026, contingent on CPUC approval of the fully executed contract.
- c. ESCA-PLD-OAKLAND2/Prologis Project (DAC-GT): 20-year, 0.72 MW solar project in Oakland, expected to be operational in December 2025, contingent on CPUC approval of the fully executed contract.
- d. ESCA-PLD-SANLEANDRO1/Prologis Project (CSGT): 20-year, 1.0 MW solar project in San Leandro, expected to be operational in April 2025, contingent on CPUC approval of the fully executed contract.
- e. ESCA-PLD-HAYWARD1/Prologis Project (CSGT): 20-year, 0.56 MW solar project in Hayward, expected to be operational in April 2025, contingent on CPUC approval of the fully executed contract.

## **Background**

In 2018, the California Public Utilities Commission (CPUC) adopted Decision 18-06-027 (D.18-06-027), creating two CPUC funded programs: the Disadvantaged Communities Green Tariff (DAC-GT) and Community Solar Green Tariff (CSGT). Both programs promote the development of renewable generation within a disadvantaged community (“DAC”)<sup>1</sup> and offer primarily CARE/FERA customers living in a DAC access to 100% renewable energy supply and a 20% discount on their electricity bills. The below table provides an overview of the two programs.

**Table 1: DAC-GT and CSGT Program Overview**

<b>Specifics</b>	<b>DAC-GT</b>	<b>CSGT</b>
Ava Branded Program Name	Ava Solar Discount Program	Ava Community Solar Program
Program Offering	100% Renewable Energy to eligible customers at a 20% discount	100% Renewable Energy to eligible customers at a 20% discount
Program Size	5.72 MW ~2,900 customers	1.56 MW ~800 customers
Ava Program Status	<ul style="list-style-type: none"><li>• Launched in September 2021 with an interim solar resource</li><li>• Eligible customers were auto enrolled</li><li>• Solicitation for new resource completed</li></ul>	<ul style="list-style-type: none"><li>• In development</li><li>• Solicitation for new resource completed</li><li>• Customer enrollment will occur upon project completion</li></ul>
Customer and Project Requirements	Residential customers who: <ul style="list-style-type: none"><li>• Are CARE/FERA enrolled</li><li>• Live in a DAC</li></ul>	<ul style="list-style-type: none"><li>• 50% or more of participants must be residential customers who are CARE/ FERA enrolled and must be subscribed before non-CARE/FERA customers are able to participate</li><li>• Customers located within 5 miles of site and live in a DAC</li><li>• Community Sponsor<sup>2</sup></li></ul>

<sup>1</sup> For the purposes of DAC-GT and CSGT, the CPUC categorizes a “disadvantaged community” as a community that appears among the top 25% of census tracts identified by CalEnviroScreen 3.0 or CalEnviroScreen 4.0. CalEnviroScreen is an analytical tool created by the California Environmental Agency (CalEPA) that measures a combination of economic, health, and environmental factors by census tract.

<sup>2</sup> CPUC Decision 18-06-027 states that “community involvement must be demonstrated by a non-profit community-based organization or local government ‘sponsoring’ a project on behalf of residents. Developers [are] required to obtain a letter of commitment from sponsors in order to bid for projects.”

## **RFO and Proposed Contracts**

Ava issued a request for offers (RFO) in December 2022 to procure up to 5.726 MW of solar and storage for DAC-GT and up to 1.5625 MW of solar and storage for CSGT. Ava's capacity allocation is pursuant to CPUC Resolution E-5124. Bidders of the RFO were required to meet certain minimum requirements relating to project location, resource type, project size, commercial operation date, and community sponsorship (CSGT only). Additionally, bidders were evaluated based on each project's economics, workforce development plan, and development status and experience. Ava staff evaluated the above criteria and reviewed combinations of projects that optimized programs goals including volume, pricing, and geographic targets.

Ava staff selected a portfolio of five solar projects with developer Prologis. The portfolio includes two solar projects in Tracy and one solar project in Oakland for DAC-GT and two solar projects in Hayward and San Leandro for CSGT. The community sponsors for the selected CSGT projects are the City of Hayward and City of San Leandro. Both community sponsors provided letters of commitment attesting to their community's interest in these projects.

The procurement of these projects, shown below in Table 2, allows Ava to fill its allotted capacity for both programs and service the maximum number of customers with the program bill discount. The selection offers wide geographic coverage within Ava's service territory.

**Table 2: Project Portfolio**

<b>Developer</b>	<b>Contracting Entity</b>	<b>Program</b>	<b>Project</b>	<b>Location</b>	<b>Nameplate Solar</b>	<b>COD</b>	<b>Contract Term</b>
Prologis	ESCA-PLD-TRACY9, LLC	DAC-GT	Tracy 12	Tracy	3 MW	6/1/2026	20 years
Prologis	ESCA-PLD-TRACY16, LLC	DAC-GT	Tracy 2 West	Tracy	2 MW	6/1/2026	20 years
Prologis	ESCA-PLD-OAKLAND2, LLC	DAC-GT	Oakland 1	Oakland	0.72 MW	12/31/2025	20 years
Prologis	ESCA-PLD-SANLEANDRO1, LLC	CSGT	San Leandro 10	San Leandro	1 MW	4/1/2026	20 years
Prologis	ESCA-PLD-HAYWARD1, LLC	CSGT	Hayward Commerce	Hayward	0.56 MW	4/1/2026	20 years

Ava also considered pursuing solar and storage as outlined in the RFO, but was unable to come to commercially acceptable terms with Prologis for the paired storage resources.



### **CPUC Requirements and Cost Recovery**

Per CPUC Resolution E-5124, Ava must submit a Tier 2 Advice Letter with executed DAC-GT and CSGT Power Purchase Agreements for approval by the CPUC. Full execution of the projects is contingent on this CPUC approval.

DAC-GT and CSGT program costs, including above market generation costs, are eligible for reimbursement from the CPUC. To receive cost recovery from the CPUC, Ava follows the annual budget process set forth in CPUC Resolution E-4999. Each February, Ava submits a Tier 1 Advice Letter with the annual program budget numbers including detailed workpapers on how costs are calculated. The CPUC previously approved Ava's requested cost recovery for DAC-GT and CSGT actual costs for program years 2021 through 2022. Ava is in the process of seeking cost recovery for program year 2023.

### **Attachments**

- A. Resolution Authorizing the CEO to Negotiate and Execute a Twenty-Year Solar Energy Agreement in Tracy with ESCA-PLD-TRACY9, LLC for Tracy 12
- B. Resolution Authorizing the CEO to Negotiate and Execute a Twenty-Year Solar Energy Agreement in Tracy with ESCA-PLD-TRACY16, LLC for Tracy 2 West
- C. Resolution Authorizing the CEO to Negotiate and Execute a Twenty-Year Solar Energy Agreement in Oakland with ESCA-PLD-OAKLAND2, LLC for Oakland 1
- D. Resolution Authorizing the CEO to Negotiate and Execute a Twenty-Year Solar Energy Agreement in San Leandro with ESCA-PLD-SANLEANDRO1, LLC for San Leandro 10
- E. Resolution Authorizing the CEO to Negotiate and Execute a Twenty-Year Solar Energy Agreement in Hayward with ESCA-PLD-HAYWARD1, LLC for Hayward Commerce
- F. Redacted draft contract with Prologis\*
- G. PowerPoint Presentation

\*Only one redacted draft contract is attached, because all contracts have identical language except for project location, size (MW), and price.

**RESOLUTION NO. R-2024-xx**  
**A RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF**  
**EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE AGREEMENT WITH**  
**CONTRACTING ENTITY ESCA-PLD-TRACY9, LLC**

**WHEREAS** on October 24, 2023, the East Bay Community Energy Authority legally adopted the name Ava Community Energy Authority (“Ava”);

**WHEREAS** 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;

**WHEREAS** Ava issued the 2022 Disadvantaged Communities Green Tariff and Community Solar Green Tariff RFO in December 2022;

**WHEREAS** ESCA-PLD-TRACY9, LLC proposed a 3.0 mega-watts (MW) solar project in Tracy to be developed by Prologis; and

**WHEREAS** the project is expected to be operational by June 2026 and will provide renewable solar energy and associated environmental attributes for a term of twenty years.

**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 solar energy agreement with ESCA-PLD-TRACY9, LLC for a 3.0 MW solar project in Tracy, expected to be operational in June 2026, contingent on California Public Utilities Commission approval of the fully executed contract.

ADOPTED AND APPROVED this 21<sup>st</sup> day of February, 2024.

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Elisa Márquez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board

**RESOLUTION NO. R-2024-xx**  
**A RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF**  
**EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE AGREEMENT WITH**  
**CONTRACTING ENTITY ESCA-PLD-TRACY16, LLC**

**WHEREAS** on October 24, 2023, the East Bay Community Energy Authority legally adopted the name Ava Community Energy Authority (“Ava”);

**WHEREAS** 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;

**WHEREAS** Ava issued the 2022 Disadvantaged Communities Green Tariff and Community Solar Green Tariff RFO in December 2022;

**WHEREAS** ESCA-PLD-TRACY16, LLC proposed a 2.0 mega-watts (MW) solar project in Tracy to be developed by Prologis; and

**WHEREAS** the project is expected to be operational by June 2026 and will provide renewable solar energy and associated environmental attributes for a term of twenty years.

**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 solar energy agreement with ESCA-PLD-TRACY16, LLC for a 2.0 MW solar project in Tracy, expected to be operational in June 2026, contingent on California Public Utilities Commission approval of the fully executed contract.

ADOPTED AND APPROVED this 21<sup>st</sup> day of February, 2024.

---

Elisa Márquez, Chair

ATTEST:

---

Adrian Bankhead, Clerk of the Board

**RESOLUTION NO. R-2024-xx**  
**A RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF**  
**EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE AGREEMENT WITH**  
**CONTRACTING ENTITY ESCA-PLD-OAKLAND2, LLC**

**WHEREAS** on October 24, 2023, the East Bay Community Energy Authority legally adopted the name Ava Community Energy Authority (“Ava”);

**WHEREAS** 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;

**WHEREAS** Ava issued the 2022 Disadvantaged Communities Green Tariff and Community Solar Green Tariff RFO in December 2022;

**WHEREAS** ESCA-PLD-OAKLAND2, LLC proposed a 0.72 mega-watts (MW) solar project in Oakland to be developed by Prologis; and

**WHEREAS** the project is expected to be operational by December 2025 and will provide renewable solar energy and associated environmental attributes for a term of twenty years.

**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 solar energy agreement with ESCA-PLD-OAKLAND2, LLC for a 0.72 MW solar project in Oakland, expected to be operational in December 2025, contingent on California Public Utilities Commission approval of the fully executed contract.

ADOPTED AND APPROVED this 21<sup>st</sup> day of February, 2024.

---

Elisa Márquez, Chair

ATTEST:

---

Adrian Bankhead, Clerk of the Board

**RESOLUTION NO. R-2024-xx**  
**A RESOLUTION OF THE BOARD OF DIRECTORS**  
**OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF**  
**EXECUTIVE OFFICER TO NEGOTIATE AND EXECUTE AGREEMENT WITH**  
**CONTRACTING ENTITY ESCA-PLD-SANLEANDRO1, LLC**

**WHEREAS** on October 24, 2023, the East Bay Community Energy Authority legally adopted the name Ava Community Energy Authority (“Ava”);

**WHEREAS** 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;

**WHEREAS** Ava issued the 2022 Disadvantaged Communities Green Tariff and Community Solar Green Tariff RFO in December 2022;

**WHEREAS** ESCA-PLD-SANLEANDRO1, LLC proposed a 1.0 mega-watts (MW) solar project in San Leandro to be developed by Prologis; and

**WHEREAS** the project is expected to be operational by April 2026 and will provide renewable solar energy and associated environmental attributes for a term of twenty years.

**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 solar energy agreement with ESCA-PLD-SANLEANDRO1, LLC for a 1.0 MW solar project in San Leandro, expected to be operational in April 2026, contingent on California Public Utilities Commission approval of the fully executed contract.



ADOPTED AND APPROVED this 21<sup>st</sup> day of February, 2024.

---

Elisa Márquez, Chair

ATTEST:

---

Adrian Bankhead, Clerk of the Board

**RESOLUTION NO. R-2024-xx**

**A RESOLUTION OF THE BOARD OF DIRECTORS**

**OF AVA COMMUNITY ENERGY AUTHORITY AUTHORIZING THE CHIEF EXECUTIVE  
OFFICER TO NEGOTIATE AND EXECUTE AGREEMENT WITH CONTRACTING ENTITY  
ESCA-PLD-HAYWARD1, LLC**

**WHEREAS** on October 24, 2023, the East Bay Community Energy Authority legally adopted the name Ava Community Energy Authority (“Ava”);

**WHEREAS** 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;

**WHEREAS** Ava issued the 2022 Disadvantaged Communities Green Tariff and Community Solar Green Tariff RFO in December 2022;

**WHEREAS** ESCA-PLD-HAYWARD1, LLC proposed a 0.56 mega-watts (MW) solar project in Hayward to be developed by Prologis; and

**WHEREAS** the project is expected to be operational by April 2026 and will provide renewable solar energy and associated environmental attributes for a term of twenty years.

**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 solar energy agreement with ESCA-PLD-HAYWARD1, LLC for a 0.56 MW solar project in Hayward, expected to be operational in April 2026, contingent on California Public Utilities Commission approval of the fully executed contract.

ADOPTED AND APPROVED this 21<sup>st</sup> day of February, 2024.

---

Elisa Márquez, Chair

ATTEST:

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Adrian Bankhead, Clerk of the Board

# DISADVANTAGED COMMUNITIES GREEN TARIFF (DAC-GT) RENEWABLE POWER PURCHASE AGREEMENT

## COVER SHEET

**Seller:** ESCA-PLD-OAKLAND2, LLC, a Delaware limited liability company (“**Seller**”)

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

**Description of Facility:** A 0.72 MW solar photovoltaic project (the “**Facility**”) located in a DAC (as defined herein) within PG&E’s distribution service territory, as further described in Exhibit A.

**Milestones:**

Milestone	Date for Completion
Evidence of Site Control	[REDACTED]
CEC Pre-Certification Obtained	[REDACTED]
Documentation of Conditional Use Permit if required: [ ] CEQA, [X] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR	[REDACTED]
Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities	[REDACTED]
[REDACTED]	[REDACTED]
Procure Major Equipment	[REDACTED]
Financial Close	[REDACTED]
Expected Construction Start Date	[REDACTED]
Initial Synchronization	8/30/2025
Network Upgrades completed	[REDACTED]
Expected Commercial Operation Date	12/31/2025

**Delivery Term:** Twenty (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:** 0.72 MW**Contract Price:** The Contract Price of the Product shall be:

Contract Year	Contract Price
1 - 20	

**Metering Arrangement:** CAISO Metered Entity

**Delivery Point:** [REDACTED]

**Product:**

- ☒ Facility Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☐ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☐ Full Capacity Deliverability Status
- ☐ Ancillary Services

**Scheduling Coordinator:** Ava Community Energy

**Development Security and Performance Security**

Facility Type	Development Security or Pre-Delivery Term Security	Delivery Term Performance Security
DAC-GT Facilities with Contract Capacity less than or equal to three (3) MW	[REDACTED]	[REDACTED]

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## RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement (“**Agreement**”) is entered into as of February 22, 2024 (the “**Execution 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 Section 1.1.

### RECITALS

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

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

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

### ARTICLE 1 DEFINITIONS

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

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.10(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.

“**Alternative Site**” has the meaning set forth in Section 2(b) of Exhibit B.

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

**“Approval Condition Precedent”** has the meaning set forth in Section 2.3.

**“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(c)(ii).

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

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

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

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

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

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

(a) the CAISO provides notice to a Party or 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; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC Schedules or Bids the Facility or Facility Energy, 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 Facility Energy that was not generated due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

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

**“Buyer Curtailment Period”** means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (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 4.8(a).

**“CAISO”** means the California Independent System Operator Corporation.

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

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

**“CAISO Tariff”** means the California Independent System Operator Corporation Agreement and Tariff (the “Tariff”), Business Practice Manuals (“BPMs”), CAISO Operating Agreement, and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC; provided that if there is a conflict between the BPMs, the CAISO Operating Agreement or the Operating Procedures, on the one hand, and the Tariff, on the other hand, the Tariff will control.

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

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

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

delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

**“CEQA”** means the California Environmental Quality Act.

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

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

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

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

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

**“COD Delay Damages”** means liquidated damages in an amount equal to (a) the total Development Security amount required hereunder, divided by (b) [REDACTED]

**“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 3.10(b).

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.10(b).

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

**“Construction Delay Damages”** means liquidated damages in an amount equal to (a) the total Development Security amount required hereunder, divided by (b) [REDACTED]

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

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

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

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

**“Contract Year”** means a period of twelve (12) consecutive months beginning on January 1st and continuing through December 31st of each calendar year, except that the first Contract Year shall commence on the Commercial Operation Date and the last Contract Year shall end at midnight at the end of the day prior to the anniversary of the Commercial Operation.

**“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.

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

**“CPUC Approval”** means a final and non-appealable order of the CPUC, on terms and conditions satisfactory to Buyer in its sole discretion, which (a) approves of this Agreement in its entirety, including payments to be made by Buyer, subject to CPUC review of Buyer’s administration of this Agreement; and (b) provides full cost recovery to Buyer for its payments made under this Agreement. CPUC Approval will be deemed to have occurred on the date that a CPUC decision containing such findings becomes final and non-appealable.

**“CPUC Approval Date”** means the date upon which the Approval Condition Precedent has been obtained or waived in writing by both Parties.

**“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.

**“CS-GT”** means the Community Solar – Green Tariff (CS-GT) program approved by the CPUC.

**“Curtailment Cap”** is the yearly quantity per Contract Year, in MWh, equal to [REDACTED] by the Guaranteed Capacity.

**“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.

**"DAC"** means a disadvantaged community, as identified by the California Environmental Protection Agency's CalEnviroScreen 3.0 (or the latest version) tool in effective as of the Execution Date.

**"DAC-GT"** means the Disadvantaged Communities – Green Tariff (DAC-GT) program approved by the CPUC.

**"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 Facility Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility during a Buyer Curtailment Period, which amount shall be calculated using the 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 Facility Energy delivered to 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).

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



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

**“Delivery Point”** has the meaning [REDACTED]

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

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

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

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

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

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

**“Eligible Intermittent Resource Protocol”** or **“EIRP”** means CAISO’s intermittent resource program established pursuant to the CAISO Tariff, as it may be amended from time to time.

**“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 AC electrical energy measured in MWh.

**“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.

[REDACTED]

**“Execution Date”** has the meaning set forth in the Preamble.

**“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 Facility Energy that Seller expects to be able to deliver to Buyer from the Facility during each Contract Year.

**“Facility”** means the renewable energy 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 Facility Energy to the Delivery Point.

**“Facility Energy”** means all Energy that is delivered from the Facility as measured at the Facility Metering Point by the Facility Meter, as such meter readings are adjusted by CAISO for any applicable Electrical Losses or [REDACTED]

**“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 Facility Energy delivered to the Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Facility Meter, and, unless otherwise indicated, references to the Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

**“Fast Track Process”** has the meaning set forth in Electric Rule 21, as approved by the CPUC.

**“FERC”** means the Federal Energy Regulatory Commission.

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

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

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

**“Force Majeure Delay”** has the meaning set forth in Exhibit B.

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

**“Forecasting Penalty”** [REDACTED]

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

**“Future Environmental Attributes”** shall mean any and all generation attributes other than Green Attributes or Renewable Energy Incentives under the RPS regulations or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes does not include 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 during the remaining Contract Term of this Agreement and the present value of the payments that would be required to be made under any transaction(s) replacing this Agreement 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 under any transaction(s) replacing this Agreement and the present value of the payments required to be made 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.

**“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) 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.

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

**"Guaranteed Capacity"** means the amount of generating capacity of the Facility, as measured in MW at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 6 of Exhibit B.

**"Guaranteed Commercial Operation Date"** has the meaning set forth in Section 3(a) of Exhibit B.

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

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

**"Guaranteed Energy Production Damages"** has the meaning set forth in Exhibit G.

**"IA Execution Date"** means the date upon which the Interconnection Agreement is executed between Seller and the PTO.

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

**"Indemnifiable Loss(es)"** has the meaning set forth in Section 16.1.

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

**“Installed Capacity”** means the actual generating capacity of the Facility as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation (up to but not in excess of the Guaranteed Capacity), adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Interconnection Agreement”** means the interconnection agreement or agreements entered into by Seller or its Affiliate pursuant to which the Facility will be interconnected with the Transmission System, providing for interconnection capacity available or allocable to the Facility that is no less than the Guaranteed Capacity, and pursuant to which Seller’s Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.

**“Interconnection Delay”** has the meaning set forth in Section 5 of Exhibit B.

**“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.

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

**“Investment Grade Credit Rating”** means a Credit Rating of [REDACTED] or higher by S&P or [REDACTED] or higher by Moody’s.

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

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

**“Joint Powers Agreement”** means that certain Joint Powers Agreement dated December 1, 2016, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

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

acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

**“Letter(s) of Credit”** means [REDACTED]

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

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

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

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

**“Low-Income Solar Policy Guide”** means the Low-Income Solar Policy Guide prepared by GRID Alternatives, as it may be amended from time to time.

**“Major Subcontractors”** means any first-tier subcontractor of Seller with which Seller has an agreement having an aggregate value in excess of [REDACTED] for performance of any part of the work at the Site.

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

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

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

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

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

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

**“Negative LMP”** means, in any Settlement Period or Settlement Interval, the Real-Time Market LMP at the Facility’s PNode is less than [REDACTED]

**“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.

**“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 e-mail.

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

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

**“Operating Procedures”** has the meaning in the CAISO Tariff.

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

**“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 or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

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

(a) [REDACTED]

(b) [REDACTED]

**“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 4.5(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.

**“Project Labor Agreement”** means a pre-hire collective bargaining agreement with one or more labor organizations that establishes the terms and conditions of employment for a specific construction project.

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities in the Western United States, or (b) any of the practices, methods and acts which, in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.



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

“**Real-Time Forecast**” means any Notice of any change to the Available Generating Capacity or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(ii).

“**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 the Section 18.2.

“**Remedial Action Plan**” has the meaning in Section 2.7.

“**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.



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

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

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

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

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

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

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

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

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

**“Settlement Amount”** means



**“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 the 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.

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



**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (a) prevent or limit harm to or loss of life or property, (b) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (c) to preserve Transmission System reliability.

**“Tax”** or **“Taxes”** means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a

Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

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

**“Terminated Transaction”** has the meaning set forth in Section 11.2(a).

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

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

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

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

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

**“Ultimate Parent”** [REDACTED]

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

**“VER Forecast”** means, for a given period, the forecast of Energy to be produced by the Facility in accordance with the requirements of the CAISO Tariff applicable to Variable Energy Resources.

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

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

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

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

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

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

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

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

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that 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 “without limitation” and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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

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

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

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

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

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

## ARTICLE 2 TERM; CONDITIONS PRECEDENT

### 2.1 Contract Term.

(a) The term of this Agreement shall commence on the Execution Date and shall continue until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension 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 2.5.

### 2.2 Binding Nature.

(a) Upon Execution Date. This Agreement will be in full force and effect, enforceable and binding in all respects, as of the Execution Date. Unless otherwise specified, all obligations of the Parties are binding through the Delivery Term.

### 2.3



2.4 **Survival.** Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under ARTICLE 18 and all indemnity and audit rights shall remain in full force and effect for five (5) years following the termination of this Agreement.

2.5 **Conditions Precedent.** The Delivery Term shall not commence until Seller completes each of the following conditions:

(a) The Approval Condition Precedent has been satisfied in accordance with Section 2.3;

(b) 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;

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

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

(e) All applicable regulatory authorizations, approvals and permits for operation of the Facility have been obtained [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;

(f) Seller has received CEC Precertification of the Facility [REDACTED]

(g) 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;

(h) Seller has delivered the [REDACTED] to Buyer in accordance with Section 8.8;

(i) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages; and

(j) The Facility meets the eligibility criteria for a DAC Green Tariff (“DAC-GT”) project pursuant to CPUC D.18-06-027, D.18-10-007, and Resolution E-4999 in effect as of the Execution Date.

**2.6 Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Execution Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller’s construction progress. Details regarding the form and content of the Progress Report are set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality

restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.7 **Remedial Action Plan.** If Seller misses [REDACTED] Milestones, or misses any [REDACTED] by more than [REDACTED], except as the result of Force Majeure Event or Event of Default, Seller shall submit to Buyer, within [REDACTED] of such missed Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. [REDACTED]

### ARTICLE 3 PURCHASE AND SALE

#### 3.1 **Purchase and Sale of Product.**

(a) Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase 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, 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 from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, a Curtailment Order, or, if applicable, the curtailment of any transmission required to deliver the Product to the Delivery Point.

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 Facility Energy generated by the Facility.

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 Execution 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 Execution Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.10, in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration.

(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.** If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis. As compensation for such Test Energy and any associated Products, Buyer shall pay Seller an amount equal to [REDACTED] received by Buyer for the Facility Energy and any associated Products (the "**Test Energy Rate**"). For the avoidance of doubt, the conditions precedent in Section 2.5 are not applicable to the Parties' obligations under this Section 3.6.

3.7 **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.

3.8 **Eligibility.** Subject to Section 3.10 and the timing requirements of Section 3.7, Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is pre-certified or certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.8 means efforts consistent with and subject to Section 3.10.

3.9 **California Renewables Portfolio Standard.**

(a) **Eligibility.** Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.9 means efforts consistent with and subject to Section 3.10. [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].

3.10 **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 to cooperate with respect to any future changes to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law to maximize benefits to Buyer, including: (i) modification of the description of Green Attributes, 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 Execution Date has increased Seller's known or reasonably expected costs to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) any Product pursuant to [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 shall be capped at [REDACTED] of Guaranteed Capacity in aggregate over the Contract Term (the "**Compliance Expenditure Cap**").

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

(d) Buyer will have sixty (60) Days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs (including lost production, if any), the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions. If Buyer does not respond to a Notice given by Seller under this Section 3.10 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions for the Compliance Action(s) described in the Notice.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall pay Seller in advance to effect the Compliance Actions. Under no circumstances shall Seller be obligated to expend more than the Accepted Compliance Costs. When the Compliance Actions are completed, if the Seller's actual costs are less than the Accepted Compliance Costs, Seller shall refund the excess to Buyer.

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

(c) EIRP; VER Forecast. From the commencement of the Delivery Term until the Facility obtains EIRP certification, Seller shall provide a VER Forecast in accordance with the requirements set forth in the CAISO Tariff. In the event that EIRP and/or any protocols relating thereto are terminated or are otherwise not applicable to the Facility, Seller shall thereafter be responsible for providing Buyer with Day-Ahead Forecasts and Real-Time Forecasts in accordance with the following:

(i) *Day-Ahead Forecast.* If forecasts are required in accordance with Section 4.3(c), 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 (A) Available Generating Capacity and (B) 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 (X) the Available Generating Capacity and (Y) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(c)(ii) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(ii) *Real-Time Forecasts.* If Real-Time Forecasts are required in accordance with the foregoing, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect

to any Forced Facility Outage, Seller shall use 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 reasonably 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(c)(ii), then Seller shall send such communications by telephone and email to Buyer.

(d) 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.

(e)



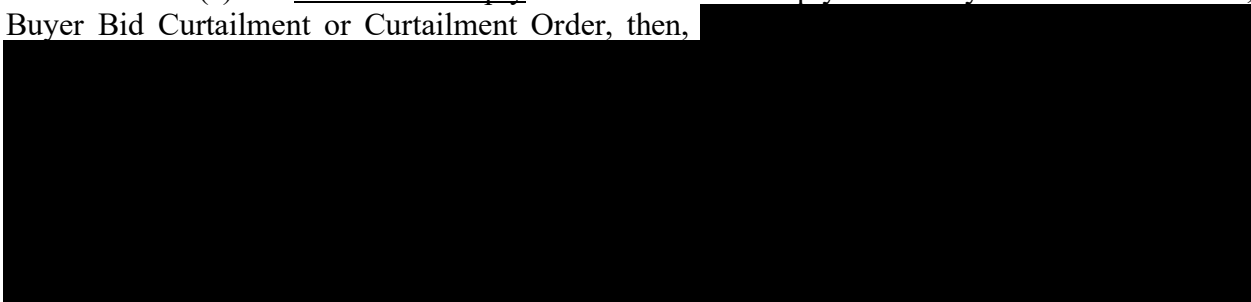
(f) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.10, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource 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.

(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 Contract Price in accordance with Exhibit C.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then,



[REDACTED]

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

(a) [REDACTED]

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

(c) System Emergencies; Curtailment. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

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

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

4.6 **Guaranteed Energy Production.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer all (1) Deemed Delivered Energy and (2) Lost Output from the Performance Measurement Period. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer the Guaranteed Energy Production Damages calculated in accordance with Exhibit G.

4.7 [REDACTED]

4.8 **WREGIS.** Seller shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.9(c), provided that Seller fulfills its obligations under Sections 4.8(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 "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

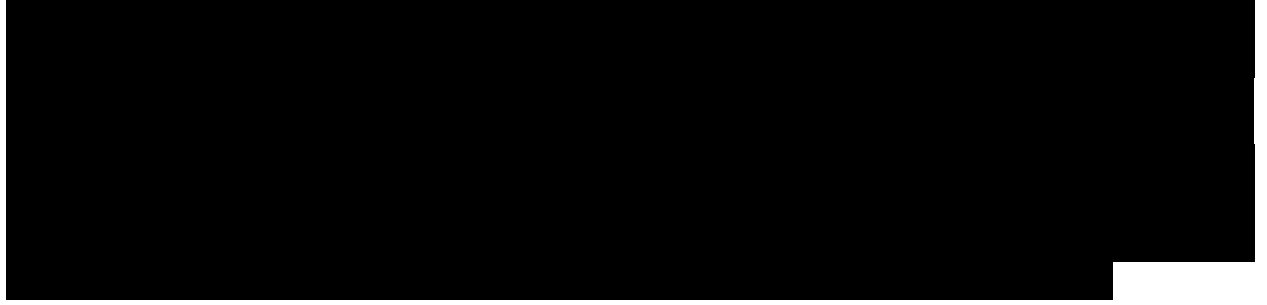
(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Facility Energy generated, any fractional MWh amounts (i.e.,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

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month.

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

Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller.



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

4.9 **Interconnection Capacity.** Seller shall have and maintain interconnection capacity 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 CAISO Grid 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.

4.10 **Green-E Certification.** Upon request of Buyer, Seller shall submit a Green-e® Energy Tracking Attestation Form (“**Attestation**”) for Product delivered under this Agreement to the Center for Resource Solutions (“**CRS**”) at <https://www.tfaforms.com/4652008> or its successor. The Attestation shall be submitted in accordance with the requirements of CRS and shall be submitted within thirty (30) days of Buyer’s request or the last day of the month in which the applicable Facility Energy was generated, whichever is later.

## ARTICLE 5 TAXES

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees), if any. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any



particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Execution 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 Internal Revenue Code of 1986 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 Internal Revenue Code of 1986. 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 Internal Revenue Code of 1986.

## ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility.** Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility, the generation and sale of Product, and the disposal and recycling of any equipment associated with the Facility, including without limitation solar panels.

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

6.3 **Shared Facilities.** The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller’s rights and obligations under the Interconnection Agreement and Seller’s rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements (“**Shared Facilities Agreements**”) to be entered into among two or more of Seller, the Participating Transmission Owner, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to

joint ownership and/or shared maintenance and operation arrangements; *provided* that such 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, (ii) continue to provide for separate metering and a separate Resource ID for the 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.

## ARTICLE 7 METERING

7.1 **Metering**. Seller shall measure the amount of Facility Energy using the Facility Meter. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. 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 meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

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

## 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 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. 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. [REDACTED]

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least five (5) years or as otherwise required by Law. Upon five (5) Business Days' Notice to the other Party, either Party shall be granted access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated 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; 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 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 Exhibit B, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7



8.8





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

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

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

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

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

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

## ARTICLE 9 NOTICES

9.1 **Addresses for the Delivery of Notices.** Any Notice required, permitted, or

contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on 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, 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 (Defaults; Remedies; Termination), 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; import restriction delays; 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



10.3 **Notice for Force Majeure**. Within five (5) Business Days of the commencement of Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the Force Majeure Event, and within two (2) weeks of the commencement of a Force Majeure Event the claiming Party shall provide the other Party with notice in the form of a letter describing in detail the occurrence giving rise to the Force Majeure Event, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance. Failure to provide timely notice constitutes a waiver of the claiming Party’s excused non-performance due to the Force Majeure Event for a number of days equal to the number of days between the deadline to notify the non-claiming Party set forth in this Section 10.3 and the date upon which the claiming Party provides such notice. Upon written request from the non-claiming Party, the claiming Party shall provide documentation demonstrating to the non-claiming Party’s reasonable satisfaction that each day of the claimed delay was the result of a Force Majeure Event and did not result from the claiming Party’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

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

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

(ii)

(iii) if not remedied within ten (10) days after Notice thereof, the failure by Seller to deliver a Remedial Action Plan required under Section 2.7 that demonstrates a reasonable plan for completing the Facility by the Guaranteed Commercial Operation Date;

(iv)



[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;

(vi) [REDACTED]

(vii) [REDACTED]

(viii) [REDACTED];

(ix) [REDACTED]

(x) 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 [REDACTED] by S&P or [REDACTED] by Moody's;

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

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

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

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

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

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

(xi) [REDACTED]

(xii) [REDACTED]

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 monetary remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment.** The Termination Payment (“**Termination Payment**”) for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

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

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

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

11.7

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

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT. 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 EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.6, 11.2, AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G. THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. 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 Execution 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 California.

(f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility and Seller or an Affiliate will be the applicant on any CEQA documents.

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

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

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

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

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

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court (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.).

(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 Execution 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 **Workforce Development**. Seller shall perform the obligations related to workforce development set forth in Exhibit S.

## ARTICLE 14 ASSIGNMENT

14.1 **General Prohibition on Assignments**. Neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, prior written consent is not required for (i) a sale, assignment, or other transfer of equity in either Party directly or indirectly to an Affiliate or (ii) any Change of Control of Seller where after such Change of Control, Ultimate Parent or an Affiliate owns, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller. Any assignment made without required written consent, or in violation of the conditions to assignment set out below shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

14.2 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lenders to agree upon a consent to collateral assignment of this Agreement ("**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 (or its designee) 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 (or cause to be cured) 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 (or its designee) 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 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; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender 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.

## 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, 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 Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly,

informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, the Parties shall submit the dispute to mediation prior to seeking any and all remedies available to it at Law in or equity. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, then either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

## **ARTICLE 16 INDEMNIFICATION**

16.1 **Indemnity.** Seller agrees to defend, indemnify and hold harmless Buyer, its directors, officers, agents, attorneys, consultants, employees and representatives from and against all third party claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees collectively arising from negligence, willful misconduct, or breach of the Agreement (collectively, "**Indemnifiable Losses**"). Nothing in this Section shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its 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.

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 and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of [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.** 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] policy limit will apply to each employee.

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

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

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

(f) 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 Seller (and Lender if any) as additional named insured.

(g) 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 1.1(g).

(h) Evidence of Insurance. Within sixty (60) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

## ARTICLE 18 CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available

through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

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

18.3 **Irreparable Injury; Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Disclosure to Lenders, Etc.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller’s actual or potential agents, advisors, actual or potential investors, consultants, contractors, or trustees, so long as the Person (other than 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).

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

withheld, conditioned or delayed.

## ARTICLE 19 MISCELLANEOUS

19.1 **Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly.

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

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

19.4 **No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) or, to the extent set forth herein, any Lender or indemnified party 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.** Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

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 Execution Date.

**ESCA-PLD-OAKLAND2, LLC, a  
Delaware limited liability company**

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

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

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

**Approved as to form:**

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



**EXHIBIT A**  
**FACILITY DESCRIPTION**

**Site Name:** Oakland 1

**Site includes all or some of the following APNs:** [REDACTED]

**County:** Alameda

**CEQA Lead Agency:** City of Oakland

**Type of Facility:** Rooftop Solar Photovoltaic

**Operating Characteristics of Facility:** Intermittent renewable generation

**Guaranteed Capacity:** 0.72 MW

**Interconnection Point:** [REDACTED]  
[REDACTED]

**Facility Meter:** See Exhibit R

**PNode:** [REDACTED]

**Participating Transmission Owner:** [REDACTED]

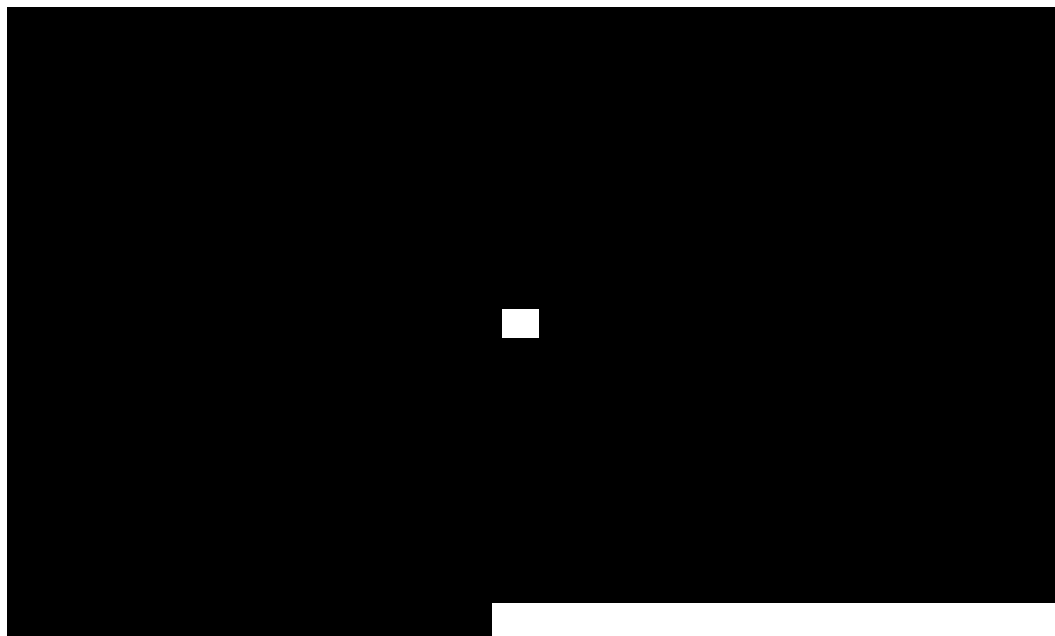
## EXHIBIT B

### MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. **Construction Start Milestone.**

- 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.

b.



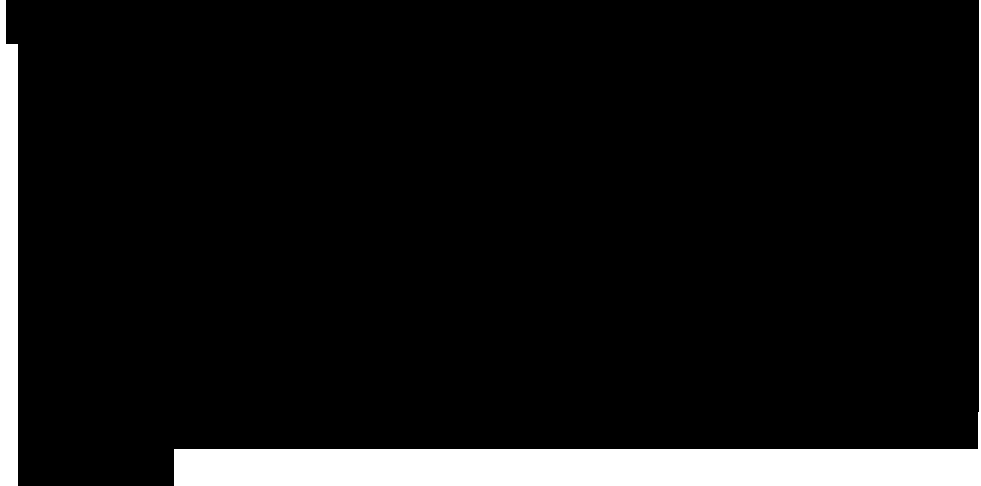
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a.



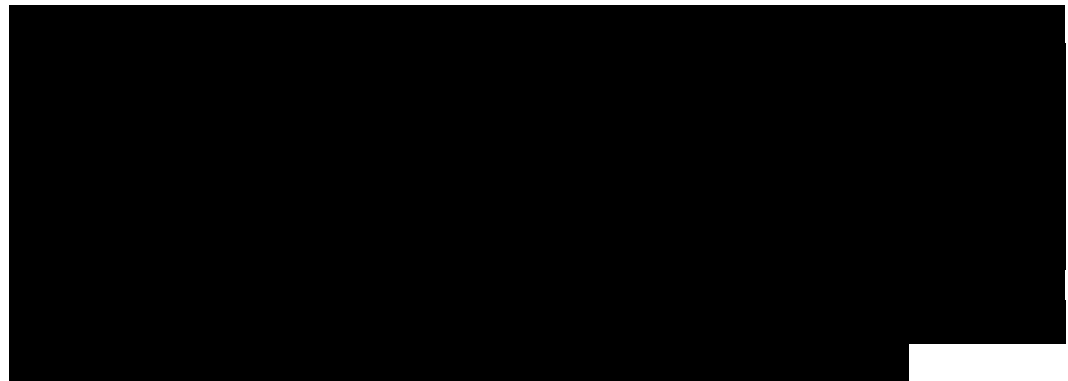
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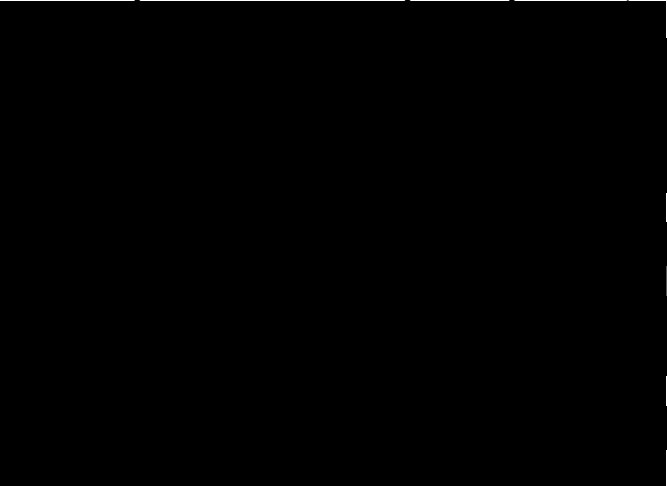
(ii)



b.



3. **Commercial Operation of the Facility.** “**Commercial Operation**” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.5 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”) (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation, and (iii) Buyer has acknowledged to Seller in writing that Buyer agrees that Commercial Operation has been achieved. The “**Commercial Operation Date**” shall be either (i) the later of (x) the Expected Commercial Operation Date, or (y) the date on which Commercial Operation is achieved.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Expected Commercial Operation Date (as such date may be extended by the Development Cure Period (defined below), the “**Guaranteed Commercial Operation Date**”). Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date, all Construction Delay Damages paid by Seller shall be refunded to Seller. Seller shall include a request for refund of the Construction Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. 
4. 
5. **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 



6. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, the Installed Capacity is less than [REDACTED] of the Guaranteed Capacity, Seller shall have [REDACTED] after the Commercial Operation Date to install additional capacity or Network Upgrades such that the Installed Capacity is equal to (but not greater than) the Guaranteed Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed Capacity. If Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “**Capacity Damages**” to Buyer, in an amount equal to [REDACTED] [REDACTED] for each MW that the Guaranteed Capacity exceeds the Installed Capacity, and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.

**EXHIBIT C**  
**COMPENSATION**

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

(a) Contract Price. Buyer shall pay Seller the Contract Price for each MWh of Facility Energy, plus [REDACTED]

(b) [REDACTED]

(c) [REDACTED]

(d) [REDACTED]

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

(f) Tax Credits. The Parties agree that the neither the Contract Price nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. 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.

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

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for

all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties (“**CAISO Charges Invoice**”) for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

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

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

(g) Master Data File and Resource Data Template. Seller shall provide the data to Buyer (or the Scheduling Coordinator) 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. Buyer (or its Scheduling Coordinator) shall provide such data to the CAISO. Neither Party shall change such data without the other Party’s prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and provide any update regarding such data to Buyer (or the Scheduling Coordinator), and the Scheduling Coordinator shall update the CAISO as appropriate.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller’s compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer’s possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with NERC reliability standards.



**EXHIBIT E**  
**PROGRESS REPORTING FORM**

1. Each Progress Report must include the following items:
2. Executive Summary.
3. Facility description.
4. Site plan of the Facility.
5. Description of any material planned changes to the Facility or the Site.
6. Gantt chart schedule showing progress on achieving each of the Milestones.
7. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
8. Forecast of activities scheduled for the current calendar quarter.
9. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
10. List of issues that are likely to potentially affect Seller's Milestones.
11. 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.
12. Prevailing wage reports as required by Law.
13. 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.
14. 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.
15. Supplier Diversity Reporting (if applicable under Exhibit S). Format to be provided by Buyer.
16. 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
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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 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 ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] ("**Agreement**") by and between [*Name of Seller*], and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [Date], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
2. Seller has installed equipment for the Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Capacity.
3. Seller has commissioned all equipment in accordance with its respective manufacturer's specifications.
4. 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/or the CAISO.
5. The Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the Guaranteed Capacity for the Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing.
6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.
7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation.
8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff.
9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead Market and Real-Time Market in respect of the Facility.

EXECUTED by [*Licensed Professional Engineer*]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[*LICENSED PROFESSIONAL ENGINEER*]

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

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

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

**EXHIBIT I**

**FORM OF INSTALLED CAPACITY CERTIFICATE**

This certification ("**Certification**") of Installed Capacity is delivered by [*Licensed Professional Engineer*] ("**Engineer**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] ("**Agreement**") by and between [*Name of Seller*] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify that the performance test for the Facility demonstrated peak electrical output of \_\_\_\_\_ MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test.

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 [*Prologis Energy LLC*] ("**Seller**") to Ava Community Energy Authority, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated [Date] ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;
2. the Construction Start Date occurred on [Date]; 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**

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date: \_\_\_\_\_  
Bank Ref.: \_\_\_\_\_  
Amount: US\$ \_\_\_\_\_  
Expiry Date: \_\_\_\_\_

Beneficiary:

Ava Community Energy Authority, a California joint powers authority

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of Ava Community Energy Authority, a California joint powers authority (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof (the “Expiration Date”).

Funds under this Letter of Credit are available to Beneficiary by complying presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] (“Drawing Certificate”).

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

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

We hereby agree with the Beneficiary that all documents presented under and in compliance with

the terms of this Letter of Credit, that such Drawing Certificate 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/multiple draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

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

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

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

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Ava Community Energy Authority, [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.

[Bank Name]

---

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

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

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the "Agreement").
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because the Applicant's 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 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 by wire transfer in immediately available funds to the following account: *[Specify account information]*

Ava Community Energy Authority

\_\_\_\_\_  
Name and Title of Authorized Representative

Date \_\_\_\_\_



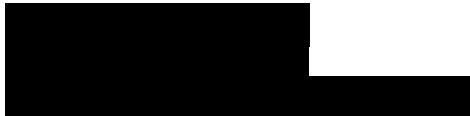



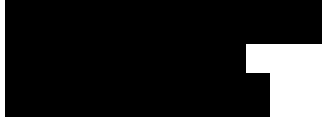
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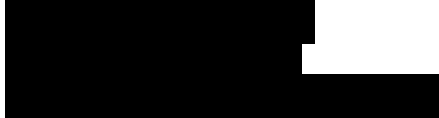
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**EXHIBIT M**

**[RESERVED]**

**EXHIBIT N****NOTICES**

ESCA-PLD-OAKLAND2, LLC (“Seller”)	Ava Community Energy Authority (“Buyer”)
<b>All Notices:</b> 	<b>All Notices:</b> Street: 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Attn: Power Resources Phone: (510) 809-7458 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:legal@avaenergy.org">legal@avaenergy.org</a>
<b>Reference Numbers:</b> 	<b>Reference Numbers:</b> Duns: 08-110-3072 Federal Tax ID Number: 82-2262960
<b>Invoices:</b> 	<b>Invoices:</b> Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: <a href="mailto:ap@avaenergy.org">ap@avaenergy.org</a> ; <a href="mailto:powersettlements@avaenergy.org">powersettlements@avaenergy.org</a> ; <a href="mailto:settlements@ncpa.com">settlements@ncpa.com</a>
<b>Scheduling:</b> 	<b>Scheduling:</b> Attn: NCPA c/o Ken Goeke, Manager, Portfolio and Pool Administration Phone: (916) 781-4290 Email: <a href="mailto:powerscheduling@avaenergy.org">powerscheduling@avaenergy.org</a>
<b>Confirmations:</b> 	<b>Confirmations:</b> Attn: Power Resources Phone: (510) 361-6247 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:powersettlements@avaenergy.org">powersettlements@avaenergy.org</a> ; <a href="mailto:confirmations@ncpa.com">confirmations@ncpa.com</a>
<b>Payments:</b> 	<b>Payments:</b> Attn: Jason Bartlett, Finance Manager Phone: 510-650-7584 Email: <a href="mailto:ap@avaenergy.org">ap@avaenergy.org</a>
<b>Wire Transfer:</b> 	<b>Wire Transfer:</b> BNK: River City Bank 2485 Natomas Park Drive, Suite 100, Sacramento, CA 95833 ABA: 121133416 ACCT: 5648137551

ESCA-PLD-OAKLAND2, LLC (“Seller”)	Ava Community Energy Authority (“Buyer”)
<b>Credit and Collections:</b> 	<b>Credit and Collections:</b> Attn: Howard Chang, Chief Operating Officer Phone: (510) 809-7458 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> <a href="mailto:powersettlements@avaenergy.org">powersettlements@avaenergy.org</a>
<b>With additional Notices of an Event of Default to:</b> 	<b>With additional Notices of an Event of Default to:</b> Attn: Power Resources 1999 Harrison Street, Suite 2300 Oakland, CA 94612 Phone: (510) 809-7458 Email: <a href="mailto:powernotices@avaenergy.org">powernotices@avaenergy.org</a> ; <a href="mailto:legal@avaenergy.org">legal@avaenergy.org</a>  <b>With an additional copy to:</b> Wilson Sonsini Goodrich & Rosati PC Attn: Peter Mostow Phone: (206) 883-2541 Email: <a href="mailto:pmostow@wsgr.com">pmostow@wsgr.com</a>

**EXHIBIT O**

**[RESERVED]**



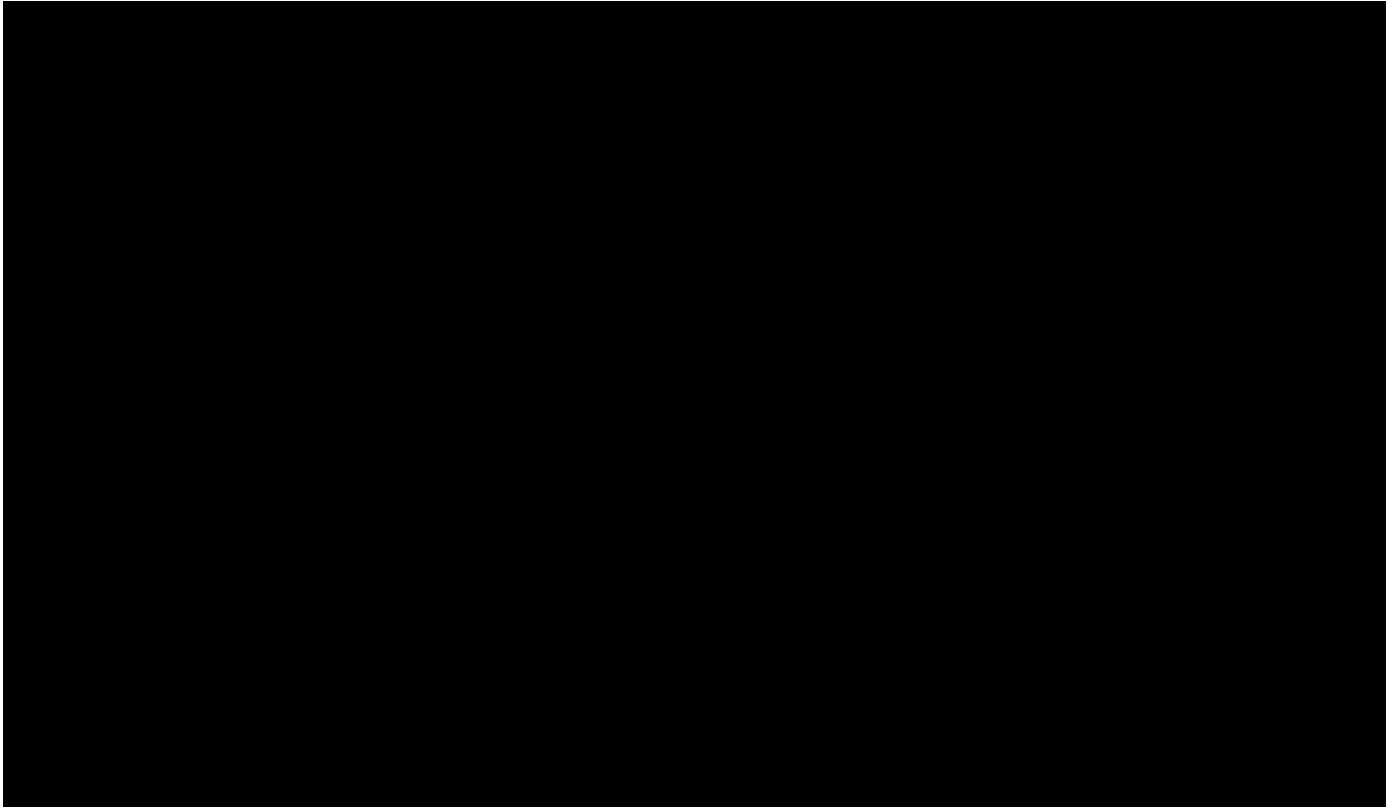
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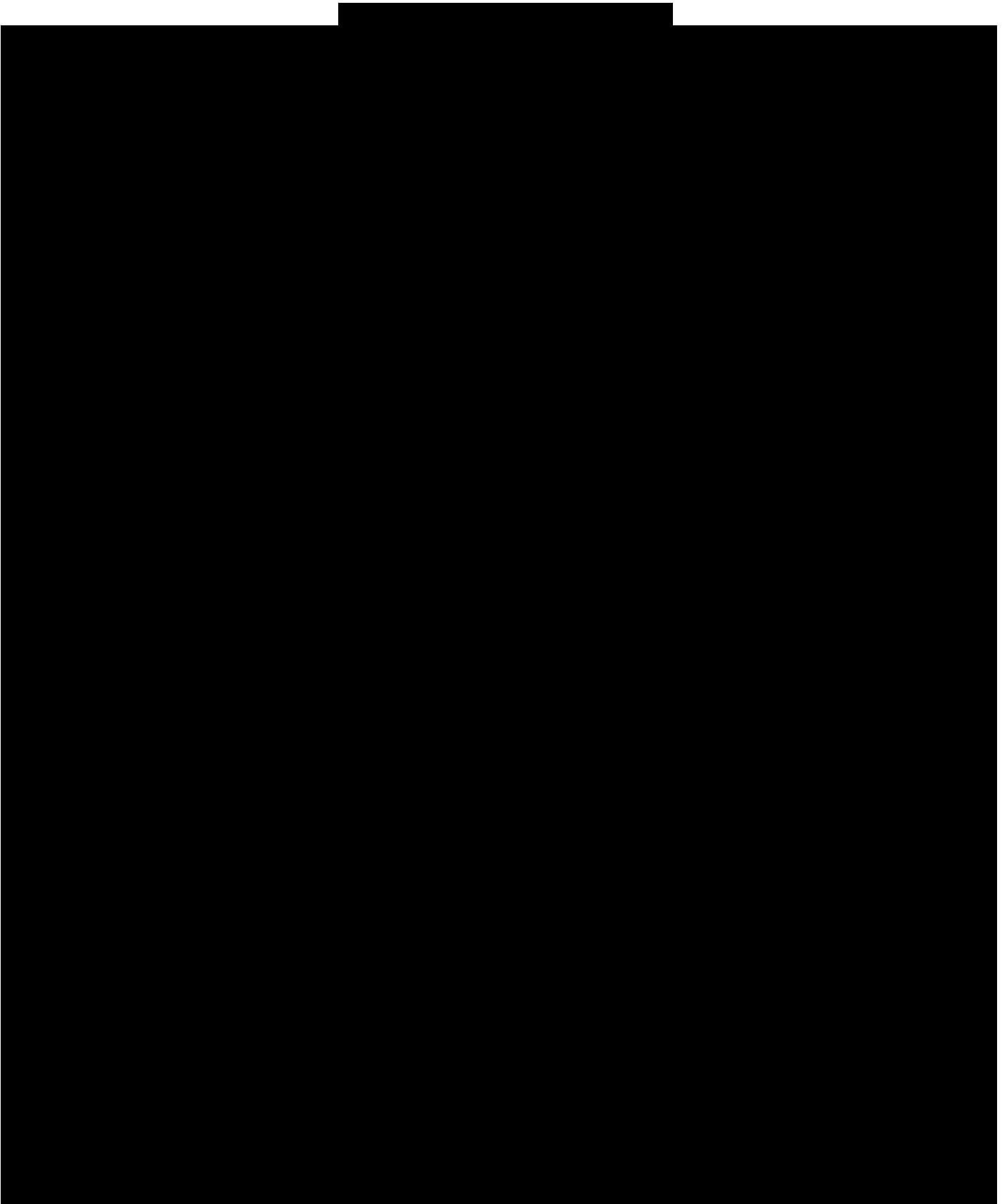
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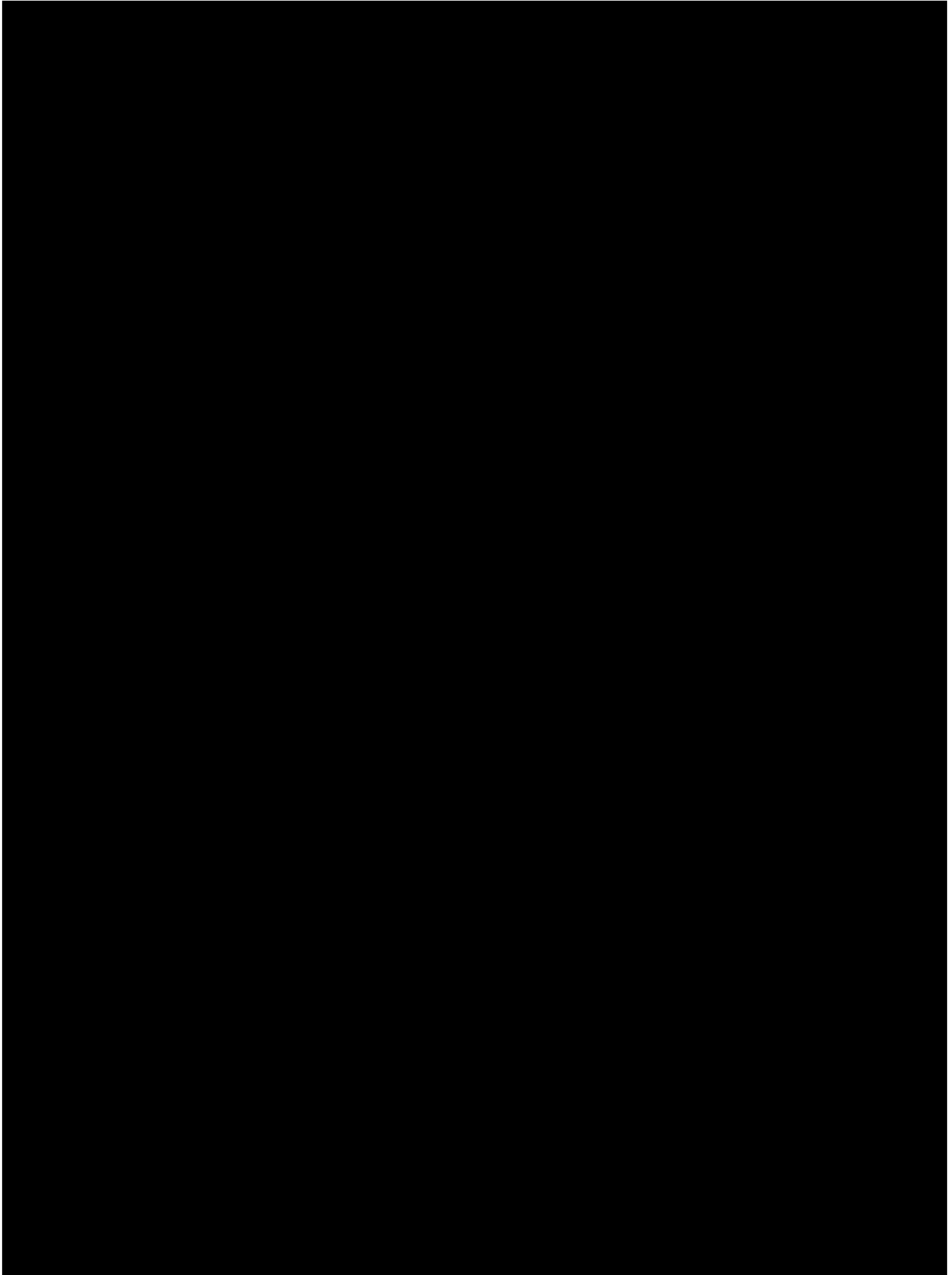
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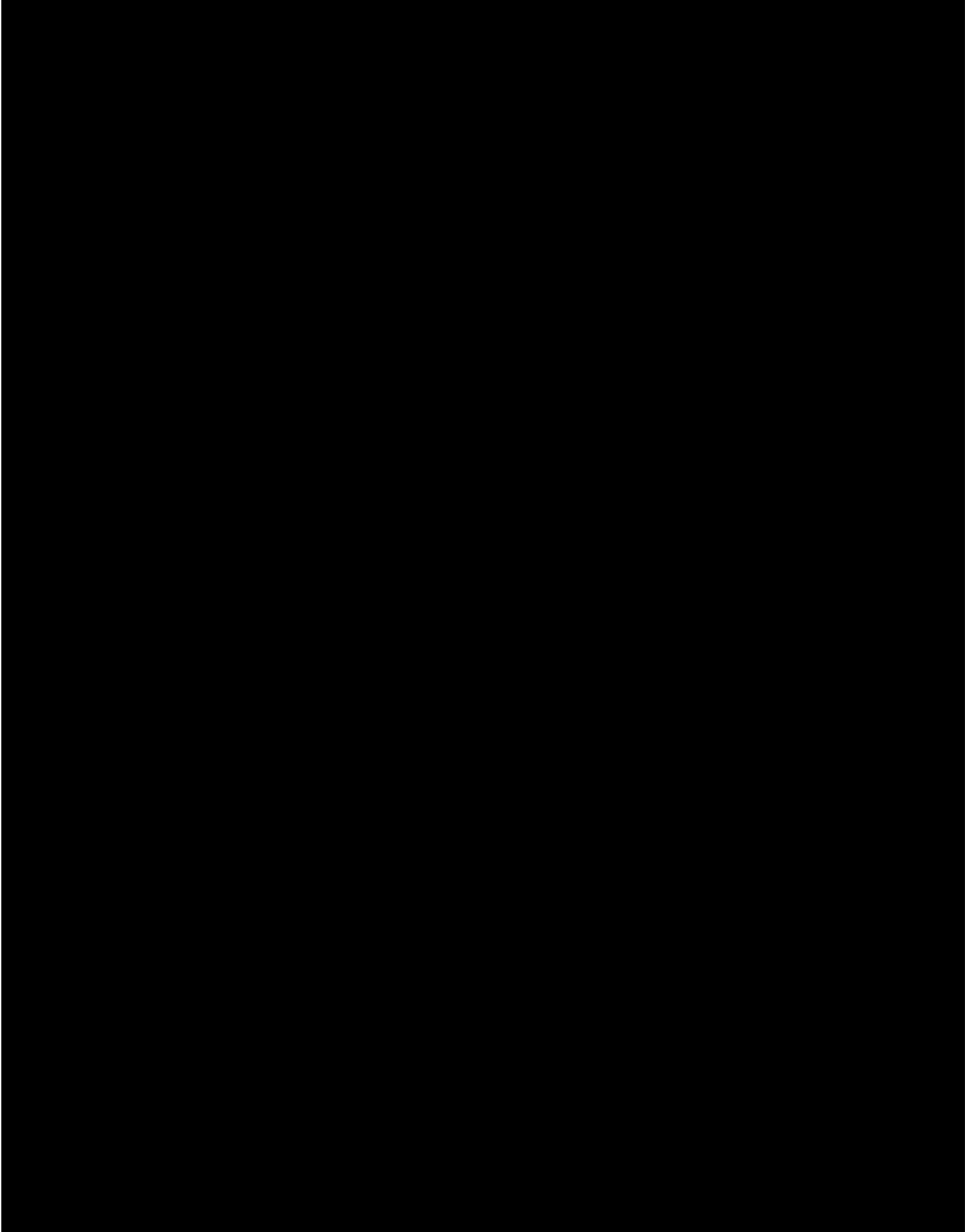
**EXHIBIT R**  
**METERING DIAGRAM**

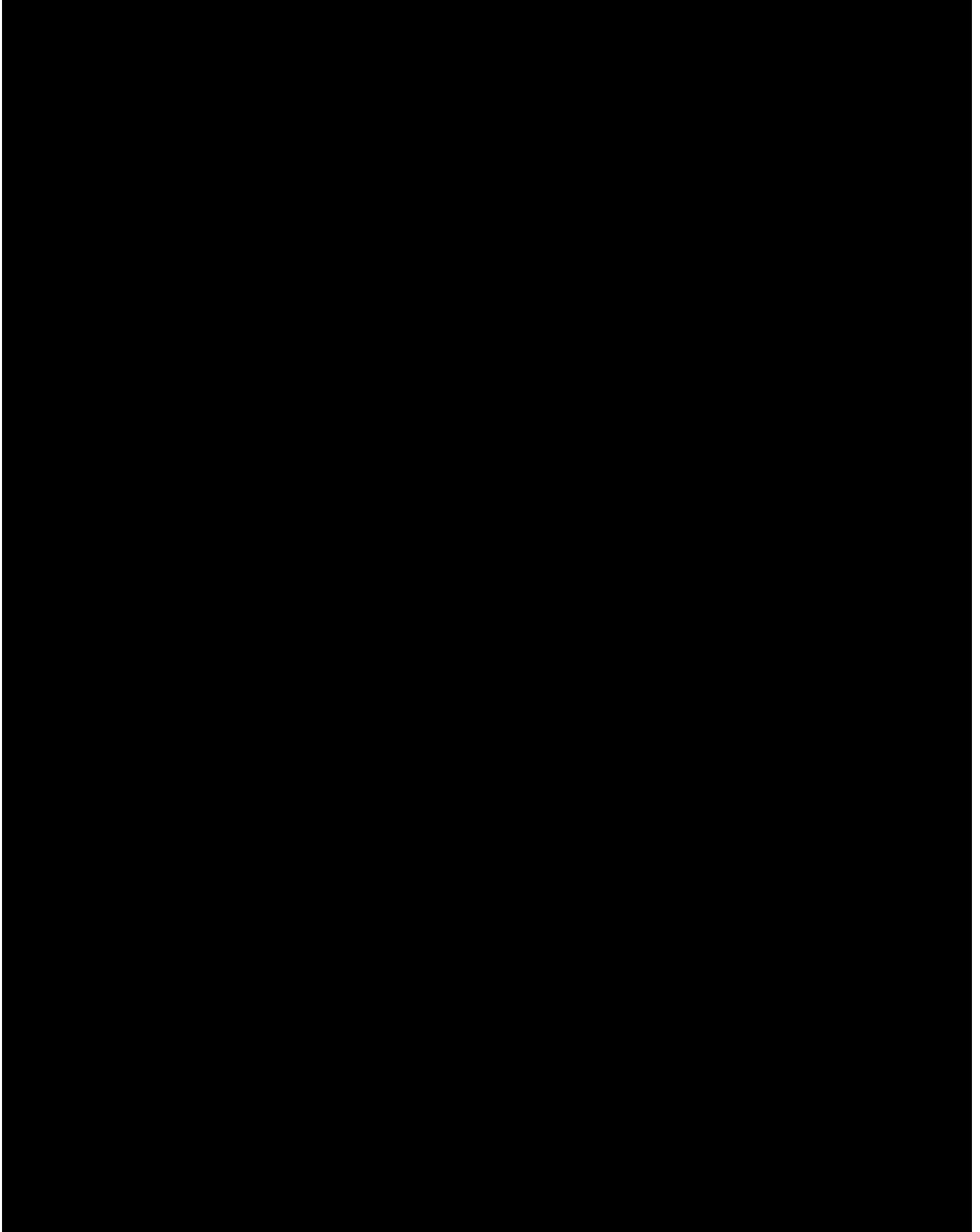


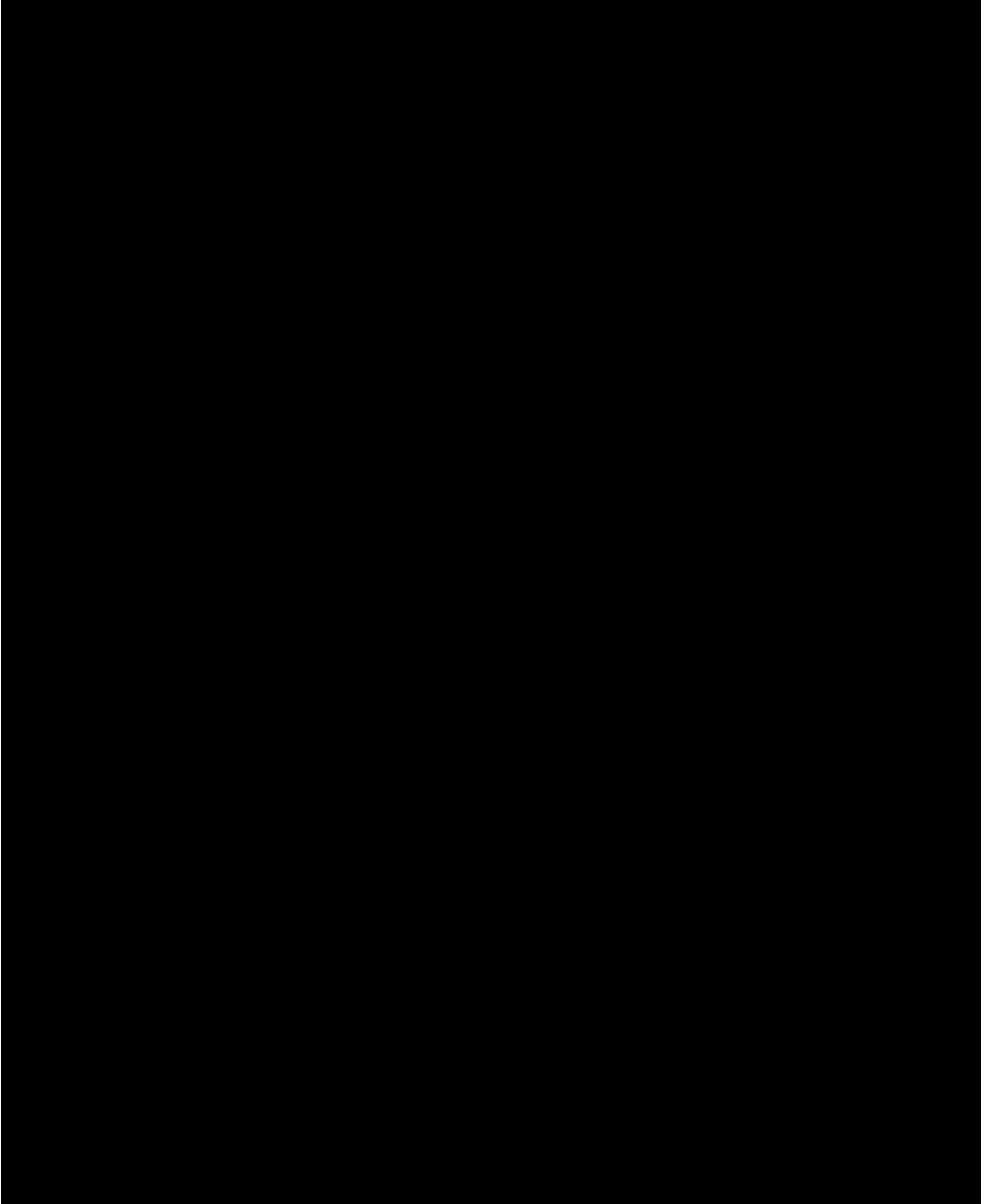
**EXHIBIT S**















# The Disadvantaged Communities Green Tariff (DAC-GT) & Community Solar Green Tariff (CSGT) Project Approvals

February 21, 2024



# Agenda

1. Background
2. CPUC Approval and Cost Recovery
3. Programs Overview
4. RFO Overview
5. Company Overview
6. Projects Proposed for Execution
7. Next Steps



# Background

- In 2018, the California Public Utilities Commission (CPUC) created the DAC-GT and CSGT programs which promote the development of renewable generation in disadvantaged communities (DACs)
- Both programs offer customers living in a DAC access to 100% renewable energy supply and a 20% discount on their **total** electricity bill
- In December 2022, Ava issued its DAC-GT and CSGT Request for Offers (RFO) to procure eligible renewable energy projects as part of the CPUC programs

**Board Action Requested:** Ava is seeking Board approval on Resolutions authorizing the Chief Executive Officer to negotiate and execute five Power Purchase Agreements (PPAs) for two solar projects in Tracy and three solar projects in Oakland, San Leandro, and Hayward, with Prologis LLC



# CPUC Approval and Cost Recovery

- The CPUC makes Ava whole on program costs:
  - Above-market procurement costs
  - 20% discount on customer's electric bill
  - Program administration and marketing costs
- Each year in February, Ava submits a request for cost recovery through the CPUC's annual budget letter process
- Ava must implement the programs consistent with CPUC guidelines and submit a formal request with executed PPAs to the CPUC for approval



# Programs Overview

	DAC-GT (aka Ava Solar Discount Program)	CSGT (aka Ava Community Solar Program)
Program Offering	<ul style="list-style-type: none"> <li>100% Renewable Energy to eligible customers at a 20% discount</li> </ul>	<ul style="list-style-type: none"> <li>100% Renewable Energy to eligible customers at a 20% discount</li> </ul>
Program Size	<ul style="list-style-type: none"> <li>5.72 MW</li> <li>~2,900 customers</li> </ul>	<ul style="list-style-type: none"> <li>1.56 MW</li> <li>~800 customers</li> </ul>
Program Status	<ul style="list-style-type: none"> <li>Launched in September 2021 with an interim solar resource</li> <li>Eligible customers were auto enrolled</li> <li>Solicitation for new resource completed</li> </ul>	<ul style="list-style-type: none"> <li>In development</li> <li>Solicitation for new resource completed</li> <li>Enrollment will occur upon project completion</li> </ul>
Customer and Project Requirements	Residential customers who: <ul style="list-style-type: none"> <li>Are enrolled in CARE/FERA; and</li> <li>Live in a DAC</li> </ul>	<ul style="list-style-type: none"> <li>50% or more of participants must be CARE/FERA enrolled residential customers and subscribed before non-CARE/FERA customers can participate;</li> <li>Customers located within 5 miles of site and live in a DAC</li> <li>Community Sponsor</li> </ul>



# RFO Overview

- Objective: Secure up to 5.72 MW of solar resources for DAC-GT and 1.56 MW for CSGT paired with energy storage
- Ava issued a 2022 DAC-GT and CSGT RFO in December 2022
- Ava received offers from two developers in March 2023
- Only one developer's offer included CSGT projects which streamlined CSGT project selection
- The Evaluation Rubric included:
  - Threshold conditions: eligible DAC location, eligible resource, project size, commercial operation date, workforce development plan, PPA acceptance, interconnection status, site control, and community sponsorship (CSGT only)
  - Scoring for three topics: Project Economics, Workforce Development Plan, and Development Status and Experience
- The Ava selection committee evaluated the above criteria and reviewed combinations of projects that optimized program goals including volume, pricing, and geographic targets
- The committee selected a portfolio of 5 projects with Prologis for the entire allotted program amounts
  - Ava considered pursuing solar and storage but was unable to come to commercially acceptable terms with Prologis for paired storage resources



# Prologis Company Overview

- Prologis Energy LLC, a subsidiary of Prologis Inc., is a developer, owner and long-term operator of clean energy facilities
- Prologis Inc. is an operator of logistics real-estate with over 1 billion square feet of warehouse space under management across 19 countries
- Prologis is actively developing solar and battery energy storage systems (BESS) at its properties for revenue growth with both front-of-the-meter and behind-the-meter installations
- Prologis has been developing solar since 2007. They have developed over 400 MW of generating capacity across 12 countries and recently expanded their offering to front of the meter solar and storage projects serving community choice aggregators and investor-owned utilities
- Prologis has experience working with other CCAs on Solar Discount programs; they have previously been awarded rooftop solar PV as a part of other CCAs' DAC-GT programs



# Projects Proposed for Execution

Developer	Program	Project	Location	Nameplate Solar*	COD	Contract Term
Prologis	DAC-GT	Tracy 12	Tracy	3 MW	6/2026	20 years
Prologis	DAC-GT	Tracy 2 West	Tracy	2 MW	6/2026	20 years
Prologis	DAC-GT	Oakland 1	Oakland	0.72 MW	12/2025	20 years
Prologis	CSGT	San Leandro 11	San Leandro	1 MW	4/2026	20 years
Prologis	CSGT	Hayward Commerce	Hayward	0.56 MW	4/2026	20 years

\*Ava fills its entire DAC-GT allocation of 5.72 MW and CSGT allocation of 1.56 MW through these projects and is able to service the maximum number of customers with a 20% discount





# Action Requested

Approve the five Prologis PPAs for DAC-GT and CSGT solar projects and authorize the CEO to execute the agreements



# Thank you!



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