REGULAR MEETING of the Board of Directors of the
Clean Power Alliance of Southern California
Thursday, October 4, 2018
2:00 p.m.

Los Angeles County Hall of Administration
Room 739
500 West Temple Street
Los Angeles, CA 90012

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 Jacquelyn Betha at least two (2) working days before the meeting at jbetha@cleanpoweralliance.org or (213) 269-5870, ext. 1001.
Notification in advance of the meeting will enable us to make reasonable arrangements to ensure accessibility to this meeting and the materials related to it.

Members of the public may also participate in this meeting remotely at the following addresses:

Calabasas City Hall – Council Conference Room
100 Civic Center Way, Calabasas, CA 91301

Ventura County Government Center
Channel Islands Conference Room, 4th Floor Hall of Administration
800 South Victoria Avenue, Ventura, CA 93009
I. WELCOME AND ROLL CALL

II. PUBLIC COMMENT
This item is reserved for persons wishing to address the Board on any Clean Power Alliance-related matters not on today’s agenda. Public comments on matters on today’s agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are requested to complete a speaker’s slip and provide it to Clean Power Alliance staff. If you have anything that you wish to be distributed to the Board and included in the official record, please hand it to a member of the staff who will distribute the information to the Board members and staff. Speakers are customarily limited to two minutes, but an extension can be provided at the discretion of the Chair.

III. SPECIAL PRESENTATION OF PROCLAMATION TO NAZIE TASHAKORIAN

IV. CONSENT AGENDA
1. Approve Minutes from August 16, 2018 Board of Directors Meeting
2. Approve Task Order #3 with The Energy Authority (TEA) for Power Procurement and Risk Management Advisory Services
3. Authorize $200,000 Increase of Contract Amount for Troutman Sanders LLC to Provide Specialized Legal Services for Energy Contracting in FY 2018-2019 (FY18-19)
4. Amend Cost Sharing Agreement with the Western Riverside Council of Governments (WRCOG) and the Coachella Valley Association of Governments (CVAG) for Best Best and Krieger (BBK) Legal Services for Regulatory Support to Increase CPA Spending Authority by $75,000
5. Adopt Resolution 18-014 to Approve Addition of New Rate Schedules to Clean Power Alliance Phase 2 Rates
V. REGULAR AGENDA

6. Approve Clean Power Alliance Tagline and Product Names
7. Approve Voyager Wind Power Purchase Agreement
8. Consider Westlake Village Membership Request

VI. CLOSED SESSION

9. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
   Initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: (1)

VII. LEGISLATIVE & REGULATORY UPDATE

VIII. REPORT FROM THE EXECUTIVE DIRECTOR

IX. BOARD MEMBER COMMENTS

X. REPORT FROM THE CHAIR

XI. ADJOURN – TO NOVEMBER 15, 2018

Public records that relate to any item on the open session agenda for a regular Board Meeting are available for public inspection. Those records that are distributed less than 72 hours prior to the meeting are available for public inspection at the same time they are distributed to all, or a majority of, the members of the Board. The Board has designated Clean Power Alliance, 555 W. 5th Street, 35th Floor, Los Angeles, CA 90013, for making those public records available for inspection. The documents are also available online at www.cleanpoweralliance.org.
REGULAR MEETING of the Board of Directors of the
Clean Power Alliance of Southern California
Thursday, August 16, 2018, 2:00 p.m.

Southern California Association of Governments – Policy Room A
900 Wilshire Blvd., Ste. 1700, Los Angeles, CA 90017

Calabasas City Hall – Council Conference Room
100 Civic Center Way, Calabasas, CA 91301

Ventura County Hall of Administration – 4th Floor Channel Island Conference Room
800 South Victoria Avenue, Ventura CA 93009

Whittier City Hall – Admin. Committee Room
13230 Penn Street, Whittier, CA 90602

MINUTES

I. WELCOME & ROLL CALL
Chair Diana Mahmud called the meeting to order. Board Secretary Jacquelyn C. Betha conducted roll call.

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II. PUBLIC COMMENT

The following individuals provided public comments on items not on the agenda:
Harvey Eder (Public Solar Power Coalition); Shomari Davis (IEBW Local 11), and
Joe Sullivan (IEBW Local 11, NECA).

III. CONSENT AGENDA

1. Approved Minutes from July 12, 2018 Board of Directors Meeting
2. **Adopted Resolution 18-010 Authorizing Section 125 Administration of Benefits for CPA Employees**

3. **Adopted Resolution 18-011 Authorizing Participation in State Disability Insurance Program**

4. **Authorized Executive Director to Execute Amendment No. 1 to Memorandum of Understanding between County of Los Angeles and Clean Power Alliance**

5. **Approved Execution of Master Agreement and Task Order No. 1 between CPA and MRW & Associates for Rate Setting and Cost of Service Consulting Services**

6. **Approved Execution of Master Agreement and Task Order No. 1 between CPA and LevelTen Energy for Long-Term RFO Support Consulting Services**

7. **Adopted Resolution 18-012 to Approve the Clean Power Alliance Employee Handbook**

8. **Adopted Resolution 18-013 to Approve Addition of New Rate to Clean Power Alliance Phase 2 Rate Schedule**

Chair Mahmud requested a revision to Item 4 to reflect the Executive Director’s authority to make changes to the County MOU. Director Lindsey Horvath requested that Item 6 reflect additional considerations for apprenticeships.

Motion: West Hollywood, Director Lindsey Horvath. Second: Los Angeles County, Vice Chair Sheila Kuehl. Vote: The Consent Agenda, with noted changes to Items 4 and 6, was approved by a unanimous roll call vote.

**IV. CLOSED SESSION**
9. PUBLIC EMPLOYMENT  
(Government Code 54957)  
Recruitment of General Counsel

Acting General Counsel, Nazie Tashakorian, reported that the Clean Power Alliance Board of Directors has appointed Nancy Whang to serve as General Counsel.

Vote: Item 9 passed by a unanimous vote.

V. REGULAR AGENDA

10. Approved General Counsel Employment Agreement

Ted Bardacke, CPA Executive Director, reported that Nancy Whang will begin serving as CPA General Counsel beginning on October 8, 2018.

Motion: Santa Monica, Director Kevin McKeown. Second: Claremont, Director Corey Calaycay. Vote: Item 10 passed by a unanimous roll call vote.

11. Approved 2019 Rate Structure

The following individual provided public comments on Item 11: Harvey Eder (Public Solar Power Coalition).

Motion: Claremont, Director Corey Calaycay. Second: Redondo Beach, Director Christian Horvath. Vote: Item 11 passed by a unanimous roll call vote.

12. Approved Contract Amendment No. 1 and Scope of Work #2 with The Energy Coalition for Communications & Marketing Services

The following individual provided public comments on Item 12: Harvey Eder (Public Solar Power Coalition).
Motion: Culver City, Director Meaghan Sahli-Wells. Second: Claremont, Director Corey Calaycay. Vote: Item 12 passed by a unanimous roll call vote.

VI. LEGISLATIVE & REGULATORY UPDATE
Mr. Bardacke provided an update on several bills currently in the Legislature that could have impacts on CPA and indicated that staff may call upon Board members to reach out to Legislators for assistance. He also provided an update on the ongoing process to determine the outcome of the Power Charge Indifference Adjustment (PCIA), or exit fee, and its impacts on CPA.

VII. REPORT FROM THE EXECUTIVE DIRECTOR
Mr. Bardacke reported that CPA is currently transferring remaining customer accounts from Southern California Edison to CPA, with only 172 accounts left to be transitioned. He also gave an update on CPA’s long-term Request for Offers (RFO) process, which will be discussed at upcoming Energy Committee meetings.

VIII. BOARD MEMBER COMMENTS
Board Members provided various comments.

IX. REPORT FROM THE CHAIR
Chair Mahmud announced that the CalCCA Annual Meeting is scheduled for September 5-6, 2018. She also encouraged Board members to considered participating on the various CPA Committees, and reminded the Board will be dark in the month of September.

X. ADJOURN
Chair Mahmud adjourned the meeting.
To: Clean Power Alliance (CPA) Board of Directors

From: Ted Bardacke, Executive Director

Subject: Approve Task Order #3 with The Energy Authority (TEA) for Power Procurement and Risk Management Advisory Services

Date: October 4, 2018

RECOMMENDATION
Authorize the Executive Director to execute Task Order #3 with TEA for power procurement and risk management advisory services for the remainder of Fiscal Year 2018-2019 (FY18-19) for a not-to-exceed amount of $550,000.

BACKGROUND
In December 2017, Clean Power Alliance (then LACCE) Board of Directors authorized execution of a three-year Resource Management Agreement (RMA) with TEA for a variety of services related to power procurement and delivery, including scheduling coordination with the California Independent System Operator (CAISO), power trading activities, load and energy price forecasting, risk management, and congestion revenue rights (CRR) management. This RMA was the result of a competitive RFP process that included 11 bidders.

At the same, the Board authorized the execution of Task Order #1 with TEA for scheduling coordination and congestion revenue rights services for three years at a fixed fee of between $20,000 and $25,000 per month depending on load. In March 2018, the Board authorized the execution of Task Order #2 with TEA for a variety of additional services related to power procurement and risk management for a six-month period with a not-to-
exceed amount of $350,000. In June 2018, the Board approved an FY18-19 budget that included $1 million for these types of services.

Under TEA’s Task Order #2, which expires this month, TEA has provided front-office services (energy trading) and prepared and administered short-term Requests for Offers for system energy, renewable energy, carbon free energy, and the four different types of Resource Adequacy (RA) that CPA is required to procure. They also assisted in the preparation of CPA’s Energy Risk Management Policy, which the Board approved in July 2018; since then they have assisted CPA’s Risk Management Team with implementing and complying with that policy. TEA has also refreshed CPA’s load forecast using new data from CPA’s Data Manager, Calpine, and Southern California Edison, filed various year-ahead and month-ahead RA compliance documents with the CPUC/CEC/CAISO, and began to catalog CPA’s energy contracts—now numbering over 60 individual transactions—into an organized system of record that can be fed into CPA’s financial model. In addition to CPA legal counsel and two members of CPA staff, including the Executive Director, two members of TEA staff must sign off on every short-term power transaction that CPA makes. The final costs to CPA for Task Order #2 services are expected to be around $300,000, or approximately $50,000 under budget.

**TASK ORDER #3 WITH TEA**

Staff is proposing to leave Task Order #1 services in place and through Task Order #3, extend and augment TEA’s services for another nine months. In addition to the current services, TEA would add modelling assistance, which will include a daily update of CPA’s financial model with energy price forecasts and continuous updating of CPA’s load forecast using actual customer data, projections based on past performance, weather and other variables. TEA will also assist with the building and maintenance of a financial risk model to assist CPA’s Risk Management Team and other staff with analyzing various power supply cost scenarios and how they may impact CPA’s overall financial profile and revenue requirements, which are used to set rates. TEA’s functions in maintaining a record or CPA’s power supply contracts and support to the Risk Management Team are also clarified and further defined by Task Order #3.
Task Order #3 will supersede Task Order #2 and run through the end of FY18-19, when CPA’s two remaining phases of mass enrollment will be complete. Task Order #1 for scheduling coordination and congestion revenue rights management will remain in place. The combined costs of Task Order #1, amount spent during FY18-19 on Task Order #2 and the $550,000 not-to-exceed amount of Task Order #3 are within the $1 million Board-approved budget for this suite of services. Prior to the end of this fiscal year, staff will be assessing how much, if any, of these services should be brought in-house in FY19-20.

Attachment: 1) Task Order #3 with The Energy Authority
TEA Task Order 3 for Power Procurement and Advisory Services

This Task Order 3 for Power Procurement and Advisory Services (“Task Order 3”) is made and entered this 10th day of October, 2018 (the “Task Order 3 Effective Date”), by and between The Energy Authority, Inc. (“TEA”) and Clean Power Alliance of Southern California (“CPA”), and the terms and conditions contained herein are hereby incorporated by reference as part of the certain Resource Management Agreement dated the 28th day of December, 2017 (the “RMA”). TEA and CPA are sometimes referred to herein individually as a “Party,” or collectively as the “Parties.” Defined terms used herein but not specifically defined shall have the meanings set forth in the RMA or in the CAISO Tariff. Task Order 3 supersedes and replaces Task Order 2 which expired on October 9, 2018.

Section 1 Scope of Services.

During the term of this Task Order 3, TEA shall provide to CPA certain power procurement and related services (“Services”), as more particularly described herein.

Section 1.1 Power Procurement.

Subject to the terms and conditions of the RMA, TEA shall provide Services on behalf of CPA for Transactions with CPA counterparties. For purposes of this Task Order 3, “Transactions” means the purchase and sale of electricity products, including energy, Resource Adequacy capacity, renewable energy, carbon free and/or Asset Controlling Supplier energy.

Section 1.1.1 Planning and Coordination

TEA will coordinate with CPA staff, its consultants and legal counsel on issues affecting procurement, including, but not necessarily limited to:

- Prepare and maintain CPA’s customer and electric sales forecasts consistent with CPA phasing schedules including forecast of: 1) monthly enrolled accounts, megawatt hours (“MWh”) and megawatts (“MW”) by load profile group; and 2) monthly coincident Peak MW and hourly MW for the CPA system.

- Update long term sales forecasts biannually and more frequently as necessary, including development of scenario analysis and monitor accuracy of load forecast on monthly basis.

- Maintain net position model to identify incremental procurement needs of CPA in consideration of risk management policies, approved procurement strategies and applicable regulatory requirements.

- Monitor markets both to provide guidance on the timing of opportunistic hedging decisions and to inform CPA on changes occurring in the markets and the underlying drivers of those changes.

- Work with CPA staff and its legal counsel to provide certain subject matter expertise on the commercial aspects of the different power supply transactions, including commercial analysis of alternative power products, as well as providing input on confirmation agreements.

- Maintain/manage relationships with qualified suppliers of requisite energy products: participate in periodic calls, email exchanges and other communications with and/or on behalf of CPA.
• Coordinate with CPA’s Data Analytics staff and consultants on data management issues relating to billing services for different default product options to ensure alignment with CPA’s procurement volumes for products such as renewable and GHG-free energy.

• Assist with Implementation Plan amendments and other regulatory filings with the California Public Utility Commission ("CPUC").

Section 1.1.2 Prepare Request for Offers.

As directed by CPA, TEA will prepare formal Requests for Offer ("RFO") documents to be submitted to power suppliers and manage short-term RFO processes on behalf of CPA for the purpose of procuring power supplies to meet the requirements of CPA’s customers, including:

• coordinating information with prospective suppliers and answering questions;
• evaluating offers against economic and non-economic criteria set by CPA;
• developing short-lists of suppliers and reviewing results with CPA; and
• evaluating and recommending power suppliers to CPA.

As directed by CCA, TEA will coordinate and evaluate bilateral procurement activities.

Section 1.1.3 Financial and Risk Analysis.

TEA will build and maintain an integrated set of models to project CPA’s revenues, costs and gross margins, and to measure potential variability in projected results. The integrated set of models will include a Financial Model and a Risk Model.

Financial Model: TEA will build and maintain a financial model of CPA’s energy-related financial projections that includes load, resources with associated costs, market prices, various fixed costs and CAISO fees, executed transactions and any other variables, as necessary, to provide a complete cost and financial view for CPA. TEA will coordinate with CPA staff on all necessary inputs required to derive the financial projections. The model shall be Excel-based and available for CPA staff to use and manipulate for other purposes, including but not limited to scenario analysis, compliance reporting, annual budgeting, and rate setting. The financial model will be updated daily with the most recent market price information and forward transactions executed by CPA. CPA will have on-demand access to the most recent financial model at all times through a web portal.

Risk Model: TEA will build and maintain a risk model for CPA. The risk model generates scenarios by using inputs for several variables that may include market implied heat rates, natural gas prices, power prices, load variables, variable energy resource generation and other relevant inputs. The risk model will be used as a component to the entire risk management function, including calculating potential variability in CPA’s power supply costs. This information will be used in assessing the need for short-term hedging transactions, establishing adequate financial reserve funds, and for setting retail rates.

Section 1.1.4 Risk Management Team Support Services.

TEA will assist CPA in maintaining its formal risk management program consistent with CPA’s Board of Directors-approved Energy Risk Management Policy ("ERMP"). TEA will participate in CPA’s monthly Risk Management Team (“RMT”) Meetings during which time CPA-related risks are
reviewed, discussed, and as appropriate, risk mitigation strategies are reviewed and approved by CPA. TEA will work with CPA staff to compile the CPA's Risk Management Team ("RMT") monthly meeting agenda, develop presentation material into a single document or presentation that can be reviewed and discussed at the monthly meeting, as well as keep meeting records. TEA will also monitor and report on ERMP compliance.

Section 1.2 Mid-Office Services.

TEA will provide the following mid-office services:

- All Transactions executed by CPA will be entered into TEA’s system of record;
- All executed Transactions will be verified that they match an official delegation of CPA’s RMT or authorized CPA individual;
- Confirm that the new Transaction is uploaded to the net position model;
- TEA will provide the following reports through a secure web-portal:
  - Counterparty credit report
  - Energy Risk Management Policy compliance report
  - Forward position reports
  - Daily activity (with delegation matrix)
  - Official record of CPA’s Transactions, including checklist and approvals.

Section 1.3 Regulatory and Legislative Compliance.

TEA will perform the following compliance related activities:

- Prepare and submit monthly and annual Resource Adequacy ("RA") showings to the CPUC;
- Prepare and submit historical load, monthly and annual load forecasts to the CPUC and California Energy Commission ("CEC");
- Prepare and submit Integrated Energy Policy Report ("IEPR") to the CEC;
- Assist CPA with preparing the RPS Procurement plan;
- Assist CPA with preparing the REC Retirement Report;
- Assist CPA with preparing RPS Compliance Reports;
- Assist CPA with preparing the annual Power Source Disclosure report; and
- Assist CPA with preparing the annual Power Content Label report.

For the avoidance of doubt, TEA’s contractual obligations under this Section 1.3 will be limited to performing the activities outlined above and preparing the required load and/or generation data in a format consistent with that established by the applicable regulatory agency and/or CPA’s legal counsel. Certain compliance filings require CPA’s legal counsel designated by CPA to assist with preparing written documentation and providing submittals to the appropriate service list.

Section 1.4 Additional Work.

Upon request, TEA may also provide other services related to procuring and managing CPA’s power supply portfolio. In addition, TEA may also provide services including, but not limited to, the following:

- Support for financial planning and analysis including assistance with preparing CPA’s annual budget, performing ad hoc financial analysis, and assist with retail rate design and rate setting
- Attend CPA's Board of Director Meetings to discuss wholesale procurement and
Section 2. Additional Obligations.

(Section is Reserved)

Section 3. Term and Termination of this Task Order 3.

Section 3.1 Term of Task Order 3.

This Task Order 3 shall commence on the Task Order 3 Effective Date and shall continue through June 30, 2019 (the “Task Order 3 Term”).

Section 3.2 Termination.

Either Party may terminate this Task Order 3 either (i) as allowed under the terms of the RMA; or (ii) by providing a minimum of thirty (30) days prior written notice of a designated termination date to the other Party (the “Termination Notice Period”).

Section 4. Compensation for Services Provided Under This Task Order 3.

For the Services defined in Sections 1.1, 1.3 and 1.4 of this Task Order 3, CPA shall pay to TEA an amount determined on a time and materials basis using the hourly billing rates provided in Section 8 multiplied by the hours of work performed by TEA (the “Variable Services Fee”). For the Services defined in Section 1.2, CPA shall pay to TEA a fixed monthly amount equal to Five Thousand Five Hundred Dollars ($5,500) (the “Mid-Office Services Fee”). The total amount of Service Fees under this Task Order 3, for both Mid-Office Services Fee and Variable Services Fees (collectively, the “Service Fees”) shall not exceed Five Hundred Fifty Thousand Dollars ($550,000) (the “Service Fees Limit”) without the prior written consent of CPA. If the Service Fees Limit is reached, TEA will not be obligated to continue to provide Services under this Task Order 3, unless and until TEA receives written authorization from CPA as to an additional amount authorized.

Section 5. Controlling Terms and Conditions.

The provisions of this Task Order 3 are subject to the Terms and Conditions of the RMA between the Parties. If any provisions of this Task Order 3 conflict with any provisions in the RMA, the provisions of the RMA shall take precedence.

Section 6. Expenses and Reimbursement.

Actual out-of-pocket expenses for travel and participation in on-site meetings are in addition to the Services Fees outlined in Section 4 herein, however, will be included in the calculation of the Service Fee Limit. Travel costs such as airfare, hotel, ground transportation, or meals (hereinafter, “Expenses”) will be billed in the amount incurred by TEA for actual out-of-pocket cost, without any additional mark-up by TEA. Any Expenses incurred shall be billed for the month in which the Expenses are incurred. Air travel will be purchased at coach class fares, with advance purchase discounted tickets used when scheduling permits. Expense reports detailing all Expenses, along with receipts, shall be presented to CPA for reimbursement.

Section 7. Settlement, Billing, and Payment Terms.

Section 7.1 Direct CPA Counterparties.
During the Task Order 3 Term, TEA shall not be responsible for credit support or payments for Transactions for CPA with counterparties, other than obligations related to CAISO, as more particularly described in Task Order 1 for Scheduling Coordinator and CRR Management Services (“Task Order 1”).

Section 7.2 Hourly Billing and Payments.

TEA billable hourly fees, if any, will be tracked and itemized for each month in which TEA services are performed under this Task Order 3. TEA will bill CPA on a monthly basis for the amount of fees owed as Service Fees, or other billable hourly fees (hereinafter, “Compensation”) pursuant to Section 4 of this Task Order 3, plus Expenses, if any. Such billable amounts may be (i) itemized on the same monthly invoice(s) related to Task Order 1, or (ii) billed by TEA on an individual invoice for Services related to Task Order 3.

For Service Fees due under this Task Order 3, CPA shall pay each invoice no later than thirty (30) days (each an “Invoice Due Date”) after receiving the invoice from TEA. CPA will send payment as designated in Section 7.3 herein, or as otherwise designated by TEA.

Section 7.3 Notices and Invoices.

TEA shall submit all correspondences and invoices under the RMA and Task Order 3 to:

    Clean Power Alliance
    Attn: Ted Bardacke
    555 West 5th Street, 35th Floor
    Los Angeles, CA 90013
    Email: accountspayable@cleanpoweralliance.org (invoices)
    Email: tbardacke@cleanpoweralliance.org (notices)

Unless otherwise provided by TEA, CPA will send payment via electronic funds transfer to TEA’s bank account addressed to:

    The Energy Authority, Inc.
    301 W. Bay Street, Suite 2600
    Jacksonville, Florida 32202
    Attention: Daina Dean, Accounting

The Parties agree to cooperate to develop and supplement the procedures related to billing and payments for the orderly implementation of Sections 7.1 through 7.3 herein; provided, however, that nothing herein shall require either Party to agree to an amendment to the terms of those sections of this Task Order 3.

Section 7.4 CPA Failure to Pay.

CPA’s failure to make timely payments for undisputed amounts to TEA under this Task Order 3 before or on each Invoice Due Date, may be considered a breach of the payment terms of this Task Order 3. In the event such a breach is not cured within thirty (30) calendar days (the “Cure Period”) following written notice by TEA of the past due invoice amount, then CPA shall be in default (an “Event of Default”). Notwithstanding the forgoing, if the payment of the past due amount would result in the Service Fees Limit being exceeded, then the Cure Period for payment shall be increased to sixty (60)
calendar days, to allow payment authorization at the next CPA board meeting. Upon the occurrence of an Event of Default, TEA may, without waiving any other remedies:

(a) Apply a late fee amount to invoices past due, as allowable, under Section 7.5 herein; and/or
(b) Give notice of Termination of this Task Order 3 and all services provided for herein pursuant to the process set forth in Section 3.2 herein.

Section 7.5 Late Payments.

Any payment for Services under Task Order 3 that is not received by TEA on or before the Invoice Due Date required may incur a late fee, and be subject to Cure Period. The late fee shall be calculated by multiplying the total undisputed outstanding balance by the lesser of (i) the Interest Rate (as described in RMA Section 25.2), or (ii) the maximum rate allowable by state law for the number of days which the balance remains outstanding (the “Late Fee”).

Section 8. Billing Rates

The TEA Billing Rates shown in the table below are applicable to any work performed by TEA under Task Order 3 for which TEA is compensated on the basis of actual hours worked by TEA staff. Billing rates are fixed for the term of this Task Order.

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Section 9. Functions Performed by CPA.

Unless otherwise mutually agreed to by the Parties, activities not expressly provided for herein are considered not within the scope of services for this Task Order 3 and shall not be performed by TEA, unless otherwise addressed in a separate Task Order or an amendment to this Task Order.

Section 10. Amendment.

This Task Order 3 may only be amended by an instrument in writing signed by each Party’s authorized representative.

[Signature Page to Follow]
IN WITNESS WHEREOF, the Parties hereto have caused this Task Order 3 to be executed by their respective duly authorized representatives as of the date written in the first paragraph of this Task Order 3.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: _____________________________
Name: Theodore Bardacke
Its: Executive Director
Date: _____________________________

ATTEST:
By: _____________________________
Name: Behnaz Tashakorian
Title: Attorney
Date: _____________________________

THE ENERGY AUTHORITY, INC.

By: _____________________________
Name: Joanie C. Teofilo
Its: President and CEO
Date: _____________________________
To: Clean Power Alliance (CPA) Board of Directors

From: Ted Bardacke, Executive Director

Subject: Authorize $200,000 Increase of Contract Amount for Troutman Sanders LLC to provide Specialized Legal Services for Energy Contracting in Fiscal Year 2018-2019 (FY18-19)

Date: October 4, 2018

RECOMMENDATION
Authorize the Executive Director to increase the contract amount for Troutman Sanders LLP by $200,000 for FY18-19 to provide specialized legal services to CPA in energy contracting.

BACKGROUND
Steven Hall of Troutman Sanders has been representing CPA in power procurement activities since March 2018. His initial $50,000 contract was increased to $125,000 by the Board in May 2018. Since March, Mr. Hall has assisted CPA in establishing the legal and commercial infrastructure necessary for power procurement, including lockbox and security arrangements with River City Bank and negotiating final master Edison Electric Institute (EEI) agreements with 13 different energy suppliers; 7 more enabling agreements are pending. He has also conducted legal review for more than 60 individual transactions worth in aggregate over $300 million and his approval is currently required on every power transaction CPA executes. Mr. Hall has also effectively represented CPA in complex supplier negotiations, including one that led to the return of $2.7 million in collateral to CPA at a time when the organization’s cash flow was extremely tight and another when CPA needed to complete multiple contract negotiations for Resource Adequacy (RA) just hours before its month-ahead RA filing deadline. Mr. Hall represents
other CCAs and has a strong understanding of both the commercial and legal terrain in which CCAs operate.

During the remainder of FY18-19, CPA expects Mr. Hall to continue to be an active member of the power procurement team for both short-term and long-term contracting. Mr. Hall has reviewed the Power Purchase Agreement (PPA) templates that accompany CPA’s Request for Offers (RFO) for long-term power procurement and the PPA with Voyager Wind, which is the subject of Agenda Item 7. Mr. Hall may also be called upon to assist with negotiations on the final PPAs that emerge from the Long Term RFO; CPA’s ultimate approach to legal services for those negotiations will be determined in conjunction with our new General Counsel.

Due to the volume of work, Mr. Hall has hired an Associate at his firm to assist with some routine transactional work and help reduce costs to CPA. The $200,000 increase for FY18-19 will bring the total contract amount with Troutman Sanders to $325,000. This contact addition is within the overall budget for legal services in CPA’s Board-approved FY18-19 annual budget.
To: Clean Power Alliance (CPA) Board of Directors

From: Ted Bardacke, Executive Director

Subject: Amend Cost Sharing Agreement with the Western Riverside Council of Governments (WRCOG) and the Coachella Valley Association of Governments (CVAG) for Best Best and Krieger (BBK) Legal Services for Regulatory Support to Increase CPA Spending Authority by $75,000

Date: October 4, 2018

RECOMMENDATION
Amend Cost Sharing Agreement with WRCOG and CVAG for BBK legal services for regulatory support to increase CPA spending authority by $75,000.

BACKGROUND
Ryan Baron of BBK has been representing CPA on matters before the California Public Utilities Commission (CPUC) and in negotiations with Southern California Edison (SCE) since late 2017 under a cost-sharing agreement with WRCOG and CVAG.

Since early summer, as the work on the CPUC proceeding regarding the timing of CCA commencement of operation slowed and CPA began relying on CalCCA for major regulatory work, BBK has been assisting CPA staff with regulatory filings such as the Integrated Resources Plan, Renewable Portfolio Standard compliance and plan, as well as gaining party status to significant proceedings before the CPUC such as SCE’s Energy Resource Recovery Account filing. For matters where WRCOG and CVAG are not involved, BBK bills CPA via WRCOG on a pass-through basis.
Staff is proposing to increase the maximum authorized expenditure to cover these types of routine items through the end of the 2018 calendar year. Some of the work covered by BBK will start to be done in-house by CPA's new General Counsel. Where additional and more specialized work may be needed on complex regulatory matters, Ms. Whang will be coordinating those engagements. Having spending authorization to work with BBK through the end of the year will allow for a smooth transition to a new structure for regulatory counsel at CPA, which we anticipate will occur in early 2019 and is likely to include additional cost sharing agreements with other CCAs.

The $75,000 increase in spending authority will bring BBK's not-to-exceed amount to a total of $95,000. This amount is within the overall budget for legal services in CPA's Board-approved FY18-19 annual budget.
Staff Report – Agenda Item 5

To: Clean Power Alliance (CPA) Board of Directors

From: Matthew Langer, Chief Operating Officer

Approved By: Ted Bardacke, Executive Director

Subject: Adopt Resolution 18-014 to Approve Addition of New Rate Schedules to Clean Power Alliance Phase 2 Rates

Date: October 4, 2018

RECOMMENDATION

Adopt Resolution 18-014 to approve the addition of three rate schedules to CPA’s Phase 2 rates.

SUMMARY

On April 5, 2018, the Board adopted Resolution 18-006 approving customer generation rates for Phase 2, and on August 16, 2018, the Board adopted Resolution 18-013 to add an additional rate schedule. The need to add three additional rate schedules to CPA’s Phase 2 rates was recently discovered by CPA’s data manager; these rates had been implemented for billing without being formally contained in Resolution 18-006. These rate schedules are TOU-8-SEC-R, TOU-GS-2-PRI-A, and TOU-GS-1-B-PRI.

The TOU-8 rate group is applied to large industrial customers, and the TOU-8-SEC-R rate is for customers with maximum monthly demand above 500 kW and who utilize renewable distributed generation technologies onsite. Less than five CPA customers have been billed on this rate to date.
The TOU-GS-2-PRI-A rate is applied to medium sized commercial customers with maximum monthly demand above 20 kW and below 200 kW. The TOU-GS-1-B-PRI rate is applied to small commercial customers with maximum monthly demand below 20 kW. These rates are both primary service voltage rates, meaning they include a discount for customers who take service at a voltage level above 2kV and below 50kV. To date, no CPA customers have been billed on either of these rates.

CPA’s proposed TOU-8-SEC-R, TOU-GS-2-PRI-A, and TOU-GS-1-B-PRI rates, provided as Attachment 2, were calculated utilizing the same discount and methodology applied to the creation of all other Phase 2 rates and the same adders were utilized for the 50% and 100% product options. Subsequent to Board approval of Resolution 18-014, the new TOU-8-SEC-R, TOU-GS-2-PRI-A, and TOU-GS-1-B-PRI rate schedules will be incorporated into CPA’s Phase 2 rates effective June 25, 2018, and staff will update the listing of all CPA rates accordingly.

Attachments: 1) Resolution 18-014
2) CPA’s TOU-8-SEC-R, TOU-GS-2-PRI-A, and TOU-GS-1-B-PRI Rate Schedules
RESOLUTION NO. 18-014

A RESOLUTION OF THE BOARD OF DIRECTORS OF THE
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA TO APPROVE
ADDITION OF RATE SCHEDULES TO PHASE 2 RATES

THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA DOES HEREBY FIND, RESOLVE, AND ORDER AS FOLLOWS:

WHEREAS, the Clean Power Alliance of Southern California (formerly known as Los Angeles Community Choice Energy Authority) (“Clean Power Alliance” or “CPA”) was formed on June 27, 2017; and

WHEREAS, the CPA Board of Directors directed staff to procure power supply for Phase 2 load to provide three energy products (36% renewable, 50% renewable, and 100% renewable) and maximize non-emitting energy resources for the non-renewable portions of the portfolio; and

WHEREAS, the Board of Directors also sought to provide a discount relative to Southern California Edison’s base rate for its 36% and 50% renewable energy products; and

WHEREAS, on April 5, 2018, the Board of Directors adopted rate schedules for Phase 2 customer generation rates, which became effective on June 25, 2018; and

WHEREAS, the approval of new CPA rate schedules TOU-8-SEC-R, TOU-GS-2-PRI-A, and TOU-GS-1-B-PRI effective June 25, 2018, are required for the Phase 2 rates.

NOW THEREFORE, BE IT RESOLVED, BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA:

1. CPA TOU-8-SEC-R, TOU-GS-2-PRI-A, and TOU-GS-1-B-PRI rate schedules will be added to CPA’s Phase 2 rates.


APPROVED AND ADOPTED this ____ day of __________ 2018.

Chair

ATTEST:

Secretary
New Phase 2 Rates

**TOU-8-SEC-R**

Equivalent to TOU-8-R-SEC rate schedule.

### Summer Energy Rates ($/kWh)

<table>
<thead>
<tr>
<th>Unit/Period</th>
<th>36% renewable</th>
<th>50% renewable</th>
<th>100% renewable</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-peak</td>
<td>$0.28430</td>
<td>$0.28513</td>
<td>$0.29930</td>
</tr>
<tr>
<td>Mid-peak</td>
<td>$0.07165</td>
<td>$0.07248</td>
<td>$0.08665</td>
</tr>
<tr>
<td>Off-peak</td>
<td>$0.02281</td>
<td>$0.02364</td>
<td>$0.03781</td>
</tr>
</tbody>
</table>

### Winter Energy Rates ($/kWh)

<table>
<thead>
<tr>
<th>Unit/Period</th>
<th>36% renewable</th>
<th>50% renewable</th>
<th>100% renewable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mid-peak</td>
<td>$0.03821</td>
<td>$0.03904</td>
<td>$0.05321</td>
</tr>
<tr>
<td>Off-peak</td>
<td>$0.02802</td>
<td>$0.02885</td>
<td>$0.04302</td>
</tr>
</tbody>
</table>

**TOU-GS-2-PRI-A**

Equivalent to TOU-GS2A-PRI SCE rate schedule.

### Summer Energy Rates ($/kWh)

<table>
<thead>
<tr>
<th>Unit/Period</th>
<th>36% renewable</th>
<th>50% renewable</th>
<th>100% renewable</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-peak</td>
<td>$0.31697</td>
<td>$0.31780</td>
<td>$0.33197</td>
</tr>
<tr>
<td>Mid-peak</td>
<td>$0.07570</td>
<td>$0.07653</td>
<td>$0.09070</td>
</tr>
<tr>
<td>Off-peak</td>
<td>$0.01496</td>
<td>$0.01579</td>
<td>$0.02996</td>
</tr>
</tbody>
</table>

### Winter Energy Rates ($/kWh)

<table>
<thead>
<tr>
<th>Unit/Period</th>
<th>36% renewable</th>
<th>50% renewable</th>
<th>100% renewable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mid-peak</td>
<td>$0.03283</td>
<td>$0.03366</td>
<td>$0.04783</td>
</tr>
<tr>
<td>Off-peak</td>
<td>$0.02196</td>
<td>$0.02279</td>
<td>$0.03696</td>
</tr>
</tbody>
</table>
TOU-GS-1-B-PRI

Equivalent to TOU-GS1B-PRI SCE rate schedule.

### Summer Energy Rates ($/kWh)

<table>
<thead>
<tr>
<th>Unit/Period</th>
<th>36% renewable</th>
<th>50% renewable</th>
<th>100% renewable</th>
</tr>
</thead>
<tbody>
<tr>
<td>On-peak</td>
<td>$0.10963</td>
<td>$0.11046</td>
<td>$0.12463</td>
</tr>
<tr>
<td>Mid-peak</td>
<td>$0.03914</td>
<td>$0.03997</td>
<td>$0.05414</td>
</tr>
<tr>
<td>Off-peak</td>
<td>$0.02175</td>
<td>$0.02258</td>
<td>$0.03675</td>
</tr>
</tbody>
</table>

### Winter Energy Rates ($/kWh)

<table>
<thead>
<tr>
<th>Unit/Period</th>
<th>36% renewable</th>
<th>50% renewable</th>
<th>100% renewable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Mid-peak</td>
<td>$0.06969</td>
<td>$0.07052</td>
<td>$0.08469</td>
</tr>
<tr>
<td>Off-peak</td>
<td>$0.04163</td>
<td>$0.04246</td>
<td>$0.05663</td>
</tr>
</tbody>
</table>

### Demand Charge ($/kW)

<table>
<thead>
<tr>
<th>Unit/Period</th>
<th>36% renewable</th>
<th>50% renewable</th>
<th>100% renewable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Summer on-peak</td>
<td>$6.74</td>
<td>$6.74</td>
<td>$6.74</td>
</tr>
<tr>
<td>Summer mid-peak</td>
<td>$2.45</td>
<td>$2.45</td>
<td>$2.45</td>
</tr>
</tbody>
</table>
Staff Report – Agenda Item 6

To: Cleaning Power Alliance (CPA) Board of Directors
From: Jennifer Ward, Head of Local Government Affairs
Approved By: Ted Bardacke, Executive Director
Subject: Approve Clean Power Alliance Tagline and Product Names
Date: October 4, 2018

RECOMMENDATIONS
Approve the tagline “Locally Powered Energy Innovation” for CPA.
Approve “Lean Power”, “Clean Power” and “100% Green Power” as the product names for CPA’s three rate tiers.

SUMMARY
The recommended tagline and product names are the result of a months-long process overseen by CPA’s Communications & Outreach Ad Hoc Committee, assisted by the organization’s communications consultant, The Energy Coalition, and CPA staff. This process included a comparative analysis of other CCA and Utility taglines and product names, identifying common patterns and frameworks, a decision to focus on the brand and product value as guiding principles, the generation of product name and tagline types, and two calls to discuss and whittle down options. There was consensus on the tagline recommendation, while a strong majority of the Committee preferred the recommended product names. A full report on the process and outcome is attached.

The tagline and product names are being recommended for their ability to further articulate CPA’s mission and brand promise, along with being straightforward descriptors of what CPA offers to its customers. They were also preferred because, containing the
word “Power”, they align with CPA’s broader brand ecosystem and reinforce one another to provide consistent messaging to CPA’s audiences. In the case of the product names, they are positive, descriptive, and have strong alliteration. They also allow for the amount of renewables in the Lean Power and Clean Power tier to change over time without having to revisit and change CPA’s marketing materials and approach. In the case of the tagline, the combination of local and innovation strongly resonated with the Committee as being essential parts of CPA’s mission.

A mockup of how these product names and tagline would appear on the CPA website and in other marketing and communications materials is provided below:

**SAMPLE Mock-up**

![Mock-up Image]

**NEXT STEPS**

Upon selection of the tagline and product names, they will be incorporated into all communications and marketing materials, including CPA’s forthcoming updated website and a Member Agency Communications Toolkit to be distributed the week of October 8.
An outline of the Member Agency Toolkit along with a nine-month workplan for upcoming marketing and communications activity is available in the Draft Communications & Marketing Plan.

Attachment: 1) Brand Tagline and Product Names Options Report
Brand Tagline + Product Name Options Report

Prepared by The Energy Coalition on behalf of Clean Power Alliance
Table of Contents

Introduction & Context 3
Recommendations & Sample Mock-up 3
Process & Methodology 5
  Comparative Analysis 5
  Identification of Common Patterns & Frameworks 9
  Product Name Options & Selection Process 10
  Brand Tagline Options & Selection Process 13
Introduction & Context

Clean Power Alliance is constructing its brand identity. As part of that process, Clean Power Alliance needs a tagline that is representative of its brand identity and product names that provide a complementary branding element to its three renewable percentage rate options.

This report provides recommendations from Clean Power Alliance's Communications & Outreach Subcommittee on product names and a tagline. To allow for completion of a comprehensive communications strategy for the next phase of service, decisions on the tagline and product names should be made at the October 4, 2018 Board of Directors meeting. Once the tagline and product names have been selected, member agencies will be provided with updated communications and marketing materials reflecting this brand identity through the Member Agency toolkit.

Recommendations & Sample Mock-up

After extensive review and discussion with Clean Power Alliance's Marketing Team, the Subcommittee recommends the following product names because of their positivity, descriptive nature, and strong "alliteration". The Subcommittee also recommends the following tagline because it is centered on local innovation to support and serve our diverse communities, an essential part of Clean Power Alliance's mission. These product names and tagline were also chosen because they do not clash, but rather align with the broader brand ecosystem and reinforce one another to provide consistent messaging to Clean Power Alliance's audiences.

<table>
<thead>
<tr>
<th>36% rate option</th>
<th>Lean Power</th>
</tr>
</thead>
<tbody>
<tr>
<td>50% rate option</td>
<td>Clean Power</td>
</tr>
<tr>
<td>100% rate option</td>
<td>100% Green Power</td>
</tr>
<tr>
<td>Tagline</td>
<td>Locally Powered Energy Innovation.</td>
</tr>
</tbody>
</table>
SAMPLE Mock-up

Lean Power  Clean Power  100% Green Power

Our LEAN POWER provides 36% renewable content at the lowest possible cost, with the added benefit of local management and control. Learn more

Our CLEAN POWER provides 50% renewable content and the opportunity to support building a cleaner future—all at cost competitive rates. Learn more

Our 100% GREEN POWER provides 100% renewable content and the opportunity to be an environmental champion—leading the way to a greener future. Learn more
Process & Methodology

To generate ideas for brand taglines and product names, we first conducted a comparative analysis of various CCAs to gather an understanding of the landscape’s messaging, tone, and voice.

Comparative Analysis

The following table lists operational California CCA taglines and product names, organization names, logos, and links to product pages. It also includes Southern California Edison, for reference.

<table>
<thead>
<tr>
<th>Organization</th>
<th>Logo</th>
<th>Tagline</th>
<th>Product Names</th>
<th>Product Pages</th>
</tr>
</thead>
<tbody>
<tr>
<td>Apple Valley Choice Energy</td>
<td></td>
<td>The better choice</td>
<td><strong>Core Choice</strong>: The lowest possible rates with higher renewable content than SCE</td>
<td><a href="https://avchoiceenergy.com/your-options/">https://avchoiceenergy.com/your-options/</a></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td><strong>More Choice</strong>: 50% renewable energy content with solar, wind or geothermal sources</td>
<td></td>
</tr>
</tbody>
</table>
| CleanPower SF            |      | Same Service · Cleaner Energy | **CleanPowerSF Green**: 43% renewable energy  
**CleanPowerSF SuperGreen**: 100% renewable energy | https://www.cleanpowersf.org/residential |
| East Bay Community Energy |      | A Bright Choice       | **Bright Choice**: standard electric service, cleaner energy at lower rates than PG&E   | https://ebce.org/residents/  |
| **Lancaster Choice Energy** | **Brilliant 100:** 100% carbon free energy, same as current PG&E prices  
**Renewable 100:** 100% renewable and carbon-free energy |
|---|---|
| **MCE (Marin Clean Energy)** | **CLEARChoice:** the lowest possible rates with higher renewable content than SCE  
**SMARTChoice:** 100% renewable energy content with solar, wind and geo-thermal sources  
http://www.lancasterchoiceenergy.com/your-options/ |
| **Monterey Bay Community Power** | **Light Green:** 50% renewable, costs 2-5% less than PG&E, effective March 1st.  
**Deep Green:** 100% renewable  
**Local Sol:** 100% locally-produced solar  
https://www.mcecleanenergy.org/your-energy-choices/ |
| **Monterey Bay Community Power** | **MBchoice:** standard offering, 3% rebate over PG&E’s rates  
**MBprime:** carbon-free electricity, 100% renewable, $0.01 per kWh added cost over PG&E rates  
**MBgreen+:** same price as PG&E, redirect 3% rebate to support local renewable resource development  
**MBshare:** same price as PG&E, redirect 3% rebate to local nonprofit projects that lower greenhouse gas emissions and support low income rate-payers  
https://www.mbcommunitypower.org/service-offerings/ |
<table>
<thead>
<tr>
<th>Region</th>
<th>Energy Source</th>
<th>Plan</th>
<th>Cost/Benefit</th>
<th>Website</th>
</tr>
</thead>
</table>
| Peninsula Clean Energy         | Cleaner Energy at lower rates for San Mateo County | **ECOplus:** 5% savings compared to PG&E's rates, 50% renewable and 85% greenhouse gas free energy  
**ECO100:** 100% renewable energy that is Green-e certified, cost-effective | https://www.peninsulacleanenergy.com/        |
| Pico Rivera Innovative Municipal Energy (PRIME) | Powered by Prime                                | **Prime Power:** 50% renewable energy plan, lowest possible rates plus significantly higher renewable content  
**Prime Future:** 100% renewable energy plan at a competitive price | https://www.powerepdbyprime.org/your-options|
| Redwood Coast Energy Authority | Community Choice Energy in Humboldt County        | **REpower:** lower rates and local control of our energy sources  
**REpower+ rate:** 100% renewable energy, costs $0.01 more per kWh than standard REpower energy mix | https://redwoodenergy.org/                  |
| San Jacinto Power              | The Power to Choose                               | **SJP Prime Power:** default choice, lowest possible rates plus significantly higher renewable content  
**SJP PureGreen:** 100% renewable energy content at a competitive price | http://sanjactopower.hosted.civiclive.com/your-options/ |
| San Jose Clean Energy          | A Cleaner Way to Power San Jose                   | **GreenSource:** 100% carbon free, 40% renewable, 60% hydroelectric, 1% cheaper than PG&E  
**TotalGreen:** 100% renewable | https://www.sanjosecleanenergy.org/your-choices |
<p>| Silicon Valley Clean Energy    | Your Community-Owned                              | <strong>GreenStart:</strong> carbon free, 50% renewable, competitively priced | <a href="https://www.svclene.com/">https://www.svclene.com/</a>                                                       |</p>
<table>
<thead>
<tr>
<th>Electricity Provider</th>
<th>GreenPrime: carbon free, 100% renewable, premium of less than 1 penny per kWh</th>
<th>energy.org/choices/</th>
</tr>
</thead>
<tbody>
<tr>
<td>Solana Energy Alliance</td>
<td>A New Wave of Energy for Solana Beach</td>
<td>SEA Choice: default product, 50% renewable, 75% greenhouse gas-free sources&lt;br&gt;SEA Green: 100% renewable energy product, slightly higher but very competitive rate</td>
</tr>
<tr>
<td>Valley Clean Energy</td>
<td>The Power to Choose</td>
<td>Valley Clean Energy: 2.5% below PG&amp;E's generation costs, 42% renewable (cleaner than PG&amp;E)&lt;br&gt;UltraGreen: 100% renewable energy, slightly higher rate, $0.15/kWh premium from VCE base rates</td>
</tr>
<tr>
<td>Southern California Edison</td>
<td>Energy for What's Ahead</td>
<td>Standard rate&lt;br&gt;50% Green Rate&lt;br&gt;100% Green Rate</td>
</tr>
</tbody>
</table>
Identification of Common Patterns & Frameworks

Upon synthesis of our research, we identified common patterns and frameworks to guide our brainstorm. For product names, four approaches to naming emerged from our research:

<table>
<thead>
<tr>
<th>Naming Approach</th>
<th>Examples</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Product type</td>
<td>Southern California Edison</td>
</tr>
</tbody>
</table>
| This approach simply describes the product at a surface level, focusing on its function or source. | • Standard  
  • Green Rate(s) |
| 2. Product value/utility               | Apple Valley Choice Energy                    |
| This approach uses descriptors to differentiate products by their value and utility. | • Core Choice  
  • More Choice |
| 3. Brand + product type                | Solana Energy Alliance                        |
| This approach emphasizes the product type as an extension of the brand. | • SEA Choice  
  • SEA Green |
| This hybrid approach combines being brand-centric with highlighting product value and utility. | • PRIME Power  
  • PRIME Future |

The product value/utility and brand + product value/utility approaches are the best approaches for Clean Power Alliance because they help differentiate each product’s value and emphasize the products as part of a cohesive brand strategy. These approaches served as a funnel for brainstorming product name ideas.
**Product Name Options & Selection Process**

Clean Power Alliance product names should reinforce and live in harmony with the broader Clean Power Alliance brand ecosystem. Therefore, potential product names options developed by The Energy Coalition and vetted with the Clean Power Alliance team use the brand + product value/utility approaches discussed in the *Identification of Common Patterns & Frameworks* section above. By using these methods to shape ideation, we were able to develop product name options that communicate product value while emphasizing and reinforcing the brand.

<table>
<thead>
<tr>
<th>Concept</th>
<th>Product Name Option(s)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Focusing on the “Clean” aspect of Clean Power Alliance Brand</strong></td>
<td><strong>36%</strong></td>
</tr>
<tr>
<td>Clean Power</td>
<td>Clean Future</td>
</tr>
<tr>
<td>Clean Choice</td>
<td>Clean Power</td>
</tr>
<tr>
<td>Clean Neighborhood</td>
<td>Clean Community</td>
</tr>
<tr>
<td>Clean Choice</td>
<td>Clean Collective</td>
</tr>
<tr>
<td>Clean Foundation</td>
<td>Clean Focus</td>
</tr>
<tr>
<td>Clean Ally</td>
<td>Clean Partner</td>
</tr>
<tr>
<td>Clean Light</td>
<td>Clean Bright</td>
</tr>
<tr>
<td>Light Clean</td>
<td>Bright Clean</td>
</tr>
</tbody>
</table>

| **Focusing on the “Power” aspect of Clean Power Alliance brand.** | **Lean Power** | **Spark Power** | **Local Power** |
| **36%** | **Clean Power** | **Radiant Power** | **Community Power** |
| **50%** | **Green Power** | **Future Power** | **Future Power** |
A survey of these options was conducted with Clean Power Alliance’s Marketing and Outreach Subcommittee and other stakeholders, followed by a conference call to further discuss feedback. Highly favorable options from the survey are shown below, with the most favored option in bold.

<table>
<thead>
<tr>
<th>Initial Survey Results - Highly Favorable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Clean Choice</td>
</tr>
<tr>
<td>Clean Ally</td>
</tr>
<tr>
<td><strong>Lean Power</strong></td>
</tr>
<tr>
<td>Spark Power</td>
</tr>
<tr>
<td>Clean Power Ally</td>
</tr>
<tr>
<td>Clean Power Supporter</td>
</tr>
</tbody>
</table>

The Subcommittee requested similar options based on this selected direction along with an additional conference call to review the updated options. Once these updated options were provided to the Subcommittee, final two selections were made as shown in the table below.
## Updated Options Based on Subcommittee Feedback

<table>
<thead>
<tr>
<th>Leaner Power</th>
<th>Greener Power</th>
<th>Cleaner Power</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Lean Power</strong></td>
<td><strong>Clean Power</strong></td>
<td><strong>100% Green Power</strong></td>
</tr>
<tr>
<td>Light Power</td>
<td>Bright Power</td>
<td>Radiant Power/Radiant100</td>
</tr>
<tr>
<td><strong>Clean Start</strong></td>
<td><strong>Clean Mix</strong></td>
<td><strong>Clean Max</strong></td>
</tr>
<tr>
<td>Clean Choice</td>
<td>Clean Power</td>
<td>Ultra Clean</td>
</tr>
</tbody>
</table>

A final survey was sent out to the Subcommittee and other stakeholders to determine the final selection. The results are shown at right.

---

**Which option do you prefer for Clean Power Alliance's product names?**

- **Lean Power | Clean Power | 100% Green Power**: 28.6%
- **Clean Start | Clean Mix | Clean Max**: 71.4%
Brand Tagline Options & Selection Process

When generating tagline options, we adhered to guiding principles originally developed for the Tagline Survey distributed on June 8, 2018. These guiding principles included that the tagline should align with the brand strategy, living in harmony with the rest of the elements in the brand ecosystem, such as the metaphors, tone, and personality. The tagline must also be consistent with brand voice and key messages that are already launched on Clean Power Alliance’s current communication channels and heard by the public. These messages include that Clean Power is “here to serve you,” that they offer options that suit the “diverse needs of our communities”, and “the choice is yours!”. Finally, the tagline must be brief, simple, easy to read and understand, and not redundant (i.e. not repeating the organization’s full name).

For brand taglines, we identified common keywords and unique standouts from our competitive analysis:

<table>
<thead>
<tr>
<th>Common Keywords</th>
<th>Unique Standouts</th>
</tr>
</thead>
<tbody>
<tr>
<td>• choice</td>
<td>• “A New Wave of Energy for Solana Beach” - Solana Energy Alliance</td>
</tr>
<tr>
<td>• choose</td>
<td>• &quot;Innovation. Grown Locally.&quot; - Sonoma Clean Power</td>
</tr>
<tr>
<td>• clean(er)</td>
<td>• &quot;Energy for What’s Ahead &quot; - Southern California Edison</td>
</tr>
<tr>
<td>• electricity</td>
<td></td>
</tr>
<tr>
<td>• energy</td>
<td></td>
</tr>
<tr>
<td>• power(ed)</td>
<td></td>
</tr>
<tr>
<td>• community</td>
<td></td>
</tr>
<tr>
<td>• local</td>
<td></td>
</tr>
</tbody>
</table>

To accurately represent Clean Power Alliance’s brand purpose and value without being redundant of the organization’s name, we generated ideas that incorporated the keywords community and choice. We also cross-referenced taglines and product name options with the trademarks office and all are currently not registered trademarks.
Below is a list of potential brand taglines.

<table>
<thead>
<tr>
<th>Tagline Option</th>
<th>Concept/Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy for us.</td>
<td>This tagline is centered on supporting and serving community, which is an essential part of Clean Power Alliance’s mission.</td>
</tr>
<tr>
<td>Your source for local energy innovation.</td>
<td>This tagline is centered on supporting and serving the local community, which is an essential to Clean Power Alliance's mission.</td>
</tr>
<tr>
<td>Powering our energy future.</td>
<td>This tagline positions Clean Power Alliance as an inclusive and community-minded leader in clean energy.</td>
</tr>
<tr>
<td>Electrifying our future.</td>
<td>This tagline builds on Clean Power Alliance’s product offering and explores “energy” as a physical resource and the act of “electrifying” as a way to engage the community and propel the future.</td>
</tr>
<tr>
<td>Your partner in energy.</td>
<td>This tagline builds on Clean Power Alliance’s product offering and explores “energy” as a physical resource and as a way to engage the community and propel the future.</td>
</tr>
</tbody>
</table>

A survey of these options was conducted with Clean Power Alliance’s Marketing and Outreach Subcommittee and other stakeholders, followed by a conference call to further discuss feedback. Feedback was then incorporated into the following updated options. Highly favorable options from the survey are shown below, with the most favored option in bold.
<table>
<thead>
<tr>
<th><strong>Initial Survey Results - Highly Favorable</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Your source for local energy innovation.</td>
</tr>
<tr>
<td>Powering our energy future.</td>
</tr>
<tr>
<td>Electrifying our future.</td>
</tr>
</tbody>
</table>

The Subcommittee requested similar options based on this direction along with an additional conference call to review the updated options. Once these options were provided to the Committee, the final selection was made.

<table>
<thead>
<tr>
<th><strong>Updated Options Based on Subcommittee Feedback</strong></th>
</tr>
</thead>
<tbody>
<tr>
<td>Community Innovation. Electrified.</td>
</tr>
<tr>
<td>Powered by local energy innovation.</td>
</tr>
<tr>
<td>Locally powered energy innovation.</td>
</tr>
<tr>
<td>Community energy innovation.</td>
</tr>
<tr>
<td>Local energy innovation.</td>
</tr>
</tbody>
</table>
RECOMMENDATION
Authorize the Executive Director to execute a 15-year power purchase agreement (PPA) with the Voyager Wind project.

OVERVIEW
CPA has a time-sensitive opportunity to secure a 15-year PPA with the Voyager Wind project, a 21.6 MW project located in Southern California with an expected output of approximately 71,500 MWh/year. The PPA being offered to CPA is part of a fully permitted larger wind project already under construction, with a commercial online date (COD) of December 31, 2018. The project would consist of six wind turbines added to the existing project of 48 turbines on a site located in a high capacity wind area near Mojave, CA.

The project has been reviewed by both the Energy Planning & Resources Committee and the Executive Committee, and each recommended that a PPA be presented to Board of Directors, pending successful completion of final due diligence items. Staff has completed evaluation of the opportunity, with a planned site visit on October 1, and is recommending that the attached PPA be approved by the Board. Portions of the PPA have been redacted to protect market sensitive information.
The project is an opportunity to secure a new wind resource in California (which are limited), and wind offers CPA important renewable portfolio diversification, particularly important because wind generation in the project area often takes place at night when solar resources are not producing. The project will help CPA meet its SB 350 long-term contracting compliance requirements, and the price will lower CPA’s renewable energy costs as early as 2019 ahead of the next enrollment phases.

PROJECT DESCRIPTION

Project Highlights
- Name: Voyager Wind
- Commercial Online Date (COD): December 31, 2018
- Pricing: The contract fixed price (no escalator) offers an immediate cost savings to CPA’s currently projected renewables procurement costs (~25% savings in 2019)
- PPA Term: 15 Years
- Project location: Mojave, CA in Kern County
- Interconnection: Interconnection agreement is executed, and project will have Full Capacity Deliverability Status (FCDS)
- Turbine manufacturer: Vestas-American Wind Technology, Inc.

Developer
The project developer is Terra-Gen, a U.S.-based independent power producer focused on the development, construction and operation of power generation facilities utilizing clean energy resources such as wind, solar, geothermal and battery storage, with over 1,300 MW in operations and construction and 3+ GW in development. Terra-Gen has developed several wind projects in the area.

Wind Resource
The Tehachapi Wind Resource Area, where the Voyager project is located, is considered the largest wind resource area in California and is located approximately 100 miles from the Los Angeles load center. The region has a proven wind resource where wind generation has been operating since the 1980s and today consists of over 2,900 MW of
installed capacity. The generation profile of this wind resource is particularly attractive because it has an inverse shape to solar. The wind generation is expected to ramp up during the night-time and ramp-down during the middle of the day, improving CPA’s supply shape compared to load, as it is likely that CPA’s future renewable portfolio will have a heavy component of solar resources.

Environmental/Permitting
The project is fully permitted. Since the project is an infill opportunity in an existing high intensity wind development region, the project was determined to be exempt from full California Environmental Quality Act (CEQA) review. The developer hired consultants to perform an assessment of environmental impacts. No significant issues arose requiring remediation or mitigation, and no additional impacts to sensitive biological resources are anticipated from the project. The project will implement avoidance and protection measures, particularly for avian issues, and a Bird and Bat Conservation Strategy was developed to address potential impacts to bird and bat species of concern.

Workforce Development
The nearest cities to the project are located in Los Angeles County (Lancaster and Palmdale). The majority of permanent employees working at Terra-Gens’ O&M Center live in LA County. The overall Voyager wind development is expected to create an average of 205 construction jobs, and 16 new permanent jobs. In addition, the developer will fund a $150,000 community college STEM education scholarship program to be co-administered by CPA and the developer over four years. CPA expects to engage its future Community Advisory Committee, workforce development stakeholders, and the Board in the design of this scholarship program.

Attachment: 1) Voyager Wind Power Purchase Agreement (PPA)
POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

**Seller:** Voyager Wind II, LLC

**Buyer:** Clean Power Alliance of Southern California, a California joint powers authority

**Description of Facility:** A 21.6 MW wind-powered electricity generating facility located in Mojave, Kern County, CA, as further described in Exhibit A.

**Guaranteed Commercial Operation Date:** December 31, 2018

**Milestones:**

<table>
<thead>
<tr>
<th>Identify Milestone</th>
<th>Date for Completion</th>
</tr>
</thead>
<tbody>
<tr>
<td>Evidence of Site Control</td>
<td>Complete</td>
</tr>
<tr>
<td>Documentation of Conditional Use Permit if required:</td>
<td></td>
</tr>
<tr>
<td>CEQA [X] Cat Ex, [ ] Neg Dec, [ ] Mitigated Neg Dec, [ ] EIR</td>
<td>Site is zoned Wind Energy and does not require Conditional Use Permit. Notice of Exemption to CEQA has been filed.</td>
</tr>
<tr>
<td>Seller’s receipt of Phase I and Phase II Interconnection study results for Seller’s Interconnection Facilities</td>
<td>Complete</td>
</tr>
<tr>
<td>Executed Interconnection Agreement</td>
<td>Complete</td>
</tr>
<tr>
<td>Construction Start</td>
<td>Complete</td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>30 days prior to Guaranteed Commercial Operation Date</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)</td>
<td>Complete</td>
</tr>
<tr>
<td>Guaranteed Commercial Operation Date</td>
<td>December 31, 2018</td>
</tr>
</tbody>
</table>

**Guaranteed Capacity:** 21.6 MW AC

**Delivery Term:** Fifteen (15) Contract Years
## Delivery Term Expected Energy:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>71,523</td>
</tr>
</tbody>
</table>

## Contract Price:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Price ($/MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>with no escalation</td>
</tr>
</tbody>
</table>

## Product:
- ☒ Energy
- ☒ Green Attributes (if Renewable Energy Credit, please check the applicable box below):
  - ☒ Portfolio Content Category 1
  - ☐ Portfolio Content Category 2
  - ☐ Portfolio Content Category 3
- ☒ Capacity Attributes
  - ☒ Full Capacity Deliverability Status
    - a) Expected FCDS Date: Commercial Operation Date

**Scheduling Coordinator:** Seller/Seller Third-Party

**Development Security:**

**Performance Security:**

**Damage Payment:** See definition of “Damage Payment”
Notice Addresses:

Seller:

Voyager Wind II, LLC
c/o Terra-Gen, LLC
11512 El Camino Real, Suite 370
San Diego, CA 92130

With a copy to: Jeff.Cast@terra-gen.com <jcast@terra-gen.com>

Scheduling: TG Operations Center at 661-822-2440 or 661-822-2441

Buyer:

Clean Power Alliance of Southern California
555 West 5th Street, 35th Floor
Los Angeles, CA 90013
Attention: Ted Bardacke, Executive Director
Phone No.: (213) 269-5870
E-mail: tbardacke@cleanpoweralliance.org

With a copy to (which shall not be required for Notice purposes):

Troutman Sanders LLP
100 SW Main St., Suite 1000
Portland, Oregon 97204
Attention: Stephen Hall
Phone No.: (503) 290-2336
Email: steve.hall@troutman.com

[Signatures on following page.]
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

VOYAGER WIND II, LLC

By: __________________________
Name: _________________________
Title: __________________________

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority

By: __________________________
Name: Ted Bardacke
Title: Executive Director
# TABLE OF CONTENTS

| ARTICLE 1  | DEFINITIONS | ................................................................. | 1 |
| Article Definitions | .................................................................................. | 1 |
| Rules of Interpretation | ................................................................................... | 15 |
| ARTICLE 2  | TERM; CONDITIONS PRECEDENT | ................................................................. | 17 |
| Contract Term | ..................................................................................................... | 17 |
| Conditions Precedent | ........................................................................................... | 17 |
| Progress Reports | .................................................................................................. | 18 |
| Remedial Action Plan | .......................................................................................... | 18 |
| ARTICLE 3  | PURCHASE AND SALE | ................................................................. | 18 |
| Sale of Product | .................................................................................................... | 18 |
| Sale of Green Attributes | ........................................................................................ | 19 |
| Compensation | ..................................................................................................... | 19 |
| Imbalance Energy | ................................................................................................... | 20 |
| Ownership of Renewable Energy Incentives | ................................................................................ | 20 |
| Future Environmental Attributes | .................................................................................. | 20 |
| Test Energy | ........................................................................................................ | 21 |
| Capacity Attributes | ............................................................................................... | 21 |
| Resource Adequacy Failure | ......................................................................................... | 21 |
| CEC Certification and Verification | ............................................................................... | 22 |
| Eligibility | ............................................................................................................ | 22 |
| California Renewables Portfolio Standard | .................................................................................. | 22 |
| Compliance Expenditure Cap | ........................................................................................ | 22 |
| ARTICLE 4  | OBLIGATIONS AND DELIVERIES | ................................................................. | 23 |
| Delivery | ................................................................................................................ | 23 |
| Title and Risk of Loss | ................................................................................................ | 24 |
| Scheduling Coordinator Responsibilities | .................................................................................. | 24 |
| Forecasting | ........................................................................................................... | 25 |
| Reserved | ............................................................................................................... | 25 |
| Reduction in Delivery Obligation | ........................................................................................ | 25 |
| Expected Energy and Guaranteed Energy Production | .................................................................................. | 26 |
| WREGIS | .................................................................................................................. | 26 |
| ARTICLE 5  | TAXES | ................................................................. | 28 |
| Allocation of Taxes and Charges | ................................................................................ | 28 |
| Cooperation | ........................................................................................................ | 28 |
| ARTICLE 6  | MAINTENANCE OF THE FACILITY | ................................................................. | 28 |
6.1 Maintenance of the Facility
6.2 Maintenance of Health and Safety
6.3 Shared Facilities

ARTICLE 7
7.1 Metering
7.2 Meter Verification

ARTICLE 8
8.1 Invoicing
8.2 Payment
8.3 Books and Records
8.4 Payment Adjustments; Billing Errors
8.5 Billing Disputes
8.6 Netting of Payments
8.7 Seller’s Development Security
8.8 Seller’s Performance Security
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral
8.10 Buyer’s Financial Statements

ARTICLE 9
9.1 Addresses for the Delivery of Notices
9.2 Acceptable Means of Delivering Notice

ARTICLE 10
10.1 Definition
10.2 No Liability If a Force Majeure Event Occurs
10.3 Notice
10.4 Termination Following Force Majeure Event

ARTICLE 11
11.1 Events of Default
11.2 Remedies; Declaration of Early Termination Date
11.3 Termination Payment
11.4 Notice of Payment of Termination Payment or Damage Payment
11.5 Disputes With Respect to Termination Payment or Damage Payment
11.6 Rights And Remedies Are Cumulative
11.7 Mitigation

ARTICLE 12
12.1 No Consequential Damages
12.2 Waiver and Exclusion of Other Damages
<table>
<thead>
<tr>
<th>ARTICLE 13</th>
<th>REPRESENTATIONS AND WARRANTIES</th>
<th>39</th>
</tr>
</thead>
<tbody>
<tr>
<td>13.1</td>
<td>Seller’s Representations and Warranties</td>
<td>39</td>
</tr>
<tr>
<td>13.2</td>
<td>Buyer’s Representations and Warranties</td>
<td>40</td>
</tr>
<tr>
<td>13.3</td>
<td>Seller Covenants</td>
<td>41</td>
</tr>
<tr>
<td>13.4</td>
<td>General Covenants</td>
<td>41</td>
</tr>
<tr>
<td>ARTICLE 14</td>
<td>ASSIGNMENT</td>
<td>42</td>
</tr>
<tr>
<td>14.1</td>
<td>General Prohibition on Assignments</td>
<td>42</td>
</tr>
<tr>
<td>14.2</td>
<td>Permitted Assignment by Seller</td>
<td>41</td>
</tr>
<tr>
<td>ARTICLE 15</td>
<td>LENDER ACCOMMODATIONS</td>
<td>42</td>
</tr>
<tr>
<td>15.1</td>
<td>Granting of Lender Interest</td>
<td>42</td>
</tr>
<tr>
<td>15.2</td>
<td>Rights of Lender</td>
<td>43</td>
</tr>
<tr>
<td>15.3</td>
<td>Cure Rights of Lender</td>
<td>43</td>
</tr>
<tr>
<td>ARTICLE 16</td>
<td>DISPUTE RESOLUTION</td>
<td>44</td>
</tr>
<tr>
<td>16.1</td>
<td>Governing Law</td>
<td>44</td>
</tr>
<tr>
<td>16.2</td>
<td>Dispute Resolution</td>
<td>44</td>
</tr>
<tr>
<td>16.3</td>
<td>Attorneys’ Fees</td>
<td>44</td>
</tr>
<tr>
<td>ARTICLE 17</td>
<td>INDEMNIFICATION</td>
<td>44</td>
</tr>
<tr>
<td>17.1</td>
<td>Indemnification</td>
<td>44</td>
</tr>
<tr>
<td>17.2</td>
<td>Claims</td>
<td>44</td>
</tr>
<tr>
<td>ARTICLE 18</td>
<td>INSURANCE</td>
<td>45</td>
</tr>
<tr>
<td>18.1</td>
<td>Insurance</td>
<td>45</td>
</tr>
<tr>
<td>ARTICLE 19</td>
<td>CONFIDENTIAL INFORMATION</td>
<td>46</td>
</tr>
<tr>
<td>19.1</td>
<td>Definition of Confidential Information</td>
<td>46</td>
</tr>
<tr>
<td>19.2</td>
<td>Duty to Maintain Confidentiality</td>
<td>47</td>
</tr>
<tr>
<td>19.3</td>
<td>Irreparable Injury; Remedies</td>
<td>47</td>
</tr>
<tr>
<td>19.4</td>
<td>Disclosure to Lender</td>
<td>47</td>
</tr>
<tr>
<td>19.5</td>
<td>Public Statements</td>
<td>47</td>
</tr>
<tr>
<td>ARTICLE 20</td>
<td>MISCELLANEOUS</td>
<td>47</td>
</tr>
<tr>
<td>20.1</td>
<td>Entire Agreement; Integration; Exhibits</td>
<td>47</td>
</tr>
<tr>
<td>20.2</td>
<td>Amendments</td>
<td>48</td>
</tr>
<tr>
<td>20.3</td>
<td>No Waiver</td>
<td>48</td>
</tr>
<tr>
<td>20.4</td>
<td>No Agency, Partnership, Joint Venture or Lease</td>
<td>48</td>
</tr>
<tr>
<td>20.5</td>
<td>Severability</td>
<td>48</td>
</tr>
<tr>
<td>20.6</td>
<td>Mobile-Sierra</td>
<td>48</td>
</tr>
<tr>
<td>20.7</td>
<td>Counterparts</td>
<td>48</td>
</tr>
<tr>
<td>20.8</td>
<td>Facsimile or Electronic Delivery</td>
<td>48</td>
</tr>
</tbody>
</table>
20.9 Binding Effect

20.10 No Recourse to Members of Buyer

20.11 Change in Electric Market Design

**Exhibits:**

- Exhibit A Description of the Facility
- Exhibit B Facility Construction and Commercial Operation
- Exhibit C Contract Price
- Exhibit D Emergency Contact Information
- Exhibit E Reserved
- Exhibit F Guaranteed Energy Production Damages Calculation
- Exhibit G Progress Reporting Form
- Exhibit H Reserved
- Exhibit I-1 Form of Commercial Operation Date Certificate
- Exhibit I-2 Form of Installed Capacity Certificate
- Exhibit J Reserved
- Exhibit K Form of Letter of Credit
- Exhibit L Form of Replacement RA Notice
POWER PURCHASE AND SALE AGREEMENT

This Power Purchase and Sale Agreement ("Agreement") is entered into as of October 5, 2018 (the "Effective Date"), between Seller and Buyer (each also referred to as a "Party" and collectively as the "Parties").

RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate the wind-powered electric generating facility to be located in California in the location identified in Exhibit A, having a Guaranteed Capacity to Buyer of twenty-one and six-tenths (21.6) MW AC (the "Facility"); and

WHEREAS, Seller desires to sell, and Buyer desires to purchase, on the terms and conditions set forth in this Agreement, 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 3.13.

"Adjusted Energy Production" has the meaning set forth in Exhibit F.

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

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

"Available Capacity" means the capacity from the Facility, expressed in whole MWs, that is available to generate Energy.
“Bankrupt” means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of 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.

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

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

“Buyer Default” means a failure of Buyer to perform its material obligations hereunder.

“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 Energy produced by the Facility net of Electrical Losses and Station Use.

“CAISO Costs” means the debits, costs, penalties and interest that are directly assigned by the CAISO to the CAISO Resource ID for the Facility for, or attributable to, Scheduling or deliveries from the Facility under this Agreement in each applicable Settlement Interval.

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

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

“CAISO Resource ID” means the number or name assigned by the CAISO to the CAISO Approved Meter.

“CAISO Revenues” means the credits and other payments incurred or received by Seller, as the Facility’s Scheduling Coordinator, as a result of Scheduling or energy from the Facility delivered by Seller to any CAISO administered market, including costs and revenues associated with CAISO dispatches, for each applicable Settlement Interval.

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

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

“Capacity Attribute” means any current or future defined characteristic, certificate, tag, credit, or accounting construct associated with the amount of power that the Facility can generate and deliver to the CAISO Grid at a particular moment and that can be purchased and sold under CAISO market rules, including Resource Adequacy Benefits.

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

“CEC” means the California Energy Commission or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Facility has commenced commercial operation (as such term is defined by and according to the CEC), 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 Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

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

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

“Commercial Operation Delay Damages” means an amount per day.
“Compliance Actions” has the meaning set forth in Section 3.13.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.13.

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

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

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

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date 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 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, completed by Seller and incorporated into this Agreement.

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

“Credit Rating” means, with respect to any entity, the rating then assigned to such entity’s unsecured, senior long-term debt obligations (not supported by third party credit enhancements) or if such entity does not have a rating for its senior unsecured long-term debt, then the rating then assigned to such entity as an issuer rating by S&P or Moody’s. If ratings by S&P and Moody’s are not equivalent, the lower rating shall apply.

“Curtailed Energy” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Curtailment Period, which amount shall be equal to the result of the equation provided by Seller to reasonably calculate the potential generation of the Facility as a function of Available Capacity, wind speed, and wind direction and using relevant Facility availability, weather and other pertinent data for the period of time during the Curtailment Period less the amount of Metered Energy delivered to the Delivery Point during the Curtailment Period; provided that, if the Metered Energy is greater than the calculation of potential generation, then the Curtailed Energy shall be zero (0) MWh.

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

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

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

provided, however, that Buyer may not issue any Curtailment Order or any other instruction to curtail or reduce deliveries or output associated with Energy, Scheduled Energy or Metered Energy.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order.

“Damage Payment”

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

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Market Curtailment Period, which amount shall be equal to the result of the equation provided by Seller to reasonably calculate the potential generation of the Facility as a function of Available Capacity, wind speed, and wind direction and using relevant Facility availability, weather and other pertinent data for the period of time during the Market Curtailment Period less the amount of Metered Energy delivered to the Delivery Point during the Market Curtailment Period; provided that, if the Metered Energy is greater than the calculation of potential generation, then the Deemed Delivered Energy shall be zero (0) MWh.

“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” means the PNode designated by the CAISO for the Facility.

“Delivery Term” shall mean the period of fifteen (15) Contract Years beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

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

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

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

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

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

“Electrical Losses” means all transmission or transformation losses between the Facility and the Delivery Point.

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

“Energy” means electrical energy, measured in MWh.

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

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

“Expected FCDS Date” means the date set forth in the deliverability Section of the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

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

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

“Fifteen Minute Market” or “FMM” has the meaning set forth in the CAISO Tariff.

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

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

“Forward Certificate Transfers” has the meaning set forth in Section 4.8(a).
“Full Capacity Deliverability Status” has the meaning set forth in the CAISO Tariff.

“Future Environmental Attributes” shall mean any and all emissions, air quality or other environmental attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility. Future Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Production Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits.

“Gains” means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and includes the value of Green Attributes and Capacity Attributes.

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

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

“Green Tag Reporting Rights” means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by 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.

“Grossed Up Value” means, with respect to Production Tax Credits, a payment rate, expressed in dollars per MWh ($/MWh), equal to the amount required to yield the applicable Production Tax Credit amount on an after-tax basis, such that, after paying federal and state income tax on such payment (which shall be deemed to be at the highest marginal rate in each case), the net remaining amount is equal to the dollar amount of the lost Production Tax Credits for which the payments were made.

“Guaranteed Capacity” means twenty-one and six-tenths (21.6) MW AC capacity measured at the Delivery Point.

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

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

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

“Indemnified Party” has the meaning set forth in Section 17.1.

“Indemnifying Party” has the meaning set forth in Section 17.1.

“Initial Synchronization” means the initial delivery of Energy from the Facility to the Delivery Point.
“Installed Capacity” means the actual installed nameplate generating capacity of the Facility less expected Electrical Losses and Station Use, but not to exceed the Guaranteed Capacity, as evidenced by a certificate provided by Seller to Buyer and substantially in the form attached as Exhibit I-2 hereto.

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

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

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

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


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

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

“Losses” means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

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

“Market Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which (a) Seller reduces generation from the Facility during a Settlement Period or Settlement Interval in which there is a Negative LMP, or (b) Seller reduces generation from the Facility due to a Buyer Default.

“Metered Energy” means the Energy generated by the Facility expressed in MWh, as recorded by the CAISO Approved Meter(s) and net of all Electrical Losses and Station Use.

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

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour measured in alternating current.

“Negative LMP” means, in any Settlement Period or Settlement Interval, whether in the Day-Ahead Market or Real-Time Market, the LMP is less than zero dollars ($0).

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

“Participating Transmission Owner” or “PTO” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is Southern California Edison Company.

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

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

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

“Permitted Transferee” means an entity that has, or is controlled by another Person that has, all of the following:

(a) A tangible net worth of not less than one hundred fifty million dollars ($150,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

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

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

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

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

“Portfolio Content Category 1” or “PCC1” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.
“Portfolio Content Category 2” or “PCC2” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(2), as may be amended from time to time or as further defined or supplemented by Law.

“Portfolio Content Category 3” or “PCC3” means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(3), as may be amended from time to time or as further defined or supplemented by Law.

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

“Production Tax Credit” or “PTC” means the production tax credit for wind-powered electric generating facilities described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

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

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

“Qualified Assignee” means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller’s obligations (considering such Person’s own financial wherewithal and that of such Person’s credit support) under this Agreement.

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

“RA Deficiency Amount” means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.9(b).

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.9(b), any month during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month.

“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 federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

“Replacement RA” means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer, and located within the East Central Area TAC Area (as described in the CAISO Tariff) and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource.

“Resource Adequacy Benefits” means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

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

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

“Scheduled Energy” means the Energy scheduled by Seller that clears the applicable CAISO market.

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

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

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

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

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

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

“Settlement Period” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

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

“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.

“Station Use” means:

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

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

“System Emergency” means any condition that: (a) requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

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

“Termination Payment” has the meaning set forth in Section 11.3.
“Terminated Transaction” has the meaning set forth in Section 11.2.

“Test Energy” means the Metered Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility to the CAISO and (ii) the 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.

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

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

“Ultimate Parent” means Terra-Gen, LLC, which as of the Effective Date directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in Seller.

“Variable Energy Resource” or “VER” has the meaning set forth in the CAISO Tariff.

“WECC” means the Western Electricity Coordinating Council or its successor.

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

“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 December 2010, 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 shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

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

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

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

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

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

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

(m) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.
ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

(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 19 shall remain in full force and effect for 2 years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer a completion certificate from a licensed professional engineer substantially in the form of Exhibit I-1;

(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 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;

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

(e) Seller has received the requisite pre-certification of the CEC Certification and Verification;

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system or have completed any other requirements to enable Buyer to fulfill its RPS requirements;
(g) Seller has delivered and maintained the Development Security with Buyer, if Seller elects to maintain its Development Security with Buyer in order to satisfy its Performance Security requirements hereunder; provided, that Seller may, instead of maintaining the Development Security, provide a form of Performance Security which differs from the form of Development Security up to and no later than ten (10) days following the Commercial Operation Date; and

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

2.3 Progress Reports. The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of each calendar month from the Effective 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. The form of the Progress Report is set forth in Exhibit G. 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.

2.4 Remedial Action Plan. If Seller misses a Milestone by more than thirty (30) days, except to the extent due to Force Majeure or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“Remedial Action Plan”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. If the missed Milestone(s) is not the Guaranteed Commercial Operation Date, and so long as Seller complies with its obligations under this Section 2.4, then Seller shall not be considered in default of its obligations under this Agreement as a result of missing such Milestone(s).

ARTICLE 3
PURCHASE AND SALE

3.1 Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller at the applicable prices identified in Section 3.3, all of the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term (if applicable) re-sell or use for another purpose all or a portion of the Product, provided that such resale or use for another purpose will not relieve Buyer of any of its obligations under this Agreement. Subject to Sections 3.3 and 4.1, Buyer has no obligation to purchase from Seller any...
Product that is not or cannot be delivered to the Delivery Point as a result of any circumstance, including, an outage of the Facility, a Force Majeure Event, Negative LMPs, or a Curtailment Order.

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

3.3 **Compensation.**

(a)

(i)

(ii)

(b)

(i)

(ii)

(c)
3.4 Imbalance Energy.

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

3.6 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however,
Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.6(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or the operation of the Facility 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 associated with such alteration or change in operation.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 Test Energy.

3.8 Capacity Attributes. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

(a) Throughout the Delivery Term, subject to Section 3.13, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

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

3.9 Resource Adequacy Failure.

(a) RA Deficiency Determination. Notwithstanding Seller’s obligations set forth in Section 4.3 or anything to the contrary herein but subject to Section 3.13, the Parties acknowledge and agree that for each RA Shortfall Month, Seller shall pay to Buyer the RA
Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer for such RA Shortfall Month.

(b) RA Deficiency Amount Calculation. Commencing on the Commercial Operation Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the “RA Deficiency Amount”) equal to

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3.10 \text{ CEC Certification and Verification.} \quad \text{Subject to Section 3.13, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the RPS Eligibility Guidebook, Ninth Edition (or its successor). Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.}

3.11 Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term “commercially reasonable efforts” as used in this Section 3.11 means efforts consistent with and subject to Section 3.13.

3.12 California Renewables Portfolio Standard. Subject to Section 3.13, Seller shall also take all other actions necessary to ensure that the Energy produced from the Facility is tracked for purposes of satisfying the California Renewables Portfolio Standard requirements, as may be amended or supplemented by the CPUC or CEC from time to time.

3.13 Compliance Expenditure Cap. If Seller establishes to Buyer’s reasonable satisfaction that a change in Laws occurring after the Effective Date has increased Seller’s cost above the cost that could reasonably have been contemplated as of the Effective Date to take all actions to comply with Seller’s obligations under the Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable), the items listed in Sections 3.13(a), (b) and (c), then the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear during the Delivery Term shall be capped. 

22
Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

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.

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 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. If Buyer does not respond to a Notice given by Seller under this Section 3.13 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 that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Term.

If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller’s actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. The Energy generated by the Facility shall be scheduled with the CAISO by Seller (or Seller’s designated Scheduling Coordinator).

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Metered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.
4.2 Title and Risk of Loss.

(a) Energy. Title to and risk of loss related to the Metered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.

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

4.3 Scheduling Coordinator Responsibilities.

(a) Seller to be Scheduling Coordinator. During the Delivery Term and the Compensated Curtailment Payback Period (if applicable), Seller shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO to Schedule and deliver the Product to the Delivery Point, and Buyer shall be its own Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO. Each Party shall perform all scheduling and transmission activities in compliance with (i) the CAISO Tariff, (ii) WECC scheduling practices, and (iii) Prudent Operating Practice. Seller shall be responsible for the proper entry of any information on an E-Tag or in WREGIS. The Parties agree to communicate and cooperate as necessary in order to address any scheduling or settlement issues as they may arise, and to work together in good faith to resolve them in a manner consistent with the terms of the Agreement.

(b) CAISO Market Participation.

(c) CAISO Costs and CAISO Revenues. Seller shall be responsible for all CAISO Costs and shall be entitled to all CAISO Revenues (including credits and other payments) as the Scheduling Coordinator for the Facility; provided, that, any net costs or charges assessed by the CAISO which are due to a Buyer Default shall be Buyer’s responsibility. The Parties agree that any Availability Incentive Payments are for the benefit of the Seller and for Seller’s account and that any Non-Availability Charges or other CAISO charges associated with the Facility not providing sufficient Resource Adequacy capacity are the responsibility of the Seller and for Seller’s account. In addition, if during the Delivery Term the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, the cost of such sanctions or penalties arising from the scheduling, outage reporting, or generator operation of the Facility shall be the Seller’s responsibility.

(d) Future Changes to Scheduling Protocols. During the Delivery Term, the Parties agree to discuss in good faith requested changes by either Party to the CAISO scheduling
procedures set forth in this Agreement, including the possibility of incorporating Inter-SC Trades in the Day-Ahead Market.

4.4 **Forecasting.** Seller shall provide the Available Capacity forecasts described below. Seller’s Available Capacity forecasts shall include availability for the Facility. Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Facility accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer’s designee).

(a) **Annual Forecast of Available Capacity.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide a non-binding forecast of each month’s average-day expected Metered Energy, by hour, for the following calendar year in a form reasonably acceptable to Buyer.

(b) **Monthly Forecast of Available Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and Buyer’s designee (if applicable) a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer.

4.5 **Reserved.**

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

(a) **Facility Maintenance.** Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

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

(c) **System Emergencies and other Interconnection Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, or upon Notice of a Curtailment Order, or 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 a Buyer Default.

(f) **Negative LMP.** Seller shall be permitted, but not obligated, in its sole discretion to reduce deliveries of Product during any period in which there is a Negative LMP.
4.7 **Expected Energy and Guaranteed Energy Production.** The quantity of Energy (with associated Product) that Seller expects to be able to deliver to Buyer during each Contract Year is set forth on the Cover Sheet (“Expected Energy”). During the Delivery Term, Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in any period of Performance Measurement Period during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” means an amount of Product, as measured in MWh, Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, Buyer’s failure to perform, and Curtailment Orders. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount equal to the sum of: (a) Adjusted Energy Production during such Performance Measurement Period; plus (b) the amount of Energy during such Performance Measurement Period with respect to which Seller has already paid liquidated damages in accordance with Exhibit F. If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit F; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit F) delivered to SP 15 EZ Gen Hub within ninety (90) days after the conclusion of the applicable Performance Measurement Period and within the same calendar year in the event Seller fails to deliver the Guaranteed Energy Production during any Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer. Buyer will pay Seller for all such Replacement Product provided pursuant to this Section 4.7 in accordance with Section 3.3(a) as if such Replacement Product were Metered Energy.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, 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 Metered 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 4.8(g), provided that Seller fulfills its obligations under Sections 4.8(a) through (g) 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 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 Metered Energy for such calendar month as evidenced by the Facility’s metered data.

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

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Metered Energy for the same calendar month (“Deficient Month”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Metered Energy in the Deficient Month shall be reduced by three times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller provides Replacement Product (as defined in Exhibit F) delivered to SP 15 or NP 15 EZ Gen Hub within ninety (90) days of the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer. Without limiting Seller’s obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

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

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under the contract.
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 the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from the Delivery Point (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). 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 Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

ARTICLE 6
MAINTENANCE OF THE FACILITY

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

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

6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Interconnection Facilities, and Seller’s rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to
perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

**ARTICLE 7\nMETERING**

7.1 **Metering.** Seller shall measure the amount of Metered Energy produced by the Facility using a CAISO Approved Meter, using a CAISO-approved methodology. Subject to meeting any applicable CAISO requirements, such meter may be installed on the low voltage side or high voltage side of the Seller’s transformer and maintained at Seller’s cost. The meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

**ARTICLE 8\nINVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no sooner than fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall provide
8.2 **Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "Interest Rate"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records.** To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Either Party, upon fifteen (15) days written Notice to the other Party, shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5, an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer’s monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the non-erring Party received Notice thereof.

8.5 **Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any
required payment shall be made within two (2) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall replenish the Development Security by an amount equal to the amount of any unpaid Commercial Operation Delay Damages within five (5) Business Days in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment. Upon the earlier of (i) Seller’s delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain its Credit Rating, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising under this Agreement, including compensation for penalties, Damage Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the
minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer’s properly documented request to draw on such Letter of Credit by such issuer, Seller shall have five (5) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest (“Security Interest”) in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, 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.

8.10 **Buyer’s Financial Statements.** No later than one hundred eighty (180) days after the end of each fiscal year, at Seller’s request Buyer will provide Seller a copy of Buyer’s audited financial statements for the preceding fiscal year, if such financial statements are not on the internet at https://www.cleanpoweralliance.org/. Buyer’s financial statements shall have been prepared in accordance with GAAP.
ARTICLE 9
NOTICES

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

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition.**

(a) “**Force Majeure Event**” means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the
Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell Energy generated by the Facility at a higher price, than the Contract Price); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, 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 that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) Seller’s inability to achieve Commercial Operation following the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

10.2 **No Liability If a Force Majeure Event Occurs.** Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party’s performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice.** In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; provided, however, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon written Notice to the other Party with respect to the
Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security or Performance Security then held by Buyer.

**ARTICLE 11**

**DEFAULTS; REMEDIES; TERMINATION**

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

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

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

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

(ii) the failure by Seller to achieve Commercial Operation within sixty (60) days after the Guaranteed Commercial Operation Date;
(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount is not at least ten percent (10%) of the Expected Energy amount for the current Contract Year, and Seller fails to demonstrate to Buyer’s reasonable satisfaction, within ten (10) Business Days after Notice from Buyer, a legitimate reason for the failure to meet the ten percent (10%) minimum;

(iv) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment;

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least BBB by S&P or Baa2 by Moody’s;

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

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

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

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

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

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

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party (“Non-Defaulting Party”) shall have the following rights:
(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement (the “Terminated Transaction”) and ends the Delivery Term effective as of the Early Termination Date;

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

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

(d) to suspend performance; and

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

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

11.3 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 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; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment or Damage Payment, as applicable, is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment or Damage Payment, as applicable, is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party’s rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.
11.4 **Notice of Payment of Termination Payment or Damage Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment or Damage Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes With Respect to Termination Payment or Damage Payment.** If the Defaulting Party disputes the Non-Defaulting Party’s calculation of the Termination Payment or Damage 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 or Damage Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment shall be determined in accordance with Article 16.

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

11.7 **Mitigation.** Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY, INDEMNITY PROVISION, OR MEASURE OF DAMAGES HEREIN, 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, OR OTHERWISE.

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.9, 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT F, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO 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 State of Delaware, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.
(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

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

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

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

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

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

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

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

(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.

13.3 **Seller Covenants.** Seller agrees to the following:

(a) **Community Benefits.** Seller agrees to fund a scholarship program through a one-time payment by Seller of one hundred fifty thousand dollars ($150,000) (“Community Benefit Payment”). The scholarship program will be co-administered by Buyer and Seller and subject to other terms and conditions to be established in good faith by the Parties after the Effective Date. Within sixty (60) days after the Commercial Operation Date, Seller will deposit the Community Benefit Payment in an escrow account maintained at a bank or financial institution that is reasonably acceptable to Buyer.

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 each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;
(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

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

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments.** Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, which consent shall not be unreasonably withheld, conditioned, or delayed. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

14.2 **Permitted Assignment by Seller.** Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(i) the assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and

(iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Notwithstanding the foregoing, any assignment by Seller, its successors or assigns under this Section 14.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

ARTICLE 15
LENDER ACCOMMODATIONS

15.1 **Granting of Lender Interest.** Notwithstanding anything to the contrary in Section 14.1 or Section 14.2, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party’s obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the other Party in writing of the name, address, and telephone numbers of any Lender to which the granting Party’s interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications
may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice. Without limiting the foregoing, Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities (1) utilizing tax equity investment, or (2) on a portfolio or other aggregated basis, which may include cross-collateralization or similar arrangements.

15.2 Rights of Lender. If a Party grants an interest under this Agreement as permitted by Section 15.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 11.2 and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender’s security interest and such other provisions as may be reasonably requested by Seller or any such Lender; provided, however, that all costs and expenses (including reasonable attorney’s fees) incurred by Buyer in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting Party hereunder; provided that the non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party’s obligations under this Agreement.

15.3 Cure Rights of Lender. The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 11.1 or 11.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder. The cure rights of Lender may be documented in the certificates, consents, opinions, estoppels, direct agreements, amendments and other documents reasonably requested by the granting Party pursuant to Section 15.2(b).
ARTICLE 16
DISPUTE RESOLUTION

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

16.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a 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, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

16.3 Attorneys’ Fees. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys’ fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 17
INDEMNIFICATION

17.1 Indemnification.

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

(b) Nothing in this Section 17.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

17.2 Claims. Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 17 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the
Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 17, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 17, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

ARTICLE 18
INSURANCE

18.1 Insurance

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000) Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer’s Liability Insurance. Employers’ Liability insurance shall not be less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

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

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

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

(f) **Subcontractor Insurance.** Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers’ compensation insurance and employers’ liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 18.1(f).

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

(h) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 18, Seller, among other things and without restricting Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 18 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

**ARTICLE 19**

**CONFIDENTIAL INFORMATION**

19.1 **Definition of Confidential Information.** The following constitutes “Confidential Information,” whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available the laws of California.
through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

19.2 **Duty to Maintain Confidentiality.** Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The Parties acknowledge and agree that this Agreement is subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion.

19.3 **Irreparable Injury; Remedies.** Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 19 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at Law or in equity, including injunctive relief and/or notwithstanding Section 12.2, consequential damages.

19.4 **Disclosure to Lender.** Notwithstanding anything to the contrary in this Article 19, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 19 to the same extent as if it were a Party.

19.5 **Public Statements.** 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.

**ARTICLE 20**

**MISCELLANEOUS**

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

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

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

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

20.6 **Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party 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.

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

20.8 **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.
20.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

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

20.11 **Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 16. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.
EXHIBIT A

DESCRIPTION OF THE FACILITY

Site Name: Voyager Wind II, Phase 4


County: Kern County, California

Guaranteed Capacity: 21.6 MW

Interconnection Point: Windhub Substation near Mojave, CA

Participating Transmission Owner: Southern California Edison Company

Additional Information:

[Shared Facilities – The Facility will share some existing transmission facilities with other parties via shared facilities agreement(s). The other parties to the shared facilities agreement(s) include [Voyager Wind I, LLC,] Pinyon Pines Wind I, LLC, Pinyon Pines Wind II, LLC, [Alta Wind VII, LLC (“AW VII”),] Alta Wind X, LLC (“AW X”), Alta Wind XI, LLC (“AW XI”), Alta Wind XII, LLC (“AW XII”), and Alta Wind Development, LLC (“AWD”). The gen-tie line from the project substation will connect to the existing, shared Sun Creek switchyard (which includes a control house, a 230kV electrical bus with substation facilities, controls, yard grading, fences (including exterior perimeter fencing), area lighting, parking, and entryway roads servicing the site). Facility generation will then flow through an existing, shared 230kV transmission line approximately two miles to Windhub Substation, the point of interconnection. Facility fiber optic communications cables will connect into open circuits of the existing, shared fiber-optic cables connecting Sun Creek switchyard to the existing O&M building and Windhub Substation.]
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. 

Exhibit B-1
EXHIBIT C

CONTRACT PRICE

The Contract Price of the Product shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>$X/MWh (flat) with no escalation</td>
</tr>
</tbody>
</table>
EXHIBIT D

EMERGENCY CONTACT INFORMATION

BUYER:

SELLER:

Attn: Operations 24/7 Desk
Phone: 661-822-2440 or 661-822-2441
EXHIBIT E

Reserved
EXHIBIT F

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Performance Measurement Period, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

Additional Definitions:
EXHIBIT G

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 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 month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that could 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. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Any other documentation reasonably requested by Buyer.

Exhibit G-1
EXHIBIT H

Reserved

Exhibit H-1
Exhibit I-1

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by _______ [licensed professional engineer] ("Engineer") to [ ] ("Buyer") in accordance with the terms of that certain Power Purchase and Sale Agreement dated _______ ("Agreement") by and between [Seller] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Engineer hereby certifies and represents to Buyer the following:

(1) The Facility’s testing included a performance test demonstrating peak electrical output of no less than ninety (90) percent of the Guaranteed Capacity at the Delivery Point, as adjusted for ambient conditions including adjustments for wind resource and losses on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW].

(2) Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on _______ [DATE]_____.

(3) The Participating Transmission Provider or Distribution Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _______ [DATE]_____.

(4) The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _______ [DATE]_____.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of __________________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

Its: ________________________________

Date: ________________________________
EXHIBIT I-2

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity is delivered by [licensed professional engineer] ("Engineer") to [ ] ("Buyer") in accordance with the terms of that certain Power Purchase and Sale Agreement dated __________ ("Agreement") by and between [SELLER ENTITY] and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

The aggregate nameplate capacity of the installed generating units comprising the Facility, less expected Station Use and Electrical Losses prior to the Delivery Point, is ____MW AC ("Installed Capacity").

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this ______ day of ____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

Its: ________________________________

Date: ______________________________
EXHIBIT J
RESERVED
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US$[XXXXXXXX]

Expiry Date:

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
555 West 5th Street, 35th Floor
Los Angeles, CA 90013

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 Clean Power Alliance of Southern California, a California joint powers authority (“Beneficiary”), 555 West 5th Street, 35th Floor, Los Angeles, CA 90013, for an amount not to exceed the aggregate sum of U.S. $[XXXXXXXX] (United States Dollars XXXXXX and 00/100), pursuant to that certain Power Purchase and Sale 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 __________, 201_.

Funds under this Letter of Credit are available to you against your draft(s) drawn on us at sight, referencing thereon our Letter of Credit No. [XXXXXXXX] accompanied by your 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.

We hereby agree with the Beneficiary that all drafts drawn under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the drawee at [insert bank address]. Payment shall be made by Issuer in U.S. dollars with Issuer’s own immediately available funds.

Partial draws are permitted under this Letter of Credit.

Exhibit K - 1
It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such expiry 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 its the date specified in such notice. No presentation made under this Letter of Credit after such expiry date will be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the “UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer’s control (as defined in Article 36 of the UCP) that interrupts Issuer’s business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

[Bank Name]

___________________________
[Insert officer name]
[Insert officer title]
(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Clean Power Alliance of Southern California, a California joint powers authority, 555 West 5th Street, 35th Floor, Los Angeles, CA 90013, 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 Power Purchase and Sale 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

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 [ ] 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 [ ] by wire transfer in immediately available funds to the following account:

[Specify account information]
[ ]

_______________________________
Name and Title of Authorized Representative

Date___________________________

Exhibit K - 3
EXHIBIT L

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] (“Seller”) to [ ] (“Buyer”) in accordance with the terms of that certain Power Purchase and Sale Agreement dated __________ (“Agreement”) by and between Seller and Buyer. All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section [3.7] [3.9(b)] of the Agreement, Seller hereby provides the below Replacement RA product information:

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<thead>
<tr>
<th>Unit Information¹</th>
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<tbody>
<tr>
<td>Name</td>
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<td>Location</td>
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<tr>
<td>CAISO Resource ID</td>
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<tr>
<td>Unit SID</td>
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<tr>
<td>Prorated Percentage of Unit Factor</td>
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<tr>
<td>Resource Type</td>
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<tr>
<td>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</td>
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<td>Path 26 (North or South)</td>
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<tr>
<td>LCR Area (if any)</td>
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<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
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<tr>
<td>Run Hour Restrictions</td>
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<td>Delivery Period</td>
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<table>
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<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
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<tbody>
<tr>
<td>January</td>
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<td>December</td>
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¹ To be repeated for each unit if more than one.
[SELLER ENTITY]

By: ________________________________

Its: ________________________________

Date: ________________________________
To: Clean Power Alliance (CPA) Board of Directors
From: Matthew Langer, Chief Operating Officer
Approved By: Ted Bardacke, Executive Director
Subject: Consider Westlake Village Membership Request
Date: October 4, 2018

RECOMMENDATION
Extend a formal invitation to the City of Westlake Village to join Clean Power Alliance (CPA) by November 30, 2018 and direct staff to prepare the necessary documents as required by the California Public Utilities Commission (CPUC) and CPA. Staff does not recommend any special conditions on Westlake Village’s membership in CPA.

SUMMARY
Over the summer, elected officials and staff from several cities in Southern California have inquired about the possibility of, and procedures for, joining CPA. Most have decided to wait until 2019 to further consider the option. However, on September 5, 2018, the Westlake Village City Council directed its staff to take the actions necessary for the City of Westlake Village to join CPA before December 31, 2018 so that customers in Westlake Village could begin enrollment in CPA service in 2020. Westlake Village is in the unique position of being an island of non-CPA territory, as it is completely surrounded by CPA member agencies, including Agoura Hills, Thousand Oaks, and unincorporated LA County. CPA staff have had discussions with key customers who have multiple properties in and adjacent to Westlake Village who would prefer to deal with just one electricity provider.
CPA staff has conducted an analysis of the potential impacts to CPA of Westlake Village membership and prepare for the procedural steps as required by CPA’s Joint Powers Agreement (JPA) and by the CPUC. In accordance with CPA’s process for adding new members to the JPA, the CPA Board is being requested to consider the results of this analysis, determine whether to formally invite Westlake Village as a member of CPA, and identify what conditions, if any, should be applied to the City’s membership. Westlake Village is covering the costs of conducting the impact analysis.

**IMPACT ANALYSIS**

Westlake Village would add 4,259 customers to CPA with a load mix of which approximately 30% would be residential and 70% non-residential. This would have the following impacts on CPA:

a. **Peak load and total generation impact**

   Westlake Village would increase total load (kWh) by 0.80% and peak demand (kW) by 0.82%.

b. **Financial impact**

   CPA’s net financial position would increase by 0.70% with the addition of Westlake Village. No impact to financing costs are expected. No additional implementation costs would be required beyond the costs of filing an updated implementation plan, which would be paid by Westlake Village.

Staff also analyzed the effect Westlake Village would have on CPA’s reserves. If a new member of CPA adds less to reserves than their proportional share of existing reserves, then it can be said that their entry causes “dilution” of existing reserves by spreading those reserves over a larger customer base and increased revenues. Dilution does not necessarily impact CPA’s financial stability but can cause the percentage of reserves to revenue to decline. Westlake Village would initially cause a 0.80% dilution to net reserves. However, because the addition of Westlake Village benefits CPA’s existing customers by spreading out overhead
over more customers, this dilution effect would be offset in approximately six years.

c. **Renewable energy and greenhouse gas impacts**
If Westlake Village were to join at the 36% RPS tier, CPA would increase renewable energy purchases by 0.61% and carbon free purchases by 0.80%. Selection of a higher tier would imply even greater purchases of renewable and carbon free energy. Because CPA’s portfolio mix has a lower greenhouse gas intensity than SCE’s, the addition of Westlake Village would result in lowering Southern California’s overall greenhouse gas footprint.

d. **Impact summary**
Overall, the addition of Westlake Village to CPA would have a modest positive impact on CPA’s financial position in 2020 and beyond, have a minimal dilution effect, have a positive environmental impact and potentially help reduce customer confusion in a sector of CPA’s service territory. As a result, staff recommends that the Board invite Westlake Village to join CPA without any preconditions.

**NEXT STEPS**
Should the Board decide to extend a formal invitation to Westlake Village, there are several next steps that must occur:

1. **Westlake Village adopts an Ordinance and Resolution to join CPA and executes an amendment to the JPA by November 30, 2018**: Westlake Village must adopt the implementing ordinance and execute the JPA amendment. The ordinance adoption requires two readings and both votes must take place before the CPA Board of Director’s December meeting.

2. **Update Implementation Plan and Notice of Intent to amend the JPA (considered at the December Board meeting)**: The CPA Board would then
vote to file an amended Implementation Plan with the CPUC to cover the addition of Westlake Village. This amended Implementation Plan must be filed by no later than December 31, 2018 for Westlake Village to be eligible to be served load by CPA in 2020. The Board would also vote to provide a 30-day Notice of Intent to amend the JPA. CPA may prepare the Implementation Plan Amendment in-house or engage a consultant to prepare this filing. In either case, Westlake Village would be responsible for the costs of preparing the Implementation Plan Amendment.
To: Clean Power Alliance (CPA) Board of Directors
From: Ted Bardacke, Executive Director
Subject: Legislative and Regulatory Update
Date: October 4, 2018

REGULATORY ISSUES

1. PCIA Rulemaking (R.17-06-026)
The Power Charge Indifference Adjustment (PCIA) decision has been delayed by the California Public Utilities Commission (CPUC) until October 11. Staff will provide a verbal presentation with the latest updates at the October 4 Board meeting.

LEGISLATIVE ISSUES
Two bills with long-term consequences for CPA, SB 237 and SB 100, have been signed by Governor Brown.

1. Direct Access Expansion (SB 237)
SB 237, sponsored by Senator Bob Hertzberg and IBEW, was signed by Governor Brown on September 20, 2018. SB 237 directs the CPUC to raise the cap on the amount of capacity permissible to be served by Direct Access (DA) providers. DA authorizes direct energy transactions between electricity suppliers, known as ESPs, and retail end-use customers. DA participation was suspended, and DA load capped, in 2001 due to concerns about reliability after DA providers left customers without electricity during the energy crisis. The cap was re-examined and expanded in 2010 to its current level over a four-year phase-in period.
The DA cap’s current level is approximately 13% of the state’s retail electric load and SB 237 requires the CPUC to increase the annual maximum allowable total DA capacity limit by 4,000 gigawatt hours (GWh) and apportion that increase among the service territories of the Investor Owned Utilities (IOUs). The additional 4,000 GWh would increase the statewide cap to about 16% of the total electric IOU territory load. The resulting risk to CPA is that it could lose key commercial customers to ESPs, who traditionally have shown little appetite for engaging in the long-term contracting necessary to build new renewable capacity and have often missed their Renewable Portfolio Standard (RPS) and Resource Adequacy (RA) compliance requirements.

The bill also requires the CPUC to report to the Legislature by June 1, 2020 on further expansion of the DA program and include potential phase-in periods for all remaining non-residential accounts in IOU service territory.

<table>
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<tr>
<th>Timeline</th>
<th>Action</th>
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<tr>
<td>By 6/1/2019</td>
<td>CPUC to open a proceeding implementing the statute and allocating the cap between the IOUs.</td>
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<tr>
<td>1/1/2020</td>
<td>The estimated date that the additional load will be available to IOU customers.</td>
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<tr>
<td>By 6/1/2020</td>
<td>CPUC to report to the Legislature on a further DA reopening schedule for all remaining nonresidential customer accounts in the IOU service areas.</td>
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The majority of DA customer accounts are commercial customer accounts with load demand between 20 and 500 kilowatts (kW) per month. However, industrial customers with load demand over 500 kW per month are the largest DA customers in terms of kilowatt hours provided (about 35.5% of total load served by ESPs). Currently in Southern California Edison (SCE) territory, DA availability is filled by waitlist, which is determined by an annual lottery. Participation has been limited to retail non-residential customers.

SB 237 does not specify how the additional capacity will be apportioned among the three major IOUs, but it will most likely be based on a portion of retail sales relative to the overall
DA cap, meaning SCE territory would be allotted 1,880 GWh. The potential impact to CPA depends largely on how many customers in our territory migrate to ESPs, i.e. how much of the additional 1,880 GWh growth in SCE territory will come from CPA territory. If the distribution of the additional 1,880 GWh is proportional to the approximate percentage of departing SCE load that CPA represents, then about 3% of load would be lost to ESPs. Given the level of customer sophistication in CPA territory however, the impact may be slightly higher, more on the magnitude of up to half of the expanded cap, or closer to 7%, of CPA’s expected 2020 load. See the table below.

<table>
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<th>Scenario</th>
<th>Amount Allocated in CPA Territory</th>
<th>Percent of CPA Load</th>
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<tr>
<td>Entire SCE Cap Expansion</td>
<td>1,880 GWh</td>
<td>14.5%</td>
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<tr>
<td>Half of SCE Cap Expansion</td>
<td>940 GWh</td>
<td>7%</td>
</tr>
<tr>
<td>Proportional to CPA Load</td>
<td>376 GWh</td>
<td>3%</td>
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CPA will be increasing its marketing and outreach efforts to large customers in the coming months and will put a priority on informing potential DA customers of the value proposition of remaining with CPA. Maintaining cost competitive rates at the low and high rate tiers will be crucial in this effort, as DA customers tend to be driven almost exclusively by cost or, for large corporate clients, greenhouse gas (GHG) and renewables corporate mandates.

2. **100% Carbon Free Electricity by 2045 (SB 100)**

SB 100 by Senator Kevin de Leon places California on a planning path to providing 100% carbon free electricity by 2045. This ambitious goal was supported by many environmental stakeholders and while the pathway to implementing the goal is still uncertain, SB 100 has the potential to unleash a new era of electricity sector innovation similar to what followed the passage of California’s first RPS standard.

In the near term, SB 100 raises CPA’s 2030 RPS requirements from 50% to 60%, and increases interim targets between 2020 and 2030 proportionately with 44% renewables by 2024 the next interim target. This puts an increased emphasis for CPA on successfully acquiring long-term renewable resources over the next 2 to 3 years.
In the long term, SB 100 partially shifts the conversation in the electricity sector away from eligible renewables (solar, wind, geothermal, small hydro) to a wider range of GHG resources, including large hydro facilities and other technologies that have yet to mature. With its Clean Power and Electrification Pathway initiative, SCE has largely adopted this GHG shift in its marketing and public policy efforts; with its emphasis on renewables and local development, CPA is well differentiated from the GHG-only emphasis of others. Depending on cost drivers and technology innovation over the long-term, this differentiation may come at an increased cost.
Phase 1 and 2 – Operations

CPA has now entered a “steady-state” with its 34,000 Phase 1 and 2 customers and staff is focused on resolving lingering data management and billing issues that typically follow phases of mass enrollment. The vast majority of these are related to Southern California Edison’s (SCE) ability to provide complete and consistent sets of customer and billing data. This was a major topic of discussion in the Quarterly Business Review meeting between CPA and SCE executives this past month. The two organizations have established a formal escalation process and matters that have revenue impact are being handled accordingly.

As of September 25, the opt-out rate for Phases 1 and 2 is 1.13%, representing approximately 2.31% of CPA's total expected annual energy load for these two phases. Only 42 customers have chosen to change their rate option (seven to 100% renewables and 37 to 36% renewables); customer inquiries to the call center and with CPA staff have shown an increased interest in the opt-down option as customers get their first bills with CPA charges on them. The two most common reasons stated for opting out continue to be a dislike of being automatically enrolled and rate/cost concerns. In September, 95% of calls to the call center were answered within one minute and 99% were answered within three minutes, with an average wait time of 19 seconds.
CPA’s Fiscal Year 2018-2019 (FY18-19) financial performance through August is running slightly ahead of projections with a cumulative margin of $8.5 million compared to a projected $7.8 million. CPA expects to see further increases in its cumulative margin in September with decreases beginning in October as electricity use declines and there is a shift from summer rates to winter rates. Days-to-Pay, a key metric impacting CPA’s cash flow that measures the number of days it takes for CPA to receive revenue after charges are sent to SCE, has improved from 21 days in July to 10 days in August. Attached is the August monthly performance dashboard. The Finance Committee reviews these results in detail every month.

**Power Procurement**
Under the leadership of Natasha Keefer, Director of Power Planning and Procurement, CPA anticipates the release of its first Request for Offers (RFO) for long term renewable energy and storage contracts the week of October 1. CPA is seeking between 1 million and 2 million MWh/year via this solicitation and expects to bring a portfolio of projects to the Board for consideration in the Spring. The RFO announcement will be available on CPA’s website.

Projects will be evaluated based on a host of criteria, including cost, developer risk, environmental stewardship, workforce development, project location, benefits to disadvantaged communities, and supplier diversity. Stakeholders from the environmental and labor communities, along with the Energy Planning & Resources Committee have been involved in the crafting of this criteria, and the Energy Planning & Resources Committee will play a key role in selecting the portfolio of projects that will ultimately be presented to the Board.

**Staffing**
David McNeil has been hired as Chief Financial Officer. David joins CPA from Marin Clean Energy (MCE), where he successfully led MCE’s process in receiving an investment grade credit rating, maintained MCE’s banking, accounting and auditing relationships, and played a key role in the organization’s risk management activities. David is a native
of Canada, is a Chartered Financial Analyst and has more than 20 years of business, financial and energy markets experience. David will begin at CPA on October 29.

Jesus Benavides has joined CPA on an 11-month fellowship through the CivicSpark program. Jesus will be working on policies, programs, and metrics related to supplier diversity, equity in CPA program spending, and internal corporate social responsibility targets in addition to assisting with community and customer outreach efforts. Jesus is a native of South Los Angeles, a recent graduate from UC Riverside and was a Congressional Intern with Rep. Pete Aguilar.

Consistent with the approved FY18-19 budget, CPA expects to hire a Regional Affairs Manager (to be located in Ventura County), a Community Outreach Manager, a Senior Manager of Marketing & Customer Engagement, and a Power Supply & Compliance Senior Analyst by the end of the year. CPA expects to begin a search for a Director Legislative & Regulatory Affairs and a Large Accounts Manager in the coming months.

More than 50 customer service representatives have been hired to staff CPA’s contracted call center, to be located at the LEED-certified San Gabriel Valley Corporate Campus in Irwindale, CA. Recruitment was conducted in coordination with the Foothill Workforce Development Board. A large financial institution recently laid off approximately 300 call center representatives in the area and CPA has been able to provide new jobs immediately to some of these call center professionals. Energy and CPA specific training to these new representatives will begin in mid-October.

Contracts Executed in July Under Executive Director Delegated Authority
Evelyn Kahl of the Buchalter law firm was contracted to represent CPA in rate-related matters before the California Public Utilities Commission (CPUC) for a not-to-exceed amount of $20,000.
Community Advisory Committee Recruitment
The application period for Community Advisory Committee members closed on August 23 and CPA received a total of 45 eligible applications. However, certain subregions did not generate enough applications to either fill the spots or achieve a broad enough applicant pool. Additional targeted outreach is being conducted those subregions. In the meantime, staff is working with the Community Advisory Ad Hoc Committee to review the applications, interview potential candidates, and achieve a diverse balance of Committee members than can fulfil the expectations of the Community Advisory role. Recommendations for membership are anticipated to be presented to the Board for consideration and appointment at its November 15 meeting.

Board Retreat Summary
The CPA Board held a retreat on June 22 which included an overview panel from executives of other CCAs and roundtable discussions related to Rates, Finance and Local Programs. For CPA staff the three main takeaways from the retreat were:

- Maintain renewables-based rate options for CPA’s launch years but explore customer rebates and GHG-based rate options in the future.
- Set a simple and clear financial reserve policy by the end of 2018 with the goal of earning a credit rating in the future years.
- Engage in a local programs strategic planning process so that CPA will be ready to deploy programs when funding is available while pursuing strategic opportunities for piloting cost-neutral projects and programs that could be scaled in the future.

A full report from the retreat is attached.

Attachments: 1) August 2018 Financial Dashboard
2) 2018 CPA Board Retreat Summary
August 2018

August Revenue of $13.8M accounted for 162 GWh in net retail consumption. This comes in 2 GWh ahead of Budget with the cumulative usage just 3GWh or 1% behind.

Margins for August were modestly above plan at $4.7M compared to $4.5 with cumulative margin ahead of budget by $700k (37% vs 30%).

The chart to the right shows volume comparison to budgeted volume.

The charts below display cumulative revenue and margin $ vs budget.

YTD Revenue $2.9 (1%) below budget of $22.7.7M. YTD Margin Dollars above budget by $700k.

Data Definitions:
CUSTOMERS: Invoiced: Unique Customers Account Numbers billed during Calendar Month. Total and Opt-out from monthly Calpine Exec Summary.
REVENUE: Total Company Total Revenue net of bad debt, excluding interest income.
SALES VOLUME: Total Electricity Usage from estimated meter reads, net of meter adjustments to prior periods invoiced in the current month.
ELECTRICITY SALES: Electricity Sales, excludes Interest and Other Income.
COST OF ELECTRICITY: Direct Energy Expenses, excludes Scheduling Coordinator.
MARGIN $: Electricity Sales less Cost of Electricity.
ACTUAL: see sales volume above
T55/T12: Best available estimate of Meter usage data, as submitted to CAISO.
2018 Board Retreat Overview
In early 2018, the Clean Power Alliance Board of Directors (Board), directed staff to initiate plans for a retreat for all members to jointly discuss opportunities and goals for CPA’s future. Recognizing that CPA is moving from its start up to operational phase and in advance of enrolling the majority of CPA’s 1 million customers in 2019, the retreat provided an opportunity to address key short-term milestones as well as look to the future and engage in visioning for longer-term strategic planning. The goal for the retreat was to focus discussion around three key areas of community choice development: rate setting, finances, and local programs. To incorporate lessons learned from operational CCAs across the state, staff collected best practices on each key area and presented background information to the Board for review. To provide context and color to these key areas, CPA invited speakers from 3 CCAs in various stages of development to speak generally on CCA activities and participate in breakout discussions designed around the priority topics.

Speakers: Tom Habashi, CEO, Monterey Bay Community Power; Nick Chaset, CEO, East Bay Clean Energy; and David McNeil, Manager of Finance, Marin Clean Energy

Breakout Session 1 – Rate Design & Product Options
Facilitated by CPA Vice Chair Sheila Kuehl, this session discussed a number of different options for developing rate tiers, including renewable energy percentages and portfolio attributes to offer CPA customers. A major area of consensus that was reached was that CPA should prioritize creating names for each product offering, so that member agencies do not have to go back and change their decisions regarding a base offering. Additionally, consensus was reached that CPA should continue to offer three tiers (36%, 50% and 100%) as it has in 2018.

The breakout participants reviewed the variety of rate structures used by CCAs throughout California. Rate discounts are an important driver for some jurisdictions, but CPA should continue to focus its message on the importance of competitiveness with the incumbent Investor Owned Utility (IOU) rather than emphasizing savings. Even if rates are slightly less or the same as those rates offered by Southern California Edison, CPA customers garner many benefits. These include the ability to choose among rate options, and the ability for a local
elected body to serve as the rate-making authority. This breakout also emphasized the desire to become increasingly financially secure over time.

**Breakout Session 2 – Financial Reserves & CCA Best Practices**

Facilitated by CPA Chair Diana Mahmud, breakout participants discussed two main points. The first agreement reached was that pursuing financial strength should be a leading priority, to be accomplished by establishing reserve targets and associated policies, because it is an initial investment that will allow CPA to be much better equipped to offer substantial benefits, through local program spending, lower rates, and other financial benefits. This dedication to a strong financial position also will help us obtain a credit rating in the future, which is really the gold standard. Important to note is that this certainly does not mean CPA will not initiate any work on these other areas; for example there should be a dedicated time period to start planning processes to develop local programs— and we can also start working now on low cost programs, such as a green business recognition program. Additional funds should be sought, including CPUC funds to administer efficiency programs.

Second consensus is around how we define reserves and set policy to these reserves. Finance Committee Chair, Mayor Gold from Beverly Hills, suggested, and the group agreed, that CPA take a simple and straightforward approach in the beginning. We should define reserves as cash in the bank, avoid establishing specific reserve categories at the onset, and set a manageable target early on (perhaps 10% of our operating expenditures, but this will be a full discussion with the Board/Finance Committee), and work towards achieving that target. Having a single, cash-based reserve policy keeps things easily defined for now, allowing us to demonstrate to credit rating agencies a very understandable, straightforward reserve policy, and provides the Board flexibility on how to leverage these reserves in the future. For context, Marin Clean Energy (MCE) achieved a credit rating 8 years after launch with about 16% of annual operating revenue set aside in reserves.

**Breakout Session 3 – Planning for Local Programs**

Facilitated by CPA Vice Chair Linda Parks, the local programs breakout reached a consensus that a well-considered approach to program development will be key to success. Careful planning and research will ensure CPA programs integrate well with existing regional programs administered by other agencies and take advantage of available funding and partnership opportunities. During the start-up phase, there is an important tradeoff to weigh on resource deployment versus building operating reserves. As CPA has limited resources to dedicate to programs in this initial phase, focusing on low-cost wins and funding opportunities will be an effective approach in the near term, while allowing CPA to evaluate long term program goals.

East Bay Clean Energy (EBCE) CEO Nick Chaset encouraged CPA to consider where it can have the most impact, and discover its unique competitive advantage. EBCE has focused on developing robust customer data analytics, including creative ways to target hard to reach segments and disadvantaged communities. One option discussed was how CPA could potentially develop a unique advantage through its ability to leverage the strength of its
member agency resources and staff to find out where CPA could support the actions already being taken by members. Another low-cost way for member agencies to utilize their resources is through the ability to modify building codes and standards.

Other comments touched on the importance of community engagement and the member agencies’ role in developing trust in the CPA brand. There was a desire expressed for more effective outreach and education materials around CPA in general, and Net Energy Metering specifically. There was also discussion about the possibility of revenue sharing and return of funds to support local programs developed and administered by member jurisdictions in addition to regional programs administered by CPA as a whole.