REGULAR MEETING of the Board of Directors of the Clean Power Alliance of Southern California
Thursday, July 9, 2020
2:00 p.m.

Listen to the Board of Directors meeting (Audio Only):
Call: (866) 901-6455 Conference Code: 173-232-934
All Participants must press “#” to join the meeting.

SPECIAL NOTICE REGARDING PUBLIC COMMENT: Pursuant to Paragraph 11 of Executive Order N-29-20, executed by the Governor of California on March 17, 2020, and as a response to mitigating the spread of Coronavirus known as COVID-19, the Board of Directors will allow members of the public to participate and address Board Members during the meeting via teleconference only. Below are the ways to participate:

- Members of the public are encouraged to submit written comments on any agenda item to clerk@cleanpoweralliance.org up to four hours before the meeting.
- If you desire to provide public comment during the meeting, you must contact staff at (213) 713-5995 at the beginning of the meeting but no later than immediately before the agenda item is called.
  - You will be asked to provide a phone number to call you during the meeting. You will also be asked for your name (or other identifying information) similar to filling out a speaker card so that you can be called when it is your turn to speak.
  - You will be called during the comment section for the agenda item on which you wish to speak.
  - You may be put on hold until your name is called by CPA staff.
  - You will be able to speak to the Committee for the allotted amount of time. Please be advised that all public comments must comply with our Public Comment Policy.
  - Once you have spoken, or the allotted time has run out, the phone call will be discontinued.

Meetings are accessible to people with disabilities. Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact the Clerk of the Board at least two (2) working days before the meeting at clerk@cleanpoweralliance.org or (213) 713-5995. 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.
PUBLIC COMMENT POLICY: The General Public Comment 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 Consent Agenda and Regular Agenda shall be heard at the time the matter is called. Comments on items on the Consent Agenda are consolidated into one public comment period. 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 at the beginning of the meeting but no later than immediately prior to the time an agenda item is called.

Each speaker is limited to two (2) minutes (in whole minute increments) per agenda item with a cumulative total of five 5 minutes to be allocated between the General Public Comment, the entire Consent Agenda, or individual items in the Regular Agenda. Please refer to Policy No. 8 – Public Comment for additional information.

CALL TO ORDER AND ROLL CALL

GENERAL PUBLIC COMMENT

CONSENT AGENDA

1. Approve Minutes from June 4, 2020 Board of Directors Meeting
2. Approve Agreement with Tenaska Power Services for Scheduling Coordinator and Related Services and Authorize Executive Director to Execute Contract
3. Adopt Resolution No. 20-07-010 to Approve Energy Risk Management Policy (ERMP) Amendments
4. Receive and File Notice to the Board of Directors of CPA’s Updated Position on Senate Bill 1215 (Stern) from “Support” to “Support if Amended”
5. Receive and File Community Advisory Committee Monthly Report

REGULAR AGENDA

Action Items:
6. Renewable Energy Power Purchase Agreement with SF Azalea, LLC

Recommended Action: Approve 15-year Renewable Power Purchase Agreement with SF Azalea, LLC and Authorize the Executive Director to Execute the Agreement.

**Recommended Action:** Review Preliminary Results and Delegate Authority to the Energy Planning & Resources Committee for Final Approval of the 2020 IRP

**Information Items:**

8. Update on COVID-19 Relief Credits and “Stay Engaged” Marketing Campaign

9. Update on the Voyager Clean Energy Career Pathways Scholarship Program

**MANAGEMENT UPDATE**

**COMMITTEE CHAIR UPDATES**
Director Lindsey Horvath, Chair, Legislative & Regulatory Committee
Director Julian Gold, Chair, Finance Committee
Director Kevin McKeown, Chair, Energy Planning & Resources Committee

**BOARD MEMBER COMMENTS**

**REPORT FROM THE CHAIR**

**ADJOURN – NEXT REGULAR MEETING SEPTEMBER 3, 2020**

*Public Records:* 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. Those documents are available for inspection online at www.cleanpoweralliance.org/agendas.
REGULAR MEETING of the Board of Directors of the
Clean Power Alliance of Southern California
Thursday, June 4, 2020, 2:00 p.m.

MINUTES

The Board of Directors conducted this meeting in accordance with California Governor
Newsom’s Executive Order N-29-20 and COVID-19 pandemic protocols.

WELCOME AND ROLL CALL
Chair Diana Mahmud called the meeting to order at 2:02 and Clerk of the Board Gabriela
Monzon conducted roll call.

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All votes are unanimous unless otherwise stated.

GENERAL PUBLIC COMMENT

Harvey Eder provided public comment.

CONSENT AGENDA

1. Approve Minutes from May 7, 2020 Board of Directors Meeting

2. Authorize the Executive Director to Execute a Task Order TEA-#5 with The Energy Authority for Power Procurement and Advisory Services for the period of July 1, 2020 to December 20, 2020 for a Not-To-Exceed Contract Value of $175,000

3. Receive and File Community Advisory Committee Monthly Report

**Motion:** Director Peak, Malibu  
**Second:** Director Gold, Beverly Hills  
**Vote:** The consent agenda was approved by a roll call vote, with one abstention by Director Hicks.

REGULAR AGENDA

4. Adopt Resolution No. 20-06-009 to Approve Rate Change for Phases 1 & 2 Non-Residential Customers

Matthew Langer, Chief Operating Officer, provided an oral report. Mr. Langer noted that since the last Board meeting on June 4, Southern California Edison (SCE), made another rate change to increase transmission & delivery (T&D) rates, in addition to an increase in the Power Charge Indifference Adjustment (PCIA) for
Phase 1 and 2 customers, which include unincorporated Los Angeles County, South Pasadena, and Rolling Hills Estates, due to the effects of the Energy Resource Recovery Account (ERRA) trigger, a retroactive cost recovery from 2019. Mr. Langer continued to explain that the ERRA trigger was removed from the PCIA in April 2020, but the credit for Phase 1 and 2 customers remained. Since the full amount of the credit was paid to customers at the end of May, Mr. Langer said staff was recommending an adjustment to Phase 1 and 2 rates so customers can continue to pay the same overall rate, despite the PCIA increase, essentially lowering generation rates to compensate for that increase. Mr. Langer noted the fiscal impact was approximately $2.5 million less in revenue for the next 12 months.

**Motion:** Director Horvath, West Hollywood  
**Second:** Vice Chair Kuehl, Los Angeles County  
**Vote:** Item 4 was approved by a roll call vote.  

5. **Approve FY 2020/21 Budget**

David McNeil, Chief Financial Officer, provided a presentation of the proposed budget and reviewed specific line items. Mr. McNeil stated that the budget provided authorization to collect revenues and incur expenses, it allowed for managerial prioritization within budget and policy limits, engagement in competitive solicitations, and guides reporting and transparency for the organization, including financial dashboards, contract updates, and annual audits. Mr. McNeil noted that load, revenue, cost of energy, and bad debt expense reflected CPA’s base case energy use and economic forecasting; and discussed budget priorities, including systems to enhance risk management, cost control, and local program design, staffing needs, and program commitments. Lastly, Mr. McNeil discussed CPA’s net position and reserves, which solidified the organization’s financial strength and satisfying expectations of stakeholders.

Director Gold, Chair of the Finance Committee, thanked Finance Committee members for their dedication to developing and approving a comprehensive budget that also included COVID-19 customer assistance.

Director Hicks thanked the Financed Committee and staff for addressing COVID-19 assistance in the budget and asked for clarification on the impact of solar energy on load forecasting and revenues. Mr. McNeil clarified that the reduced load of that self-generation was included in the load forecast.

Director Lopez expressed content with the conservative budget and the reduced reserves that were used to assist customers and thanked staff and the Finance Committee for their work on the budget.

**Motion:** Director Gold, Beverly Hills  
**Second:** Director Lopez, Agoura Hills  
**Vote:** Item 5 was approved by a roll call vote.
6. **Authorize up to an Additional $1 million Expense for Bill Assistance for Residential and Small Business Customers Impacted by COVID-19 and Approve Budget Amendment to FY 2019/20 Budget**

Ted Bardacke, Executive Director, provided a review detailing the status of the previously approved funds allocated for COVID-19 bill assistance. Mr. Bardacke noted that CPA was using this year’s budget funds to continue paying for bill assistance, up to another $1 million additional funding if CPA beat its fiscal targets and remained compliant with its credit covenants. If so, then the $250,000 in the new fiscal year budget would be held as a contingency in the local program budget.

Director Hicks inquired about customer bill assistance statistics, to which Mr. Bardacke clarified that usage of the COVID-19 Relief Credits has been consistent across the service territory as compared to the population, socio-economic demographics, and reflective of the outreach, but also noted that staff planned on sharing specific bill assistance statistics for each member agencies’ jurisdiction.

Director Luevanos commended staff for the bill assistance program that reflected both a responsible budget and assistance for those in need. Vice Chair Kuehl echoed support for the item.

There was no public comment for this item.

**Motion:** Director Monteiro, Hawthorne  
**Second:** Vice Chair Kuehl, Los Angeles County  
**Vote:** Item 6 was approved by a roll call vote.

7. **Approve Three CPA Local Program Categories for 2020-2025; Approve a Local Procurement Target for 2020-2025; and Direct Staff to Focus Implementation Efforts on Seven Local Program Concepts**

Mr. Bardacke provided an oral report on the Local Program categories, noting that in May 2019, CPA launched a nine-month strategic planning process to guide the development of the local programs and included public stakeholder engagement, input from the board, and several rounds of input from the Community Advisory Committee and the Executive Committee. Mr. Bardacke explained that some program concepts were being implemented already, while others required more time for planning and refinement, however, program spending came from an annual budget expenditure or a long-term cost obligation aiming to reduce overall renewable energy cost.

Mr. Bardacke continued to review the three program categories: resiliency and grid management; electrification of transportation and building; and local procurement. Within these three program categories are seven program concepts: (1) Clean Back-Up Power for Essential Facilities, (2) Demand Response – Energy Storage, (3) Peak Management Pricing, (4) Public Electric Vehicle Charging, (5) Building Electrification Code Incentives, (6) Community Solar, (7) 100% Green Discount. Mr. Bardacke discussed the program comparison tool, discussed programs not chosen for implementation, the range of target markets, and cost considerations. Lastly, Mr. Bardacke discussed the local procurement goal of 175 MW for new energy and storage resources in Los Angeles and Ventura Counties, amplification
efforts, including public agency set-aside for incentive programs, the innovation fund, and the statewide program funding strategy, and provided a brief status description for each of the chosen programs.

In response to Chair Mahmud’s question, Mr. Bardacke explained that the California Public Utilities Commission (CPUC) had already approved a megawatt allocation for two of the local programs, therefore, the approval of the CPUC is for program implementation plans, and in the case, those are not approved, CPA would rely on its existing 100% Green subsidy framework and evaluate the feasibility of a scaled-down community solar program.

David Haake, Chair of the Community Advisory Committee, Luis Amezcua of The Sierra Club, and Joe Sullivan of the International Brotherhood of Electrical Workers (IBEW), provided public comment in support of the item.

Motion: Director Horvath, West Hollywood
Second: Director Ashton, Downey
Vote: Item 7 was approved by a roll call vote.

MANAGEMENT UPDATE
Mr. Bardacke briefly reviewed COVID-19 bill assistance, customer programs, and staffing. Chair Mahmud thanked Director Tay, Arcadia, who facilitated COVID-19 outreach to Mandarin speaking communities in CPA’s jurisdiction.

COMMITTEE CHAIR UPDATES
Legislative & Regulatory Committee Chair Horvath reported that the Committee reviewed pertinent legislation

Finance Committee Chair Gold thanked staff and members of the Finance Committee for their work on the budget.

Energy Committee Chair McKeown indicated that the Energy Committee did not meet in May and therefore did not provide a report.

BOARD MEMBER COMMENTS
Director Calaycay expressed support for those board members dealing with challenges in their communities.

Director Ramirez shared support for community protests to commemorate and address historic injustice, shared an update on leadership at the Southern California Association of Governments, and offered condolences to board members.

Vice Chair Kuehl discussed the actions of those elected officials, community leaders, and members of the media that have focused on peaceful protests and offered thanks and condolences to all board members dealing with protests in their communities.
REPORT FROM THE CHAIR
Board Chair Mahmud reflected on the recent protests in the communities in response to systemic racism.

CLOSED SESSION
8. CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Potential initiation of litigation pursuant to paragraph (4) of subdivision (d) of Government Code Section 54956.9: (1)

General Counsel Nancy Whang, reported a vote of 23 ayes and 0 noes, approving a settlement agreement of $4.25 million dollars with SCE and authorizing the Executive Director to countersign the settlement agreement. Ms. Whang noted that the settlement will be available within 24 hours of the meeting.

ADJOURN
Chair Mahmud adjourned the meeting at 4:36 p.m.

In Memory of George Floyd and Breonna Taylor.
RECOMMENDATION
Authorize the Executive Director to execute an Agreement with Tenaska Power Services (TPS) for Scheduling Coordinator, Congestion Revenue Right Portfolio Management, and Middle Office Services for the period of July 10, 2020 to December 31, 2023 for an estimated total contract value of $2.7 million¹.

BACKGROUND
A Scheduling Coordinator (SC) is an intermediary for buyers and sellers transacting in the California Independent System Operator (CAISO) marketplace. Specifically, SCs are entities certified by CAISO to submit bids to purchase energy, capacity, ancillary services or other CAISO market products, on behalf of load serving entities (LSEs) and generation resource owners or off-takers. SCs also schedule and dispatch resources and fulfill contractual and financial obligations associated with CAISO settlement processes.

In December 2017, the Board authorized execution of a three-year Resource Management Agreement (RMA) with The Energy Authority (TEA) for a variety of services

¹ Total contract fees will be dependent on the number of generating and storage resources in CPA’s portfolio, as described further in the Term and Pricing section.
related to power procurement and delivery, including SC responsibilities with the CAISO, power trading activities, load and energy price forecasting, risk management, and congestion revenue rights (CRR) management. The RMA was the result of a competitive Request for Proposals (RFP) process that included 11 bidders.

Also, in December 2017, CPA executed a three-year TEA Task Order No. 1 (TEA-#1) with TEA for Scheduling and CRR Management. In February 2019, the Board approved an amendment to TEA-#1 to account for CPA’s four-phase enrollment schedule. TEA continues to perform as CPA’s SC under TEA-#1. The TEA agreement is set to expire in December 2020.²

**Solicitation**

On March 23, 2020, in anticipation of the expiration of the TEA RMA and associated Task Orders, CPA issued an RFP for CAISO SC Services and CRR Portfolio Management (“2020 RFP”). Minimum experience and qualifications included:

- CAISO SC certification
- Qualifications and experience providing SC services for LSEs with loads greater than 1,000 GWh per year, preferably in CAISO
- Qualifications and experience providing SC services for generating assets, including intermittent renewable resources and storage assets
- Qualifications and experience providing CRR portfolio management services for CAISO LSEs

**Evaluation Process**

In response to the 2020 RFP, CPA received proposals from seven potential bidders. Proposals contained cost estimates ranging from $7,000 per month to $79,750 per month, plus additional fees for incremental portfolio services. Based on staff’s review and evaluation, CPA short-listed three proposals that satisfied the minimum qualifications/experience specified in the solicitation and offered the best value to CPA.

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² TEA is also providing limited power procurement advisory and middle office services under Task Order TEA-#5, which will also expire in December 2020.
CPA staff engaged in further due diligence, including reference checks, and interviewed the three short-listed bidders.

TPS is being recommended for the contract award based on their well-established processes to analyze and manage risk, extensive experience and knowledge of energy storage operations and dispatch optimization, willingness to customize processes and tools where needed, and a competitive fee structure. References confirmed TPS’s competencies and highlighted TPS’s ability to adapt to different business models and portfolios, which matches CPA’s needs as its operations and portfolio matures.

TPS, a subsidiary of Tenaska, is a FERC-certified power marketing company established in 1997. TPS has been a registered SC in CAISO since 2012 and is active in California Resource Adequacy, Renewable Portfolio Standard, and Carbon Free markets. TPS currently provides scheduling services for nearly 13,000 MW of renewable generation throughout the United States, and the company will be managing hundreds of MWs of energy storage posed to come online in 2020 and 2021, including projects in CAISO. TPS also serves 24 other LSEs, in markets across the country, with annual loads totaling 31,000,000 MWh.

**CONTRACT OVERVIEW**

**Scope of Services**

The Scope of Services for the contract includes the following tasks:

- Scheduling Coordinator services, including all CAISO and Western Energy Coordinating Council (WECC) scheduling functions for CPA in Day-Ahead and Real-Time markets on a 24/7, 365 days per year basis, including:
  - Daily forecasting of CPA hourly load and submittal of demand bids to CAISO markets
  - Submittal of supply bids and schedules to CAISO Markets
  - Resource management and outage scheduling

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3 Tenaska is ranked by Forbes magazine as among the 50 largest private U.S. companies with a gross revenue of approximately $11.9 billion in 2018.
- Settlement validation and reporting
- Performance reporting and data
  - Congestion Revenue Rights management
  - Middle Office support, including:
    - Deal capture and system of record maintenance
    - Position management for all product types (energy, renewable energy credits, carbon free, and Resource Adequacy)
    - Credit monitoring and reporting
    - Portfolio risk analytics and financial modeling support
    - Load forecasting services

Under the terms of the contract, CPA will be establishing its own Scheduling Coordinator ID (SCID) with CAISO. Currently, TEA holds CPA’s SCID with CAISO. This transition will allow CPA to have more direct interface with CAISO, including making payments and receiving credits directly without going through an intermediary. It also increases CPA’s business resiliency as it allows CPA to more easily change Scheduling Coordinators should the SC’s performance falter or be disrupted in any manner.

**Term and Pricing**

The term of the agreement will commence upon contract execution during the transition period from TEA to TPS. SC/CRR services with TPS would commence on October 1, 2020 and to continue through December 31, 2023.

Total fixed-price fees for the Contract are as follows:
- From contract execution through October 1, 2020 (transition period): No cost
- For October 1, 2020 through June 30, 2021: $60,000 per month
- For July 1, 2021 through May 31, 2023: $69,775 per month
- For June 1, 2023 through December 31, 2023: $71,775 per month

These fixed fees include SC services for one hydro project, up to four standalone storage resources, and up to five renewable plus storage resources. Additional energy resources
beyond those listed above, for which TPS performs the SC function, will be priced at $2,500 per resource per month.

**Other Key Contract Terms**

- **Termination** – CPA has the right to terminate the agreement if TPS is providing unsatisfactory performance. In addition, CPA has the right to terminate certain services if CPA decides to bring more middle office functions in-house.
- **Performance Assurance** – TPS is required to post a $1 million letter of credit to support its obligations under the agreement.

**FISCAL IMPACT**

The cost of the contract is incorporated into the FY 2020-21 budget, which includes procurement service costs for the entire fiscal year.

**ATTACHMENT**

1) Agreement with TPS for Scheduling Coordinator, Congestion Revenue Rights Portfolio Management and Middle Office Services.
SCHEDULING COORDINATOR AGREEMENT

This Scheduling Coordinator Agreement ("Agreement") is made and entered into on July 10, 2020 ("Effective Date"), by and between CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority organized under the laws of the State of California ("CPA") and TENASKA POWER SERVICES CO, a Nebraska corporation ("TPS"). CPA and TPS are sometimes individually referred to as a "Party" and collectively as "Parties."

RECITALS

WHEREAS, CPA serves customer load, and owns, controls and/or has power purchase agreements ("PPAs") with generating facilities located within the CAISO market and which are described in Exhibit A of this Agreement (collectively, the “Resource”), and has requirements to fulfill as a community choice aggregation program (the “Project”);

WHEREAS, TPS is in the business of providing Scheduling Coordinator services including scheduling Energy, load, capacity, ancillary services, and managing congestion revenue rights from electric generating facilities through the markets operated by CAISO;

WHEREAS, TPS desires to perform certain Scheduling Coordinator services for the Resource and other services required by CPA as part of its Project on the terms and conditions as set forth in this Agreement;

WHEREAS, CPA desires to retain TPS to perform certain Scheduling Coordinator services for the Resource and Services, as defined below.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties hereto hereby agree as follows:

AGREEMENT

1. Designation

No Party will be an agent, partner, joint venturer, or legal representative of any other Party for any purpose whatsoever, and no Party is authorized to assume or create any obligation, liability, or responsibility, expressed or implied, on behalf of or in the name of any other Party, or to bind any other Party to any Third Party in any manner whatsoever; provided, however, that during the Term of this Agreement CPA authorizes TPS to act, and TPS agrees to act, as CPA’s Scheduling Coordinator in accordance with the terms of this Agreement, the Governing Rules, and Prudent Industry Practice.

The relationship of CPA with TPS as set forth in this Agreement is one of an independent contractor.
2. **Scope of Services and Term.**

2.1 **General Scope of Services.** TPS promises and agrees to furnish to CPA all services, and incidental and customary work necessary to fully and adequately provide Scheduling Coordinator, Congestion Revenue Rights management, and Middle Office services necessary for the Resource and Project ("Services"), which Services are more particularly described in Exhibit B. All Services shall be subject to, and performed in accordance with, this Agreement, the schedules and/or exhibits attached hereto, and all applicable local, state and federal laws, rules and regulations.

2.2 **Term.** This Agreement shall be effective on the Effective Date. Unless earlier terminated as provided herein, this Agreement shall remain in effect through December 31, 2023 ("Initial Term"). At the end of the Initial Term, the Parties may renew this Agreement for successive one (1) year terms for a maximum of two years (each, a "Renewal Term"), unless either Party provides ninety (90) days prior written notice of its intent not to renew the term of the Agreement ("Renewal Notice"). TPS shall provide the Services within the term of this Agreement, and shall meet all other established schedules and deadlines during the Renewal Notice.

Notwithstanding the foregoing, no termination of this Agreement shall take effect until CAISO has confirmed that its systems no longer reflect TPS as the representative of the CPA Scheduling Coordinator.

2.3 **Authorized Early Termination Provisions.** CPA may terminate this Agreement prior to the term of the applicable Initial Term or Renewal Term without cost or penalty, other than the obligation to pay TPS any Service Fees due for Services prior to the termination date, under the following two circumstances:

(a) **Early Termination Related to Unsatisfactory Performance.** If on two or more occasions within a calendar quarter, CPA experiences an Event of Unsatisfactory Performance, CPA may notify TPS of its dissatisfaction detailing the events or circumstances giving rise to its dissatisfaction, the steps proposed for TPS to avoid any future Events, and require TPS to provide CPA with a plan for improving TPS's performance which specifically addresses steps TPS will take to avoid future Events ("Performance Improvement Plan"). TPS shall have ten (10) calendar days to submit a Performance Improvement Plan to CPA, and after the submission shall commence implementing the Performance Improvement Plan. If the Performance Improvement Plan has failed to materially improve the TPS performance level and remove CPA's cause for dissatisfaction through CPA experiencing an Event within sixty (60) calendar days of receipt of the Performance Improvement Plan, CPA may terminate this Agreement by sending TPS ten (10) days written notice of termination. If CPA has not acted to notify TPS of an Event giving rise to its dissatisfaction within one hundred twenty (120) calendar days after the discovery of the Event, then CPA shall have waived any claim of dissatisfaction based on such Event, and shall be barred from using such Event as a cause for termination.

(b) **Limited Termination of Selected Services.** In the event CPA decides to perform for itself certain of the Services performed by TPS under this Agreement, CPA may send TPS a ninety (90) day notice of termination of the particular Service or Services which CPA has determined to perform for itself without TPS assistance,
and TPS shall cease performing such Services on the first day after such ninety (90) day notice period which is the first of a Month; provided, however, CPA shall not send such notice prior to March 1, 2022, and provided further, that CPA may not terminate the Services identified in Exhibit B under Sections A1 through A9.

3. **Responsibilities of TPS.**

   3.1 **Schedule of Services.** TPS shall perform the Services expeditiously, within the Term of this Agreement, and in accordance with the terms of Exhibit B. TPS represents and warrants that it has the professional and technical personnel required to perform the Services in conformance with such conditions.

4. **Performance Obligations.**

   4.1 **CPA SCID.** CPA represents and warrants that it is a registered Scheduling Coordinator at CAISO and has its own SCID to be used for this Project and Services, or will achieve such status by the Commencement Date, with the assistance of TPS as described in Exhibit B. CPA will maintain its SCID throughout the term of the Agreement. Under this SCID, CPA will be receiving payments from and making payments to CAISO. CPA maintaining its own SCID through the term of the Agreement is a condition precedent to TPS’s obligation to provide the Services listed in Exhibit B. TPS will manage CPA’s SCID as CPA’s agent; provided however, CPA must inform TPS of any transaction sufficiently in advance of any applicable CAISO deadline for scheduling transactions.

   4.2 **Information and Assistance.** CPA shall provide such information and assistance as is reasonably required for TPS to provide the Services. If CPA fails to provide TPS with such requested information or assistance, then TPS shall continue to provide in a timely manner any such portion(s) of the affected Services that TPS can reasonably provide to the extent possible in the absence of such information or assistance.

   4.3 **Commencement.** Upon execution of this Agreement, CPA and TPS shall use commercially reasonable efforts to complete and submit any and all documentation and fulfill any other steps required by CAISO, authorizing TPS to represent the CPA Scheduling Coordinator in order to provide Services in accordance with the terms herein and applicable Governing Rules. TPS’s obligations to perform Services under this Agreement shall not commence until the Commencement Date.

   4.4 **CPA’s Representative.** CPA shall designate in Exhibit D at least one representative ("CPA’s Representative(s)"). CPA’s Representative(s) shall be authorized and empowered to act for and on behalf of CPA as to all obligations of CPA hereunder. CPA may change CPA’s Representative(s) from time-to-time. TPS shall be entitled to rely upon, and CPA shall be bound by, the oral and written communications, directions, requests and decisions made by CPA’s Representative(s) with regard to this Agreement.

   4.5 **TPS’s Representative.** TPS shall designate in Exhibit D at least one representative ("TPS’s Representative(s)"). TPS’s Representative(s) shall be authorized and empowered to act for and on behalf of TPS as to all obligations of TPS hereunder. TPS may change TPS’s Representative(s) from time-to-time. CPA shall be entitled to rely upon, and TPS shall be bound
by, the oral and written communications, directions, requests and decisions made by TPS’s Representative(s) with regard to this Agreement.

4.6 Coordination of Services. TPS agrees to work closely with CPA staff in the performance of Services and shall be available to CPA’s staff, consultants and other staff at all reasonable times, and as defined in Exhibit B.

4.7 Standard of Performance Obligations. TPS will perform the Services in a good, efficient, competent, and commercially reasonable manner, and in accordance with (i) Prudent Industry Practice, acting as if it were managing the Resource for its own account (recognizing that TPS has no control or decision-making authority over the Resource), (ii) instructions from CPA, (iii) all Applicable Laws, including the CAISO Protocols, (iv) the terms of this Agreement and, (v) CPA risk management policies and protocols including but not limited to policies and protocols relating to the management of energy risks, CRRs and counterparty credit, customer data and privacy, as those policies and protocols may be amended by CPA from time to time. CPA will provide TPS with written copies of such policies and protocols, and any amendments thereto, and will train TPS personnel in the administration and application of such policies and protocols. CPA will have knowledgeable personnel available to answer questions TPS personnel may have concerning the interpretation and application of such policies and protocols to particular circumstances.

4.8 Laws and Regulations. The Parties shall keep fully informed of and in compliance with all local, state and federal laws, rules and regulations in any manner affecting the performance of the Project or the Services, and shall give all notices required by law.

4.9 Exclusivity. For the CPA SCID, subject to the other terms and conditions of this Agreement, CPA grants TPS the exclusive right to:

(a) act as CPA’s provider of Services specified; whereas,

(i) the Resources and load designated in Exhibit A will be represented by TPS,

(ii) CPA will cause all Transactions to be scheduled through and with TPS, and

(iii) CPA will not schedule CPA’s Transactions directly with CAISO, or through any other Person except TPS, as long as there is no Force Majeure event or Event of Default with respect to TPS;

(b) serve as the CPA Scheduling Coordinator, limited to the purpose of representing CPA in communications and Transactions with CAISO;

(c) schedule the Products per CPA’s instruction described in this Agreement; and

(d) administer the purchase or sale of Products from the CPA SCID into CAISO, and to arrange for sales to and purchases from other Third Parties in accordance with the terms and conditions of this Agreement and the Governing Rules.
(e) Nothing in the section shall limit CPA’s right to purchase and settle Transactions outside the CAISO or to have Transactions scheduled by third parties (where CPA is not SC) and/or traded to CPA’s SCID via an inter scheduling coordinator trade.

4.10 Other Obligations. CPA retains all other rights, obligations and responsibilities CPA may have under the Governing Rules not specifically designated in this Agreement to be implemented solely by TPS as representative of the CPA SCID.

4.11 Performance Assurance: Within 30 days of the Effective Date of this Agreement TPS will post a Letter of Credit in the amount of one million dollars ($1,000,000). CPA may draw on the Letter of Credit to cover unpaid amounts, including damages, for which CPA has invoiced TPS and TPS has failed to pay within the Due Date subject to any applicable cure period. In the event of a dispute as to whether such amounts are due, CPA may draw upon the Letter Of Credit after a final and non-appealable determination by a jurisdictional court that such amounts are due; provided, however, that if the Letter of Credit is due to expire in twenty (20) Business Days or less and such final and non-appealable determination has not been received, CPA may draw on the Letter of Credit for the amounts in dispute; provided further, however, in the event the Letter of Credit is renewed by the expiration date, CPA shall refund the drawn amounts to TPS. In the event, the Letter of Credit is drawn upon, within five (5) business days, TPS shall replenish the Letter of Credit up to the one-million-dollar amount.

5. Equipment and Data Transmission

5.1 Data Transmission. The Parties will work with the owners or operators of contracted generation resources to ensure that TPS may receive or access telemetered data for these resources. In the event additional communications services or equipment are required for TPS to obtain such data, CPA will either acquire such equipment for TPS or reimburse TPS for its authorized Reimbursable Amounts.


6.1 Compensation. TPS shall receive compensation, including authorized reimbursements, for Services rendered under this Agreement, beginning on or after the Commencement Date, and at the rates set forth in Exhibit C.

6.2 Payment of Compensation. TPS shall submit to CPA a monthly itemized invoice which shall include all fees related to Services during the previous month no later than 30 days after the previous month. CPA shall, within 20 days of receiving such invoice, review the invoice and pay all undisputed charges thereon.

7. Settlements, Reimbursable Amounts, and Accounting Records.

7.1 Reimbursable Amounts. CPA shall reimburse TPS for all authorized Reimbursable Amounts for up to $100,000.00 for the life of the Agreement (“Reimbursable Amount Limit”). TPS shall notify CPA when the Reimbursable Amount Limit is within $20,000 of being reached. CPA shall either authorize TPS to exceed the Reimbursable Amount Limit or TPS will cancel any Third Party contracts or Services that had been previously approved by CPA. CPA agrees that CPA will assume responsibility for contracting with such Third Parties directly or will perform such
Services internally. In any event, TPS shall no longer have responsibility for incurring such Third Party expenses.

7.2 No liability for payment. TPS shall have no liability for making payments to CAISO on CPA’s behalf. CPA shall be responsible for any payment obligations to CAISO.

7.3 Audit. Each Party has the right, at its sole expense and during normal working hours and upon reasonable written notice to the other Party, to examine copies of the relevant portions of the records as necessary to verify the accuracy of any invoice, charge, or computation made pursuant to this Agreement. If any such examination reveals any inaccuracy in any invoice, the necessary adjustments in such invoice and the payments will be promptly made together with interest at the Interest Rate, if applicable, from the original date of payment. No adjustment for any invoice or payment will be made unless objection to its accuracy was made prior to the lapse of two (2) years from the date that the disputed invoice was delivered. No adjustment will be made to invoices or summaries related to CAISO settlement statements that CAISO has deemed final under the Governing Rules. In addition, adjustments to any invoice may be made up to four (4) years from the date that the particular Services were completed to adjust for (a) corrections made by CAISO to prior CAISO statements and (b) tax claims. This paragraph of this Agreement survives any termination of the Agreement for a period of four (4) years from the date of such termination of this Agreement for the purpose of the right to examine records and such invoice and payment objections and corrections.


CPA owns all right, title and interest in and to all CPA Materials. Upon the expiration of this Agreement, or in the event of termination, CPA Materials and all CPA customer data, in whatever form and in any state of completion, shall remain the property of CPA and shall be promptly returned to CPA; provided however, notwithstanding the other terms of this agreement related to return or destruction of Confidential Information, receiving Party is not obligated to remove the Confidential Information from its backed-up electronic records outside of normally scheduled retention policies, provided receiving Party does not make use of the Confidential Information. CPA Materials shall mean any and all data, materials, or writings gathered or created by TPS or transmitted to TPS specifically for CPA in the performance of the Services pursuant to this Agreement (“CPA Materials”).

For the avoidance of doubt, TPS’s intellectual property, including, but not limited to, TPS’s trademarks, service marks, trade names and other designations, web site(s), web design(s), internal systems, computer systems, programs, software (including software code), ideas, know-how, work product, copyrights, patents, trade secrets and other proprietary and/or intellectual property shall remain the exclusive property of TPS.


(A) Subject to the remaining provisions of this Section, each Party agrees, for itself, its Affiliates, and its Representatives, to keep confidential this Agreement’s terms and conditions, all negotiations concerning this Agreement, and all other information furnished by either Party related to schedules, services and Transactions under this Agreement unless the information (i) is required to be disclosed to effect the requested Transaction or to enforce a Party’s rights under the
Agreement, (ii) is required to be disclosed by lenders, insurers, or underwriters in connection with financing, or (iii) is required to be disclosed pursuant to the California Public Records Act ("Confidential Information"). This confidentiality obligation will expire three (3) years past the expiration or termination of this Agreement.

(B) Subject to Section 9 (A) of this Agreement, the receiving Party, its Affiliates, and its Representatives must not disclose any Confidential Information to any Third Party without the prior written consent of the disclosing Party unless requested or required by an agency, court, or other governing body, or as permitted in accordance hereof. In the event of an authorized disclosure, the disclosing Party must require such Third Party to agree to treat the Confidential Information in accordance with this Agreement.

(C) In the event any Party is requested or required to disclose such Confidential Information by law or by a court, agency, or other governing body having or purporting to have jurisdiction over the Party, to the extent permitted by law such Party must notify the other Party prior to any disclosure but no later than three (3) business days of receipt of the request and shall use reasonable efforts not to disclose any Confidential Information so as to allow the other Party to contest such disclosure before the governing body or to seek appropriate protection from further disclosure. Each Party shall reasonably cooperate with the other when one Party seeks to contest such disclosure.

(D) The Parties agree that disclosure of Confidential Information in breach of the confidentiality provisions of this Agreement constitutes an irreparable injury and that injunctive relief is an appropriate remedy to prevent the unwarranted disclosure of any Confidential Information.

(E) The confidentiality provisions of this Agreement will not apply to any Confidential Information (i) the receiving Party developed independently without using the Confidential Information, (ii) that was in the public domain at the time of its disclosure, (iii) which passes into the public domain by acts other than the acts of or caused by the Party receiving said Confidential Information, or (iv) is disclosed to the receiving Party by a Third Party, provided that the receiving Party does not know (or has no reasonable basis to know) that the information was received or disclosed unlawfully.

10. Insurance.

All required insurance coverages shall be substantiated with a certificate of insurance and must be signed by the insurer or its representative evidencing such insurance to CPA. The general liability policy shall be endorsed naming Clean Power Alliance of Southern California and its employees, officers and agents as additional insureds to the extent of TPS’ indemnity obligations herein. Such additional insured endorsement may be provided by a blanket additional insured endorsement. The certificate(s) of insurance shall be furnished to CPA prior to the Commencement Date. Each certificate shall provide for thirty (30) days advance written notice to CPA of any cancellation or reduction in coverage, except for non-payment of premium which shall be ten (10) days prior notice. In the event TPS’ insurer will not provide such notice, TPS shall provide such notice to CPA. Said coverage shall remain in force through the life of this Agreement and shall be payable on a per occurrence or claims-made basis.
Failure to provide and maintain the insurance required by this Agreement will constitute a material breach of the Agreement. In addition to any other available remedies, CPA may suspend payment to the Consultant for any services provided during any time that insurance was not in effect and until such time as the Consultant provides adequate evidence that Consultant has obtained the required coverage.

10.1. General Liability

TPS shall maintain a commercial general liability insurance policy in an amount of no less than one million ($1,000,000) with a two million dollar ($2,000,000) aggregate limit. Such requirement for general liability insurance may be met through any combination of primary and excess policies. CPA shall be named as an additional insured on the commercial general liability policy.

11. Dispute Resolution

11.1. In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement, a Party (the “Notifying Party”) may deliver to another Party or Parties (the “Recipient Party”) notice of the Dispute with a detailed written description of the underlying circumstances of such Dispute (a “Dispute Notice”) and the requested remedy or relief.

11.2. Following delivery of the Dispute Notice, representatives of the Parties shall meet and confer as often as they deem reasonably necessary for a thirty (30) day period and engage in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

11.3. In the event a Dispute is not resolved pursuant to the procedures set forth in this section by the expiration of the thirty-day (30) period, then either Party may pursue any legal remedy available.

12. Indemnification, Liabilities, and Warranty Disclaimer

12.1 INDEMNITIES. EACH PARTY UNDERSTANDS AND AGREES THAT IT SHALL DEFEND, RELEASE, INDEMNIFY, AND HOLD THE OTHER PARTY (INCLUDING SUCH PARTY’S OWNERS, AFFILIATES, AND REPRESENTATIVES) HARMLESS FROM ALL THIRD PARTY LIABILITIES, COSTS, CLAIMS, LOSSES, OR CAUSES OF ACTION ARISING FROM (A) PERSONAL INJURY, (B) PROPERTY LOSS, (C) PROPERTY DAMAGE, OR (D) DEATH, HOWEVER CAUSED, AND RELATED TO ANY EVENT, CIRCUMSTANCE, ACT OR INCIDENT FIRST OCCURRING OR EXISTING DURING THE PERIOD OF TIME WHEN CONTROL AND TITLE TO ANY PRODUCT IS VESTED IN SUCH INDEMNIFYING PARTY.

12.2 LIMITATION OF LIABILITY. EXCEPT AS SPECIFICALLY PROVIDED IN THIS AGREEMENT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY CONSEQUENTIAL, INDIRECT, PUNITIVE, LOST PROFIT, LOST OPPORTUNITY, OR EXEMPLARY DAMAGES FOR ANY CLAIM OR CAUSE OF ACTION RELATED TO THIS AGREEMENT, WHETHER ARISING FROM BREACH OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE AND STRICT LIABILITY), STATUTE, OR OTHERWISE. MOREOVER, NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, UNLESS THE CLAIMS OR OBLIGATIONS ARE CAUSED BY TPS’
WILLFUL MISCONDUCT OR GROSS NEGLIGENCE, THE LIABILITY OF TPS TO CPA FOR
ANY OBLIGATIONS, INCLUDING INDEMNITIES, UNDER THIS AGREEMENT SHALL BE
LIMITED IN AGGREGATE TO ONE HUNDRED THOUSAND ($100,000.00) DOLLARS
FROM OCTOBER 1, 2020 TO DECEMBER 31, 2020, THREE HUNDRED THOUSAND
DOLLARS ($300,000.00) FROM JANUARY 1, 2021 TO DECEMBER 31, 2021 AND TO ONE
MILLION DOLLARS ($1,000,000.00) THEREAFTER FOR THE BALANCE OF THE TERM
PROVIDED THAT NOTHING CONTAINED IN THIS SECTION 12.2 CHANGES THE
OBLIGATIONS SET FORTH IN SECTION 4.11.

12.3 WARRANTY DISCLAIMER. EXCEPT FOR THE EXPRESS WARRANTIES
SET FORTH IN THIS AGREEMENT, TPS DOES NOT MAKE, AND HEREBY DISCLAIMS,
ANY AND ALL OTHER EXPRESS OR IMPLIED WARRANTIES, INCLUDING, BUT NOT
LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR
PURPOSE, NON-INFRINGEMENT AND TITLE, AND ANY WARRANTIES ARISING FROM
A COURSE OF DEALING, USAGE, OR TRADE PRACTICE. SOME OF THE SERVICES
WILL BE PROVIDED THROUGH COMPUTER HARDWARE, SOFTWARE SYSTEMS, AND
TELECOMMUNICATIONS SYSTEMS LICENSED FROM THIRD PARTIES, AND TPS
RELIES UPON CONTINUING UNINTERRUPTED ELECTRONIC AND TELEPHONE
SERVICE FROM THIRD PARTY UTILITIES AT TPS’ SITE. TPS CANNOT CONTROL THE
PRODUCTS AND SERVICES OF THIRD PARTIES. ACCORDINGLY, TPS DOES NOT
WARRANT THAT THE SERVICES WILL BE UNINTERRUPTED, ERROR-FREE, OR
COMPLETELY SECURE WHEN RELYING UPON THE PRODUCTS, SERVICES, OR
SYSTEMS OF THIRD PARTIES.

12.4 ADDITIONAL INDEMNITIES. AN INDEMNIFYING PARTY’S INDEMNITY
OBLIGATIONS, AND ANY WAIVERS AND RELEASES OF CLAIMS IN THIS AGREEMENT
WILL EXTEND TO THE INDEMNIFIED PARTY, ITS AFFILIATED COMPANIES,
INCLUDING ANY ENTITY CONTROLLING, UNDER THE CONTROL OF, OR UNDER
COMMON CONTROL WITH SUCH PARTY, AND TO THE RESPECTIVE OFFICERS,
DIRECTORS, EMPLOYEES, OWNERS, SHAREHOLDERS AND INSURERS OF EACH
THEREOF.


13.1 Events of Default. A Party will be in default under this Agreement upon the
occurrence of any one or more of the following events (an “Event of Default”):

(a) the failure by a Party to make a timely payment of any amounts due or
provide required credit support to the other Party under this Agreement;

(b) the failure of a Party to perform its obligations under this Agreement; which
failure causes CAISO to suspend or disqualify the Resource or the Scheduling Coordinator
from market participation;

(c) the failure by a Party to materially perform any other provision of this
Agreement, which failure is not excused by its terms;
(d) the appointment (voluntary or involuntary) of a receiver or liquidator or trustee of such Party or of any of the property of such Party by order of a court of competent jurisdiction;

(e) the filing of a petition or consent seeking relief or assisting in seeking relief in a proceeding under any of the provisions of federal or state bankruptcy or insolvency laws, as any such laws now exist or as those laws may be amended, or the filing of an answer admitting the material allegations of a petition filed against it in such proceeding; the general assignment by a Party for the benefit of its creditors; or the admission by a Party in writing of its inability to pay its debts generally as they become due; and/or

(f) Any violation of Exhibit E that occurs twice or more in any single calendar year.

13.2 Rights of Non-Defaulting Party. If an Event of Default shall have occurred and be continuing with respect to a Party (the “Defaulting Party”), the Party not in default (“Non-Defaulting Party”) shall have the right to take any one or more, or all of the following actions:

(a) upon the occurrence of an Event of Default specified under Section 13.1(a) or 13.1(b), to terminate this Agreement, after giving the Defaulting Party written notice setting forth a description of the Event of Default and providing five (5) Business Days in which to cure the Event of Default;

(b) upon the occurrence of an Event of Default specified under Section 13.1(c), to terminate this Agreement after giving the defaulting Party written notice setting forth a description of the Event of Default and providing fifteen (15) days in which to cure the Event of Default.

(c) upon the occurrence of any Event of Default as specified in Section 13.1(c), to suspend performance after giving the defaulting Party written notice setting forth a description of the Event of Default, and providing five (5) Business Days in which to cure the Event of Default;

(d) upon the occurrence of an Event of Default specified in Sections 13.1 (d), (e) or (f) to terminate this Agreement immediately; provided that with regard to 13.1(d) or (e), CPA may cure the default by providing performance assurance as reasonably requested by TPS for fulfillment of CPA’s payment obligations to TPS and show evidence that it has agreed in the bankruptcy proceeding to assume performance of the Agreement.

(e) to pursue collection of actual damages and seek any other remedy at law or in equity (except to the extent limited by, or waived under, this Agreement);

and/or

(f) to pursue any other remedy provided under this Agreement.

14.1 Governing Rules. Both Parties agree to abide by all rules, market guides, tariffs, protocols, business practice manuals, and any applicable rules or directives of CAISO, transmission service provider, market monitor, any reliability entity, NERC, or any of their successors, and CPA’s Board of Directors, as may be amended from time to time provided CPA’s Board of Directors rules are provided to TPS (collectively “Governing Rules”). For purposes of determining responsibility and rights of the Parties at any given time, in addition to the terms and conditions of this Agreement, the Governing Rules which are in effect at the time of performance or non-performance of an action, subject to the continuation of any grandfathered provisions, will govern with respect to that action. In the event of a conflict between the Governing Rules and the terms and conditions set forth in this Agreement, the Governing Rules will prevail.

14.2 NERC Compliance. TPS will use commercially reasonable efforts to assist CPA in any audit of CPA initiated by a regional reliability coordinator, or NERC including preparation of responses to the regional reliability coordinator or NERC data requests related to NERC standards for which TPS has information useful to CPA for the demonstration of compliance. Nothing contained in this Agreement will be construed to make TPS a GO, GOP, or any similar entity, or to make TPS subject to any classification under applicable NERC rules as a result of TPS’s execution of this Agreement or TPS’s performance of the services or otherwise. As between the Parties, CPA will be responsible for meeting any GO, GOP, or LSE requirements or for arranging for a party other than TPS to assume that responsibility. In the event NERC, a regional reliability entity, or other party seeks to designate TPS in any of these categories, CPA will defend and indemnify TPS from such designation, and cause itself or a Third Party to accept such designation in lieu of TPS.

14.3 Compliance with Laws. TPS and CPA will at all times comply in all material aspects with all Governing Rules and Applicable Laws. In the event that actions or omissions of one Party (“Responsible Party”) cause the other Party (“Affected Party”) to (A) be materially non-compliant with the Governing Rules or Applicable Laws, or (B) have assessed or brought against it any fines, penalties, reprimands, censures, sanctions, assessments, or other material adverse actions by CAISO, market monitor, or any other regulatory authority (“Assessments”) (which, for the avoidance of doubt, will not include ordinary course settlement charges or penalties, such as imbalance penalties or charges, mismatched schedule charges, uninstructed deviation charges, or late fees), then, in addition to any other rights or remedies under this Agreement (including the right, if any, to indemnification against such Assessments), the Affected Party may exercise any or all of the following:

(i) may give written notice to the Responsible Party setting forth the circumstances of non-compliance and, if cure is practicable, demanding cure;

(ii) must use commercially reasonable efforts to cooperate with the Responsible Party in its defense against such allegation or Assessment (provided the foregoing will not require the Affected Party to incur material expenses, unless reimbursed by the Responsible Party, nor take any position in any regulatory proceeding contrary to its interests or policies); or

(iii) may, once the adverse determination of the applicable regulatory authority is final, terminate this Agreement with written notice to the Responsible Party, with
termination to take effect as soon as CAISO completes system changes to terminate TPS as
the provider of Services for CPA.

The Responsible Party for such Assessments will reimburse the affected party for
Assessments paid by the Affected Party; provided, however, TPS’s payment obligation hereunder
will be governed by Section 12.2.

14.4 Change in Laws or Regulations. In the event a change in Applicable Laws or the
Governing Rules (i) materially impairs a Party’s ability to perform under this Agreement, (ii)
materi ally increases a Party’s costs or risks of performing under this agreement, or (iii) materially
decreases the economic benefits obtained by a Party under this Agreement, or (iv) subjects a Party
to adverse or potentially adverse regulatory effects, the adversely affected Party may notify the
other Party of the adverse effect and propose amendments to the Agreement to address the adverse
effect of the change in Applicable Laws or Governing Rules. The Parties will negotiate in good
faith to amend the Agreement to restore the Parties to the relative economic values and risk position
each had enjoyed under the Agreement prior to the change in Applicable Laws or Governing Rules.
If the Parties have not reached agreement on an amendment by the thirtieth (30th) day after the
effectiveness of the notice sent by the affected Party, then the affected Party may terminate the
Agreement upon thirty (30) days written notice (“Permitted Termination”). Neither Party will owe
damages to the other Party in the event of a Permitted Termination.

15. Force Majeure and Due Diligence.

15.1 Force Majeure. Subject to Section 15.2, neither Party will be considered to be in
default in the performance of any obligations under this Agreement (other than the obligation to
make a payment of amounts owed) when a failure of performance results from Force Majeure. The
term “Force Majeure” means causes that are beyond the control of the Party affected which, by
exercise of due diligence, such Party could not reasonably have been expected to avoid and which,
by exercise of due diligence, it has been unable to overcome and not the result of the fault or
negligence of such Party including, but not limited to: flood, earthquake, tornado, hurricane, storm,
or fire; acts of terrorism; civil disobedience, strikes, or other labor dispute; labor or material
shortage; sabotage; restraint, order, rule, or regulation of any court, governmental body, or public
authority (whether valid or invalid); equipment malfunction or failure not caused by the Party
claiming Force Majeure (including computer hardware or software malfunction); loss or disruption
of essential office equipment and services, such as loss or disruption of electric power, telephone
service, internet, or satellite communications.

15.2 Due Diligence. No Party, however, shall be relieved of liability for failure of
performance hereunder based on Force Majeure if such failure is due to causes arising out of its
own negligence or due to removable or remediable causes which it fails to remove or remedy within
a reasonable time period. A Party claiming Force Majeure will exercise due diligence to overcome
the Force Majeure event. Either Party rendered unable to fulfill any of its obligations under this
Agreement by reason of Force Majeure shall give prompt written notice of such fact to the other
Party, and as soon as practicable thereafter shall provide a detailed written explanation of the claim
of Force Majeure, and shall exercise due diligence to remove such inability with all reasonable
dispatch.
15.3 **Obligations During Force Majeure.** Notwithstanding any other provisions as stated in Section 15, an event of Force Majeure does not relieve a Party of any of its obligations under the Governing Rules and this Agreement that the Party can reasonably perform during a Force Majeure event, and does not excuse a Party of its obligations to make payments for obligations arising prior to the Force Majeure event, or of any obligations for non-performance arising pursuant to the Governing Rules and this Agreement.

16. **Delivery of Notices.**

Unless otherwise provided in this Agreement, any notices given under this Agreement must be in writing and personally delivered by hand, overnight courier, or e-mail, to such Persons at the locations designated on Exhibit D and will be deemed given and effective as indicated below:

(a) if in writing and delivered in person or by courier, on the date it is delivered;
(b) if sent by e-mail, on the date it is delivered;

unless the date of that delivery (or attempted delivery) or that receipt, as applicable, is not a Business Day or that communication is delivered (or attempted) or received, as applicable, after the close of business on a Business Day, in which case that communication will be deemed given and effective on the first following day that is a Business Day.

17. **Miscellaneous.**

17.1 **Disclaimer.** This Agreement does not constitute, create, give effect to, or otherwise recognize or imply the existence of a joint venture, pooling arrangement association, partnership, or other formal or informal business organization of any kind among the Parties, and the rights and obligations of the Parties will be limited to those set forth in this Agreement.

17.2 **Entire Agreement.** This Agreement contains the entire Agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by both Parties.

17.3 **Governing Law.** This Agreement and all matters and claims arising under or relating to this Agreement shall be governed and construed in accordance with the laws of the State of California and venued in a state or federal court located in the County of Los Angeles.

17.4 **Successors and Assigns.** This Agreement shall be binding on the successors and assigns of the Parties.

17.5 **Assignment or Transfer.** Neither Party shall assign, hypothecate, or transfer, either directly or by operation of law, this Agreement or any interest herein without the prior written consent of the other Party. Any attempt to do so shall be null and void, and any assignees, hypothecates or transferees shall acquire no right or interest by reason of such attempted assignment, hypothecation or transfer. Notwithstanding the foregoing, the Parties agree that in the absence of a merger, the sale or transfer of all or substantially all of the shares of the other Party shall not constitute an assignment or transfer of this Agreement.
17.6 Construction: References; Captions. Since the Parties have participated fully in the preparation of this Agreement, the language of this Agreement shall be construed simply, according to its fair meaning, and not strictly for or against any Party. Any term referencing time, days or period for performance shall be deemed calendar days and not work days unless specified as Business Days or work days. The captions of the various articles and paragraphs are for convenience and ease of reference only, and do not define, limit, augment, or describe the scope, content, or intent of this Agreement.

17.7 Amendment; Modification. No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing and signed by both Parties.

17.8 Remedies Cumulative; Waiver. The rights and remedies of the Parties are cumulative and not alternative. Neither any failure nor any delay by any Party in exercising any right, power or privilege under this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power or privilege will preclude any other or further exercise of such right, power or privilege or the exercise of any other right, power or privilege.

17.9 No Third-Party Beneficiaries. There are no intended third-party beneficiaries of any right or obligation assumed by the Parties.

17.10 Invalidity; Severability. If any portion of this Agreement is declared invalid, illegal, or otherwise unenforceable by a court of competent jurisdiction, the remaining provisions shall continue in full force and effect.

17.11 No Fiduciary Duty. Both Parties recognize the commercial nature of this Agreement and neither Party will owe any essential fiduciary duty to the other Party or any Third Party with respect to the performance of any of its obligations hereunder.

17.12 Authority to Enter Agreement. Both Parties have all requisite power and authority to conduct their business and to execute, deliver, and perform the Agreement. Each Party warrants that the individuals who have signed this Agreement have the legal power, right, and authority to make this Agreement and bind each respective Party.

17.13 Counterparts. This Agreement may be executed in multiple counterparts, including facsimile(s) or emails, each one of which will be considered an original Agreement, but all of which together will constitute one and the same instrument.

17.14 Conflict of Interest: TPS shall not compete with or against CPA or use information it obtains from CPA for its own account or for the account of others. CPA acknowledges and agrees that this Agreement shall not preclude TPS from providing services or making purchases and sales of a like nature to any other Person, either currently or in the future. TPS shall issue to its traders the trading restrictions shown in the attached Exhibit E. TPS will instruct its traders to follow the attached restrictions or face disciplinary actions. TPS shall inform CPA of any violations of the trading restrictions in Exhibit E no later than 10 days following the discovery of the violation and TPS’ actions with respect to traders who may have violated such restrictions. Beginning on January 1, 2021 and semiannually thereafter, TPS will provide CPA with a letter signed by its Controller or equivalent confirming compliance with this section in a
form reasonably agreeable to CPA. **TPS agrees and acknowledges that this provision is an express and absolute condition of this Agreement, is bargained for consideration and is not a mere recital. Any violation of this Section 17.14 shall constitute a material breach of this Agreement.**

18. **Definitions.**

As used in this Agreement, the following capitalized terms have the meaning set forth below:

- **“Additional Resources”** has the meaning set forth in Exhibit C.
- **“Affected Party”** has the meaning given that term in Section 14.3.
- **“Agreement”** has the meaning assigned to such term in the first paragraph of this Agreement.
- **“Ancillary Services”** means all current and future products and services defined by CAISO in CAISO Agreements that are necessary to support the transmission and distribution of electric energy from point of generation to point of delivery while maintaining reliable operation of the transmission system or which are commonly sold or traded in the market served by CAISO, which may include spinning reserves, non-spinning reserves, regulation up, regulation down, and any other ancillary services, but specifically excluding Resource Adequacy Capacity.
- **“Applicable Laws”** means any act, statute, law, regulation, permit, license, ordinance, rule, judgment, order, decree, directive, guideline, or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any governmental authority with jurisdiction over the Resource, TPS, CPA, or the Services to be performed under this Agreement.
- **“Assessments”** has the meaning set forth in Section 14.3.
- **“CAISO”** means the California Independent System Operator Corporation or any successor thereto.
- **“CAISO Agreements”** means CAISO Tariff, CAISO Business Practice Manuals and any other applicable CAISO bylaws, procedures, rules, manuals or documents, or any successor, superseding or amended versions thereof that may take effect from time to time.
- **“CAISO Protocols”** means the Tariff, Business Practice Manuals, and the governing rules of the CAISO’s operations.
- **“CAISO Tariff”** means the California Independent System Operator Corporation Operating Agreement and Tariff, dated March 31, 1997, as amended from time, including any schedules, appendices or exhibits attached thereto.
- **“Capacity”** means any capacity used to meet reliability requirements or the ability to generate and provide or deliver a Product, and includes the meaning defined in the Governing Rules.
“Commencement Date” means the later of October 1, 2020 and the date upon which TPS may fully perform its duties listed in Exhibit B.

"Confidential Information" has the meaning given that term in Section 9(A).

“Congestion Revenue Rights” or “CRR” has the meaning given that term in the CAISO Protocols.

“Contract Information” means all commercially significant information contained in CPA contracts including but not limited to counter party name and address, contract milestone dates, prices, delivery schedules, payments terms and collateral posting requirements.

“CPA” means Clean Power Alliance of Southern California.

“CPA Materials” has the meaning given that term in Section 8.

“CPA’s Representative(s)” has the meaning set forth in Section 4.4.

“CPUC” means the California Public Utilities Commission (or any successor thereto that regulates public utilities in California).

“Credit Counterparties” means entities to which CPA has direct or indirect credit exposure including entities with which CPA transacts, guarantors and providers of letters of credit and other collateral.

“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 Fitch, S&P or Moody’s.

“Credit Recommendation” means a recommendation by TPS to CPA that is consistent with CPA’s credit protocols and relates to counterparty and letter of credit provider credit limits and other credit, collateral requirements and payment terms at the entity or transaction level.

“Defaulting Party” has the meaning given that term in Section 13.2.

“Dispute Notice” has the meaning set forth in Section 11.1.

“Effective Date” has the meaning given that term in the Recitals.

“Energy” means electric energy.

“Event of Default” has the meaning set forth in Section 13.1.

“Event of Unsatisfactory Performance” or “Event” means a unexcused error, omission, or refusal by TPS in performing any of the Services listed in Exhibit B of this Agreement of which CPA notifies TPS in writing.

“FERC” means the Federal Energy Regulatory Commission or any successor thereto.
“**Force Majeure**” has the meaning set forth in Section 15.1.

“**GO**” means a “**Generation Owner**” as described in the Governing Rules.

“**GOP**” means a “**Generation Operator**” as described in the Governing Rules.

“**Governing Rules**” has the meaning given that term in Section 14.1.

“**Included Resources**” has the meaning set forth in Exhibit C.

“**Initial Term**” has the meaning set forth in Section 2.2.

“**Inter-SC Trades**” or “**IST(s)**” has the meaning given that term in the CAISO Protocols.

“**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, having assets of at least ten billion dollars ($10,000,000,000) and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody’s, in a form mutually agreeable to TPS and CPA.

“**Load Forecast**” has the meaning set forth in Exhibit C5.

“**Month**” means a calendar month.

“**Monthly Fee**” has the meaning set forth in Section 2 of Exhibit C.

“**MWh**” means one megawatt/hour.

“**Non-Defaulting Party**” has the meaning set forth in Section 13.2.

“**NERC**” means the North American Electric Reliability Corporation or any of its successors.

“**NERC E-Tag**” means a request to transfer Energy submitted in electronic format to a control area or Transmission Provider, containing required identifying information which enables the control area or Transmission Provider to schedule the transfer the Energy to another control area or Transmission Provider.

“**Notifying Party**” has the meaning given that term in Section 11.1.

“**Outage Event**” means any forced outage, trip, derating, or decrease in output at the Resource, whether or not caused by an event of Force Majeure, resulting in interruption, curtailment, reduction, or cessation of the production or provision of Energy, Ancillary Services, or Capacity from the Resource.

“**Party**” or “**Parties**” has the meaning given that term in the Recitals.

“**Performance Improvement Plan**” has the meaning set forth in Section 2.3(a).

“**Permitted Termination**” has the meaning set forth in Section 14.4.
“Person” means an individual, corporation, voluntary association, joint stock company, business trust, partnership, limited liability company, municipality (including any municipal electric board, cooperative, power utility, agency, or subdivision), rural electric cooperative, or other entity.

“Portfolio Content Category 1” or “PCC1” has the meaning set forth in the CAISO Protocols.

“Portfolio Content Category 2” or “PCC2” has the meaning set forth in the CAISO Protocols.

“Portfolio Content Category 3” or “PCC3” has the meaning set forth in the CAISO Protocols.

“Portfolio Model” has the meaning given that term in Exhibit B4(a).


“Project” means CPA’s community choice aggregation program.

“Prudent Industry Practice” means, in respect of the performance under this Agreement, the practices, methods, techniques, standards and acts that, at the time of the performance under this Agreement, are then engaged in or approved by a significant portion of the independent power production industry and that, in the exercise of reasonable judgment in light of the facts known at the time of performance, would have reasonably been expected to accomplish the desired results in a manner consistent with Applicable Law. Prudent Industry Practice is not intended to be limited to the optimum practices, methods, techniques, standards and acts to the exclusion of all others, but rather reflect the range of the practices, methods, techniques, standards and acts then generally accepted in the CAISO market, having due regard for, among other things, contractual obligations, Applicable Laws, Permits, and the Governing Rules.

“PTP” has the meaning set forth in Section 7.2.

“Real Time” has the meaning as defined in the CAISO Protocols; as such definition may be amended from time-to-time.

“Recipient Party” has the meaning given that term in Section 11.1.

“Reimbursable Amounts” shall mean any TPS costs for equipment, services, or other expenses, including Third Party load forecasting vendor costs, which CPA specifically authorizes TPS to incur pursuant to this Agreement.

“Renewal Notice” has the meaning set forth in Section 2.2.

“Renewable Energy Credit(s)” or (“REC”) means “a certificate, credit, allowance, green tag or other transferable indicia, howsoever entitled, created by or pursuant to the applicable CAISO program or certifier indicating generation of a particular quantity of energy, or RECs associated with the generation of a specified quantity of Energy from a renewable energy source by a renewable energy facility, separate from the Energy produced.
“Renewal Term” has the meaning set forth in Section 2.2.

“Resource” means CPA’s interest in the assets listed attached hereto in Exhibit A.

“Resource Adequacy Capacity” or “RA” means MW of Resource Adequacy Capacity as further set forth in CAISO Agreements. Resource Adequacy Capacity may have system, local and/or flexible attributes as determined by the CPUC/CAISO and as specified by CPA.

“Responsible Party” has the meaning set forth in Section 14.3.

“Service Fees” has the meaning set forth in Exhibit C.

“Services” has the meaning given that term in section 2.1, and described in Exhibit B.

“Scheduling Coordinator” has the meaning as defined in the CAISO Protocols.

“SCID” means the Scheduling Coordinator ID assigned to CPA by CAISO in which the Resource resides.

“Third Party(ies)” means any Person other than CPA or TPS or their respective Affiliates.

“TPS” means Tenaska Power Services Co.

“Transaction” means any arrangement relating to the scheduling, delivery, sale, and purchase of a Product, as applicable.

“TPS’s Representative(s)” has the meaning set forth in Section 4.5.

“WECC” mean the Western Electricity Coordinating Council or successor agency.

[Signature Page to follow]
IN WITNESS WHEREOF, the Parties hereby have made and executed this Agreement as of the Effective Date.

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By: _____________________________
Name: Ted Bardacke
Title: Executive Director

TENASKA POWER SERVICES CO.

By: _____________________________
Name: Kevin R. Smith
Title: President
# EXHIBIT A
## RESOURCE(S) AND LOAD INFORMATION

### Resource 1:
- **Resource Name:** Isabella  
- **Location:** Isabella Lake  
- **CAISO Resource ID:** VESTAL_6_N006  
- **Unit SCID:**  
- **Portion of total CAISO Net Qualifying Capacity of Resource:**  
- **Resource Type:** Hydro  
- **Capacity:** 11.95 MW  
- **Delivery Point:** SP15  
- **Facility PNode:** VESTAL_6_N006  
- **Transmission Owner:**  
- **Contract Start Date:** 12/8/2020

### Resource 2:
- **Resource Name:** Luna  
- **Location:** Lancaster  
- **CAISO Resource ID:**  
- **Unit SCID:**  
- **Portion of total CAISO Net Qualifying Capacity of Resource:**  
- **Resource Type:** Storage  
- **Capacity:** 100 MW  
- **Delivery Point:**  
- **Facility PNode:**  
- **Transmission Owner:**  
- **Contract Start Date:** 7/31/2021

### Resource 3:
- **Resource Name:** Sanborn  
- **Location:** Kern County  
- **CAISO Resource ID:**  
- **Unit SCID:**  
- **Portion of total CAISO Net Qualifying Capacity of Resource:**  
- **Resource Type:** Storage  
- **Capacity:** 100 MW  
- **Delivery Point:**  
- **Facility PNode:**  
- **Transmission Owner:**  
- **Contract Start Date:** 8/1/2021

### Resource 4:
- **Resource Name:** High Desert  
- **Location:** Victorville  
- **CAISO Resource ID:**
LOAD DESCRIPTION

CPA is a Community Choice Aggregation ("CCA") program, established as a Joint Powers Authority made up of 32 local agencies across Los Angeles and Ventura Counties. These agencies have banded together to provide cleaner electricity at competitive rates, offering retail electricity services to approximately 1 million customer accounts in Southern California.

CPA began offering service to municipal customers of unincorporated Los Angeles County in February 2018 and began service to non-residential customers of unincorporated Los Angeles County, Rolling Hills Estates, and South Pasadena beginning in June 2018. CPA enrolled residential customers from 31 of its member jurisdictions in February 2019 and completed enrollment of its current non-residential customers in May 2019. Both residential and non-residential customer enrollments in Westlake Village, CPA’s newest and 32nd member, occurred in June 2020. CPA may add new member jurisdictions, from time to time, which will lead to changes of the load description.

Within thirty (30) days of commencement of Services, CPA will provide TPS with all load information necessary to provide the Services.
EXHIBIT B
SERVICES

The Parties agree that the following services ("Services") shall be provided as described herein. The Services to be provided under this Exhibit B will commence upon execution of the Agreement.

A. Scheduling Coordinator Services

1. **Scheduling Coordinator Certification:** TPS will support CPA in establishing an SCID, including by preparing and submitting templates, plans, forms and other documents required by CAISO for Scheduling Coordinator certification. TPS will act as the Scheduling Agent for CPA and in this capacity, will comply with CAISO access requirements, and establish and maintain ADS, WebOMS and any other required interfaces. TPS will be available for periodic phone calls during the SCID application process to discuss application status.

2. **Scheduling Services**

   (a) TPS will perform all CAISO and WECC scheduling functions for CPA in Day-Ahead and Real-Time markets pertaining to the Products, on a 24/7, 365 days per year basis, for the Resource, subject to market availability and operational limitations of the Resource.

   (b) TPS will perform all applicable required functions of a Scheduling Coordinator, including emergency operational actions, all scheduling and bidding functions in the applicable market(s), and RA and Supply Plan filings.

   (c) As applicable, TPS will submit Inter-SC Trades ("IST(s)"), submit import schedules, prepare, update, and monitor NERC E-Tags. TPS will provide E-Tag summary information for transactions that include point of receipt (POR), point of delivery (POD), source, sink and first deliverer of record into the CAISO in support of the CARB MRR Annual Report.

   (d) TPS will monitor LMPs and implement portfolio curtailment opportunities and decisions as directed by CPA for those Resources and Loads listed in Exhibit A.

   (e) TPS will monitor and make reasonable efforts to minimize all Energy imbalances to optimize the financial impact of the CPA portfolio.

   (f) CPA must provide TPS with all schedules, offers, bids, instructions, and other information it desires TPS to submit to CAISO or WECC at least one (1) hour prior to the applicable submission deadlines.

3. **Demand Bids:** TPS will submit demand bids to CAISO to meet CPA’s forecasted load requirements per CPA’s direction as long as such direction is provided pursuant to the requirement in this Exhibit B in A(2)(f). TPS will monitor and compare demand bid information resident in the CAISO portal with submitted information and validate market data submissions.

4. **Economic and Self-Schedule Supply Bids:** As and when CPA directly enters into supply agreements with power suppliers, generators, storage facilities, and/or demand response or other aggregated or virtual resources, TPS will perform the scheduling and settlement activities required to schedule CPA’s
supply agreements with CAISO, including new resource onboarding. Any schedule change or notice provided to TPS by CPA must be provided pursuant to the requirement in this Exhibit B in A(2)(f).

5. Outage Scheduling: TPS will transmit to CAISO Resource outage data as CPA transmits to TPS concerning an Outage Event (whether planned or unplanned) or an outage to conduct emergency maintenance within time periods specified for the transmission of such data under the CAISO Protocols as long as CPA transmits such data to TPS at least one (1) hour prior to any applicable deadline for reporting set in the CAISO Protocols.

6. Resource Management: At CPA’s discretion, TPS will execute bidding and dispatch strategies for CPA’s range of resource technologies described in Exhibit A of this Agreement to maximize the value of CPA’s resource portfolio in the CAISO market.

7. Market Monitoring: TPS will use commercially reasonable efforts to monitor CAISO market activities and communicate to CPA information pertaining to such CAISO market activities that may impact CPA or be of interest to CPA.

8. Shadow Settlements and Reconciliation: TPS will use its proprietary data management and calculation engine, PowerTools Platform®© ("PTP®") to shadow settle all CAISO settlement statement versions. TPS will analyze discrepancies found between TPS’s internally generated settlement statements and CAISO’s settlement statements and will report any significant discrepancies to CPA. CPA will provide TPS parameters for further investigation of such discrepancies and filing of disputes with CAISO. For discrepancies falling within CPA’s parameters, TPS will file disputes at CPA’s cost with CAISO on behalf of CPA, will manage these disputes with CAISO, and will regularly provide CPA a status report on all filed disputes. TPS will also review all additional CAISO settlement statements to verify CAISO has made requested changes to prior statements and to verify the accuracy of any additional CAISO charges and credits. TPS is authorized to receive from CAISO historic and real time data collected by CAISO from, or provided to CAISO by, CPA. TPS is authorized to have access to CPA’s SCID at CAISO to review CAISO’s bills and settlement statements.

9. Reporting:

a. Regulatory Reporting: TPS will assist in data collection for CPA’s regulatory reporting. CPA will be responsible for required state, federal or regional reports applicable to its licenses and business interests. For clarification, nothing herein shall obligate TPS to prepare or submit any regulatory or governmental reports for CPA; provided, however, that TPS shall timely provide to CPA all information in its possession that is reasonably requested by CPA for CPA’s regulatory or governmental reports.

b. Performance / Settlements Reporting: TPS will validate all CAISO invoices, including performing CAISO shadow settlements, and provide daily validation reports (with month-to-date information) to CPA. TPS will provide a monthly report detailing all historic charges and credits by charge code and by month. In addition, TPS will provide any required data related to invoicing and validating for CPA’s supply resources.

c. Market Performance Reporting: TPS will prepare and provide to CPA in a mutually agreed upon format end-of-day summary, 14-day summary and monthly summary reports on load and
resource performance metrics, including volumes and pricing for load, contracted generation and IST hedges. Reports should include graphical representation of key metrics and underlying data. TPS may provide this report by means of granting CPA access to a portal window into TPS’s data system showing data with respect to CPA’s Resources.

B. Congestion Revenue Rights Portfolio Management

1. Congestion Revenue Rights (“CRR”) Bid Strategy Development and Implementation: TPS will manage the annual and monthly CRR auction bid processes on behalf of CPA, and consult with CPA to determine potential CRRs for which to enter bid volumes and prices. Final selection of any CRRs to bid upon and their associated bid volumes and prices will be at CPA’s sole discretion.

   (a) TPS’s consultation will consist of its standard CRR report for each monthly auction and each annual auction, along with one scheduled phone call to discuss findings and strategies. TPS’s analysis will be limited to CRR paths related to CPA’s resource nodes, demand locations, and market trading hubs.

   (b) Delivery of TPS’s standard CRR report, including standard results and any inputs used to prepare such results will be made available to CPA via mutually agreeable form. Inputs for the analysis will be consistent with the latest base case inputs in TPS’s network modeling system. Additional scenarios may be completed at an agreed-upon cost.

   (c) TPS will provide its standard CRR report no later than seven days prior to the opening day of the bid window for each auction. CPA will need to provide its selection of CRR bid volumes and prices to TPS no later than 5:00 pm on the business day prior to the opening day of the bid window. TPS and CPA will work together to ensure that any credit requirements for CRR auction participation are met by the CAISO market deadlines.

2. CRR Portfolio Performance: TPS to provide access to a dashboard. TPS to review all settlement statements and invoices associated with any such CRRs for accuracy. CPA shall be responsible for funding the CAISO CRR Candidate Holder Minimum Participant Requirement, if any, directly with CAISO.

3. CRR Risk Management Policy – TPS will assist CPA with the development of a policy to manage CRRs that is consistent with industry best practice.

C. Middle-Office Support

1. Deal Capture and System of Record: TPS will enter all of CPA’s executed and prospective Contract Information for all product types (Energy, PCC1, PCC2, PCC3, Carbon Free and Resource Adequacy) into TPS’s system of record. CPA will be provided with read-only access to its Contract Information and transaction data either through a direct user interface or daily report in a file format agreeable to CPA, including data for settlements validation of bilateral transactions. TPS will support CPA staff to validate all new contracts in the system of record.

2. Position Management: TPS will support accurate and timely tracking of CPA’s net positions for all product types (Energy, PCC1, PCC2, PCC3, Carbon Free and Resource Adequacy).
3. **Credit Risk Management Support.** TPS will monitor and report CPA’s counterparty credit exposure monitor and report changes in the credit worthiness of CPA Credit Counterparties, provide Credit Recommendations consistent with CPA’s credit protocols and provide recommendations for transaction level credit support. All Credit Recommendations made by TPS will be subject to final approval by CPA. In order for TPS to perform this service, CPA will provide TPS with a written copy of CPA’s credit protocols, and any periodic modifications thereto. Prior to the Commencement Date, CPA will meet with TPS to explain its credit protocols in detail, including its goals, philosophy, manner and process of implementation, and the quantitative and qualitative measures used in CPA’s credit assessments. CPA will make knowledgeable CPA personnel available to answer TPS questions about the policy, and to train TPS personnel in following the protocols, as necessary. CPA will provide TPS with a list of current CPA counterparties whose credit CPA expects TPS to monitor. CPA will keep that list current. TPS will provide CPA with overall Credit Recommendations per counterparty and will provide these recommendations in formats and within timelines at intervals to be mutually agreed upon by the Parties. The Parties will memorialize their agreement as to the procedures, timelines, and formats for submitting TPS’s Credit Recommendations in a written schedule. CPA will have the duty to make any final counterparty credit determination. CPA will have complete discretion concerning the weight, if any, it chooses to attach to a TPS Credit Recommendation, and may ignore any TPS Credit Recommendation.

4. **Risk Management & Financial Model Support:**

   (a) TPS will work with CPA to develop a model of CPA’s portfolio in TPS’s risk analytics system for the purpose of Monte Carlo simulation analysis in hourly granularity (the “**Portfolio Model**”). The Portfolio Model components will include owned or contracted generation resources, loads aggregated by weather location, and hedge contracts. If other sources of cost or revenue need to be included in the model, TPS will make a good faith effort to include these components. TPS will develop a reporting format agreeable to CPA for communicating model results. Outputs may be bucketed based on any combination of the following categories:

   i. Monthly, annual, or total model horizon

   ii. Cost, revenue, net profit and loss, or volume

   iii. Generation/generation contracts, load, hedge contracts, or portfolio total

For the purposes of this section, “Output” refers to a statistical centile, mean, or histogram. For example, the Portfolio Model report may include the mean, 5th and 95th percentile load cost by month, or a histogram of annual total portfolio revenue. Other outputs not covered by these categories may be made available as agreed upon between CPA and TPS.

   (b) It is expected that, from time to time, CPA will require ad hoc scenario runs of the Portfolio Model using a different set of assumptions or components. For example, CPA may wish to run the Portfolio Model including a new hedge contract under consideration, or with a custom forward curve for energy prices, or to stress the impact of a large amount of load migrating away from CPA. TPS shall support up to eight (8) scenario runs per Month. Upon receipt of a scenario run request, TPS shall communicate to CPA an expected completion
time. TPS is able to provide results within two business days in most cases, but complex requests, such as modeling a new generation resource, may take additional time. Standing scenarios or stress tests may be incorporated into the standard Portfolio Model as agreed upon between TPS and CPA, and such standing scenarios or stress tests shall not be considered a scenario run or count against the limits described in this section.

(c) The horizon of Portfolio Model simulations shall be limited to the prompt three (3) calendar years, unless otherwise agreed upon between TPS and CPA. CPA will be responsible for providing TPS with load growth and generation resource availability assumptions to be used in Portfolio Model runs. Financial outputs (cost, revenue, net profit and loss) are reported on an accrual basis by default, but may be reported on a cash basis and/or accrual basis if CPA provides TPS with settlement and invoice timelines to use for relevant Portfolio Model components. Portfolio Model reports shall be provided at least monthly, but may be provided more frequently as agreed upon between TPS and CPA.

ii. TPS will assist CPA to manage CPA’s risks in accordance with the CPA Risk Management Policy by providing Monthly Portfolio Model reports, ad hoc scenario analyses, and timely net position and counterparty credit exposure reporting, as defined in this Exhibit B. TPS will also make recommendations to CPA concerning risk management questions, and at CPA’s discretion, CPA will make the final decision on whether to ignore or implement TPS’s recommendations. Additional assistance may be provided as agreed upon between TPS and CPA.

5. Load Forecasting Services: TPS will develop or cause to be developed an hourly weather-adjusted load forecast of Energy requirements (the “Load Forecast”) setting forth CPA’s projected hourly Load Forecast for the following fourteen (14) days; provided that CPA supplies TPS with at least two years, if available, and preferably up to five years of historic CPA hourly consumption information. The Load Forecast will be refreshed on a daily basis, or more frequently, and made available to CPA along with the weather forecasts used for prediction, through a mutually agreed data transfer process. The Load Forecast shall represent expected aggregate energy consumption at each load aggregation point where CPA submits daily demand bids. The Load Forecast shall reflect weather forecasts from a minimum of three weather stations in Los Angeles and Ventura counties. TPS will monitor load forecast performance, provide weekly reports on forecast error, and make periodic adjustments to the forecast model to ensure adequate load forecast accuracy. The forecast model shall be trained/fit with new data on a Monthly basis or more frequently. TPS will make adjustments to the forecast model as necessary to account for load migration and/or mass enrollment for new jurisdictions. CPA may request, and TPS may agree, to utilize a Third Party vendor to provide load forecasting services, either to supplement or replace TPS’s load forecasting services. In such an event, TPS would pass the cost of the Third Party service through to CPA as a Reimbursable Amount.
EXHIBIT C

SCHEDULING COORDINATOR FEE SCHEDULE AND PAYMENTS

This Exhibit C describes the Services Fees (“Service Fees”) to be remitted to TPS from CPA for all Services performed pursuant to this Agreement. No additional services will be rendered, or additional fees charged to CPA unless expressly approved by CPA in writing.

Service Fees

1. Setup fee: Waived

2. Monthly Fee: As compensation for the Services provided by TPS under the Agreement, CPA will pay TPS a Monthly Fee, to begin on the Commencement Date, for Included Resources per the following:

<table>
<thead>
<tr>
<th>Services</th>
<th>Commencement Date through June 30, 2021</th>
<th>July 1, 2021 through May 31, 2023</th>
<th>After June 1, 2023</th>
</tr>
</thead>
<tbody>
<tr>
<td>Scheduling Coordination, as described in Exhibit B, Section A</td>
<td>$36,500</td>
<td>$46,275</td>
<td>$48,275</td>
</tr>
<tr>
<td>Congestion Revenue Rights Management, as described in Exhibit B, Section B</td>
<td>$3,500</td>
<td>$3,500</td>
<td>$3,500</td>
</tr>
<tr>
<td>Middle Office Services, as described in Exhibit B, Section C</td>
<td>$20,000</td>
<td>$20,000</td>
<td>$20,000</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$60,000</strong></td>
<td><strong>$69,775</strong></td>
<td><strong>$71,775</strong></td>
</tr>
</tbody>
</table>

The following Resources are included in the Monthly Fee (“Included Resources”):
- Isabella (11.95 MW Hydro)
- Up to 5 renewable plus storage hybrid / co-located facilities
- Up to 4 stand-alone storage resources

By mutual agreement, the Parties may also add new Resources to the Agreement in addition to the Included Resources (“Additional Resources”). These Additional Resources may be added for an incremental fee of $2,500 per Month per Additional Resource, commencing the Month the Additional Resource is in CPA’s SCID as long as the Services involved with each Additional Resource is commensurate with the level of Services provided to the Included Resources.

3. Additional Services: The Parties will negotiate in good faith to reach agreement on the implementation of new services not currently contemplated in this Agreement.
EXHIBIT D
NOTICE INFORMATION

TPS: TENASKA POWER SERVICES CO.

All Notices:
300 E. John Carpenter Freeway, Suite 1100
Irving, TX 75062
Attn: Contract Administration
Phone: (817) 303-1110
Email: TPSContractAdmins@tnsk.com
Duns Number: 01-501-6913
CICI Number: 549300K7NFSB93YGBN35
CFTC Designation: End User
Federal Tax ID Number: 47-0824081

TPS represents that it is corporation validly existing under the laws of the State of Nebraska and is a Qualified Subchapter S Subsidiary ("QSSS") of Tenaska Energy, Inc. disregarded for U.S. tax purposes. TPS’s sole owner for U.S. tax purposes, Tenaska Energy, Inc., is an S corporation organized under the laws of the State of Delaware and its U.S. taxpayer identification number is 47-0824081. Tenaska Energy, Inc. is "exempt" within the meaning of Treasury Regulation sections 1.6041-3(p) (1) and 1.6049-4(c) from information reporting on Form 1099 and backup withholding.

Invoices:
Attn: Accounts Payable
Phone: (817) 462-1521
Email: tpscheckout@tnsk.com

Real Time Trading:
Phone: (817) 462-1528

TPS Representative:

Payments:
Attn: Accounts Receivable
14302 FNB Parkway
Omaha, NE 68154
Phone: (402) 938-1621

CPA: CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

All Notices:
801 S. Grand, Suite 400
Los Angeles, CA 90017
Attn: Theodore Bardacke, Executive Director
Phone: (213) 269-5891
Email: tbardacke@cleanpoweralliance.org

With an copy to:
Christopher Stephens, Contract Manager
Phone: (213) 713-3113
Email: cstephens@cleanpoweralliance.org

Invoices, Payments, Credit and Collections:
Attn: Accounts Payable
Phone: (213) 269-5891
Email: accountspayable@cleanpoweralliance.org

Real Time Trading & Scheduling:
Attn: Natasha Keefer
Phone:

CPA Representative:

Payments:
Attn: Accounts Payable
Email: accountspayable@cleanpoweralliance.org
Phone:
**ACH/Wire Transfer:**
Bank: US Bank, Omaha, NE
ABA No: 042000013
Account No: 130111671306
Account Name: Tenaska Power Services Co.

**ACH/Wire Transfer:**
Bank: River City Bank
ABA No: 121133416
Account No: 2980977557
Account Name: Operating Account

**Credit and Collections:**
Attn: Credit Department
Phone: (817) 303-1113
Email: credit@tnsk.com

**Credit and Collections:**
Attn: Chief Financial Officer
Phone: (213) 269-5877
Email: dmcneil@cleanpoweralliance.org

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: Associate General Counsel
Phone: (817) 462-1507
Email: eodnotices@tnsk.com

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: Theodore Bardacke, Executive Director
Phone: (213) 269-5891
Email: tbardacke@cleanpoweralliance.org
EXHIBIT E
INSTRUCTIONS TO TPS TRADERS RESTRICTING CALIFORNIA TRADING

TPS takes seriously its legal and compliance obligations and maintains a risk policy manual that instructs TPS traders as to what activities are allowable or not allowable due to either TPS’s own internal policies or its external compliance obligations.

All TPS traders with access to Confidential Information or CPA Materials as defined above must follow all of the following directives immediately upon commencement of service to CPA:

- TPS has begun providing Scheduling Coordinator services for CPA. TPS traders are to treat CPA as a valued customer.

- TPS traders will respect the confidentiality of the Confidential Information or CPA Materials

- TPS traders shall not use any Confidential Information or CPA Materials to either support transactions with Third Parties, to manage the resources of other customers, or benefit TPS’s own trading portfolio.

- This directive will be added as an operational control limit to TPS’s risk policy, and therefore is subject to the same requirements as the TPS risk policy.

Any failure by a trader or other TPS personnel to follow the requirements stated in TPS’s risk policy manual will be cause for disciplinary action by TPS management, including written reprimands, docking of wages, loss of trader bonus eligibility, suspension, and/or termination of employment.

Traders who have questions about the applications of these instructions should contact their supervisor.
Staff Report – Agenda Item 3

To: Clean Power Alliance (CPA) Board of Directors

From: Matthew Langer, Chief Operating Officer

Approved By: Ted Bardacke, Executive Director

Subject: Energy Risk Management Policy (ERMP) Amendments

Date: July 9, 2020

RECOMMENDATION

Adopt Resolution No. 20-07-010 to approve ERMP amendments.

BACKGROUND

In July 2018, the Board approved an ERMP that governs the framework by which the Board, staff, and consultants conduct power procurement and related business activities. The ERMP establishes a staff-level Risk Management Team (RMT) and is supplemented by an Energy Risk Hedging Strategy, which sets the minimum and maximum procurement amounts CPA will undertake for various energy products.

The ERMP and associated hedging strategy is based on industry best practices which means that it evolves as CPA develops further operational experience and/or new market and regulatory conditions unfold. The Board approved an amendment to the ERMP in July 2019 to include a new transaction type, modify prompt and calendar year hedge targets, and incorporate minor revisions to reflect CPA’s operating history. It is anticipated that amendments to the ERMP will be proposed, at a minimum, on an annual basis.

COMMITTEE ACTION

The Executive Committee was provided a high-level overview of the proposal at its June 17, 2020 meeting. The proposed 2020 amendments were then reviewed by the Energy Planning & Resources Committee at its June 24 meeting. Suggested revisions by the
Committee were incorporated and the Committee voted unanimously to recommend the revised proposed amendments to the Board of Directors.

**SUMMARY OF PROPOSED ERMP AMENDMENTS**

**Middle Office**
To reflect CPA’s continued separation of front and middle office functions and plans to hire dedicated middle office staff, the Middle Office has been moved from the Chief Operating Officer to the Chief Financial Officer. Separation of these functions is an industry best practice. In addition, some functions between front and middle office have been moved to reflect current operating practices.

**Long-Term Contracts**
Per the original ERMP, contracts with terms longer than 5-years require Board approval. The proposed amendments add language memorializing the evaluation, selection, and approval process that is currently in practice, including the inclusion of Board members in the RFO Review Team and oversight provided by the Energy Planning & Resources Committee.

In addition, the proposed language addresses how amendments to Board-approved long-term contracts will be addressed:

- Require that changes to a previously approved PPA that impact the project’s selection criteria (e.g. price or major terms) be brought back to the Board for approval.
- Minor, non-core project amendments or agreements that are administrative in nature or related to effectuating a counterparty’s contractual obligations under normal course of business (e.g. consent to collateral assignments, changes to progress reporting forms, etc.) can be executed by the Executive Director.

**Fixed-Price Energy Hedge Targets**
Fixed price energy hedges are the principal way that CPA manages energy market price risk which fluctuates from day to day. CPA hedges by purchasing energy at a fixed price for a specific period of time (e.g., hourly, daily, monthly, annually), thus locking in certainty and limiting the risk of higher prices.
In the near-term, CPA will predominantly employ Fixed Price Block Energy contracts, which provide for suppliers to deliver a predetermined volume of energy at a constant delivery rate. As CPA enters into long-term, fixed price contracts for renewable and/or carbon-free energy, these will likewise hedge CPA’s market risk and, subsequently, reduce the required volume of Fixed Price Block Energy purchases.

The minimum and maximum hedge targets for the Calendar Year +3 through Calendar Year +5 timeframes have been adjusted to account for the additional fixed price hedging resulting from long-term fixed price renewable energy contracts, as shown in the table below:

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt 1-4 Quarters</td>
<td>85</td>
<td>110</td>
</tr>
<tr>
<td>Balance of prompt year not</td>
<td>65</td>
<td>90</td>
</tr>
<tr>
<td>covered by Prompt 4 Quarters</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Current Calendar Year (CY) + 2</td>
<td>40</td>
<td>70</td>
</tr>
<tr>
<td>CY + 3</td>
<td>300</td>
<td>50</td>
</tr>
<tr>
<td>CY + 4</td>
<td>300</td>
<td>60</td>
</tr>
<tr>
<td>CY + 5</td>
<td>300</td>
<td>50</td>
</tr>
</tbody>
</table>

**PCC1 Renewable Energy Hedge Targets**

To meet its emissions reduction and renewable energy goals, CPA purchases renewable energy, a large portion of which is Product Content Category 1 (PCC1) renewable energy. These purchases are made with both short-term and long-term contracts. To lower costs and comply with long-term contracting mandates, a growing share of CPA’s renewable energy supply will be through long-term contracts.

The most recent version of the ERMP had separated hedge targets to account for this change by including targets applicable for 2018-2020 and for 2021 and beyond. Given that the 2018-2020 period has largely passed, and CPA has executed a number of long-term contracts, the hedge targets have been consolidated into one table and reflects the targets below:

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Calendar Year</td>
<td>65</td>
<td>100</td>
</tr>
<tr>
<td>PY + 1</td>
<td>60</td>
<td>95</td>
</tr>
<tr>
<td>PY + 2</td>
<td>45</td>
<td>90</td>
</tr>
<tr>
<td>PY + 3</td>
<td>45</td>
<td>90</td>
</tr>
<tr>
<td>PY + 4</td>
<td>45</td>
<td>90</td>
</tr>
</tbody>
</table>
Resource Adequacy Hedge Targets
CPA has a compliance obligation to meet Resource Adequacy (RA) requirements for local, flex, and system capacity. The proposed changes clarifying how the RA hedge targets will be calculated to address variability in monthly RA requirements. In addition, the maximum Prompt Calendar Year + 4 hedge target has been increased to account for RA from expected long-term storage contracts:

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge % (applicable to all months)</th>
<th>Maximum Hedge % (applicable to peak month only)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Calendar Year</td>
<td>90</td>
<td>100</td>
</tr>
<tr>
<td>PY + 1</td>
<td>50</td>
<td>90</td>
</tr>
<tr>
<td>PY + 2</td>
<td>30</td>
<td>80</td>
</tr>
<tr>
<td>PY + 3</td>
<td>0</td>
<td>30</td>
</tr>
<tr>
<td>PY + 4</td>
<td>0</td>
<td>30</td>
</tr>
</tbody>
</table>

Other Changes
Several other minor revisions are made throughout the document that reflect CPA’s operational history related to procurement activities and hiring of new staff that in-source a number of key procurement functions that were previously provided through a third-party Portfolio Manager.

ERMP Acknowledgements
The ERMP requires CPA representatives, including the Board, participating in any activity or transaction within the scope of the ERMP to sign, on an annual basis or upon any revision, an acknowledgement of their responsibilities, duties, obligations, and compliance under the ERMP. In tandem with the amendment to the ERMP, staff will be asking the Board to complete their annual acknowledgement forms, which will be emailed to the Directors in a subsequent communication from the Clerk of the Board.

ATTACHMENTS
1) Resolution No. 20-07-010
2) Proposed ERMP Amendments (redline)
RESOLUTION NO. 20-07-010

RESOLUTION OF THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA ADOPTING AND APPROVING THE AMENDED THE ENERGY RISK MANAGEMENT POLICY

THE BOARD OF DIRECTORS OF CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA HEREBY RESOLVES AS FOLLOWS:

WHEREAS, 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;

WHEREAS, on April 5, 2018, the CPA Board of Directors ("Board") adopted Resolution 18-005 delegating authority to the Executive Director for certain activities related to power procurement;

WHEREAS, on July 12, 2018, the Board adopted Resolution 18-006 approving the Energy Risk Management Policy ("ERMP") which establishes a framework by which the Board, staff, and consultants conduct power procurement and related business activities that may impact the risk profile of CPA;

WHEREAS, on July 18, 2019, the Board approved amendments to the ERMP to authorize new transaction types, to modify prompt and calendar year hedge targets, and to incorporate other minor revisions to reflect CPA’s operating history;

WHEREAS, the ERMP specifies that CPA will review the policy on an annual basis in order to determine if the ERMP should be amended, supplemented, or updated to account for changing business conditions and/or regulatory requirements; and,

WHEREAS, CPA has considered the prevailing business conditions and regulatory environment and determined that refinements or updates to certain functions or activities are necessary or beneficial.

NOW, THEREFORE, BE IT DETERMINED, AFFIRMED, AND ORDERED BY THE BOARD OF DIRECTORS OF THE CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA that the attached ERMP, presented as Exhibit A, as amended therein, is hereby approved as of July 9, 2020;

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED, any power procurement activity that falls outside the parameters of the ERMP, as amended herein, shall be brought to the Board for consideration;

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that any and all acts authorized pursuant to this Resolution and performed prior to the passage of this Resolution are hereby ratified and approved;
IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that this Resolution shall be continuing and remain in full force and effect; and,

IT IS FURTHER DETERMINED, AFFIRMED, AND ORDERED that the approval of the ERMP is not a project under CEQA because the ERMP does not have the potential for causing a significant impact on the environment under State CEQA Guidelines Section 15061(b)(3);

ADOPTED AND APPROVED this ____ day of __________ 2020.

_______________________________
Chair

ATTEST:

_______________________________
Secretary
Energy Risk Management Policy

July 18,
2019, 2020
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Section 1: ENERGY RISK MANAGEMENT POLICY OVERVIEW

1.1 Background and Purpose

The Clean Power Alliance of Southern California (CPA) is a Joint Powers Authority (JPA) administering a Community Choice Aggregation (CCA) program in Southern California. CPA service territory currently includes 3132 jurisdictions – 2930 cities and the unincorporated parts of Los Angeles and Ventura Counties. CPA members presently include the following:

**Counties:**
- Los Angeles
- Ventura

**Cities:**
- Agoura Hills
- Hawaiian Gardens
- Santa Monica
- Alhambra
- Hawthorne
- Sierra Madre
- Arcadia
- Manhattan Beach
- Simi Valley
- Beverly Hills
- Malibu
- South Pasadena
- Calabasas
- Moorpark
- Temple City
- Camarillo
- Ojai
- Thousand Oaks
- Carson
- Oxnard
- Ventura
- Claremont
- Paramount
- West Hollywood
- Culver City
- Redondo Beach
- Westlake Village
- Whittier
- Downey
- Rolling Hills Estates
- Whittier

CCA, authorized in California under AB 117 and SB 790, allows local governments, including counties and cities, to purchase wholesale power supplies for resale to their residents and businesses as an alternative to electricity provided by an Investor Owned Utility (IOU). For CPA members, that IOU is Southern California Edison (SCE). Electricity procured by CPA to serve customers is delivered over SCE’s transmission and distribution system.

CPA exists to serve its local government members, and the residences and businesses located within their respective communities. CPA’s specific objectives are to provide its customers with a reliable supply of electricity, at competitive electric rates, sourced from a generation portfolio with lower greenhouse gas (GHG) emissions and higher renewable content than the incumbent utility, SCE. CPA also has goals to be a catalyst for local economic development and give its member agencies greater choice in the energy procured for their residents.

To meet these commitments, CPA must procure electric power supplies and operate in the wholesale energy market which exposes CPA, and ultimately the customers that it serves, to various risks. The intent of the Energy Risk Management Policy (ERMP) is to provide CPA, and by extension its customers, with a
framework, to identify, monitor and manage risks associated with procuring power supplies and operating in wholesale energy markets.

The Energy Risk Management Policy (ERMP), including its appendices, establishes CPA’s Energy Risk Program.

1.2 Scope

Unless otherwise explicitly stated in the ERMP or other policies approved by the CPA Board of Directors (Board), the ERMP applies to all power procurement and related business activities that may impact the risk profile of CPA. The ERMP documents the framework by which CPA staff and consultants will:

- Identify and quantify risk
- Develop and execute procurement strategies
- Develop controls and oversight
- Monitor, measure and report on the effectiveness of the ERMP

To ensure its successful operation, CPA has partnered with experienced consultants to provide power supply services. Specific to power procurement, CPA has partnered with an outside Portfolio Manager. The Portfolio Manager’s third-party Scheduling Coordinator that augments CPA’s internal Front (transactionscheduling), Middle (monitoring) and Back (settlement) Office related activities as discussed at Section 4.3. The Portfolio Manager’s Scheduling Coordinator supporting CPA’s power procurement activities will adhere to and be governed by the ERMP in providing these services to CPA. In addition, the Portfolio Manager’s Scheduling Coordinator’s activities executed on CPA’s behalf will be governed by its own risk management policies and procedures, and prudent industry practices.

1.3 Energy Risk Management Objective

The objective of the ERMP is to provide a framework for conducting procurement activities that maximize the probability of CPA meeting the goals listed in Section 2.1.

Pursuant to the ERMP, CPA will identify and measure the magnitude of the risks to which it is exposed and that contribute to the potential for not meeting identified goals.

1.4 ERMP Administration

The ERMP has been reviewed and approved by the Board. The Executive Director in consultation with the Risk Management Team (collectively, the “RMT”), as defined in Section 4.2, and the Board must approve amendments to the ERMP, except for appendices D, E, and F, which may be amended with approval of the Executive Director, in consultation with the RMT. The Executive Director must give notice to the Board of any amendment it makes to an appendix or a reference policy or procedure document.
Section 2: GOALS AND RISK EXPOSURES

2.1 ERMP Goals

To help ensure its long-term success, CPA has outlined the following goals:

- Build a portfolio of resources with lower GHG emissions and higher renewable content than SCE;
- Meet reliability requirements established by the State of California, and operate in a manner consistent with Prudent Utility Practice (defined as the practices generally accepted in the utility industry to ensure safe, reliable, compliant and expeditious operations);
- Maintain competitive retail rates with SCE after adjusting for exit fees (currently the Power Charge Indifference Adjustment or PCIA) and Franchise Fees paid by CPA customers;
- Emphasize during the initial years of operation the funding of financial reserves to meet the following long-term business objectives:
  - Stabilize rates by dampening year-to-year variability in power supply costs;
  - Establish an investment-grade credit rating to maximize the ability of CPA to engage in long-term acquisition or development of generation supplies consistent with ERMP goals; and
  - Provide a source of equity capital for investment in generation.

The goals outlined above are incorporated into the financial models and metrics that are used to monitor and measure risk and ERMP success. It is important to note that the goals listed above are not intended to be a comprehensive list of goals for CPA. Rather, the above reflect the overarching goals critical to CPA’s long-term financial success and that will guide the ERMP.

2.2 Risk Exposures

For the purpose of the ERMP, risk exposure is assessed on all transactions (energy, environmental attributes, and capacity) executed by the Portfolio Manager on behalf of CPA, or by CPA unilaterally, as well as the risk exposure of open positions and the impacts of these uncertainties on CPA’s load obligations.

CPA faces a range of risks during launch and ongoing operation including:

- Customer opt-out risk
- Market risk
- Regulatory risk
- Volumetric risk
- Model risk
- Operational risk
- Counterparty credit risk
- Reputation risk
2.2.1 Customer Opt-Out Risk

Customer opt-out risk may be realized by any condition or event that creates uncertainty within, or a diminution of, CPA’s customer base. Customer opt-out risk is manifested in two separate ways.

First, the ability of customers to return to bundled service from SCE creates uncertainty in CPA’s revenue stream, which is critical for funding ERMP goals and achieving the investment grade credit rating needed to successfully operate over the long-term.

Second, customer opt-out risk can potentially challenge the ability of CPA to prudently plan for, and cost-effectively implement, long-term resource commitments made on behalf of its member communities and the customers it serves.

CPA will manage customer opt-out risk through the following means:

- Implement a key accounts program and maintain strong relationships with the local community including elected leaders, stakeholders and all of the customers CPA serves;
- Actively monitor and advocate for the interests of CPA and its customers in SCE ratemaking proceedings, California Public Utilities Commission (CPUC) proceedings that potentially affect exit fees paid by CPA customers, as well as all regulatory and legislative proceedings where an adverse outcome may challenge the ability of CPA to deliver on customer commitments;
- Regularly monitor and report actual and projected financial results including probability-based and stress-tested financial results assuming a range of possible future outcomes with respect to:
  - Future SCE generation and PCIA rates;
  - Future market costs for energy, environmental attributes and capacity; and
  - Anticipated or threatened regulatory actions, when appropriate.
- Adopt, implement and update, as needed, a formal Energy Risk Hedging Strategy (Appendix B) describing the strategy that CPA will follow for engaging in procurement activities; and
- Evaluate expansion of CPA’s customers base through incorporation of other eligible communities into the CCA.

2.2.2 Market Risk

Market risk is the uncertainty of CPA’s financial performance due to variable commodity market prices (market price risk) and uncertain price relationships (basis risk). Variability in market prices creates uncertainty in CPA’s procurement costs, which has a direct impact on customer rates. CPA will manage market risk through:

- Regular measurement;
- Execution of approved procurement;
- Hedging and Congestion Revenue Right strategies; and
- Use of the Limit Structure set forth in the ERMP (see limits in Section 5.1.2 and Appendix B).
2.2.3 Regulatory and Legislative Risk

CPA and other CCAs are subject to an evolving legal and regulatory landscape. Additionally, CCAs are in direct competition with California’s IOUs in supplying retail electricity and the IOUs face the risk of stranded investments in generating assets and power purchase agreements procured in the past to serve now departing CCA loads. The manner in which such stranded costs of these legacy power supplies are allocated to departing CCA loads is subject to change based on various proceedings at the CPUC. The outcome of such proceedings will directly affect the cost of power for CPA’s customers, as well as impact the rate competitiveness of CPA.

In addition to exit fees, potential regulatory and/or legislative changes could affect the ability of CPA to exercise local control over the manner and means of procuring power supplies to serve its customers.

CPA will manage regulatory and legislative risks by:

- Regularly monitor and analyze legislative and regulatory proceedings impacting CCAs; and
- Actively participate in, and advocate for, the interests of CPA and its customers during regulatory and legislative proceedings.

2.2.4 Volumetric Risk

Volumetric risk reflects the potential uncertainty in the quantity of different power supply products (e.g., renewable energy, Carbon Free Energy and capacity) required to meet the needs of CPA customers. This uncertainty can lead to adverse financial outcomes, as well as create potential for CPA to fail to meet reliability or renewable energy compliance requirements established by the State of California and/or the CPA Board. Customer load is subject to fluctuation due to customer opt-outs or departures, temperature deviation from normal, unforeseen changes in the growth of behind the meter generation by CPA customers, unanticipated energy efficiency gains, new or improved technologies, as well as local, state and national economic conditions. CPA will manage volumetric risk by taking steps to:

- Implement robust short- and long-term load and generation supply forecast methodologies, including regular monitoring of forecast accuracy through time and refining such forecasts, including by incorporating CPA’s actual load data into forecasts as such data becomes available;
- Account for volumetric uncertainty in load and/or generation supply in in the Energy Risk Hedging Strategy;
- Monitor trends in customer onsite generation, economic shifts, and other factors that affect electricity customer consumption and composition; and
- Proactively engage with customers in developing distributed energy resources and behind-the-meter generation and energy efficiency programs so as to better forecast changes in load.

2.2.5 Model Risk

Model risk has potential for an inaccurate or incomplete representation of CPA’s actual or forecast financial performance due to deficiencies in models and/or information systems used to capture all transactions. CPA will manage model risk by:
• RMT ratification of models used to forecast financial performance, net positions and/or measure risk;
• Ongoing review of model outputs;
• A requirement to record all procurement transactions in a single trade capture system; and
• Ongoing update and improvement of models as additional information and expertise is acquired.

2.2.6 Operational Risk
Operational risk is the uncertainty of CPA’s financial performance due to weaknesses in the quality, scope, content, or execution of human resources, technical resources, and/or operating procedures within CPA. Operational risk can also be exacerbated by fraudulent actions by employees or third parties or inadequate or ineffective controls. CPA will manage operational risk through:

- The controls set forth in the ERMP;
- RMT oversight of procurement activity;
- Timely and effective reporting to the Executive Director in consultation with the RMT, and the Board;
- Implementation of a compliance training program for CPA staff;
- Ongoing CPA and Portfolio ManagerScheduling Coordinator staff education/training and participation in industry forums; and
- Annual audits to test compliance with the ERMP.

2.2.7 Counterparty Credit Risk
Counterparty credit risk is the potential that a counterparty will fail to perform or meet its obligations in accordance with terms agreed to under contract. CPA’s exposure to counterparty credit risk is controlled by the limit controls set forth in the Credit Policy described in Section 6.

2.2.8 Reputation Risk
Reputation risk is the potential that CPA’s reputation is harmed, causing customers to opt-out of CPA service and migrate back to SCE. Reputational risk is also the potential that energy market participants view CPA as an untrustworthy business partner, thus reducing the pool of potential counterparties and/or having counterparties apply a CPA-specific risk premium to pricing. Reputational risk is managed through:

- Implementation of and adherence to the ERMP;
- Engaging in ethical, transparent and honest business practices during trading activities; and
- Establishment and adherence to industry best practices including both those adopted by other CCAs, as well as those adopted by traditional municipal electric utilities.
Section 3: BUSINESS PRACTICES

3.1 General Conduct

It is the policy of CPA that all Board members, staff, and consultants (collectively referred to “CPA Representatives”), adhere to standards of integrity, ethics, conflicts of interest, compliance with statutory law and regulations and other applicable CPA standards of personal conduct while employed by or affiliated with CPA. Towards this end, all persons performing marketing and trading functions on behalf of CPA shall be subject to, read, understand, and abide by the provisions contained in the CPA Code of Marketing and Trading Practices (see Appendix F).

3.2 Trading for Personal Accounts

All CPA Representatives participating in any transaction or activity within the coverage of the ERMP are required to comply with the CPA Conflict of Interest Code approved by the Fair Political Practices Commission and are obligated to give notice in writing to CPA of any legal, financial or personal interest such person has in any counterparty that seeks to do business with CPA, and to identify any real or potential conflict of interest such person has or may have with regard to any existing or potential contract or transaction with CPA, within 48-hours of becoming aware of the conflict of interest. Written notice should be submitted to the Executive Director substantially in the form of the letter notification shown in Appendix E. This written notice obligation shall be in addition to the regulations or requirements of the Fair Political Practices Commission (e.g., Statement of Economic Interests, Form 700) and any policy adopted by the CPA Board of Directors, including but not limited to the Vendor Communication Policy No. 2019-10.

Further, all persons are prohibited from personally participating in any transaction or similar activity that is within the coverage of the ERMP, or prohibited by California Government Code Section 1090, and that is directly or indirectly related to the trading of electricity and/or environmental attributes as a commodity.

If there is any doubt as to whether a prohibited condition exists, then it is the CPA Representative’s responsibility to discuss the possible prohibited condition with CPA General Counsel.

3.3 Adherence to Statutory Requirements

All CPA Representatives are required to comply with rules promulgated by the State of California, CPUC, California Energy Commission, Federal Energy Regulatory Commission (FERC), Commodity Futures Trading Commission (CFTC), and other regulatory agencies.

Congress, FERC and CFTC have enacted laws and regulations that prohibit, among other things, any action or course of conduct that actually or potentially operates as a fraud or deceit upon any person in connection with the purchase or sale of electric energy or transmission services. These laws also prohibit any person or entity from making any untrue statement of fact or omitting a material fact where the omission would make a statement misleading. Violation of these laws can lead to both civil and criminal actions against the individual involved, as well as CPA. The ERMP is intended to comply with these laws, regulations and rules and to avoid improper conduct on the part of anyone employed by CPA. These procedures may be modified from time to time based on legal requirements, auditor recommendations,
and other considerations.
In the event of an investigation or inquiry by a regulatory agency, CPA will provide legal counsel to employees provided the subject of the investigation is within the employee’s course and scope of employment. However, CPA reserves the right to refrain from providing legal counsel if it reasonably appears to the CPA General Counsel and Executive Director that the employee was either not acting in good faith or was acting outside the course and scope of his or her employment.

CPA employees are prohibited from working for another power supplier, CCA or utility while they are simultaneously employed by CPA unless an exception is authorized by the Board.

3.4 Transaction Type

Authorized transaction types are listed in Appendix C. Each approved transaction type that is listed is included to either meet a mandatory procurement obligation required of all Load Serving Entities (LSE) serving retail loads in California; and/or alternatively, the approved product is needed for CPA to meet an identified ERMP goal. Specifically, major transaction types include:

- **Resource Adequacy Capacity** is a mandatory procurement obligation that ensures adequate generation supplies are available on a planning basis to reliably meet the requirements of electric consumers in the California Independent System Operator (CAISO) balance authority;
- **Portfolio Content Category 1 (PCC1) and Portfolio Content Category 2 (PCC2)** renewable energy must be procured by CPA to comply with the state of California's Renewable Portfolio Standard, as required by SB 350. CPA has made a voluntary decision to purchase incremental quantities of PCC1 and/or PCC2 renewable energy to exceed the renewable portfolio content of the incumbent utility;
- **Carbon Free Energy** is a voluntary purchase of specified source energy from large hydroelectric generation than enables CPA to provide its customers with electricity sourced from generators producing low GHG emissions so that member agencies can meet their climate action plans and CPA can contribute to combatting climate change;
- **Physical Energy products** are a voluntary purchase made by CPA to provide cost certainty and rate stability for customers; and
- **The CAISO** is the largest grid operator in the state of California and CPA members lie within its balancing area. CAISO operates Day-Ahead, Fifteen Minute and Real-Time Markets and other ancillary markets necessary for reliable operation of the grid. CPA is required to participate in CAISO markets. Acquisition of the CAISO products listed in Appendix C either result from mandatory participation in CAISO’s markets, or are useful for managing short-term market risks associated with CAISO’s markets.

The strategy for using and procuring the approved products is described in further detail in the Energy Risk Hedging Strategy.

3.4.1 Exceptions

New transaction types may provide CPA with additional flexibility and opportunity but may also introduce new risks. Therefore, transaction types not included in Appendix C must be approved by the RMT and the Board prior to execution using the process defined below.
When seeking approval for a new transaction type, a New Transaction Type Approval Form, as shown in Appendix D, is to be drafted describing all significant elements of the proposed transaction. The proposal write-up will, at a minimum, include:

- A description of the benefit to CPA, including the purpose, function and expected impact on costs (i.e.; decrease costs, manage volatility, control variances, etc.);
- Identification of the in-house and/or external expertise that will manage and support the new or non-standard transaction type;
- Assessment of the transaction’s risks, including any material legal, tax or regulatory issues;
- How the exposures to the risks above will be managed by the Limit Structure;
- Proposed valuation methodology (including pricing model, where appropriate);
- Proposed reporting requirements, including any changes to existing procedures and system requirements necessary to support the new transaction type;
- Proposed accounting methodology; and
- Proposed work flows/methodology (including systems).

It is the responsibility of the Middle Office to ensure that relevant departments have reviewed the proposed transaction type and that material issues are resolved prior to submittal to the Board for approval. If the transaction type is approved, Appendix C to the ERMP will be updated to reflect its addition.

### 3.5 Counterparty Suitability

All counterparties with whom CPA transacts must be reviewed for creditworthiness and assigned a Credit Limit as described in Section 6.

### 3.6 System of Record

Since information systems play a vital role in CPA’s trading abilities, CPA shall ensure that the information systems and technology used to store all transaction information are maintained and secure. At the outset of CCA operations, CPA’s transactions will be stored in the Portfolio Manager’s enterprise Scheduling Coordinator’s energy trading and risk management system.

The Portfolio Manager Scheduling Coordinator has assigned a Database Administrator (DBA) that is charged with database security and maintenance for the transaction database. For data security, transaction data stored in the system of record will be replicated daily to ensure data redundancy and backed-up to an offsite location.

All transaction records will be maintained in US dollars and will be separately recorded and categorized by type of transaction. This system of record shall be auditable.

### 3.7 Transaction Valuation

Transaction valuation and mark-to-market (valuing of an asset based on its current market price) reporting of positions shall be based on independent, publicly available, market-observed prices (replacement costs) whenever possible. In the event there are not market-observed prices, the value of CPA’s
transactions shall follow a notional value calculation (the total nominal dollar value of a transaction over its full duration) or other methodology approved as part of the new product approval process.

All transactions and open positions will be valued daily.

3.8 Stress Testing

In addition to limiting and measuring risk using the methods described herein, stress testing shall also be used to examine performance of the CPA portfolio under potential adverse conditions. Stress testing is used to understand the potential variability in CPA’s projected procurement costs and resulting impacts on customer rates and CPA’s competitive positioning associated with low probability events. The Middle Office will perform stress-testing of the portfolio on a monthly basis and distribute results as directed by the RMT.

3.9 Trading Practices

As previously noted, CPA exists to serve its customers. The scope of its wholesale market operations is limited to that which is required to meet the power supply obligations of its customers consistent with ERMP goals. It is the expressed intent of the ERMP to prohibit wholesale market activities that result in procurement of any power supply product beyond that which is required to meet an identifiable need of CPA customers. The purchase or sale of any power supply product beyond what is reasonably anticipated to be needed to meet the requirements of CPA customers is a speculative transaction and is prohibited.

In the course of developing operating plans and conducting procurement activities, CPA recognizes that staff must employ reasonable expertise and judgment, and it is not the intent of the ERMP to restrain the legitimate application of analysis and market expertise in executing procurement strategies intended to minimize costs or maximize the value of generation within the constraints of the ERMP. If any questions arise as to whether a proposed transaction(s) constitutes speculation, the RMT shall review the transaction(s) to determine whether the transaction(s) would constitute speculation and shall document its findings. As used here, “speculation” means the act of trading an asset with the expectation of realizing financial gain resulting from a change in price in the asset being transacted.

Staff and consultants engaged in procurement activities will also observe the following practices:

- Persons shall conduct business in good faith and in accordance with all applicable laws, regulations, tariffs and rules;
- Persons shall not arrange or execute wash trades (i.e. offsetting transactions where no financial risk is taken);
- Persons shall not disseminate known false or misleading information or engage in transactions to exploit such information;
- Persons shall not game or otherwise interfere with the operation of a well-functioning competitive market;
- Persons shall not collude with other market participants; and
- Persons shall immediately report any known or suspected violation of the ERMP.
3.10 Training

CPA recognizes the importance of ongoing education to manage risk and to contribute to ERMP success. Towards this end, CPA will observe the following practices:

- All employees executing procurement transactions on behalf of CPA must receive appropriate training in the attributes of each product type that they transact, how the product furthers the portfolio objectives of CPA, and how the risk profile of CPA is impacted by procurement of each product;
- All employees executing procurement activities shall complete required and available energy market compliance training as determined by the Chief Operating Officer once per calendar year and acknowledge receipt of said training in writing;
- New employees must complete energy market compliance training within 30 days of hire date. The Chief Operating Officer and The Human Resources Department shall maintain records of each employee’s training status.
Section 4: ORGANIZATIONAL STRUCTURE AND RESPONSIBILITIES

4.1 Board of Directors Responsibilities

The Board has the responsibility to review and approve the ERMP. With this approval, the Board acknowledges responsibility for understanding the risks CPA is exposed to through its CCA activity and how the policies outlined in the ERMP help CPA manage the associated risks. The Board is also responsible to:

- Provide strategic direction to CPA;
- Consider transactions beyond authorities delegated to the Executive Director in consultation with the RMT;
- Consider changes to the Energy Risk Hedging Strategy (see Appendix B); and
- Consider new transaction types not currently listed in the ERMP (see Appendix C).

4.2 Risk Management Team

The RMT is responsible for implementing, maintaining and overseeing compliance with the ERMP and for maintaining the Energy Risk Hedging Strategy. At a minimum, the members of the RMT shall include the Executive Director and at least two additional CPA staff members with experience in energy markets selected at the sole discretion of the Executive Director.

The primary goal of the RMT is to ensure that the procurement activities of CPA are executed within the guidelines of the ERMP and are consistent with Board directives. The RMT shall consider and propose changes to the ERMP when conditions dictate.

Pursuant to direction and delegation from the Board of Directors and the limitations specified by this ERMP, the Executive Director, in consultation with the RMT, maintains authority over procurement activities for CPA. This authority includes, but is not limited to, taking any or all actions necessary to ensure compliance with the ERMP.

The RMT responsibilities may include, but are not limited to:

- Maintain the Energy Risk Hedging Strategy and ensure that all procurement strategies and related protocols are consistent with the ERMP;
- Review financial and risk models and subsequent changes;
- Establish counterparty Credit Limits;
- Review initial counterparty credit review models and methods for setting and monitoring Credit Limits and subsequent changes;
- Review reports as described in the ERMP;
- Meet to review actual and projected financial results and potential risks;
- Keep apprised of any change in the environment in which CPA operates that has a material effect upon the risk profile of CPA;
- Review summaries of limit violations and recommend corrective actions, if necessary; and
• Review the effectiveness of CPA’s energy risk measurement methods.

4.3 Segregation of Duties

CPA shall work to maintain a segregation of duties, also referred to as "separation of function," to help manage and control the risks outlined in the ERMP. Individuals responsible for legally binding CPA to a transaction will not also perform confirmation or settlement functions without supplemental, transparent, and auditable controls. CPA also will leverage the organizational structure of the Portfolio Manager’s Front, Scheduling Coordinator’s Middle and Back offices to help maintain a segregation of duties. The Front, Middle and Back Office responsibilities for CPA are described below.

4.3.1 Front Office

The Front Office is headed by the Director of Power Planning & Procurement. The Front Office has overall responsibility for (1) managing all activities related to procuring and delivering resources needed to serve CPA load, (2) analyzing fundamentals affecting load and supply factors that determine CPA’s net position, and (3) transacting within the limits of the ERMP and associated policies to balance loads and resources and maximize the value of CPA assets through the exercise of approved optimization strategies. Other duties associated with these responsibilities include:

• Assist in the development and analysis of risk management hedging products and strategies, and bring recommendations to the RMT;
• Prepare a monthly operating plan for the prompt month (the month following the current month) that gives direction to the Day-Ahead and Real-Time Market trading and scheduling staff regarding the bidding and scheduling of CPA’s resource portfolio in the CAISO market;
• Calculate and maintain the net forward positions (a forecast of the anticipated electric demands compared to existing resource commitments) of CPA for all power products (energy, renewable energy, Carbon Free Energy and Resource Adequacy Capacity);
• Develop, price and negotiate hedging products;
• Forecast Day-Ahead Oversee scheduling of load and monitor/forecast same-day loads resources into CAISO;
• Keep accurate records of all executed transactions;
• Manage and facilitate the transaction execution process for power supply transactions through coordination of the following activities:
  o Notify Front Office personnel of any anticipated unique physical delivery or scheduling issues;
  o Work with Middle Office personnel and legal counsel to establish a contract, evaluate counterparty creditworthiness and secure additional credit from the counterparty, if necessary;
  o Work with Middle Office, as needed, to perform an analysis of the potential transaction to evaluate the effect on CPA’s portfolio risks;
  o Notify Back Office of terms and conditions affecting settlement to ensure that the necessary settlement procedures are in place.
4.3.2 Middle Office

The Middle Office functions will be the responsibility of the Chief Operating Officer. The Middle Office provides market and credit risk oversight, has responsibility for development of risk management policies and procedures, monitors compliance with the same, and keeps management and the Board informed on risk management issues. CPA will maintain its Middle Office functions independent from the front and back office functions.

Middle Office responsibilities include the following:

- Create and ensure compliance with policies outlining standard procedures for conducting business;
- Oversee short-term and long-term load forecasting;
- Estimate and publish daily forward monthly power and natural gas price curves for a minimum of the balance of the current year through the next calendar year;
- Verify the net forward positions of CPA for all power products;
- Calculate and maintain the net forward positions (a forecast of the anticipated electric demands compared to existing resource commitments) of CPA for all power products (energy, renewable energy, Carbon Free Energy and Resource Adequacy Capacity);
- Ensure that CPA adheres to all risk policies and procedures;
- Implement and enforce credit policies and limits;
- Confirms all transactions conform to commercial terms and reconciles differences with the trading counterparties;
- Ensure all trades have been entered into the appropriate system of record;
- Ensure that all CAISO Day-Ahead, Fifteen Minute and Real-Time Market delivery volumes and prices are entered into a transaction database;
- Review models and methodologies and recommend RMT approval, as needed;
- Maintain a record of all transactions in a single trade capture system; and
- Mark unrealized and realized gain and losses associated with CPA hedge activity.
- Development and maintain financial and energy risk management models as directed by the RMT
- Develop and maintain load forecasting models and perform long term load forecasts as directed by RMT

4.3.3 Back Office

The Back Office functions will be the responsibility of the Chief Financial Officer. It provides support with a wide range of administrative activities necessary to execute and settle transactions and to support the risk control efforts (e.g. transaction entry and/or checking, data collection, billing, etc.) consistent with the ERMP. Through its partnership with the Portfolio Manager Scheduling Coordinator, CPA will maintain its Back Office functions independent from the Front and Middle Office functions.

Back Office responsibilities include the following:
• Ensuring timely and accurate financial reporting;
• Maintaining a system of financial controls and business processes that control financial risk;
• Maintaining the overall financial security of transactions undertaken on behalf of CPA;
• Carrying out month-end checkout of all transactions each month; and
• Validation and prompt payment of energy related invoices payable by CPA and resolving disputes with counterparties;
• Generation and prompt collection of energy related invoices payable by counterparties.
Section 5: DELEGATION OF AUTHORITY

5.1 Risk Limits

The following limits apply to all CPA procurement activities. These limits are Board-approved and define the limits that CPA must operate within. The metrics and management of risk within these limits is further described in the Energy Risk Hedging Strategy.

5.1.2 Delegation Authority

Through its approval of the ERMP, the Board has delegated operations and oversight to the Executive Director, in consultation with the RMT, as outlined through the ERMP. Specifically, to facilitate daily operations of the CCA, the Board has delegated transaction execution authorities shown in the table below.

<table>
<thead>
<tr>
<th>Position</th>
<th>Term Limit*</th>
<th>Counterparty Limit</th>
<th>Notional Value Limit (per transaction)</th>
<th>Notional Value Limit (annual)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Executive Director in consultation with the RMT</td>
<td>5 years</td>
<td>Pursuant to Credit Policy</td>
<td>Board-approved limits set in the Energy Risk Hedging Strategy</td>
<td></td>
</tr>
<tr>
<td>Executive Director¹</td>
<td>1 year</td>
<td>Pursuant to Credit Policy</td>
<td>$5m in 2019; $10m in 2020 and beyond</td>
<td>$25m in 2019; $80m in 2020 and beyond¹²</td>
</tr>
</tbody>
</table>

*Term is the total duration of the contract, defined as the number of days between the beginning flow date and the ending flow date, inclusive.

For operational flexibility, the Executive Director has the authority to delegate transaction execution authority to either the Chief Operating Officer or Director of Power Planning & Procurement, as needed. Any delegation will be documented in writing and contain any limitations or exclusions that the Executive Director deems necessary.

For a transaction to be valid, it must conform to each of the four limits specified in the above table. These limits will be applied to wholesale power procurement outside of transactions directly executed with the CAISO. These limits provide CPA the needed authority to manage risks as they arise. Transactions falling outside the delegations above require Board approval prior to execution.

Transactions with CAISO and CAISO administrative fees are excluded from this table. CAISO transactions are limited to those required for scheduling contracts in the CAISO market and for balancing CPA’s load and resources.

¹ For operational flexibility, the Executive Director will have the authority to delegate 30% of procurement authority to either the Chief Operating Officer or Director of Power Planning & Procurement, as needed.

¹² Annual limits intended to reflect approximately 10% of annual power supply costs.
**5.1.3 Long-Term Procurement**

Long-term procurement, defined as contract terms greater than 5 years, will be conducted in accordance with Board-approved procurement plans. Long-term bilateral or solicitation awards are subject to Board approval. Long-term contracts are procured through solicitations or bilateral negotiations, with oversight, including shortlist approvals or project recommendations, provided by the Energy Resources & Planning Committee of the Board.

All long-term contracts are evaluated using standard evaluation criteria, including economic value over the life of the contract and any additional evaluation criteria established by the Energy Resources & Planning Committee and consistent with Board policy directives. Proposals received in solicitations, including all pricing and other confidential submission information, are reviewed by an RFO Review Team comprised of the Executive Director, additional Staff members as determined by the Executive Director, and a subset of Board members serving on the Energy Resources and Planning Committee. Proposals, either from solicitations or bilateral negotiations, are evaluated by the Energy Resources & Planning Committee and approved for contract negotiations. Final awards are then presented for Board consideration in accordance with applicable law.

Any amendments to a Board-approved long-term contract that make material changes to the terms of the contract including, but not limited to, changes to price, volume, project size, commercial operation date, counterparty security requirements, or other amendments that impact the evaluation criteria upon which a project was approved must be also approved by the Board.

Minor, non-core amendments or additional agreements that are administrative in nature or arising from the counterparties effectuating their obligations related to the project under normal course of business (e.g. implementing project financing, consent to collateral assignment, assignments, changes to forms, notice provisions, or subcontractors, insurance obligations, and other such administrative actions), may be approved by the Executive Director.

All procurement executed under the delegation above, must align with CPA’s underlying risk exposure (i.e., load requirements, locational and temporal) that is being hedged consistent with the Energy Risk Hedging Strategy. The RMT will consider risks associated with executed or planned long-term procurement within its evaluation of overall portfolio risk and procurement decision-making.

**5.1.3.5.1.4 Volume Limits**

Transactions should not be executed that exceed CPA’s energy, capacity, or renewable or Carbon Free Energy requirements. If there is an adjustment to CPA requirements resulting in the volume of existing transactions exceeding CPA’s requirements, the RMT will determine the offsetting strategy deployed in sufficient proportion to mitigate the encroachment.

An exception to the above limits may be made by the RMT if executing a transaction exceeding load will

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4 The RMT will oversee the solicitation process for long-term procurement. Awards will be presented without market-sensitive information (i.e. pricing or other sensitive commercial terms) for Board consideration in accordance with applicable law.

2 Awards will be presented without market sensitive information (i.e. pricing or other sensitive commercial terms) for Board consideration in accordance with applicable law.
minimize costs or is necessary to ensure compliance. For example, procuring RA for the entire year could cause CPA to hold excess RA in certain months. Such a transaction would be acceptable if a lower cost alternative transaction or set of transactions that more closely matches monthly needs is unavailable.

5.1.45.1.5 Locational Limits
The delivery location for all transactions must support the requirements of CPA’s source or sink locations.

5.1.55.1.6 CAISO Submission Limits
CPA shall bid at least 80% of its forecast load requirements in the Day-Ahead Market and bids shall not exceed 100% of forecast load requirements.
CPA shall offer no more than 100% of the forecasted generation capability in the Day-Ahead Market.
CPA shall follow CAISO protocols for all activity within CAISO.

5.2 Monitoring, Reporting and Instances of Exceeding Risk Limits
The Middle Office is responsible for monitoring and reporting compliance with all limits within the ERMP. If a limit or control is violated, the Middle Office will send notification to the trader responsible for the violation and the RMT. The RMT will discuss the cause and potential remediation of the exceedance to determine next steps for curing the exceedance.
Section 6: CREDIT POLICY AND COUNTERPARTY SUITABILITY

Prior to execution of any transaction, the Front Office will verify that CPA has executed a master agreement with the counterparty, that the counterparty has been evaluated for creditworthiness, and that an approved Credit Limit has been established. No transactions may be executed without first ensuring the transaction falls within the unutilized Credit Limit for the counterparty.

6.1 Master Enabling Agreements and Confirmations

Transactions are governed by master agreements, the forms of which must be prepared by CPA General Counsel and approved by the Board. No transactions may be executed without a fully executed master agreement being on file. Written confirmations of each transaction will contain standard commercial terms and provisions. Material modifications or additions to standard commercial terms in confirmations require approval by legal counsel.

It is CPA's policy to confirm all transactions in writing. All confirmations received from counterparties will be matched against trades in the system of record. Any discrepancies between a confirmation and the system of record may be handled by the Front Office representative that executed the transaction, or if necessary, a Middle Office representative will seek resolution with the counterparty. All confirmations will be kept on file.

6.1.1 Exceptions

It is standard industry practice to not provide written confirmation of certain short-term transactions with a term of one day or less. Additionally, CPA may agree with certain counterparties to alternative methods for confirming certain transactions. Transactions executed in a recorded telephone conversation or recorded instant message in which the offer and acceptance shall constitute the agreement of the parties must be confirmed in writing after-the-fact, with notice being provided to the counterparty within 72 hours.

6.2 Counterparty Suitability

All counterparties shall be evaluated for creditworthiness by the Middle Office prior to execution of any transaction and no less than annually thereafter. Additionally, counterparties shall be reviewed if a change has occurred, or is perceived to have occurred, in market conditions or in a company's management or financial condition. This evaluation, including any recommended increase or decrease to a Credit Limit, shall be documented in writing and include all information supporting such evaluation in a credit file for the counterparty.

Counterparty Credit Limits, and credit and payment terms will be recommended by the Middle Office for approval by the RMT consistent with CPA’s Credit Protocols. The Middle Office will undertake credit analysis that shall include, at a minimum, an evaluation of current audited financial statements or other supplementary data and consider factors such as:

- Liquidity
- Leverage (debt)
A Credit Limit for a counterparty will not be recommended or approved without first confirming the counterparty’s senior unsecured or corporate credit rating from one of the nationally recognized rating agencies (S&P, Moody’s, and/or Fitch) if available and performing a credit review of the counterparty’s or guarantor’s financial statements. The credit analysis shall include, at a minimum, current audited financial statements or other supplementary data that indicates financial strength commensurate with an investment grade rating and consider factors such as:

- Liquidity
- Leverage (debt)
- Profitability
- Net worth
- Proposed collateral and other contract terms

Trade and banking references, and any other pertinent information, may also be used in the review process.

Once a counterparty has been determined to be creditworthy, the Middle Office will propose a Credit Limit for approval by the RMT. Although a counterparty may qualify for a certain maximum Credit Limit, the types of products to be transacted, as well anticipated transaction volumes, terms and other business factors may prompt CPA to select a lower limit that is considered more appropriate. When establishing credit and payment terms, RMT will consider the Credit Limit of the counterparty, current exposure to the counterparty, the product type and tenor of existing and/or future transactions, notional value of proposed or future transactions with the counterparty and the availability/scarcity and commercial significance of the product being traded.

Counterparties that do not qualify for an unsecured Credit Limit must post an acceptable form of credit support or prepayment prior to the execution of any transaction. A counterparty may choose to provide a guarantee from a third party, provided the third party satisfies the criteria for a Credit Limit as outlined herein.

### 6.3 Maximum Credit Limit

Each new counterparty Credit Limit or increase to an existing limit will be reviewed by the RMT. The maximum amount of any Credit Limit extended to a counterparty shall not exceed $40,000,000 unless approved in writing by the Board.

### 6.4 Credit Review Exceptions

Counterparties not subject to the above credit review criteria include those associated with Day-Ahead and current day purchases where risks associated with market movements is minimal.

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34 Approximately 5% of annual power supply costs in 2020.
6.5 Credit Limit and Monitoring

The Middle Office will monitor the current credit exposure for each counterparty with whom CPA transacts and include such information in the Current Counterparty Credit Risk Report. This report will be submitted to the RMT for review pursuant to the reporting requirements outlined in Section 7.

Current credit exposure is a measure of the known exposures and composed of two primary exposures – (1) realized exposure, and (2) forward exposure. Realized exposure, a payable or receivable amount owed between counterparties, is a measurement of cash flow for billed and unbilled transactions. Forward exposure is a measure of current unrealized exposure and includes the measure of a counterparty’s incentive to fulfill contractual obligations. Forward exposure measures the risk associated with having a payment default or the need to replace a transaction in the event of delivery default.

6.6 CPA Credit Support

Counterparties may require CPA to post a form of credit support, such as cash or a letter of credit. The Middle Office will ensure that any CPA credit support requirements are evaluated and approved within the context of the overall transaction approval as specified herein.
Section 7: POSITION TRACKING AND MANAGEMENT REPORTING

A vital element in the ERMP is the regular identification, measurement and communication of risk. To effectively communicate risk, all risk management activities must be monitored on a frequent basis using risk measurement methodologies that quantify the risks associated with CPA’s procurement-related business activities and performance relative to identified goals.

Minimum reporting requirements are shown below. The reports outlined below will be presented to the RMT. Reports will be generated weekly unless otherwise noted.

- **Financial Model Forecast**
  Latest projected financial performance, marked to current market prices, and shown relative to CPA’s financial goals.

- **Net Position Report**
  Latest forward net position report, by product type (energy, PCC1, PCC2, Carbon Free Energy and RA capacity) for the current and prompt year.

- **Counterparty Credit Exposure**
  Current counterparty credit exposure compared against limits approved by CPA, as well as the limit assigned to CPA by the counterparty.

- **Monthly Risk Analysis**
  Cash Flow at Risk and stress testing of financial forecasts relative to financial goals. Additional discussion of the specific Cash Flow at Risk metric that CPA will use, and its application, is provided in the Energy Risk Hedging Strategy.

- **Quarterly Board Report**
  Update on activities, projected financial performance, and general market outlook to be presented quarterly at Board meetings, communicated in a way to ensure CPA confidentiality and market sensitive data is not released.
Section 8: ERMP Revision Process

The ERMP will evolve over time as market and business factors change. Atleast on an annual basis, the Executive Director, in consultation with the RMT, will review the ERMP and associated procedures to determine if they should be amended, supplemented, or updated to account for changing business conditions and/or regulatory requirements. If an amendment is warranted, the ERMP amendment will be submitted to the Board for approval. Changes to ERMP appendices may be approved and implemented by the Executive Director, in consultation with the RMT, with the exception of new transaction types and changes to the Energy Risk Hedging Strategy, which also require Board approval.

8.1 Acknowledgement of ERMP

All CPA Representatives participating in any activity or transaction within the scope of the ERMP shall sign, on an annual basis or upon any revision, a statement approved by the Executive Director, in consultation with the RMT, that such CPA Representative has:

- Read the ERMP;
- Understands the terms and agreements of said ERMP;
- Will comply with said ERMP;
- If an employee, understands that any violation of said ERMP shall subject the employee to discipline up to and including termination of employment;
- If a consultant, understands that any violation of said ERMP may be grounds for consultant contract termination; and
- If a Board member, understands that any violation of said ERMP shall subject the Board member to action by the Board.

8.2 ERMP Interpretations

Questions about the interpretation of any matters of the ERMP should be referred to the Executive Director.

All legal matters stemming from the ERMP will be referred to CPA counsel.
Appendix A: DEFINITIONS

Back Office: That part of a trading organization which handles transaction accounting, confirmations, management reporting, and working capital management.

CAISO: California Independent System Operator. CAISO operates a California bulk power transmission grid, administers the State’s wholesale electricity markets, and provides reliability planning and generation dispatch.

Carbon Free Energy: Energy that is generated from a specific zero carbon emitting generating asset. It is commonly used to note energy from large hydroelectric or nuclear generation that while non-carbon emitting, is not an RPS-eligible generation source. Sometimes referred to as specified source energy.

CCA: Community Choice Aggregator. CCAs allow local government agencies such as cities and/or counties to purchase and/or develop generation supplies on behalf of their residents, businesses and municipal accounts.

CFTC: Commodity Futures Trading Commission. The CFTC is a U.S. federal agency that is responsible for regulating commodity futures and swap markets. Its goals include the promotion of competitive and efficient futures markets and the protection of investors and market participants against manipulation, abusive trade practices and fraud.

Congestion Revenue Right: A point-to-point financial instrument in the Day-Ahead Energy Market that entitles the holder to receive compensation for or requires the holder to pay certain congestion related transmission charges that arise when the transmission system is congested.

Credit Limit: The maximum amount of financial exposure one party is willing to extend to another.

Day-Ahead Market: The short-term forward market conducted by an Organized Market prior to the operating day. It is intended to efficiently allocate transmission capacity and facilitate purchases and sales of energy and scheduling of bilateral transactions.

FERC: Federal Energy Regulatory Commission. FERC is a federal agency that regulates the interstate transmission of electricity, natural gas and oil. FERC also reviews proposals to build liquefied natural gas terminals, interstate natural gas pipelines, as well as licenses hydroelectric generation projects.

Front Office: That part of a trading organization which solicits customer business, services existing customers, executes trades and ensures the physical delivery of commodities.

Franchise Fee: A franchise fee is a percentage of gross receipts that an IOU pays cities and counties for the right to use public streets to provide gas and electric service. The franchise fee surcharge is a percentage of the transmission (transportation) and generation costs to customers choosing to buy their energy from third parties. IOUs collect the surcharges and pass them through to cities and counties.

IOU: An Investor Owned Utility (IOU) is a business organization providing electrical and/or natural gas services to both retail and wholesale consumers and is managed as a private enterprise.

Limit Structure: A set of constraints that are intended to limit procurement activities.

Middle Office: That part of a trading organization that measures and reports on market risks, develops risk management policies and monitors compliance with those policies, manages contract administration and credit, and keeps management and the Board informed on risk management issues.
**PCIA:** Power Cost Indifference Adjustment or successor. The PCIA is intended to compensate IOUs for their stranded costs when a bundled customer departs and begins taking generation services from a CCA.

**Portfolio Content Category 1 (PCC1) Renewable Energy:** Energy and bundled Renewable Energy Credits that is simultaneously procured from an RPS-Eligible Facility that is directly interconnected to the distribution or transmission grid within a California balancing authority area (CBA); or that is not directly interconnected to a CBA but is delivered to a CBA without substituting electricity from another source.

**Portfolio Content Category 2 (PCC2) Renewable Energy:** Energy and bundled Renewable Energy Credits that is simultaneously purchased from an RPS-Eligible Facility, but the energy is firmed and shaped with substitute electricity scheduled into a CBA within the same calendar year as the renewable energy is generated.

**Portfolio Content Category 3 (PCC3) Renewable Energy:** Renewable Energy Credits from RPS-eligible facilities that do not meet the definition of PCC1 or PCC2.

**Real-Time Market:** The real-time market is a spot market in which LSEs can buy power to meet the last few increments of demand not covered in their day ahead schedules, up to 75 minutes before the start of the trading hour.

**Resource Adequacy Capacity:** A capacity product whereby a Seller commits to a must offer obligation of its generator in the CAISO market and on behalf of a specified Load Serving Entity.

**RPS-Eligible Facility:** Defined under CA Public Utilities Code § 399.11 et seq. and CA Public Resources Code § 25740 et seq. as an electrical generating facility using technologies such as biomass, solar thermal, photovoltaic, wind, geothermal, fuel cells using renewable fuels, small hydroelectric generation of 30 megawatts or less, ocean wave, ocean thermal, or tidal current.

**Settlement:** Settlement is the process by which counterparties agree on the dollar value and quantity of a commodity exchanged between them during a particular time interval.

**Stress testing:** Stress testing is the process of simulating different financial outcomes to assess potential impacts on projected financial results. Stress testing typically evaluates the effect of negative events to help inform what actions may be taken to lessen the negative consequences should such an event occur.
Appendix B: ENERGY RISK HEDGING STRATEGY

1.1 Introduction

CPA is routinely exposed to commodity price risk and volume variability risk in the normal conduct of serving the power supply requirements of its customers.

This Energy Risk Hedging Strategy (ERHS) describes the strategy and framework that CPA will use to hedge the power supply requirements of its customers. Specific focus is on procurement of the following market-based products:

- Fixed Priced Energy
- Portfolio Content Category 1 Renewable Energy
- Portfolio Content Category 2 Renewable Energy
- Carbon Free Energy
- Resource Adequacy Capacity

In addition to market-based transactions entered into pursuant to this ERHS, CPA will also enter into longer-term power purchase agreements (PPAs) pursuant to statutory requirements (e.g., SB 350 mandate to, by 2021, procure a minimum of 65 percent of RPS requirements under a 10-year or longer power purchase agreement) as well as voluntary long-term resource acquisition decisions made independently by CPA pursuant to its Integrated Resource Plan or other approved Board-approved strategies. Long-term Power Purchase Agreements (PPAs) will count as hedges as described later in this ERHS.

2.1 Governance

This ERHS shall be updated, as necessary, from time to time and governed by the Energy Risk Management Policy (EMRP) approved by the CPA Board of Directors.

3.1 Hedging Program Goals

The overall goal of the ERHS is to identify exposure to commodity prices, quantify the financial impact variability in commodity prices, load requirements and generation output may have on the ability of CPA to meet its financial program goals, and manage the associated risk.

The primary goals that guide this ERHS are:

- Acquire a portfolio of resources with lower greenhouse gas emissions and higher renewable content than SCE;
- Meet reliability requirements established by the state of California, and operate in a manner consistent with prudent utility practice;
• Maintain competitive retail rates with SCE after adjusting for exit fees (currently the Power Charge Indifference Adjustment or PCIA) and Franchise Fees paid by CPA customers;

• Build financial reserves to ensure the CPA’s long-term financial objectives are achieved.

All hedging activities will be conducted to achieve results consistent with the above goals and to meet the power supply requirements of CPA’s customers. Any transaction that cannot be directly linked to a requirement of serving CPA’s customers, or that serves to reduce risk as measured by the Power Supply Cost at Risk (PSCaR) described below is prohibited.

4.1 Hedging Targets and Strategies

4.1.1 Fixed Price Energy

Fixed Price Energy purchases provide for suppliers to deliver energy – for which CPA will receive energy market revenues – to CPA at a fixed price. They are used to manage the electricity commodity price risk that the CPA faces as a Load Serving Entity. Specific to CPA’s customers, Fixed Price Energy hedges are used to provide cost certainty and rate stability.

In the near term, CPA will predominantly employ Fixed Price Block Energy contracts, which provide for suppliers to deliver a predetermined volume of energy at a constant delivery rate. As CPA enters into long-term, fixed price contracts for renewable and/or carbon-free energy, these will likewise hedge CPA’s market risk and, subsequently, reduce the required volume of Fixed Price Block Energy purchases.

When assessing its requirements for Fixed Price Energy, the CPA will use an econometric model to forecast hourly energy requirements and monthly peak demand by customer load class. The model will use historical data to estimate relationships between energy consumption and economic, demographic and/or weather variables. The model will be refined through time as additional load and other data is acquired through CPA operations.

The CPA will observe the following schedule when hedging its Fixed Price Energy Requirements. The Minimum and Maximum hedge % represent the Fixed Price Energy planned or under contract divided by forecasted load.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt 1-4 Quarters</td>
<td>85</td>
<td>110</td>
</tr>
<tr>
<td>Balance of prompt year not covered by Prompt 4 Quarters</td>
<td>65</td>
<td>90</td>
</tr>
<tr>
<td>Current Calendar Year (CY) + 2</td>
<td>40</td>
<td>70</td>
</tr>
<tr>
<td>CY + 3</td>
<td>030</td>
<td>5060</td>
</tr>
<tr>
<td>CY + 4</td>
<td>030</td>
<td>3060</td>
</tr>
<tr>
<td>CY + 5</td>
<td>030</td>
<td>1550</td>
</tr>
</tbody>
</table>
The hedge schedule for the Prompt Quarter will be measured as of 5 days prior to the first day of the quarter (e.g., on September 27, 2019, CPA will have hedged 85 to 110 percent of its projected energy requirements during Q4 2019 to Q3 2020).

The minimum hedge level will be achieved by implementing a time-driven programmatic strategy. Time-driven programmatic hedges are executed at a predetermined rate pursuant to a time schedule and without regard for market conditions. The purpose of these hedging transactions is to achieve a reduction in variability in power supply costs by gradually increasing the amount of energy hedged as the actual date of consumption approaches. Time-driven strategies avoid the inherent impossibility of trying to consistently and accurately “time the market” to purchase energy at least cost when making hedging decisions. Additionally, a load serving entity the size of CPA needs to spread its procurement efforts over time to effectively manage the potential negative price impacts of procuring a large volume of energy, over a short period of time, in an illiquid market.

Hedging decisions to reach targets between the minimum and maximum hedge levels will be based on price-driven or opportunistic strategies. The purpose of price-driven or opportunistic strategies is to capitalize on market opportunities when conditions are favorable. The CPA will base its decision to execute opportunistic hedges on the anticipated impact to projected power supply costs and the resulting reduction in PSCarRrisk.

Opportunistic hedges may be executed when energy price levels are favorable to lowering the cost of power relative to established program goals and financial projections; alternatively, opportunistic hedges can be executed in adverse market conditions relative to financial goals in order to reduce the potential negative impact of continued upward trending commodity prices relative to established goals.

In executing this ERHS, Fixed-Price Energy hedges may be modified, repositioned or unwound for the purpose of maintaining hedge coverage that matches changes in forecast electric load. This includes the ability of the CPA to use liquid market products to hedge average loads over a defined time period and then later modify its hedges to more precisely match load.

4.1.2 Portfolio Content Category 1 Renewable Energy

In order to cost-effectively meet its GHG-reduction and renewable energy goals, CPA intends to meet a growing share of its energy supply requirements with renewable energy, a large portion of which will be Product Content Category 1 (PCC1) renewable energy. PCC1 renewable energy is sourced from a renewable generator that is either directly interconnected to the California Independent System Operator (CAISO) or another California Balancing Authority or directly scheduled into CAISO without use of substitute energy.

In order to manage price risk of long-term renewable energy, and to allow CPA to prudently and methodically build a portfolio of long-term assets, CPA intends to meet its PCC1 energy targets with a
blend of short and long-term contracts. In the 2018-2020 period, this balance will include a relatively higher-share of short-term contracts as the CPA focuses on launching its CCA and establishing a strong financial foundation. While hedging its PCC1 requirements during the next one to two years with contracts that are primarily shorter in term, CPA will observe the following schedule. The hedge schedule percentages shall be measured such that a 100% hedge position equals 75% of the RPS energy CPA will need to serve all customers at their chosen rate option (e.g., 50% RPS). The hedge schedule shall be measured on December 1 of each year for the Prompt Calendar year and the four subsequent calendar years. CPA intends to fully comply with long-term contracting requirements mandated by SB 350; therefore, executed and planned long-term PCC1 contracts will be reflected in CPA’s PCC1 positions.

### PCC1 Hedge Targets Applicable During Calendar Years 2018-2020

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Calendar Year (PY)</td>
<td>75</td>
<td>100</td>
</tr>
<tr>
<td>PY + 1</td>
<td>50</td>
<td>80</td>
</tr>
<tr>
<td>PY + 2</td>
<td>30</td>
<td>70</td>
</tr>
<tr>
<td>PY + 3</td>
<td>0</td>
<td>70</td>
</tr>
<tr>
<td>PY + 4</td>
<td>0</td>
<td>70</td>
</tr>
</tbody>
</table>

Between 2018 and 2021, CPA will increase its focus to longer-term PCC1 contracts, particularly for Calendar Year 2021 and beyond. This shift is necessary to comply with the renewable procurement requirements of SB 350, as well as the fact that new renewable generating facilities typically require long-term PPAs with terms that can range from ten to twenty-five years. CPA’s strong interest in delivery of renewable generation to its customers will eventually require voluntary execution of long-term PPAs beyond what is mandated by SB 350.

CPA’s eventual goal is to reach a steady state of procurement in which it contracts for four to eight percent of its projected annual PCC1 requirements each year via long-term contract. Doing so will i) allow CPA to steadily reduce its exposure to renewable energy and energy market price risks in a fashion similar to the programmatic hedging approach for Fixed-Price Block Energy and ii) ensure that CPA is in a position to make strategic procurement decisions and, if appropriate, commitments every year.

As CPA’s PCC1 portfolio is increasingly comprised of long-term contracts in line with long-term contracting requirements mandated under SB 350, in 2021 and thereafter, CPA shall observe the following schedule while hedging its PCC1 requirements. This hedge schedule shall first be measured on December 1, 2020 and then on December 1 of each subsequent year for the Prompt Calendar year and the two following calendar years.

### PCC1 Hedge Targets Applicable Beginning in Calendar Year 2021

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Calendar Year</td>
<td>65</td>
<td>100</td>
</tr>
</tbody>
</table>

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1. SB350 requires a minimum of 75% of RPS product used for compliance to come from PCC1 resources.
4.1.3 Portfolio Content Category 2 Renewable Energy

CPA shall diversify its renewable energy portfolio further by incorporating Portfolio Content Category 2 (PCC2) renewable energy purchases. PCC2 renewable energy is sourced from renewable generators located outside the state of California where that generation is “firmed and shaped” for delivery into California. PCC2 purchases are typically less expensive and shorter in term than PCC1, so they provide a cost-effective and flexible method of augmenting CPA’s renewable energy purchases to meet renewable portfolio content commitments to customers.

CPA will observe the following schedule when hedging its PCC2 renewable energy requirements. The hedge schedule percentages shall be measured such that a 100% hedge position equals 25% of the RPS energy CPA will need to serve all customers at their chosen rate option (e.g. 50% RPS). In other words, if CPA’s PCC2 position is 100% hedged, then 75% of the RPS energy will come from PCC1 resources. The hedge schedule shall be measured on December 1 of each year for the Prompt Calendar year and the two subsequent calendar years.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge %</th>
<th>Maximum Hedge %</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Calendar Year</td>
<td>50</td>
<td>100</td>
</tr>
<tr>
<td>PY + 1</td>
<td>35</td>
<td>75</td>
</tr>
<tr>
<td>PY + 2</td>
<td>20</td>
<td>50</td>
</tr>
<tr>
<td>PY + 3</td>
<td>0</td>
<td>25</td>
</tr>
<tr>
<td>PY + 4</td>
<td>0</td>
<td>10</td>
</tr>
</tbody>
</table>

It should be noted that there is currently a proceeding underway at the California Public Utility Commission to implement California legislature’s AB 1110, which may impact the reporting and accounting methodologies that apply to PCC2 renewable energy, so the hedging schedule above is subject to change as CPA gains clarity regarding any potential revised methodology.

4.1.4 Carbon Free Energy

In pursuit of its GHG-reduction objections, CPA shall augment its renewable energy purchases outlined above with energy purchases from carbon-free energy generating facilities, which are typically hydro-electric resources located in California that are too large to qualify as Eligible Renewable Resources (30 MW or greater) or located outside of California. Similar to PCC2 renewable energy contracts, carbon-free
energy purchases are typically short-term, most frequently one to three years in length.

**CPA may have the opportunity to receive free carbon free allocations from SCE. Hedging activity should consider these allocations and expected allocations should be included in the hedging percentage.**

CPA will observe the following schedule when hedging its Carbon-Free renewable energy requirements. The hedge schedule shall be measured on December 1 of each year for the Prompt Calendar year and the two subsequent calendar years.

<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge</th>
<th>Maximum Hedge</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Calendar Year</td>
<td>75 %</td>
<td>100 %</td>
</tr>
<tr>
<td>PY + 1</td>
<td>50 %</td>
<td>75 %</td>
</tr>
<tr>
<td>PY + 2</td>
<td>25 %</td>
<td>50 %</td>
</tr>
<tr>
<td>PY + 3</td>
<td>0 %</td>
<td>25 %</td>
</tr>
<tr>
<td>PY + 4</td>
<td>0 %</td>
<td>10 %</td>
</tr>
</tbody>
</table>

In setting the above targets, it is important to note that the purchase of Carbon Free Energy is a voluntary requirement set by the CPA Board to exceed SCE’s GHG emissions goals. In determining the total volume of Carbon Free Energy to be hedged, the CPA Board may elect to increase or reduce the total quantity of Carbon Free Energy included in CPA’s portfolio as it seeks to balance multiple program objectives, including financial goals such as targets for financial reserves and retail rates. The Board will determine CPA’s target quantity of Carbon Free Energy annually during the rate-setting process.

**4.1.5 Resource Adequacy Capacity**

As a Load-Serving Entity (LSE) in California, CPA is required to demonstrate both annually and monthly that it has secured sufficient energy capacity to provide for its share of California’s energy load; this capacity is referred to as Resource Adequacy (RA). Because CPA serves customers in SCE’s service territory, CPA has local RA requirements specific to the Los Angeles Basin and Big Creek/Ventura local areas, as well as general RA requirements for Southern California (“South of Path 26 System”), a portion of which must be Flexible RA. Flexible RA requirements ensure resources are available on the grid to provide ancillary services such as ramping and regulation.

RA is typically transacted via contracts that vary in length from one month to three years, and it is currently bought and sold via a bilateral market, which not only provides cost-effective contracting opportunities but also proves at times to be fragmented and volatile. While a waiver process exists to excuse LSEs from their RA requirements, it is the goal of CPA to meet its all RA requirements, including local, flex, and system products, and not use the RA waiver process.

CPA will observe the following schedule when hedging its RA requirements. The hedge schedule shall be measured for each the system RA product by month that CPA is required to procure on December 1 of each year for the Prompt Calendar year and the two subsequent calendar years.
<table>
<thead>
<tr>
<th>Time Period</th>
<th>Minimum Hedge % (applicable to all months)</th>
<th>Maximum Hedge % (applicable to peak month only)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Prompt Calendar Year</td>
<td>90</td>
<td>100</td>
</tr>
<tr>
<td>PY + 1</td>
<td>50</td>
<td>90</td>
</tr>
<tr>
<td>PY + 2</td>
<td>30</td>
<td>80</td>
</tr>
<tr>
<td>PY + 3</td>
<td>0</td>
<td>30</td>
</tr>
<tr>
<td>PY + 4</td>
<td>0</td>
<td>1530</td>
</tr>
</tbody>
</table>

### 4.1.6 Congestion Revenue Rights (CRRs)

As a CAISO market participant, CPA has congestion risk associated with serving its customer load. CPA manages congestion risks by preferring day ahead scheduling of energy delivered at SP-15, and by resource assessment and selection consistent with this Policy. Once energy is procured, CPA manages congestion risk through the prudent management of CRRs, which are financial instruments used to hedge against transmission congestion costs encountered in the CAISO day-ahead market. The RMT is responsible for overseeing the management of CRRs and CRR trading. The CRR portfolio will be managed by CPA’s Scheduling Coordinator as directed by the RMT. CRRs are transacted to effectively manage portfolio congestion risk. Trading of CRRs for speculative purposes is not permitted.

### 5.1 Hedge Program Metrics

The success of the Energy Risk Hedging Strategy will be measured by realizing power supply costs in line with the budgeted power supply costs used to set customer rates, as well as by reducing CPA’s exposure to commodity price risk. The following two metrics will be utilized to manage the Energy Risk Hedging Strategy:

- Current projected power supply costs will be compared to budgeted power supply costs where budgeted costs will be based on the assumptions used at the time customer generation rates are set. Current power supply costs shall use all fixed priced contracts executed as of the date of the report. All open positions will be marked to market and compared to the budgeted power supply costs.

- **Power Supply Cost at Risk (PSCaR).** PSCaR represents a statistical view of what could happen to CPA’s power supply costs assuming that no action is taken to manage its portfolio from the date of the analysis through the end of the period of time being analyzed. The potential cost will be calculated using a historical sampling methodology that considers on- and off-peak periods separately over the remaining life of the transactions. The PSCaR calculation will consider potential variability in load and generation supply. The PSCaR will be calculated by rank ordering the portfolio cost and measuring the difference between the 95th percentile and the expected power cost outcome.

These metrics will be reviewed. The Front and Middle Office will use a variety of industry standard metrics to evaluate open positions and potential hedge transactions. RMT will review these metrics when making

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5 Due to the variable nature of CPA’s monthly RA requirements, non-peak months may exceed the applicable Maximum Hedge %.
price-driven or opportunistic hedging decisions to ensure that the transactions are consistent with the goals of the Energy Risk Hedging Strategy. These metrics will be updated and reported on a monthly basis.

6.1 Reporting Requirements

The following reports are required to manage the hedge program and to ensure its success:

- Net Position Report for each product
- Current Projected Power Supply Costs compared to budget
- Power Supply Cost at Risk
- GHG intensity
Appendix C: AUTHORIZED TRANSACTION TYPES

All transaction types listed below must be executed within the limits set forth in the ERMP. Definitions for each product are provided in Appendix A.

- **CAISO Market Products**
  - Day-Ahead Market Energy (Energy purchased from the CAISO Day-Ahead Market.)
  - Real-Time Market Energy (Energy purchased from the CAISO in the Real-Time Market)
  - Congestion Revenue Rights (A point-to-point financial instrument in the Day-Ahead Energy Market that entitles the holder to receive compensation for or requires the holder to pay certain congestion related transmission charges that arise when the transmission system is congested.)
  - Convergence Bids (Financial positions, either demand or supply, taken in the Day-ahead Market and liquidated in the Real-Time Market.)
  - Inter-Scheduling Coordinator Trades (A trade between two Scheduling Coordinators that is a settlement service that CAISO offers to parties of a bilateral contract as a means of offsetting CAISO settlement charges against bilateral contractual payment responsibilities.)

- **Physical Energy Products**
  - Short-Term Energy (Energy traded in the CAISO market or bilaterally for a duration less than one year.)
  - Long-Term Energy (Energy traded in the CAISO market or bilaterally for a duration greater than one year.)
  - Physical Over-the-Counter (OTC) Options (Call options that give the buyer the right, but not the obligation, to buy an underlying power product at agreed upon terms as detailed in a confirmation agreement; or put options that give the seller the right, but not the obligation, to sell an underlying power product at agreed upon terms as detailed in a confirmation letter.)

- **Resource Adequacy Capacity** (A capacity product whereby a Seller commits to a must offer obligation of its generator in the CAISO market and on behalf of a specified Load Serving Entity.)

- **Import Capability Rights** (Entitles an LSE to count Resource Adequacy products at a specified import location toward its Resource Adequacy Requirements.)

- **Physical Environmental Products**
  - PCC1, PCC2 and PCC3 Renewable Energy (see definition in Appendix A)
  - Carbon Free Energy (see definition in Appendix A)
  - Air Resource Board Allowances (An allowance is a tradeable permit issued by the California Air Resource Board to emit one metric ton of a carbon dioxide equivalent greenhouse gas emission.)

- **Financial Hedging Products**
  - Futures Contracts (A contract to buy or sell a commodity (electricity) at a predetermined price at a specified time in the future. Futures Contracts are standardized for quality and quantity to facilitate trading on a futures exchange (e.g., Intercontinental Exchange).)

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6810 Clean Power Alliance’s Joint Power’s Agreement discourages the purchase and use of PCC3 products. PCC3 products will only be acquired under exceptional circumstances requiring the use of this product to achieve the agency’s environmental and financial goals.
- **Swaps** (Financial contracts in which one party agrees to pay a cash flow calculated by multiplying a fixed volume by a fixed price (fixed price payer) and the other party agrees to pay a cash flow calculated by multiplying the same fixed volume times a market reference index price (floating price payer). At settlement, the party owing the higher amount pays the net difference. Swaps are transacted in over-the-counter markets.)

- **Call and Put Options** (Call options give the buyer the right, but not the obligation, to purchase energy or other instruments. Put options give the buyer the right, but not the obligation, to sell energy or other instruments.)

- **Options on Swaps (Swaptions)** (Call options give the buyer the right, but not the obligation, to enter into a swap transaction as the fixed price payer. A put option gives the buyer the right, but not the obligation, to enter into a swap transaction as the floating priced payer.)

- **Transmission** (The reservation and transmission of capacity and energy between two points on a transmission provider’s system.)

- **Tolling Agreements** (Agreement between a power buyer and a power generator, under which the buyer supplies the fuel, either physically or financially, and receives an amount of power generated based on an assumed conversion rate at an agreed cost.)
Appendix D: NEW TRANSACTION TYPE APPROVAL FORM

New Transaction Type Approval Form

Prepared By:

Date:

New Transaction Type Name:

Business Rationale and Risk Assessment:

• Product description – including the purpose, function, expected impact on net revenues (i.e., increase, manage volatility, control variances, etc.) and/or benefit to CPA
• Identification of the in-house or external expertise that will be relied upon to manage and support the new or non-standard transaction
• Assessment of the transaction’s risks, including any material legal, tax or regulatory issues
• How the exposures to the risks above will be managed by the limit structure
• Proposed valuation methodology (including pricing model, where appropriate)
• Proposed reporting requirements, including any changes to existing procedures and system requirements necessary to support the new product
• Proposed accounting methodology
• Proposed Middle Office work flows/methodology, including systems
• Brief description of the responsibilities of various departments within CPA who will have any manner of contact with the new or non-standard transaction

Reviewed by:

Director of Power Planning & Procurement

Date

Chief Operating Officer

Date

Executive Director

Date
Appendix E: NOTICE OF CONFLICT OF INTEREST

To: [insert title]

Declaration of Conflict of Interest

I understand that I am obligated to give notice in writing to Clean Power Alliance of any interest or relationship that I may have in any counterparty that seeks to do business with Clean Power Alliance, and to identify any real or potential conflict of interest such counterparty has or may have with regard to any existing or potential contract or transaction with Clean Power Alliance, within 48-hours of becoming aware of the conflict of interest.

I would like to declare the following existing/potential conflict of interest situation arising from the discharge of my duties concerning Clean Power Alliance activities covered by the scope of the ERMP:

a) Persons/companies with whom/which I have official dealings and/or private interests:

b) Brief description of my duties which involved the persons/companies mentioned in item a) above.

Position and Name: __________________________

Signature: __________________________

Date: __________________________
Appendix F: CODE OF MARKETING AND TRADING PRACTICES

See next page.
Definitions

*Marketing and Trading Employee* – Any employee, contractor, consultant, or agent of CPA who engages in procurement activity.

**Scope of Code**

This Code of Marketing and Trading Practices (the “Code”) applies to all CPA Marketing and Trading Employees. Each person subject to this Code is required to read, understand, and abide by the provisions contained in this Code.

**Purpose**

In addition to demonstrating CPA’s commitment to ethical business practices, this Code is designed to ensure that CPA complies with its obligations under state and federal laws, rules and regulations promulgated by various governmental agencies, and applicable policies adopted by CPA. This Code defines and affirms the values and principles that CPA’s Marketing and Trading Employees must follow in conducting their business activities. The Code is intended to complement the other policies, procedures and processes of CPA and to guide traders and marketers as they negotiate transactions, arrange for transmission, and manage risk.

Compliance with the Code allows CPA to assure its counterparties, potential customers, regulators, and the public that its business activities are, and will continue to be, conducted with integrity and unlawful/unethical trading practices will not be tolerated.

Questions about compliance with industry and company regulations as well as with this Code should be referred to CPA’s General Counsel.

**Policy**

CPA’s Marketing and Trading Employees shall:

1. Conduct business in good faith and in accordance with all applicable laws, regulations, tariffs and rules.
2. Endeavor to always act in the best interests of CPA’s customers.
3. Not disseminate, cause to be disseminated or facilitate the dissemination of known false or misleading information, or engage in transactions in order to exploit known false or misleading information.
4. Engage only in transactions with legitimate business purposes.
5. Not knowingly arrange or execute wash trades.
6. Not engage in any activity with the intent to alter any market price or otherwise interfere with the normal operation of a well-functioning competitive market.
7. Not engage in price reporting or furnishing transaction prices to any entity that collects prices to be used in the calculation of a price index or for distribution to subscribers, without prior written approval of CPA’s General Counsel.
8. Not collude with other market participants to: (i) affect the price of any commodity; (ii) allocate territories, customers or products; or (iii) otherwise restrain competition.
9. Not engage in transactions for commodities or services without the intention of providing those specific commodities or services.
10. Not reserve service, attempt to reserve service, access information, or attempt to access information from any transmission service provider except through means available to all eligible customers.
11. Successfully complete yearly CPA compliance training.
12. Comply with requirements that trading and marketing activities are recorded and retained.
13. Cooperate with any audit or investigation into trading and marketing activities.

Duty to Report Violations and Non-Retaliation Clause
A Marketing and Trading Employee who believes that a violation of the Code has occurred is required to promptly notify CPA’s Chief Operating Officer. CPA shall make every effort to ensure the confidentiality of the reporting Marketing and Trading Employee. If the reporting Marketing and Trading Employee is a CPA employee, CPA shall not discharge, suspend, demote, harass, layoff, deny a promotion, or take any other retaliatory action against that employee solely as a result of the act of reporting a suspected violation of the code. This in no way affects CPA’s rights as an employer with respect to all other issues. CPA will monitor and follow up to ensure that employees who have reported alleged violations have not been subject to retaliation.

Disciplinary Action
Any failure to abide by this Code, including the Duty to Report Violations, will result in disciplinary action. All potential violations are handled on a case-by-case basis and will result in a full review by, at minimum, the following individuals: the CPA employee’s immediate supervisor and CPA’s General Counsel. Factors that are considered in setting the disciplinary action plan include but are not limited to: source of violation discovery (self-reported, peer-reported, reported by a third party, via internal procedures, or the result of an audit), intent (accidental or intentional), type and magnitude of risk that the CPA employee exposed CPA to (financial, reputation, etc.), and frequency of the violation (first offense or history of multiple offenses). The disciplinary actions taken may involve demotion, loss of compensation (suspension without pay), and termination of employment.

I have read CPA’s Code of Marketing and Trading Practices, understand its requirements, and agree to abide by its provisions.

<table>
<thead>
<tr>
<th>Signature</th>
<th>Printed Name</th>
<th>Date</th>
</tr>
</thead>
</table>

CPA Code of Marketing and Trading Practices, Version 1.1
(updated July 18, 2019)
To: Clean Power Alliance (CPA) Board of Directors
From: Ted Bardacke, Executive Director
Subject: Notice to the Board of CPA’s Updated Position on SB 1215 (Stern) from “Support” to “Support if Amended”
Date: July 9, 2020

RECOMMENDATION
Receive and file notice to the Board of Directors of an update to CPA’s position on SB 1215 (Stern) from “Support” to “Support if Amended” approved by CPA’s Chair, Vice Chairs, Legislative & Regulatory Committee Chair, and Executive Director on an urgent basis.

BACKGROUND/SUMMARY
On May 7, 2020, the Board approved a “Support” position on SB 1215 by Senator Stern, which, as then written, would have appropriated an unspecified amount of money from the General Fund to provide grants to local governments, Joint Powers Authorities, and others, to deploy microgrids that maintain electricity during Public Safety Power Shutoff (PSPS) events. Subsequent to the Board’s Support of the bill, the author amended his bill to remove this funding, and instead focused the bill on: 1) expanding the definition of who can own a microgrid, and; 2) creation of a statewide database of critical facilities and critical infrastructure. Due to these amendments, on May 27, 2020, the Legislative & Regulatory Committee approved changing CPA’s position recommending that the Board support the bill only if the database was accessible to CCAs.

Since that meeting, the author changed the bill language again, and there was not enough time to analyze the new version and bring a recommended position change to the June 4, 2020 Board meeting. Since the last change, CPA had an opportunity analyze the
changed bill and determined that while the bill changes could make the database indirectly accessible to CCAs, it still does not go far enough to explicitly provide CCAs the access to the database. Therefore, staff maintained that “Support if Amended,” as recommended by the Legislative & Regulatory Committee, was the appropriate position for CPA. SB 1215 was heard in the Senate Appropriations Committee on June 9, 2020, and under that urgent timeframe, staff determined it could not wait for the July meeting for the Board to update its position. Per the protocols approved by the Board on June 7, 2018 for addressing time-sensitive legislative matters, staff received authorization from the Board Chair, Vice-Chairs, Legislative & Regulatory Committee Chair, and Executive Director to update CPA’s position on SB 1215. CPA’s “Support if Amended” position was communicated to the author and Appropriations Committee on June 8, 2020. This staff report serves as notice to inform the Board of CPA’s new position.

**Current Bill Status**

SB 1215 passed the Senate Appropriations Committee on June 18, 2020, where the bill was amended to cover circuits located in Tier 2 and Tier 3 high-fire threat districts. The bill passed the Senate on June 26, 2020 and will be debated in the Assembly once the legislature resumes. CPA’s lobbyists will continue to work with Senator Stern’s office to represent CPA’s interests.
Staff Report – Agenda Item 5

To: Clean Power Alliance (CPA) Board of Directors

From: Christian Cruz, Community Outreach Manager

Approved By: Ted Bardacke, Executive Director

Subject: Community Advisory Committee (CAC) Monthly Report

Date: July 9, 2020

RECOMMENDATION
Receive and file the June 2020 report from the Community Advisory Committee (CAC).

BACKGROUND
The June 18 CAC meeting was cancelled in order to conduct an evaluation and visioning session with Chair David Haake and Vice Chairs Robert Parkhurst, Los Angeles County, and Angus Simmons, Ventura County. The purpose of this session was to provide staff with preliminary ideas on the goals and expectations of the Committee moving forward. Based on the feedback and ideas received, staff together with the Committee leadership, will conduct a larger visioning discussion with the entire CAC at their July meeting.


Staff Report – Agenda Item 6

To: Clean Power Alliance (CPA) Board of Directors
From: Natasha Keefer, Director of Power Planning & Procurement
Approved By: Ted Bardacke, Executive Director
Subject: Renewable Power Purchase Agreement with SF Azalea, LLC
Date: July 9, 2020

RECOMMENDATION
Approve a 15-year Renewable Power Purchase Agreement with SF Azalea, LLC (Azalea) for long-term renewable energy and storage resources and authorize the Executive Director to execute the agreement.

BACKGROUND
2019 Clean Energy RFO
CPA launched the 2019 Clean Energy RFO targeting procurement of 1-2 million MWh of annual renewable energy via long-term contracts, which provide better value to CPA than short-term contracts, ensure compliance with long-term contracting mandates, and expand the amount of renewable energy serving California.

CPA received a robust response to the Utility Scale Track of the RFO from 59 conforming renewable and renewable plus storage projects. On January 13, 2020, a review team consisting of three Board members from the Energy Committee as well as senior staff consisting of the Executive Director, Chief Operating Officer, and Director of Power Planning and Procurement met to analyze the submitted projects. These review team members evaluated confidential terms and conditions, including pricing, and selected a shortlist of projects to be recommended to the Energy Committee. On January 22, 2020, the Energy Committee reviewed and approved the recommended shortlist, authorizing
staff to proceed with renewable power purchase agreement (PPA) negotiations. From the Energy Committee approved shortlist, CPA entered exclusive negotiations for 8 renewable or renewable plus storage projects for contracts 10 years in length or longer, including the High Desert Solar + Storage and Kaweah Hydro projects approved by the Board on May 7, 2020. Per CPA’s Energy Risk Management Policy, any power purchase transactions greater than 5 years require approval by the Board.

CPA retained Kevin Fox with Keyes & Fox LLP to represent CPA and its interests in the negotiation of these agreements. Mr. Fox’s work was overseen by the General Counsel.

**Project Overview**
Azalea is a 60 MW solar and 38 MW / 152 MWh lithium-ion battery storage facility located in the City of Lost Hills in Kern County, with a commercial operation date of December 31, 2022. The has executed its interconnection agreement and the project will have Full Capacity Deliverability Status (FCDS), meaning it will provide resource adequacy attributes to CPA in addition to energy benefits.

The project’s current land use is agricultural, but the property has been taken out of Williamson Act protection. The Azalea project interconnects with the CAISO system at PG&E’s Arco Substation. Site control has been fully secured for the entirety of the proposed delivery term. The project has submitted a Conditional Use Permit application and expects approval by Q4 2020.

CPA pays for the output of the solar generating portion of the project at a fixed-price rate per MWh and pays for the use of the storage portion of the project at a fixed-price rate per kW-month, both with no escalation, for the full term of the contract (15 years). CPA is entitled to all product attributes from the facility, including energy, renewable energy credits (RECs), ancillary services, and resource adequacy.

The project is being developed by Solar Frontier Americas (SFA), the U.S.-based renewable energy business of Idemitsu Kosan Company, a Japanese energy company
with a market cap of nearly $10 billion. SFA is a California-based independent power producer and solar development firm with over 1 GW of renewable projects in development in North America and has constructed and sold over 200 MW to date. SFA is also currently financing and building 3 projects, a total of approximately 300 MW, with CCA offtake. SFA intends to be the owner and operator of this project.

**Evaluation Criteria**

CPA ranks projects for economic value based on the net present value (NPV) to CPA and on a High, Medium, Neutral, and Low scale in five other evaluation criteria categories (Development Risk, Workforce Development, Environmental Stewardship, Benefits to Disadvantaged Communities, and Project Location). Below is the ranking assigned to this project in each of those categories.

**Value**

The value for this offer falls within first quartile of offer submissions ranked on value in the 2019 Clean Energy RFO. The project is expected to be NPV positive to CPA (i.e., CPA will earn more revenue from this project than it will cost CPA over the life of the project).

The solar portion of the project is priced competitively priced compared to current market prices as reflected in LevelTen’s Q1 PPA 2020 Price Index, which provides average “P25”¹ solar PPA pricing in $/MWh terms recently offered for SP15 solar projects in California. A similar publicly available benchmark for the storage portion of the project does not exist.

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¹ Represents the most competitive 25th percentile offer price.
Development Risk Score
The project ranks High as it is in late-stage development and substantially de-risked. All land for the project is under contract, and the project has an executed interconnection agreement. The project has submitted a Conditional Use Permit application and expects approval by Q4 2021.

Workforce Development
The project ranks High as Solar Frontier has committed to ensuring that work performed on the construction of the project will be conducted using a 5-trade Project Labor Agreement (PLA) with local union chapters, support apprenticeship programs and hiring of local apprentices, and will pay prevailing wages. Additionally, Solar Frontier intends to provide an amount of $45,000 towards a ‘Community Investment Fund’ which CPA may use in its discretion. The developer estimates this project will create 474 construction jobs and 5 permanent jobs.

Environmental Stewardship
The project ranks Neutral as the project footprint is not located in an ecological avoidance area. All biological and cultural resource surveys are in progress. The site is being actively utilized for row crops, but the site does not have high grade soils for prime agriculture production.

Benefits to Disadvantaged Communities
The project ranks High as it is located within a Disadvantaged Community (DAC) and will provide workforce opportunities and community benefits to this region. Specifically, the project has committed to outreach and targeted hires of local Disadvantaged Workers.

Project Location
The project ranks Medium as it is located within California, but not within Los Angeles County or Ventura County.
Rationale

The projects selected in the 2019 Clean Energy RFO help CPA meet its customers’ large renewable energy demand, while maintaining competitiveness. Although the Board of Directors has already approved several long-term renewable contracts, these past contracts will make up a small portion – approximately 18.8% – of CPA’s overall load once they come online, as shown in the table below:

Long-Term Renewable Contracts Contributing to CPA’s Load:

<table>
<thead>
<tr>
<th>Project</th>
<th>Renewable MWs</th>
<th>Status</th>
<th>Commercial Operation Date</th>
<th>Term (Years)</th>
<th>Approx. % of Load Served</th>
</tr>
</thead>
<tbody>
<tr>
<td>Voyager Wind</td>
<td>21.6</td>
<td>Online</td>
<td>12/28/2018</td>
<td>15</td>
<td>0.6%</td>
</tr>
<tr>
<td>Kaweah Hydro</td>
<td>20.1</td>
<td>Online</td>
<td>7/1/2020</td>
<td>10</td>
<td>1.0%</td>
</tr>
<tr>
<td>Isabella Hydro</td>
<td>12</td>
<td>Contracted</td>
<td>12/8/2020</td>
<td>10</td>
<td>0.4%</td>
</tr>
<tr>
<td>Mohave Wind (White Hills)</td>
<td>300</td>
<td>Contracted</td>
<td>12/31/2020</td>
<td>20</td>
<td>7.1%</td>
</tr>
<tr>
<td>Golden Fields Solar</td>
<td>40</td>
<td>Contracted</td>
<td>3/31/2021</td>
<td>15</td>
<td>1.0%</td>
</tr>
<tr>
<td>Arlington Solar</td>
<td>233</td>
<td>Contracted</td>
<td>12/31/2021</td>
<td>15</td>
<td>6.1%</td>
</tr>
<tr>
<td>High Desert Solar + Storage</td>
<td>100</td>
<td>Contracted</td>
<td>8/1/2021</td>
<td>15</td>
<td>2.6%</td>
</tr>
<tr>
<td>Azalea Solar + Storage</td>
<td>60</td>
<td>Pending Approval</td>
<td>12/31/2022</td>
<td>15</td>
<td>1.6%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>20.4%</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

The Azalea project will add another 60 MW of renewable generating resources, covering approximately 1.6% of CPA’s overall demand.

In addition, this contract will enable CPA to reach its regulatory obligations under SB 100 and SB 350, which requires that 65% of Renewables Portfolio Standard (RPS)-compliance related renewable energy supply be sourced from long-term contracts beginning in the 2021-2024 compliance period. As shown in the table below, even with the proposed Azalea, CPA must secure additional long-term energy contracts to meet its state mandate.

---

2 CPA’s executed Luna Storage Sanborn Storage projects are not included in this list because these are standalone storage resources with no generating component.
RPS Under SB 100 and SB 350 Long-term (LT) Contracting Requirement per Compliance Period:

<table>
<thead>
<tr>
<th></th>
<th></th>
<th>2021-2024</th>
<th>2025-2027</th>
<th>2028-2030</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>State Mandated RPS per Compliance Period - % of Retail Sales</td>
<td>40.0%</td>
<td>50.0%</td>
<td>57.0%</td>
</tr>
<tr>
<td>2</td>
<td>State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS LT Contracts</td>
<td>65.0%</td>
<td>65.0%</td>
<td>65.0%</td>
</tr>
<tr>
<td>3</td>
<td>CPA's LT RPS Mandate = Row #2 * Row #1</td>
<td>26.0%</td>
<td>32.5%</td>
<td>37.1%</td>
</tr>
<tr>
<td>4</td>
<td>RPS Achieved by CPA with Existing LT Contracts</td>
<td>18.8%</td>
<td>18.8%</td>
<td>18.8%</td>
</tr>
<tr>
<td>5</td>
<td>RPS Achieved by CPA with Existing LT Contracts and Projects Pending Approval(^3)</td>
<td>20.4%</td>
<td>20.4%</td>
<td>20.4%</td>
</tr>
<tr>
<td>6</td>
<td>Open Position relative to State Mandate (Row 3) +Above/ (-) Short</td>
<td>-5.6%</td>
<td>-12.1%</td>
<td>-16.6%</td>
</tr>
</tbody>
</table>

**ATTACHMENTS**

1) Azalea Power Purchase Agreement Presentation
2) Renewable Power Purchase Agreement with SF Azalea, LLC\(^4\)

---

\(^3\) RPS percentages by compliance period differ from the previous "Long-Term Renewable Contracts Contributing to CPA’s Load" table due to timing on when projects come online and changes to load from year to year.

\(^4\) Consistent with industry practice, portions of the agreement have been redacted to protect market sensitive information.
Renewable Power Purchase Agreement with SF Azalea, LLC

Thursday, July 9, 2020
Summary

• Action Requested

• Background on CPA’s 2019 Clean Energy Request for Offers (RFO) and Portfolio Considerations

• RFO Results

• Project Summary
Action Requested

- CPA is seeking Board approval for the Azalea long-term renewable energy and storage contract from CPA’s 2019 Clean Energy RFO:

<table>
<thead>
<tr>
<th>Project</th>
<th>Technology</th>
<th>Installed Capacity</th>
<th>Online Date</th>
<th>Process</th>
</tr>
</thead>
<tbody>
<tr>
<td>Azalea</td>
<td>Solar + Storage</td>
<td>60 MW solar + 38 MW storage</td>
<td>12/31/2022</td>
<td>2019 Clean Energy RFO</td>
</tr>
</tbody>
</table>
Background on CPA’s 2019 Clean Energy RFO and Portfolio Considerations
Background on 2019 Clean Energy RFO

- Targets securing 1-2 million MWh of annual renewable energy via long-term contracts
- Helps CPA meet its customers’ large renewable energy demand while capturing better value compared to short-term renewable energy contracts
- Enables CPA to meet its regulatory obligations under SB 100 and SB 350 long-term renewable energy contracting requirements¹

---

¹ SB350 requires that 65% of Renewables Portfolio Standard (RPS)-compliance related renewable energy supply be sourced via long-term contracts beginning in the 2021-2024 compliance period
Renewable Energy Position

• CPA’s Board has approved 7 long-term renewable energy contracts to date

• Given CPA’s large customer base, these executed and pending contracts make up a small portion of CPA’s total load:

<table>
<thead>
<tr>
<th>Project</th>
<th>Renewable MWs</th>
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<td>15</td>
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</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>20.4%</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
## Compliance Position

- **RPS Under SB 100 and SB 350 Long-term Contracting**

### Requirement per Compliance Period:

<table>
<thead>
<tr>
<th></th>
<th>2021-2024</th>
<th>2025-2027</th>
<th>2028-2030</th>
</tr>
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<td><strong>3</strong> CPA’s LT RPS Mandate = Row #2 * Row #1</td>
<td>26.0%</td>
<td>32.5%</td>
<td>37.1%</td>
</tr>
<tr>
<td><strong>4</strong> RPS Achieved by CPA with Existing LT Contracts¹</td>
<td>18.8%</td>
<td>18.8%</td>
<td>18.8%</td>
</tr>
<tr>
<td><strong>5</strong> RPS Achieved by CPA with Existing LT Contracts and Projects Pending Approval</td>
<td>20.4%</td>
<td>20.4%</td>
<td>20.4%</td>
</tr>
<tr>
<td><strong>6</strong> Open Position relative to State Mandate (Row #3) +Above/ (-) Short</td>
<td>-5.6%</td>
<td>-12.1%</td>
<td>-16.6%</td>
</tr>
</tbody>
</table>

(1) Note that RPS percentages by compliance period differ from the table on Slide 6 due to timing of when projects come online and changes to load from year to year.
RFO Results
2019 Clean Energy RFO Valuation Results

- Shortlisting in the 2019 Clean Energy RFO focused on first quartile projects, with additional projects in 2\textsuperscript{nd} and 3\textsuperscript{rd} quartile added based on other portfolio considerations (resource diversification, online date)
Project Summary
Azalea Solar + Storage Summary

Project Overview

• 60 MW solar and 38 MW / 152 MWh lithium-ion battery storage facility
• Located in Lost Hills, Kern County
• New build project with a December 31, 2022 online date
• Developer: Solar Frontier Americas (SFA)

Rationale

• High evaluation criteria scores
• Early online date to meet SB350 and IRP Procurement Track compliance

Evaluation Summary

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>1st quartile</td>
</tr>
<tr>
<td>Development Risk Score</td>
<td>High</td>
</tr>
<tr>
<td>Workforce Development</td>
<td>High</td>
</tr>
<tr>
<td>Environmental Stewardship</td>
<td>Neutral</td>
</tr>
<tr>
<td>Benefits to DACs</td>
<td>High</td>
</tr>
<tr>
<td>Project Location</td>
<td>Medium</td>
</tr>
</tbody>
</table>
RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

**Seller:** SF Azalea, LLC, a Delaware limited liability company

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

**Description of Facility:** A 60 MW solar photovoltaic Generating Facility combined with a 152 MWh (38 MW x 4 hours) battery energy Storage Facility, as more fully described herein

**Guaranteed Construction Start Date:** June 1, 2022

**Guaranteed Commercial Operation Date:** December 31, 2022

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Expected 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 [] Cat Ex, [] Neg Dec, [] Mitigated Neg Dec, [x] EIR</td>
<td>December 31, 2021</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>January 31, 2021</td>
</tr>
<tr>
<td>Financial Close</td>
<td></td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td></td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td>November 1, 2022</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>December 1, 2022</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>December 31, 2022</td>
</tr>
</tbody>
</table>
**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</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td></td>
</tr>
<tr>
<td>3</td>
<td></td>
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<td>4</td>
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<td>12</td>
<td></td>
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<tr>
<td>13</td>
<td></td>
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<tr>
<td>14</td>
<td></td>
</tr>
<tr>
<td>15</td>
<td></td>
</tr>
</tbody>
</table>

**Guaranteed Capacity:** 98 MW of total Facility capacity

**Guaranteed Storage Capacity:** 38 MW of Installed Storage Capacity at four (4) hours of continuous discharge

**Guaranteed PV Capacity:** 60 MW of PV capacity

**Guaranteed Efficiency Rate:**

**Contract Price**

The Renewable Rate shall be:

4124-8010-7043.28
<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 15</td>
<td>$[ ]/MWh (flat) with no escalation</td>
</tr>
</tbody>
</table>

The Storage Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 - 15</td>
<td>$[ ]/kW-mo. (flat) with no escalation</td>
</tr>
</tbody>
</table>

**Product**

- PV Energy
- Discharging 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
- Installed Storage Capacity and Effective Storage Capacity
- Ancillary Services
- Capacity Attributes (select options below as applicable)
  - Energy Only Status: for the Generating Facility
  - Full Capacity Deliverability Status: for the Storage Facility
    - RA Guarantee Date: Commercial Operation Date

**Scheduling Coordinator:** Buyer

**Security and Guarantor**

Development Security: $60/kW of Guaranteed PV Capacity plus $90/kW of Guaranteed Storage Capacity

Performance Security: $60/kW of Installed PV Capacity plus $90/kW of Installed Storage Capacity

Guarantor: N/A
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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of July 10, 2020 (the “Effective Date”), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.” All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

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

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

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

ARTICLE 1
DEFINITIONS

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

“AC” means alternating current.

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

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

“Adjusted Facility Energy” means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the total Discharging Energy for such period from (ii) the total Discharging Energy for such period divided by the Storage Facility Loss Factor for such period.

“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.
“**Alternative Dispatches**” has the meaning set forth in Section 4.5(j).

“**Ancillary Services**” means spinning reserve, non-spinning reserve, regulation up, regulation down, black start, voltage support, and any other ancillary services, in each case as defined in the CAISO Tariff from time to time that the Facility is at the relevant time actually physically capable of providing consistent with the Operating Restrictions set forth in Exhibit Q. For clarity, “Ancillary Services” as used herein does not include any ancillary services that the Facility is not actually physically capable of providing consistent with the Operating Restrictions set forth in Exhibit Q and the Facility’s CAISO Certification.

“**Ancillary Services Dispatch**” means any Charging Notice or Discharging Notice that instructs the Storage Facility to provide any Ancillary Services.

“**Annual Storage Capacity Availability**” has the meaning set forth in Exhibit P.

“**Approved Forecast Vendor**” means (a) any of Clean Power Research SolarAnywhere, SolarGIS, CAISO, AWS Truepower/UL, DNV GL or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

“**Assignment Agreement**” has the meaning set forth in Section 14.5.

“**Automated Dispatch System**” or “**ADS**” has the meaning set forth in the CAISO Tariff.

“**Automated Dispatches**” has the meaning set forth in Section 4.5(j).

“**Automatic Generation Control**” or “**AGC**” has the meaning set forth in the CAISO Tariff.

“**Availability Notice**” means Seller’s availability forecasts issued pursuant to Section 4.3 with respect to the available Effective Storage Capacity and available Storage Capability.

“**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.

“**Battery Charging Factor**” means the percentage SOC of the Storage Facility after the first five (5) hours of the charging phase of the applicable Storage Capacity Test.

“**Battery Discharging Factor**” means one (1) minus the percentage SOC of the Storage Facility after the first four (4) hours of the discharging phase of the applicable Storage Capacity Test.
“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 Assignee” has the meaning set forth in Section 14.5.

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

(a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to curtail any Energy which would have been produced from the Generating Facility for a period of time based on the full amount of Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from Buyer or the SC for the Facility either (i) not having submitted a Self-Schedule for the MWhs subject to the reduction or (ii) having submitted a Self-Schedule in the Day-Ahead Market for the MWhs subject to the reduction, but thereafter having submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWhs subject to the reduction.

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period) during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any Energy that was not delivered or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period (excluding, for the avoidance of doubt, a curtailment covered by (a) and (b) above that is not during a period covered by any other circumstances within the definition of Curtailment Period).

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

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

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

“Buyer Dispatched Test” has the meaning in Section 4.9(c).
“Buyer’s Indemnified Parties” has the meaning set forth in Section 18.2.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.10(a).

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

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

“CAISO Certification” means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

“CAISO Charges Invoice” has the meaning set forth in Exhibit D.

“CAISO Dispatch” means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW rate for a specified period of time or amount of MWh.

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

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, 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.

“Calculation Interval” has the meaning set forth in Exhibit P.

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

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

“Capacity Availability Factor” has the meaning set forth in Exhibit C.
“Capacity Damages” means collectively Storage Capacity Damages and PV Capacity Damages.

“Capacity Test” or “CT” means the Commercial Operation Storage Capacity Test and each other Storage Capacity Test conducted pursuant to Exhibit O.

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

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

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

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

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

“Charging Energy” means the as-available Energy produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Points by the Storage Facility Meter. All Charging Energy shall be used solely to charge the Storage Facility, and unless authorized in writing by Seller all Charging Energy shall be generated solely by the Generating Facility.

“Charging Notice” means the operating instruction, and any subsequent updates, given by Buyer’s SC or the CAISO to the Facility, instructing the Storage Facility to charge at a specific MW rate for a specified period of time or to an amount of MWh; provided, (a) any such operating instruction shall be in accordance with the Operating Restrictions, and (b) if, during a period when the Storage Facility is so instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable “Charging Notice”, such “Charging
Notice” shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility. For the avoidance of doubt, any Buyer Dispatched Test and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

“Collateral Assignment Agreement” has the meaning set forth in Section 14.2.

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

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

“Commercial Operation Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

“Commercial Operation Storage Capacity Test” means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of Exhibit B.

“Communications Protocols” means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

“Compliance Actions” has the meaning set forth in Section 3.12(a).

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

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

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

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

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

“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, which is incorporated into this Agreement.

“CPM Price” has the meaning set forth in Section 3.8(b).

“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.

“Cure Plan” has the meaning set forth in Section 11.1(b)(iii).

“Curtailment Order” means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (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; or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed (based on the full amount of Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) (it being acknowledged, for the avoidance of doubt, that any CAISO direction to curtail Generating Facility Energy in response to an Energy oversupply or potential Energy oversupply in circumstances where Buyer or the SC for the Facility submitted an Energy Supply Bid (as defined in the CAISO Tariff) for the MWhs curtailed (based on the full amount of Energy forecasted for the Generating Facility for such period in accordance with the most recent forecast available under Section 4.3) during the relevant time period, shall be deemed Buyer Bid Curtailment and not a Curtailment Order);

(b) a curtailment ordered by the Transmission Provider 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 Transmission Provider’s electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment ordered by CAISO or the Transmission Provider due to a Transmission System Outage; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Transmission Provider or distribution operator.
“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Generating Facility pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

“Cycles” means, at any point in time during any Contract Year, the number of equivalent charge/discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) four (4) times the weighted average Effective Storage Capacity for such Contract Year to date.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

“Damage Payment” means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

“Day-Ahead Forecast” has the meaning set forth in Section 4.3(c).

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

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

“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period (or other relevant period); provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility’s PNode during any Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

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

“Deficient Month” has the meaning set forth in Section 4.10(e).

“Delay Damages” means Daily Delay Damages and Commercial Operation Delay Damages.

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

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

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

“**Discharging Energy**” means all Energy delivered to the Delivery Point from the Storage Facility, net of Electrical Losses and Station Use, as measured at the Storage Facility Metering Points by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

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

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

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

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

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

“**Effective Storage Capacity**” means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

“**Efficiency Rate**” means the rate of conversion of the Charging Energy into Discharging Energy, as calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In.
“Electrical Losses” means all transmission or transformation losses (a) between the Generating Facility and the Delivery Point, (b) between the Storage Facility and the Delivery Point, and (c) between the Generating Facility and the Storage Facility. If any amounts included within the definitions of “Electrical Losses” and “Station Use” hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.

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

“Energy” means electrical energy generated by the Generating Facility, measured in kilowatt-hours or multiple units thereof.

“Energy Dispatch” means any Charging Notice or Discharging Notice that instructs the charging or discharging of the Storage Facility and is not an Ancillary Services Dispatch.

“Energy In” has the meaning set forth in Section III.A(5) of Exhibit O.

“Energy Management System” or “EMS” means the Facility’s energy management system.

“Energy Out” has the meaning set forth in Section III.A(10) of Exhibit O.

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

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

“Expected Commercial Operation Date” has the meaning set forth on the Cover Sheet.

“Expected Construction Start Date” has the meaning set forth on the Cover Sheet.

“Expected Energy” means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year (assuming no Charging Energy or Discharging Energy in such Contract Year), which for each Contract Year is the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

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

“Facility Energy” means the sum of PV Energy and Discharging Energy during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter.

“Facility Meter(s)” means the CAISO Approved Meter(s) that will measure all Facility Energy. Without limiting Seller’s obligation to deliver Facility Energy to the Delivery Point, the
Facility Meter(s) will be located, and Facility Energy will be measured, at the high- or low-voltage side of the main step up transformer and will be subject to adjustment to measure Facility Energy at the Delivery Point in accordance with CAISO meter requirements to account for Electrical Losses.

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

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

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

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

“Forecasted Product” has the meaning set forth in Section 4.3(b).

“Forward Certificate Transfers” has the meaning set forth in Section 4.10(a).

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

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

“Future Environmental Attributes” means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of “Green Attributes” herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

“Gains” means, with respect to 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., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.
“Generating Facility” means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, and (ii) Charging Energy to the Storage Facility; provided, that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

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

“Generating Facility Metering Points” means the locations of the Generating Facility Meters shown on Exhibit R.

“Governmental Authority” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and CPUC; 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 (including 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), 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 hexaflouride 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 such avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, or (iii) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.
“**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.

“**Green Tags**” means a unit accumulated on a MWh basis where one (1) represents the Green Attributes associated with one (1) MWh of Facility Energy.

“**Green-e Certified**” means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

“**Green-e Energy National Standard**” means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

“**Grid Charging Effective Date**” has the meaning set forth in Section 3.13.

“**Guaranteed Capacity**” means the sum of (x) the Guaranteed PV Capacity and (y) the Guaranteed Storage Capacity.

“**Guaranteed Commercial Operation Date**” means the date specified on the Cover Sheet, subject to extension pursuant to Exhibit B.

“**Guaranteed Construction Start Date**” means the date specified on the Cover Sheet, subject to extension pursuant to Exhibit B.

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

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

“**Guaranteed PV Capacity**” means the guaranteed capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

“**Guaranteed Storage Availability**” has the meaning set forth in Section 4.8.

“**Guaranteed Storage Capacity**” means the maximum dependable operating capability of the Storage Facility to discharge electric Energy, as measured in MW AC at the Delivery Point for four (4) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

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

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

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

“Indemnified Party” has the meaning set forth in Section 16.1.

“Indemnifying Party” has the meaning set forth in Section 16.1.

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

“Installed Capacity” means the sum of (x) the Installed PV Capacity and (y) the Installed Storage Capacity.

“Installed PV Capacity” means the actual capacity of the Generating Facility, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto.

“Installed Storage Capacity” means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge electric energy for four (4) hours of continuous discharge, as measured in MW AC at the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; provided, for all purposes of this Agreement the amount of Installed Storage Capacity and Effective Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and (for the avoidance of doubt) Buyer shall have no right to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times four (4) hours.

“Inter-SC Trade” or “IST” has the meaning set forth in the 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 Capacity Limit” means the maximum instantaneous amount of Energy that is permitted to be delivered to the Delivery Point under Seller’s Interconnection Agreement, in the amount of 60 MW.

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

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

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

“IP Indemnity Claim” has the meaning set forth in Section 16.1(b).

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


“Joint Powers Agreement” means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

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

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

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

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

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

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

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

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

“Make-up Days” has the meaning set forth in Exhibit B.

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

“Monthly Capacity Payment” means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the provision of Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

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

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

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

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

“Negative LMP” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars ($0).
“NERC” means the North American Electric Reliability Corporation.

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

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

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

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

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

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

“Performance Measurement Period” means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. For the avoidance of doubt, Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; provided, however, that a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

“Performance Security” means (i) cash, (ii) a Letter of Credit or (iii) a Guaranty (if permitted by Buyer, in its sole discretion), in the amount set forth on the Cover Sheet.

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

(a) A tangible net worth of 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 and energy storage 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.

“Planned Outage” means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in advance in accordance with Section 4.6(a).

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

“PMIN” means the applicable CAISO-certified minimum operating level of the Storage Facility.

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

“Portfolio” means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller’s Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

“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.

“Portfolio Financing” means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

“Portfolio Financing Entity” means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

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

“Progress Report” means a progress report including the items set forth in Exhibit E.
“Prudent Operating Practice” means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice shall include compliance with applicable Laws, applicable reliability criteria, and the applicable criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

“PV Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

“PV Energy” means that portion of Energy that is delivered directly from the Generating Facility to the Delivery Point, and is not Discharging Energy.

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

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

“RA Guarantee Date” means the date set forth in the deliverability Section of the Cover Sheet, which is the date the Storage Facility is expected to achieve FCDS.

“RA Shortfall Month” means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Storage Facility for such month was less than the Qualifying Capacity of the Storage Facility for such month (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

“Real-Time Forecast” has the meaning set forth in Section 4.3(d).

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

“Real-Time Price” means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.
“Receiving Party” has the meaning set forth in Section 18.2.

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

“Remedial Action Plan” has the meaning set forth 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 is not a Green Attribute or a Future Environmental Attribute.

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

“Replacement Energy” has the meaning set forth in Exhibit G.

“Replacement Green Attributes” has the meaning set forth in Exhibit G.

“Replacement Product” has the meaning set forth in Exhibit G.

“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 SP 15 TAC Area 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.

“Requested Confidential Information” has the meaning set forth in Section 18.2.

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

“Resource Adequacy Rulings” means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions,
rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Contract Term.

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

“SCADA Systems” means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer’s SC.

“Schedule” has the meaning set forth in the CAISO Tariff. “Scheduled” and “Scheduling” have corollary meanings.

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

“Scheduling Coordinator” or “SC” means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in “Responsibilities of a Scheduling Coordinator,” of the CAISO Tariff, as amended from time to time. The SC may be Buyer if Buyer meets all applicable requirements.

“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 Initiated Test” has the meaning set forth in Section 4.9(c).

“Seller’s WREGIS Account” has the meaning set forth in Section 4.10(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.

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

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

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; provided, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer’s approval of such updates in its sole discretion.

“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.

“SOC” or “State of Charge” means the level of charge of the Storage Facility relative to its maximum capacity, expressed as a percentage.

“SP-15” means the Existing Zone Generation Trading Hub for Existing Zone region SP15 as set forth in the CAISO Tariff.

“Station Use” means the Energy produced or discharged by the Facility that is used within the Facility to power the lights, motors, AC temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility.

“Storage Capability” has the meaning in Exhibit P.

“Storage Capacity Availability Payment True-Up” has the meaning set forth in Exhibit C.

“Storage Capacity Availability Payment True-Up Amount” has the meaning set forth in Exhibit C.

“Storage Capacity Damages” has the meaning set forth in Section 5 of Exhibit B.

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

“Storage Cure Plan” has the meaning set forth in Section 11.1(b)(iv).
“Storage Facility” means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

“Storage Facility Loss Factor” shall be the greater of (i) the Guaranteed Efficiency Rate set forth on the Cover Sheet, or (ii) the percentage calculated by dividing Discharging Energy in the applicable month of the Delivery Term, as measured at the Storage Facility Meter, by Charging Energy, as measured at the Storage Facility Meter, in the same month of the Delivery Term.

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

“Storage Facility Metering Points” means the locations of the Storage Facility Meters shown on Exhibit R.

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

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

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

“Supplementary Capacity Test Protocol” has the meaning set forth in Section II.H of Exhibit O.

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

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

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

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

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

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

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

“**Total YTD Calculation Intervals**” has the meaning set forth in Exhibit C.

“**Transmission Provider**” means any 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 for the purpose of transmitting or transporting the Facility Energy 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.

“**Transmission System Outage**” means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller’s actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.


“**Unavailable Calculation Interval**” has the meaning set forth in Exhibit P.

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

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

“**WREGIS Certificate Deficit**” has the meaning set forth in Section 4.10(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 May 1, 2018, 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:

(f) 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;

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

(h) 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;

(i) 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;

(j) 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;

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

(l) the terms “include” and “including” mean “include or including (as applicable) 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;

(m) 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;

(n) 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, unless the context otherwise requires;

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

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

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(q) 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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for 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 (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed PV Capacity, the Installed Storage Capacity and Installed Capacity on the Commercial Operation Date;

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

(c) An Interconnection Agreement between Seller and the Transmission Provider 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 (including from the CAISO) for the commencement of operation of the Generating Facility and Storage Facility have been obtained and all conditions thereof required for commencement of operation have been satisfied and shall (as applicable) be in full force and effect, including any CAISO Certification necessary for the Storage Facility to commence (i) general charging and discharging in the CAISO market and (ii) the provision the Ancillary Services in the CAISO market;

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

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, 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;

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

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

2.3 **Development; Construction; Progress Reports.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller’s construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.
2.4 **Remedial Action Plan.** If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

**ARTICLE 3**
**PURCHASE AND SALE**

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

3.2 **Sale of Green Attributes.** During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer’s efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.

3.3 **Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.
3.4 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), 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, losses, and liabilities associated with such alteration or change in operation.

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

3.6 **Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to seventy percent (70%) of the Renewable Rate (the “Test Energy Rate”). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties’ obligations under this Section 3.6.

3.7 **Capacity Attributes.** Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process for the Storage Facility. As between Buyer and Seller,
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 and subject to Section 3.12, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.12, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Storage Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Storage Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.

(c) For the duration of the Delivery Term, and subject to Section 3.12, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute all documents or instruments, necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

(d) If at any time during the Delivery Term, the Generating Facility qualifies to provide Capacity Attributes or Resource Adequacy Benefits separate from the Storage Facility, Seller shall use commercially reasonable efforts to obtain and deliver such Capacity Attributes or Resource Adequacy Benefits for Buyer’s benefit, provided that Seller shall not be required to incur costs or assume liabilities in doing so beyond de minimis amounts unless Buyer agrees to reimburse Seller for doing so.

3.8 Resource Adequacy Failure.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “RA Deficiency Amount”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Storage Facility (or, if applicable, during the period between the RA Guarantee Date and the Effective FCDS Date, the Guaranteed Storage Capacity), minus (ii) the Net Qualifying Capacity of the Storage Facility, multiplied by the price for CPM Capacity (in $/kW) as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) (“CPM Price”); provided that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Storage Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Storage Facility with respect to such month, not to exceed ten percent (10%) of the Qualifying Capacity amount in any such RA Shortfall Month, and provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a Notice.
substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification.** Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, 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 throughout the Delivery Term, including compliance with all requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor) that are applicable to the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification.

3.10 **Eligibility.** Subject to Section 3.12, Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility or the Generating Facility (as applicable) 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 (or Generating Facility’s, as applicable) 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 (and the Buyer’s payment obligations hereunder for Product shall not be reduced) if Seller has used commercially reasonable efforts to comply with such change in Law. The term “commercially reasonable efforts” as used in this Section 3.10 means efforts consistent with and subject to Section 3.12.

3.11 **California Renewables Portfolio Standard.** Subject to Section 3.12, Seller shall also take all other actions necessary to ensure that the Energy produced from the Generating 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.

3.12 **Compliance Expenditure Cap.** If a change in Law occurring after the Effective Date has increased Seller’s cost to comply with Seller’s obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at Twenty-Five Thousand Dollars ($25,000) per MW of Guaranteed Capacity (“Compliance Expenditure Cap”).

(a) 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”; provided that Compliance Actions
shall not require Seller to install any additional MW or MWh of energy storage or generation capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any change in Law occurring after the Effective Date.

(b) 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.

(c) 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 3.12 within sixty (60) days after Buyer’s receipt of same, Seller shall provide a second Notice to Buyer, and if Buyer does not respond to such second Notice within five (5) 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, such Compliance Actions for the remainder of the Delivery Term; provided, however, that if Buyer responds within the required timeframe, Buyer shall have such time as Buyer reasonably requires to direct Seller to take the Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe.

(d) 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 in a commercially reasonable timeframe 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.

3.13 Project Configuration. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy to provide Charging Energy; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties in their sole discretion as set forth in a written agreement. The date on which the Parties execute any such agreement is herein referred to as the “Grid Charging Effective Date”.
ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 Delivery.

(a) Energy. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, and including without limitation any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility’s operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Facility Energy will be scheduled to the CAISO by Buyer’s designated Scheduling Coordinator in accordance with Exhibit D.

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

(c) Energy Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products that may become recognized from time to time in the CAISO market (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller’s obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including for avoidance of doubt any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller’s obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 Title and Risk of Loss.

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

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.
4.3 **Forecasting.** Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer’s designee).

(a) **Annual Forecast of Energy.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month’s average-day expected Energy from the Generating Facility, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) **Monthly Forecast of Energy and Available Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected (i) available capacity of the Generating Facility, (ii) Energy produced by the Generating Facility, (iii) available Effective Storage Capacity, and (iv) available Storage Capability (items (i)-(iv) collectively referred to as the “**Forecasted Product**”), for each day of the following month in a form substantially similar to Exhibits F-1, F-2, F-3 and F-4, as applicable (“**Monthly Forecast**”).

(c) **Day-Ahead Forecast.** By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of the hourly expected Forecasted Product, in each case, for each hour of the immediately succeeding day (“**Day-Ahead Forecast**”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of the hourly expected Forecasted Product. Such Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast or the Monthly Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected Forecasted Product (“**Real-Time Forecast**”), in each case, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Forecasted Product changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy produced by the Generating Facility shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in the change in any Forecasted Product, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage.
within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that are reasonably likely to affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. In the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a “Forecasting Penalty” for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Energy produced by the Generating Facility for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer’s SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 Dispatch Down/Curtailment.

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; provided, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an
amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such SCADA Systems, communications links and other equipment, and implement such protocols and practices, as necessary to respond to and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as directed by the CAISO or Buyer’s SC in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the methodologies applicable to the Facility and used to transmit such instructions. If at any time during the Delivery Term, Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies applicable to the Facility, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller’s facilities, communications links or other equipment, protocols or practices are not in compliance with applicable methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 Energy Management.

(a) Charging Generally. Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller’s possession or control used to deliver the Charging Energy from the Generating Facility to the Storage Facility.

(b) Charging Notices. Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Charging Notices to be issued; provided, Buyer’s right to cause Charging Notices to be issued is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a) and the availability of Charging Energy. Each Charging Notice issued in accordance with this Agreement will be effective unless and until such Charging Notice is modified with an updated Charging Notice.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), in connection with a Seller Initiated Test (including Facility maintenance or a
Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. If, during the Delivery Term, Seller (i) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in a Charging Notice, or (ii) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) in the event the charging Energy is from the grid (following the Grid Charging Effective Date), Seller shall be responsible for all energy costs associated with such charging of the Storage Facility and Buyer shall not be required to pay for such charging Energy, (y) Buyer shall be entitled to discharge such energy and entitled to all of the CAISO revenues and benefits (including Storage Product) associated with such discharge, and (z) to the extent that the charging Energy for any such period is Charging Energy from the Generating Facility, the Adjusted Facility Energy associated with such Charging Energy shall be calculated in a manner such that there is no “gross up” benefit to Seller for Storage Facility efficiency losses associated with such Charging Energy. Notwithstanding the foregoing, during any Curtailment Period, Buyer shall use commercially reasonable efforts to cause all curtailed PV Energy to be used as Charging Energy.

(d) No Unauthorized Discharging. Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Discharging Notice in order to maintain compliance with the Operating Restrictions), in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from CAISO, the Transmission Provider, or any other Governmental Authority. Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Buyer’s SC or the CAISO to provide, Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the existing level of charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer’s SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice.

(e) Curtailments. Notwithstanding anything in this Agreement to the contrary, (i) during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and (ii) Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer’s SC shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with CAISO rules and the Operating Restrictions.

(f) Consequences of Unauthorized Charging or Discharging. If Seller or anyone acting on behalf of Seller charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder (it being acknowledged, however, that any unintended or accidental deviations in charging, discharging or use of the Storage Facility expressly addressed in Section 4.5(k) shall be considered permitted uses hereunder), it shall be a breach by Seller and Seller shall hold Buyer harmless from and indemnify Buyer against all actual costs or losses associated
therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then it shall be an Event of Default under Article 11.

(g) Requirements for Charging and Discharging Notices. Buyer shall ensure that all Charging Notices and Discharging Notices are issued in a manner consistent with all requirements of this Agreement, including all Operating Restrictions and the CAISO Tariff.

(h) Pre-Commercial Operation Date Period. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to test, charge and discharge the Storage Facility.

(i) Priority of CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer’s SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller’s compliance with any CAISO Dispatch.

(j) Maintenance of SCADA Systems; Back-up Procedures. During the Delivery Term, Seller shall maintain SCADA Systems, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice (“Automated Dispatches”). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer’s review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices (“Alternative Dispatches”).

(k) Failure to Comply with Dispatches.

(i) During any time interval during the Delivery Term in which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches (and has not been reported as unavailable in accordance with Section 4.3 or Exhibit P), but the Storage Facility deviates from a CAISO Dispatch that (for the avoidance of doubt) otherwise complies with the Operating Restrictions and other requirements of this Agreement, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation. The remedy set forth in this Section 4.5(k)(i) shall be Buyer’s sole remedy arising out of any such deviations.

(ii) For each Calculation Interval during the Delivery Term for which the Storage Facility has not been reported as unavailable in accordance with Section 4.3 or Exhibit P, and is not capable of responding to Automated Dispatches or Alternative Dispatches, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of
calculating the Annual Storage Capacity Availability. The remedy set forth in this Section 4.5(k)(ii) shall be Buyer’s sole remedy arising out of any such incapability of responding to Automated Dispatches or Alternative Dispatches.

(iii) For each Calculation Interval during the Delivery Term for which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches, but the Storage Facility fails to respond at all to an Ancillary Services Dispatch, the Storage Capability for such Calculation Interval shall be deemed reduced for purposes of calculating the Annual Storage Capacity Availability to the extent of such inability or failure multiplied by fifty percent (50%). The remedy set forth in this Section 4.5(k)(iii) shall be Buyer’s sole remedy arising out of such failure to respond at all to an Ancillary Services Dispatch.

(iv) For clarity, in any case where preceding Sections 4.5(k)(ii) or (iii) are applicable, Section 4.5(k)(i) shall be inapplicable.

4.6 Reduction in Energy Delivery Obligation. For the avoidance of doubt, and in no way limiting Sections 3.1, 3.8 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(a) Facility Maintenance. Seller will provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. No outages shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer’s comments. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages. Seller shall have the right during each Contract Year, on no less than sixty (60) days advance Notice to Buyer, to make changes to each such schedule, and shall reasonably coordinate to obtain comments from Buyer on such changes.

(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, Transmission System Outage, Buyer Curtailment Period or upon notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event so long as Seller complies with the applicable requirements of Article 10.
(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability to the extent the Storage Facility otherwise has an Unavailable Calculation Interval under Exhibit P.

4.7 **Guaranteed Energy Production.** During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of Adjusted Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Adjusted Facility Energy, as measured in MWh, equal to one hundred sixty percent (160%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Buyer Default or other failure to perform that directly prevents Seller from being able to deliver Facility Energy to the Delivery Point. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

4.8 **Storage Facility Availability: Ancillary Services**

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than [percent] percent (the "**Guaranteed Storage Availability**"), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer’s sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate are the payment adjustments made pursuant to the definitions of the Storage Facility Loss Factor and Adjusted Facility Energy.

(c) Buyer’s exclusive remedies for Seller’s failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller’s payment for the Product by application of
the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) Seller shall operate and maintain the Storage Facility throughout the Delivery Term so as to be able to provide the Ancillary Services in accordance with the specifications set forth in the Storage Facility’s initial CAISO Certification associated with the Installed Storage Capacity, provided that Buyer’s exclusive remedies for Seller’s failure to satisfy such obligation are as set forth in Section 4.5(k). Upon Buyer’s reasonable request, Seller shall submit the Storage Facility for additional CAISO Certification so that the Storage Facility may provide additional Ancillary Services that the Facility is at the relevant time actually physically capable of providing consistent with the definition of Ancillary Services herein, assuming that conducting such tests do not involve any material costs unless Buyer agrees to reimburse therefor.

4.9 **Storage Facility Testing.**

(a) **Storage Capacity Tests.** Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, then the actual capacity and/or Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) **Additional Testing.** Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Automated Dispatches.

(c) **Buyer or Seller Initiated Tests.** Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility (“Buyer Dispatched Test”). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a “Seller Initiated Test”.

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(i) For any Seller Initiated Test other than a Storage Capacity Test, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility, Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test, and Buyer shall pay Seller the Renewable Rate for all Adjusted Facility Energy associated with such discharge. For all Seller Initiated Tests, Seller shall be responsible for all Charging Energy (and, to the extent that the Charging Energy for any such period is Charging Energy from the Generating Facility, the Adjusted Facility Energy associated with such Charging Energy shall be calculated in a manner such that there is no “gross up” benefit to Seller for Storage Facility efficiency losses associated with such Charging Energy), and Seller shall be entitled to all CAISO revenues (but not the Renewable Rate) associated with a Storage Facility discharge, but all Green Attributes associated therewith shall be for Buyer’s account at no additional cost to Buyer. Buyer shall pay to Seller, in the month following Buyer’s receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 WREGIS. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer’s sole benefit, it being acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. 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 4.10(g), provided that Seller fulfills its obligations under Sections
4.10(a) through (f) below. In addition:

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

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

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month 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 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “WREGIS Certificate Deficit” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (taking into account the timing of WREGIS’ issuance of WREGIS Certificates in the normal course) (“Deficient Month”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of error or omission of Seller, then the amount of Adjusted Facility 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 next coming due under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, 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 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(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 this Agreement.

4.11 **Financial Statements.** In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.

**ARTICLE 5**

**TAXES**

5.1 **Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided, however,* that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.
ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 Maintenance of the Facility. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility 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 N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Facility Energy to the Delivery Point.

6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Shared Facilities and 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 Transmission Provider, 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
METERING

7.1 Metering. Unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have a separate CAISO Resource ID for each of the Generating Facility and the Storage Facility. Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. Upon the reasonable request from time to time by Buyer, Seller shall provide Buyer with good faith estimates (based on Prudent Operating Practice) as to the quantities of Station Use consumed by the Facility. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller’s cost. Subject to meeting any applicable CAISO requirements, the Storage Facility Meters, Generating Facility Meter and the Facility Meter shall be programmed to adjust for all losses from such meters to the Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter, Generating Facility Meter and the Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all Generating Facility Meter, Facility Meter and Storage Facility Meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO
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 request permission from CAISO to 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**

**INVOICING AND PAYMENT; CREDIT**

8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no later than the tenth (10th) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy produced by the Generating Facility as read by the Generating Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment.** Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts by the later of (a) ten (10) Business Days after Buyer’s receipt of the invoice from Seller, and (b) the thirtieth (30th) day of the month after the operational month for which such invoice was rendered; provided, 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

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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. Upon fifteen (15) days’ Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

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 or 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 next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

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

8.7 **Seller’s Development Security.** To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days after the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller’s delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within ten (10) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If requested by Seller, Buyer shall from time to time reasonably cooperate with Seller to enable Seller to exchange one permitted form of Development Security or Performance Security for another permitted form (i.e., cash, Letter of Credit or Guaranty, as applicable); provided, however, that a Guaranty shall be considered on a case-by-case basis only for Performance Security, not Development Security, and Buyer’s acceptance of a Guaranty shall be subject, in Buyer’s sole discretion, to Guarantor meeting Buyer’s credit requirements.

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 Financial Statements.** Buyer shall provide to Seller both upon request and as indicated below: (a) within forty-five (45) days following the end of its first, second and third fiscal quarters, unaudited quarterly financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; (b) within one hundred eighty (180) days following the end of each fiscal year, annual audited financial statements of Buyer prepared in accordance with generally accepted accounting principles in the United States, consistently applied; and (c) as available, Buyer’s annual report which will include an overview of customer rate classes and retention rate (and may include opt-out rates), procurement activities, customer programs, and a list of Buyer’s member agencies and board members.

**ARTICLE 9**

**NOTICES**

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

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

**ARTICLE 10**

**FORCE MAJEURE**

10.1 **Definition.**

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

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic; 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 (including resulting from changes in Law) that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer’s ability to buy Product at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (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) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs.** Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented or delayed from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable (or delayed) to fulfill any obligation by reason of a Force Majeure Event shall take commercially reasonable actions necessary to remove such inability or delay with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform or delay after said cause has been removed. The obligation to use commercially reasonable 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 or Development Cure Period.**

   (a) If the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) in Exhibit B) equal or exceed one hundred eighty (180) days, and Seller has demonstrated to Buyer’s reasonable satisfaction that such delays did not result from Seller’s commercially unreasonable actions (or failure to take commercially reasonable actions), then Seller may terminate this Agreement upon Notice to Buyer. Upon such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

   (b) If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party with respect to the Facility experiencing
the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the
other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall
promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn
in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

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

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

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (A) missing a Milestone other than the Guaranteed Construction Start Date or Guaranteed Commercial Operation Date, the exclusive remedies for which are set forth in Section 2.4; (B) failure to provide Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8; (C) failure to provide the forecast required in Section 4.3(d), the exclusive remedies for which are set forth in Section 4.3(f); (D) failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, the exclusive remedies for which are set forth in Section 4.4(c); (E) unauthorized charging in violation of Section 4.5(c), the exclusive remedies for which are set forth in Section 4.5(c); (F) deviations from a CAISO Dispatch during any time interval for which the Storage Facility has not been reported as unavailable and is capable of responding to Automated Dispatches or Alternative Dispatches in violation of Section 4.5(k)(i), the exclusive remedies for which are set forth in Section 4.5(k)(i); (G) failure to respond to Automated Dispatches or Alternative Dispatches in violation of Section 4.5(k)(ii), the exclusive remedies for which are set forth in Section 4.5(k)(ii); (H) failure to respond at all to an Ancillary Services Dispatch during any Calculation Interval during which the Storage Facility is capable of responding to Automated Dispatches or Alternative Dispatches in violation of Section 4.5(k)(iii), the exclusive remedies for which are set forth in Section 4.5(k)(iii); (I) failures related to the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7 and Exhibit G; (J) failures related to the Guaranteed Efficiency Rate that violate Section 4.8(b), the exclusive remedies for which are set forth in Section 4.8(b); (K) failures related to the Annual

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Storage Capacity Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8(c) and Exhibit C; (L) failure to remedy a WREGIS Certificate Deficit caused by any action or inaction of Seller within thirty (30) days after notice from Buyer in violation of Section 4.10(e), the exclusive remedies for which are set forth in Section 4.10(e); (M) failure to achieve Construction Start by the Guaranteed Construction Start Date that does not trigger the provisions of Section 11.1(b)(ii)(A), the exclusive remedies for which are set forth in Section 1 of Exhibit B; (N) failure to achieve Commercial Operation by the Guaranteed Commercial Operation Date that does not trigger the provisions of Section 11.1(b)(ii)(B), the exclusive remedies for which are set forth in Section 2 of Exhibit B; (O) failure to reach the Guaranteed PV Capacity, the exclusive remedies for which are set forth in Section 5(a) of Exhibit B; and (P) failure to reach the Guaranteed Storage Capacity, the exclusive remedies for which are set forth in Section 5(a) of Exhibit B and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

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

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

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

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

(ii) the failure by Seller (A) to achieve Construction Start on or before the Guaranteed Construction Start Date as may be extended by Seller’s payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller’s payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any consecutive six (6) month period, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is not at least ten percent (10%) of the 6-month pro rata amount of Expected Energy for such period adjusted for seasonality proportionately to the monthly forecast provided annually by Seller under Section 4.3(a), and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from
Buyer a plan or report developed by Seller that describes the cause of the failure to meet the ten percent (10%) threshold and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Cure Plan") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, for any full Contract Year, the Annual Storage Capacity Availability for such Contract Year multiplied by the weighted average Effective Storage Capacity for such Contract Year is not at least seventy percent (70%) multiplied by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the seventy percent (70%) multiplied by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Storage Cure Plan") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vi) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash or (2) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;
(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty;

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

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least A- by S&P or A3 by Moody’s;

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

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

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

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

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

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.
11.2 Remedy 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, or (ii) the Termination Payment calculated in accordance with Section 11.3 below;

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

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

11.3 Damage and Termination Payments. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or the Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the entire Development Security amount and any interest accrued thereon. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer’s harm or loss.

(ii) If Buyer is the Defaulting Party, then a Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) incurred or paid by Seller or its Affiliates, from the Effective Date through
the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) plus (ii) without duplication of any costs or expenses covered by preceding clause (i), all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) which have been actually incurred, or become payable, by Seller or its Affiliates between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4, directly in connection with the Facility and arising out of the termination of this Agreement, including all Facility-related debt and other financing repayment obligations (and including all pre-payment penalties, accelerated payments, make-whole payments and breakage costs), and all other termination payments and other similar or related payments, costs or expenses in connection with the Facility, including in connection with financing, construction and equipment supply contracts, land rights contracts, and other Facility contracts and matters, in each case pursuant to and provided for in agreements that are in effect as of the Early Termination Date or entered into thereafter in order to mitigate or minimize the aggregate costs and expenses hereunder, less (B) the fair market value (determined in a commercially reasonable manner by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer’s sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)(A)), of (a) all Seller’s assets if sold individually, or (b) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of. Fair market value will be based on the value of Seller’s assets or the entire Facility as existing on the Early Termination Date and not on the value thereof at a later stage of development or construction of the Facility or at completion of the Facility. There will be no amount owed to Buyer. The Parties agree that Seller’s damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer’s default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller’s harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date (“Termination Payment”) shall be the aggregate of all Settlement Amounts plus any other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (i) 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, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) 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, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether 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, as applicable, 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, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Limitation on Seller’s Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller’s Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller’s Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller’s Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer’s receipt thereof.

Neither Seller nor Seller’s Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the Interconnection Queue Position) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer.

Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights And Remedies Are Cumulative.** Except as set forth in Section 4.8(b) and 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.

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

11.9 **Additional Seller Rights.** At any time prior to the Commercial Operation Date, Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer’s sole right and remedy (and Seller’s sole liability and obligation) arising out of any such termination under this Section 11.9, Buyer shall be entitled (A) to liquidate and retain all Development Security and (B) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date, provided that in no event shall the sum of (A) and (B) exceed an amount equal to two (2) times the Development Security amount.

**ARTICLE 12**

**LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

12.1 **No Consequential Damages.** EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN IP INDEMNITY CLAIM, (C) AN ARTICLE 15 INDEMNITY CLAIM, (D) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (E) RESULTING FROM A PARTY’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

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

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

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

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 2.4, 3.8, 4.3(f), 4.4(c), 4.5(c), 4.5(k)(i), 4.5(k)(ii), 4.5(k)(iii), 4.7, 4.8(b), 4.8(c) 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

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

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

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

(a) Seller is a Delaware limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in 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

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authorized by all necessary limited liability company action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

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

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

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

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 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 in material compliance with any Law.

13.4 Workforce Development. The Parties acknowledge that in connection with Buyer’s renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof.
ARTICLE 14
ASSIGNMENT

14.1  **General Prohibition on Assignments.** Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided, however, that a Change of Control of Seller shall not require Buyer’s consent if the assignee or transferee is a Permitted Transferee. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer’s reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys’ fees.

14.2  **Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement (“Collateral Assignment Agreement”). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a)  Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b)  Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i)  The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii)  Impediments to the cure plan or its development;

(iii)  If a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv)  Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.
Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender’s receipt of notice of such Event of Default from Buyer, indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

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

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

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller’s obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Event of Default personal to Seller and not reasonably capable of cure) in order to avoid the exercise by Buyer (in its sole discretion) of Buyer’s right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

(i) Cause such Event of Default to be cured, or

(ii) Not assume this Agreement;

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

(h) Subject to Lender’s cure of any Events of Defaults under the Agreement capable of cure in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller’s bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement
agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer’s written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee (if it is not a Permitted Transferee) shall be approved by Buyer, not to be unreasonably withheld.

14.3 **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 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing.** Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney’s fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 **Buyer Financing Assignment.** Seller agrees that Buyer may assign a portion of its rights and obligations under this Agreement to a Person in connection with a municipal prepayment financing transaction (“**Buyer Assignee**”) at any time upon reasonable prior Notice to Seller, provided that as conditions to any such assignment: (i) Seller and Buyer (and Seller’s financing parties) shall first agree on the terms and conditions of a written assignment and consent
agreement based on the initial form attached hereto as Exhibit S ("Assignment Agreement"), such agreement not to be unreasonably withheld; (ii) at the time of such assignment, such Buyer Assignee has a Credit Rating equal to the higher of (a) Buyer’s Credit Rating at the time of such assignment (if applicable), and (b) Baa3 from Moody’s and BBB- from S&P; (iii) as reasonably requested by Buyer Assignee, Seller shall provide Buyer Assignee with information and documentation with respect to Seller, including but not limited to account opening information, information related to forecasted generation, Credit Rating, and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies; and (iv) as reasonably requested by Seller, Buyer Assignee shall provide Seller with information and documentation with respect to Buyer Assignee and the proposed municipal prepayment financing transaction.

ARTICLE 15
DISPUTE RESOLUTION

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

15.2 Dispute Resolution. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a 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.

15.3 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 16
INDEMNIFICATION

16.1 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) (i) 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, or (ii) third-party claims resulting from the Indemnifying
Party’s breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

(b) Seller shall indemnify, defend and hold harmless Buyer and its Affiliates, directors, officers, employees from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys’ fees) in connection with any claims of infringement upon or violation of any trade secret, trademark, trade name, copyright, patent, or other intellectual property rights of any third party by equipment, software, applications or programs (or any portion of same) used by (or provided by) Seller in connection with the Facility (an “IP Indemnity Claim”).

(c) Nothing in this Section 16.1 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.

16.2 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 16 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 the Indemnifying 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 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s 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 17
INSURANCE

17.1 Insurance.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of Two Million Dollars ($2,000,000) per
occurrence, and an annual aggregate of not less than Five Million Dollars ($5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Ten Million Dollars ($10,000,000). 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 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 include 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 17.1(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. Such 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.

(h) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, 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 17 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 18
CONFIDENTIAL INFORMATION

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

18.2 Duty to Maintain Confidentiality. The Party receiving Confidential Information (the “Receiving Party”) from the other Party (the “Disclosing Party”) shall not disclose Confidential Information to a third party (other than the Party’s employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party’s Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; provided, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated
with the word “Confidential.” The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as “Confidential” that clearly contain information that is not Confidential Information.

Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party’s request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents (“Buyer’s Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer’s Indemnified Parties for Buyer’s refusal to disclose any Requested Confidential Information.

18.3 Irreparable Injury; Remedies. Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 Further Permitted Disclosure. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates’ agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

18.5 Press Releases. Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

ARTICLE 19
MISCELLANEOUS

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

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

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

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

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

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

19.8 Electronic Delivery. This Agreement may be duly executed and delivered by a
Party by electronic format (including portable document format (.pdf)) delivery of the signature
page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing
Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has
executed to the other Party, but this Agreement shall be binding on and enforceable against the
executing Party whether or not it delivers such original counterpart.

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

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

19.11 Forward Contract. The Parties acknowledge and agree that this Agreement
constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and
Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each
Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to
assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein
such Party is a debtor. In any such proceeding, each Party further waives the right to assert that
the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or

19.12 Change in Electric Market Design. If, after the Effective Date, (i) a change in
the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed
or administered, or

[Redacted]

then either 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 (or, in the case of preceding clause (ii), to maintain Seller’s level of
burdens or obligations under Section 3.8), in each case while attempting to preserve to the
maximum extent possible the overall 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 15. 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, and (ii) all unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

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

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

SF AZALEA, LLC, a Delaware limited liability company

By: __________________________
Name: __________________________
Title: __________________________

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

By: __________________________
Name: __________________________
Title: __________________________
EXHIBIT A

FACILITY DESCRIPTION

Site Name: Azalea

Site includes all or some of the following APNs: 043-210-17-00, 043-210-18-00, 043-210-28-00, and 043-220-01-00

County: Kern County, CA

Zip Code: 93249

Latitude and Longitude: 35.767967, -119.895893

Facility Description: 60 MW(AC) PV + 152 MWh (38 MW(AC) x 4 hours) storage

Delivery Point: Arco 70 kV Substation

Facility Meter: See Metering Diagram in Exhibit R

Storage Facility Meter Locations: See Metering Diagram in Exhibit R

P-node applicable to Facility’s CAISO IDs: As established by CAISO NRI process

Transmission Provider: Pacific Gas & Electric Company

Additional Information: See diagram below
Site Diagram:
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

   a. “Construction Start” will occur upon Seller’s (i) acquisition of all applicable regulatory authorizations, approvals and permits necessary for commencement of the construction of the Facility and (ii) Seller’s execution of an engineering, procurement, and construction contract (or similar contract) and issuance of a notice to proceed (or reasonable equivalent) to the contractor or integrator party thereto, all in a manner (under preceding clauses (i) and (ii)) that can reasonably be considered necessary so that engineering, procurement and construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration. The date of Construction Start will be evidenced by and subject to Seller’s delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the “Construction Start Date.” Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun after the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility; provided, in no event shall Seller be obligated to pay aggregate Daily Delay Damages in excess of the Development Security amount required hereunder. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Daily Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Construction Start Date on or before the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default pursuant to Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. Each day for which Seller pays Daily Delay Damages shall automatically extend the Guaranteed Commercial Operation Date, and if Seller achieves the Commercial Operation Date by one or more days prior to the extended Guaranteed Commercial Operation Date, with such number of days by which the Commercial Operation Date precedes the Guaranteed Commercial Operation Date as extended by the payment of Daily Delay Damages (but not by a Development Cure Period) being referred to as the “Make-up Days”, then Buyer shall refund to Seller an amount equal to the number of Make-up Days multiplied by the Daily Delay Damages amount, up to but not in excess of the aggregate

Exhibit B - 1
amount of Daily Delay Damages previously paid. If requested by Seller, the Parties shall negotiate in good faith and enter into a three-party escrow agreement arrangement with a bank or other creditworthy escrow agent under which all Daily Delay Damages would be paid into a mutually agreed bank escrow (rather than directly to Buyer) and under which Buyer would have the unconditional right to draw down thereon the amount of all such amounts that cease to become subject to refund to Seller hereunder if the Seller misses the Guaranteed Commercial Operation Date and Buyer becomes entitled to such amounts.

2. **Commercial Operation of the Facility.** “Commercial Operation” means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “COD Certificate”); and the “Commercial Operation Date” means the date set forth in such Notice of the occurrence of the fulfillment of such conditions precedent.

   a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.

   b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of ninety (90) days of extensions by such payment of Commercial Operation Delay Damages. On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date, Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for up to ninety (90) days of delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date
4. **Extension of the Guaranteed Dates.** Independent of Seller’s extension rights under Section 1 and 2 of this Exhibit B above, the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “Development Cure Period”) for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines:

a. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals, or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller; or

b. a Force Majeure Event occurs; or

c. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the date that is thirty (30) days prior to the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date (it being acknowledged that an extension under this paragraph (d) shall not limit other rights and remedies Seller may have for any Buyer default).

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(d) above) shall not exceed one hundred eighty (180) days, for any reason, including a Force Majeure Event, and the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(d) above) shall not exceed two hundred seventy (270) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer’s reasonable satisfaction that the delays described above did not result from Seller’s actions or failure to take commercially reasonable actions.

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

   a. **Guaranteed PV Capacity.** If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall

   Exhibit B - 3
provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay “PV Capacity Damages” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW that the Guaranteed PV Capacity exceeds the Installed PV Capacity.

b. Guaranteed Storage Capacity. If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay “Storage Capacity Damages” to Buyer, in an amount equal to Two Hundred Fifty Thousand Dollars ($250,000) for each MW at four (4) hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. Buyer’s Right to Draw on Development Security. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller’s payment obligation thereof.
Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) **Renewable Rate.** Buyer shall pay Seller the Renewable Rate for each MWh of Adjusted Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) **Excess Contract Year Deliveries Over 115%.** Notwithstanding the foregoing, if, at any point in any Contract Year, the amount of Adjusted Facility Energy, plus Deemed Delivered Energy, exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy and/or Deemed Delivered Energy shall be $0.00/MWh.

(c) **Excess Settlement Interval Deliveries.** If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours (“**Excess MWh**”), then the price applicable to all such Excess MWh in such Settlement Interval shall be zero dollars ($0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such Excess MWh.

(d) **Storage Capacity Payment.**

   (i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the **Storage Rate** x **Effective Storage Capacity.** Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity is adjusted pursuant to a Storage Capacity Test other than the first day of calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity is applicable.

   (ii) **Storage Capacity Availability Payment True-Up.** Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%) of the Guaranteed Storage Availability, or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the “**Storage Capacity Availability Payment True-Up**”), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; provided, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any...
Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

“Storage Capacity Availability Payment True-Up Amount” means an amount equal to A x B - C, where:

A = The sum of the year-to-date Monthly Capacity Payments

B = The Capacity Availability Factor

C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously withheld by Buyer in the applicable Contract Year.

“Capacity Availability Factor” means:

(A) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

(B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = Guaranteed Storage Availability – YTD Annual Storage Capacity Availability

(C) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = ((Guaranteed Storage Availability – YTD Annual Storage Capacity Availability) * 1.5)

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

(f) Tax Credits. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any

Exhibit C - 2
Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.
EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer’s designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility’s Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer’s authorization to act as the Facility’s Scheduling Coordinator unless agreed to by Buyer. Buyer’s SC (which may be Buyer) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market, real time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff.

(b) Notices. Buyer’s SC (which may be Buyer) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility’s status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically or by electronic mail to the personnel designated to receive such information. Buyer (as the Facility’s SC) shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer’s failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff)
Tariff) are for the benefit of Seller and for Seller’s account and that any Non-Availability Charges
(as defined in the CAISO Tariff) are the responsibility of Seller and for Seller’s account. In
addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or
penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or
penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by
Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this
Agreement, the cost of the sanctions or penalties shall be Seller’s responsibility.

(d) CAISO Settlements. Buyer (as the Facility’s SC) shall be responsible for
all settlement functions with the CAISO related to the Facility. Buyer shall render a separate
invoice to Seller for any CAISO payments, charges or penalties (“CAISO Charges Invoice”) for
which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after
settlement information becomes available from the CAISO that identifies any CAISO charges.
Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices
reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if
requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of
Seller in a timely manner and consistent with Buyer’s existing settlement processes for charges
that are Buyer’s responsibilities. Subject to Seller’s right to dispute and to have Buyer pursue the
dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten
(10) Business Days of Seller’s receipt of the CAISO Charges Invoice. If Seller fails to pay such
CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for
these CAISO Charges Invoices against any future amounts it may owe to Seller under this
Agreement. The obligations under this Section with respect to payment of CAISO Charges
Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility’s SC) may be required by Seller to
dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer’s costs and
expenses (including reasonable attorneys’ fees) associated with its involvement with such CAISO
disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility
that Seller has directed Buyer to dispute.

(f) Terminating Buyer’s Designation as Scheduling Coordinator. At least
thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an
earlier termination of this Agreement, the Parties will take all actions necessary to terminate the
designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration
date.

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

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall
cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller
to demonstrate Seller’s compliance with, any applicable NERC reliability standards. This
cooperation shall include the provision of information in Buyer’s possession that Buyer (as

Exhibit D - 2
Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller’s compliance with applicable NERC reliability standards.
Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are reasonably likely to 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 material 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. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.
14. Any other documentation reasonably requested by Buyer.
EXHIBIT F-1
FORM OF MONTHLY EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour] – [Insert Month]

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

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

Exhibit F-1
EXHIBIT F-2

FORM OF MONTHLY EXPECTED GENERATING FACILITY ENERGY REPORT

[MWh Per Hour] – [Insert Month]

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

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
EXHIBIT F-3
FORM OF MONTHLY EXPECTED AVAILABLE EFFECTIVE STORAGE CAPACITY REPORT

[MW Per Hour] – [Insert Month]

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

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.
**EXHIBIT F-4**

**FORM OF MONTHLY AVAILABLE STORAGE CAPABILITY REPORT**

[MWh Per Hour] – [Insert Month]

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[insert additional rows for each day in the month]

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

Exhibit F-4
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

\[ [(A - B) \times (C - D)] \]

where:

- **A** = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh
- **B** = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh
- **C** = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the market value of Replacement Green Attributes
- **D** = the Renewable Rate, in $/MWh

“**Adjusted Energy Production**” shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

“**Replacement Energy**” means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

“**Replacement Green Attributes**” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same year of production as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided, that are provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Energy provided by Seller as Replacement Product for the same Performance Measurement Period.

“**Replacement Product**” means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.
No payment shall be due if the calculation of \((A - B)\) or \((C - D)\) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.
EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by _______[licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase 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.

As of _______[DATE]_____, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with an Installed PV Capacity, as measured at the Delivery Point, of no less than ninety-five percent (95%) of the Guaranteed PV Capacity, as measured at the Delivery Point.

3. Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.

4. Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on___[DATE]_____.

5. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _______[DATE]_____.

6. 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-1
FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase 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.

I hereby certify the following:

(a) The installed capacity of the Generating Facility, as measured at the Delivery Point, is ___ MW AC ("Installed PV Capacity");

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of ___ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the “Installed Storage Capacity”);

(c) The sum of (a) and (b) is ___ MW AC and shall be the “Installed Capacity”; and

(d) The Commercial Operation Storage Capacity Test demonstrated [(i) a Battery Charging Factor of ___%,]51 and (ii) a Battery Discharging Factor of ___%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O).

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this ______ day of ____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]
By: ____________________________
Its: _____________________________
Date: ____________________________

51 Only include if applicable according to Exhibit O.

Exhibit I-1

4124-8010-7043.28
EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification ("Certification") of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("Engineer") to Clean Power Alliance of Southern California, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase 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.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW AC to the Delivery Point at four (4) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the "Effective Storage Capacity"); and

(b) The Storage Capacity Test demonstrated (i) an Efficiency Rate of __%, (ii) a Battery Charging Factor of __%, and (iii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]
this ________ day of ______________, 20__.  

[LICENSED PROFESSIONAL ENGINEER]
By: ____________________________
Its: ____________________________
Date: ________________________
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date (“Certification”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase 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.

Seller hereby certifies and represents to Buyer the following:

(1) Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;

(2) the Construction Start Date occurred on __________ (the “Construction Start Date”);

(3) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

____________________________________________________________________

(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of ________.

[SELLER ENTITY]

By: __________________________________________
Its: __________________________________________

Date: _________________________________________
EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US$[XXXXXXXX]

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. [XXXXXXX] (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 [XXXXX] and 00/100) (the “Available Amount”), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall be of no further force or effect at 5:00 p.m., California time, on [Date] or, if such day is not a Business Day (as hereinafter defined), on the next Business Day (as may be extended pursuant to the terms of this Letter of Credit, the “Expiration Date”).

For the purposes hereof, “Business Day” shall mean any day on which commercial banks are not authorized or required to close in Los Angeles, California.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. California time, on or before the Expiration Date of a copy of this Letter of Credit No. [XXXXXXX] and all amendments accompanied by Beneficiary’s dated statement purportedly signed by Beneficiary’s duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

Any full or partial drawing hereunder may be requested by transmitting copies of the requisite documents as described above to the Issuer by facsimile at [facsimile number for draws] or such other number as specified from time-to-time by the Issuer.
The facsimile transmittal shall be deemed delivered when received. Drawings made by facsimile transmittal are deemed to be the operative instrument without the need of originally signed documents.

Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored if presented to the Issuer before the Expiration Date. All correspondence and any drawings (other than those made by facsimile) hereunder are to be directed to [Issuer address/contact]. Issuer undertakes to make payment to Beneficiary under this Standby Letter of Credit within three (3) business days of receipt by Issuer of a properly presented Drawing Certificate. The Beneficiary shall receive payment from Issuer by wire transfer to the bank account of the Beneficiary designated in the Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance; provided, the Available Amount shall be reduced by the amount of each such drawing.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter) beginning on the present Expiration Date hereof and upon each anniversary for such date (or, if such period ends on a day that is not a Business Day, until the next Business Day thereafter), unless at least one hundred twenty (120) days prior to any such Expiration Date Issuer has sent Beneficiary written notice by overnight courier service at the address provided below that Issuer elects not to extend this Letter of Credit, in which case it will expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date will be honored.

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

Except so far as otherwise stated, this Letter of Credit is subject to the International Standby Practices ISP98 (also known as ICC Publication No. 590), or revision currently in effect (the “ISP”). As to matters not covered by the ISP, the laws of the State of California, without regard to the principles of conflicts of laws thereunder, shall govern all matters with respect to this Letter of Credit.

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

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 555 West 5th Street, 35th Floor, Los Angeles, CA 90013. Only notices to Beneficiary meeting the requirements of this paragraph shall
be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

___________________________

[Insert officer name]
[Insert officer title]
EXHIBIT A

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate
[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [________], [ADDRESS], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of [________] (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of [________], 20[___] (the “Agreement”).

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $[_________] because a Seller Event of Default (as such term is defined in the Agreement) has occurred.

or

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 L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [____], a [______] (“Guarantor”), and Clean Power Alliance of Southern California, a California joint powers authority (together with its successors and permitted assigns, “Buyer”).

Recitals
A. Buyer and [SELLER ENTITY], a _____________________ (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [____], 20__.
B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.
C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

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

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty.
and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

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4124-8010-7043.28
(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

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

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s
organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. **Notices.** Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four Business Days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

[____]
Attn: [____]
Fax: [____]

If delivered to Guarantor, to it at

[____]
Attn: [____]
Fax: [____]

8. **Governing Law and Forum Selection.** This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the City and County of Los Angeles, California.

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

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

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).
(iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

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

GUARANTOR:

[_______]

By:____________________________

Printed Name:__________________
Title:____________________________

BUYER:

[_______]

By:____________________________

Printed Name:__________________
Title:____________________________

By:____________________________

Printed Name:__________________
Title:____________________________
EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this “Notice”) is delivered by [SELLER ENTITY] (“Seller”) to Clean Power Alliance of Southern California, a California joint powers authority (“Buyer”) in accordance with the terms of that certain Renewable Power Purchase 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 3.8 of the Agreement, Seller hereby provides the below Replacement RA product information:
[SELLER ENTITY]

By: ____________________________
Its: ____________________________

Date: ____________________________
## EXHIBIT N

### NOTICES

<table>
<thead>
<tr>
<th>SF AZALEA, LLC, a Delaware limited liability company (&quot;Seller&quot;)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (&quot;Buyer&quot;)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
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</tr>
<tr>
<td>Street: 50 California Street, #820</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>City: San Francisco, CA 94111</td>
<td>City: Los Angeles, CA 90017</td>
</tr>
<tr>
<td>Attn: Jeremy Yates, Operations Manager</td>
<td>Attn: Executive Director</td>
</tr>
<tr>
<td>Phone: 415-200-4861</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Facsimile: 415-789-4338</td>
<td>Email: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td>E-mail: <a href="mailto:Jeremy.Yates.0160@idemitsurenewables.com">Jeremy.Yates.0160@idemitsurenewables.com</a></td>
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<tr>
<td>With a copy of all Notices of any Event of Default to:</td>
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<td>Street: 50 California Street, #820</td>
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<tr>
<td>City: San Francisco, CA 94111</td>
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<tr>
<td>Attn: Mark Wong, VP Transactions</td>
<td></td>
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<tr>
<td>Phone: 415-593-6993</td>
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<tr>
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<tr>
<td>Email: <a href="mailto:mark.wong.0150@idemitsurenewables.com">mark.wong.0150@idemitsurenewables.com</a></td>
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<tr>
<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
</tr>
<tr>
<td><strong>Bank:</strong> [Redacted]</td>
<td><strong>BNK:</strong> River City Bank</td>
</tr>
<tr>
<td><strong>ABA:</strong> [Redacted]</td>
<td><strong>ABA:</strong> [Redacted]</td>
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<tr>
<td><strong>Acct Number:</strong> [Redacted]</td>
<td><strong>ACCT:</strong> [Redacted]</td>
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EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days’ prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) days following any Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a “CT”. Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer’s sole cost).

Exhibit O - 1
B. Conditions Prior to Testing.

(1) **EMS Functionality.** The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

(2) **Communications.** The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer’s RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Buyer’s RTU and Seller’s EMS interface and the ability to record SCADA Systems data.

(3) **Commissioning Checklist.** Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the EMS are configured.

(4) **Generating Facility Conditions.** Any CTs requiring the availability of Charging Energy may be conducted when either (a) solar insolation over a continuous five (5)-hour period is in excess of 800 watts/m², or (b) the Generating Facility is producing over 50 MW continuously for a five (5)-hour period, *provided* that Seller may waive such conditions at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of condition (a) or (b) being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

**PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.**

A. **Test Elements.** Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom. For the avoidance of doubt, the Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the Test will still be deemed “complete,” and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such Test, if applicable, will be made in accordance with this Exhibit O.

(1) Electrical output at maximum discharging level (MW) for four (4) continuous hours; and
(2) Electrical input at maximum charging level at the Storage Facility Meter (MW), as sustained until the Stored Energy Level reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage Facility Meter (MW), as sustained until the Stored Energy Level reaches 100%, not to exceed five (5) hours of total charging time, provided that solar insolation and Generating Facility conditions permit such charging levels.

B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:

(1) Time;

(2) Net electrical energy output to the Facility Meters (kWh) (i.e., to each measurement device making up the Facility Meter);

(3) Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Facility Meter);

(4) Stored Energy Level (MWh).

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

(1) That the CT successfully started;

(2) The maximum sustained discharging level for four (4) consecutive hours pursuant to A(1) above;

(3) The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above;

(4) Amount of time between the Storage Facility’s electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);

(5) Amount of time between the Storage Facility’s electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);
(6) Amount of Charging Energy, registered at the Storage Facility Meter, to go from 0% Stored Energy Level to 100% Stored Energy Level;

(7) Amount of Discharging Energy, registered at the Facility Meter, to go from 100% Stored Energy Level to 0% Stored Energy Level.

E. Test Conditions.

(1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.

(2) Abnormal Conditions. If abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT (including inadequate solar insolation or other Generating Facility conditions resulting in inadequate Charging Energy or ambient air temperature above 45° Celsius or below 0° Celsius), Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.

(3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice and, as applicable, the CAISO Tariff.

F. Incomplete Test. If any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event, other Generating Facility conditions resulting in inadequate Charging Energy, or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

(1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

(2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and
(3) Seller’s statement of either Seller’s acceptance of the CT or Seller’s rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer’s acceptance of the CT results or Buyer’s rejection of the CT and reason(s) therefor. If either Party rejects the results of any CT, such CT shall be repeated in accordance with Part II.F.

H. Supplementary Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design of the Storage Facility (“Supplementary Capacity Test Protocol”). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:

(1) The total amount of Facility Energy delivered to the Delivery Point (expressed in MWh AC) during the first four (4) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) four (4) hours) shall be divided by four (4) hours to determine the Effective Storage Capacity, which shall be expressed in MW AC, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. Effective Storage Capacity and Efficiency Rate Test

- Procedure:

  (1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.

  (2) Record the initial value of the Storage Facility SOC.

  (3) Command a real power charge that results in an AC power of Storage Facility’s maximum charging level, and continue charging until the earlier

Exhibit O - 5
of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have lapsed since the Storage Facility commenced charging.

(4) Record and store the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.

(5) Record and store the AC energy charged to the Storage Facility as measured at the Storage Facility Meter (“Energy In”).

(6) Following an agreed-upon rest period, command a real power discharge that results in an AC power output of the Storage Facility’s maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for four (4) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.

(7) Record and store the Storage Facility SOC after four (4) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Storage Facility SOC remains above 0% after maintaining the maximum discharging level for four (4) consecutive hours pursuant to Section III.A.6(a), the SOC will be deemed 0 for purposes of calculating the Battery Discharging Factor.

(8) Record and store the AC Energy discharged (in MWh) as measured at the Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.

(9) If the Storage Facility has not reached 0% SOC pursuant to Section III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.

(10) Record and store the AC Energy discharged (in MWh) as measured at the Facility Meter for determining the Effective Storage Capacity. “Energy Out” means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter from the commencement of discharging pursuant to Section III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Section III.A.6 or Section III.A.9, as applicable.

• Test Results

(1) The resulting Efficiency Rate is calculated as Energy Out/Energy In, with Energy Out/Energy In measured at the Storage Facility Meter.

(2) The resulting Effective Storage Capacity measurement is the sum of the total Discharged Energy at the Facility Meter divided by four (4) hours.

Exhibit O - 6
B. **AGC Discharge Test**

- **Purpose:** This test will demonstrate the AGC discharge capability to achieve the Storage Facility’s ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).

- **System starting state:** The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- **Procedure:**
  1. Record the Storage Facility active power level at the Facility Meter.
  2. Command the Storage Facility to follow a simulated CAISO RIG signal of 38 MW for ten (10) minutes.
  3. Record and store the Storage Facility active power response (in seconds).

- **System end state:** The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. **AGC Charge Test** (only applicable after the Grid Charging Effective Date)

- **Purpose:** This test will demonstrate the AGC charge capability to achieve the Storage Facility’s ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff).

- **System starting state:** The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.

- **Procedure:**
  1. Record the Storage Facility active power level at the Facility Meter.
  2. Command the Storage Facility to follow a simulated CAISO RIG signal of -38 MW for ten (10) minutes.
  3. Record and store the Storage Facility active power response (in seconds).

- **System end state:** The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

D. **Reactive Power Production Test**

Exhibit O - 7
Purpose: This test will demonstrate the reactive power production capability of the Storage Facility.

System starting state: The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow an agreed-upon predefined reactive power profile.

Procedure:

1. Record the Storage Facility reactive power level at the Facility Meter.
2. Command the Storage Facility to follow 19 MVAR for ten (10) minutes or time as coordinated/approved by CAISO.
3. Record and store the Storage Facility reactive power response.

System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.

E. Reactive Power Consumption Test (only applicable after the Grid Charging Effective Date)

Purpose: This test will demonstrate the reactive power consumption capability of the Storage Facility.

System starting state: The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The Storage Facility control system will be configured to follow an agreed-upon predefined reactive power profile.

Procedure:

1. Record the Storage Facility reactive power level at the Facility Meter.
2. Command the Storage Facility to follow -19 MVAR for ten (10) minutes.
3. Record and store the Storage Facility reactive power response.

System end state: The Storage Facility will be in the on-line state and at a commanded reactive power level of 0 MVAR.
EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) “Annual Storage Capacity Availability” for the current Contract Year using the formula set forth below:

Annual Storage Capacity Availability (%) = \[ \frac{1 - \text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}} \]

“Calculation Interval” or “C.I.” means each successive five-minute interval, but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

“Unavailable Calculation Intervals” means the sum of year-to-date Unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

\[ \text{Unavailable Calculation Interval} = \text{1 C.I. x } \left( 1 - \text{the lesser of:} \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity x 4 hrs}} \right) \]

“A” is the available Effective Storage Capacity, with both (a) and (b) in the definition of Effective Storage Capacity calculated as the product of (1) the count of available system inverters in such Calculation Interval, multiplied by (2) the capacity, in MW AC, expected from each such system inverter in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer’s guidelines).

“Storage Capability” means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the “available battery charging capability” and “available battery discharging capability” are calculated as the product of (1) the count of available system cells in such Calculation Interval, multiplied by (2) the capability, in MWh, expected from each such system cell (based on normal operating conditions pursuant to the manufacturer’s guidelines).

“Total YTD Calculation Intervals” means, for each applicable Contract Year, the total number of Calculation Intervals year-to-date up through and including the month for which
the Annual Storage Capacity Availability is being calculated.

(b) The “available Effective Storage Capacity” and “Storage Capability” in the above calculations shall be the lower of (i) such amounts reported by Seller’s real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, or (ii) Seller’s most recent Availability Notice (as updated pursuant to Section 4.3). Except as otherwise expressly provided in this Agreement, the calculations of “available Effective Storage Capacity” and “Storage Capability” in the foregoing shall be based solely on the availability of applicable components of the Storage Facility to charge or discharge Energy, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) After □ Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to the such period of time.

(d) Seller shall install Storage Facility inverters with total rated power associated with the Installed Storage Capacity that is no less than 38.5 MW charging and 38.5 MW discharging at 45°C, or Buyer shall have the right, in its reasonable discretion, to apply an ambient air temperature availability derate to the applicable Calculation Interval.
EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date (or, if requested by Seller, prior to Seller’s commencement of Facility construction), provided that the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller’s operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

I. STORAGE FACILITY OPERATING RESTRICTIONS

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<th>File Update Date:</th>
<th>5/15/2020</th>
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<tbody>
<tr>
<td>Technology:</td>
<td>Lithium Ion Battery Energy Storage</td>
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<tr>
<td>Storage Unit Name:</td>
<td>SF Azalea</td>
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A. Contract Capacity

<table>
<thead>
<tr>
<th>Guaranteed Storage Capacity (MW):</th>
<th>38 MW</th>
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</thead>
<tbody>
<tr>
<td>Effective Storage Capacity (MW):</td>
<td>38 MW</td>
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B. Total Unit Dispatchable Range Information

<table>
<thead>
<tr>
<th>Interconnect Voltage (kV):</th>
<th>70</th>
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<tbody>
<tr>
<td>Maximum Storage Level (MWh):</td>
<td>152</td>
</tr>
<tr>
<td>Minimum Storage Level (MWh):</td>
<td>0</td>
</tr>
<tr>
<td>Stored energy capability (MWh):</td>
<td>152</td>
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<tr>
<td>Maximum Discharge (MW):</td>
<td>38</td>
</tr>
<tr>
<td>Maximum Charge (MW):</td>
<td>38</td>
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<tr>
<td>Guaranteed Efficiency Rate:</td>
<td>See Cover Sheet</td>
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Maximum discharging energy throughput (BET) (MWh/year): [Redacted] MWh/year

C. Charge and Discharge Rates

<table>
<thead>
<tr>
<th>Mode</th>
<th>Maximum (MW)</th>
<th>Ramp Rate Description</th>
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<tbody>
<tr>
<td>Energy (Charge)</td>
<td>38</td>
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</tr>
<tr>
<td>Energy (Discharge)</td>
<td>38</td>
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</table>

D. Storage Reaction Rate

<table>
<thead>
<tr>
<th>Storage Facility Reaction Time</th>
<th>At the inverter-level</th>
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</thead>
</table>

E. Ancillary Services

| Frequency regulation is included: | Yes |
| Spin is included: | Yes |

Exhibit Q - 1
<table>
<thead>
<tr>
<th>F. Additional Restrictions</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Unless waived by Seller in its sole discretion, the Storage Facility shall be charged</td>
</tr>
<tr>
<td>exclusively with energy from the Generating Facility unless the Parties mutually agree</td>
</tr>
<tr>
<td>otherwise pursuant to Section 3.13.</td>
</tr>
<tr>
<td>2. [Redacted]</td>
</tr>
<tr>
<td>3. Storage Facility SOC may not exceed</td>
</tr>
<tr>
<td>4. [Redacted]</td>
</tr>
</tbody>
</table>

II. OTHER OPERATING RESTRICTIONS

Sum of PV Energy and Discharging Energy may not exceed the Interconnection Capacity Limit.

Exhibit Q - 2
EXHIBIT R
METERING DIAGRAM

![Diagram of metering system with labels and arrows indicating energy flow: Delivery Point, Facility Meter, HV, MV, PV Energy, Discharging Energy, Charging Energy, Generation Meter, Storage Meter, MV, LV, PV AC, BESS AC.]

Exhibit R - 1
EXHIBIT S

FORM OF ASSIGNMENT AGREEMENT

This Assignment Agreement (this “Assignment Agreement” or “Agreement”) is entered into as of [___________] by and among [PPA Seller], a [_____________] (“PPA Seller”), Clean Power Alliance of Southern California, a California joint powers authority (“PPA Buyer”), and [Financing Party] (“Financing Party”), and relates to that certain power purchase agreement (the “PPA”) between PPA Buyer and PPA Seller as described on Appendix 1.

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

1. Limited Assignment and Delegation.

(a) PPA Buyer hereby assigns, transfers and conveys to Financing Party all right, title and interest in and to the rights of PPA Buyer under the PPA to receive delivery of the products described on Appendix 1 (the “Assigned Products”) during the Assignment Period (as defined in Appendix 1), as such rights may be limited or further described in the “Further Information” section on Appendix 1 (the “Assigned Product Rights”) [NOTE: Appendix 1 to provide for transfer of RECs]. All other rights of PPA Buyer under the PPA are expressly reserved for PPA Buyer, including the right to receive any additional quantities of products beyond the limits set forth in Appendix 1.

(b) PPA Buyer hereby delegates to Financing Party the obligation to pay for all Assigned Products that are actually delivered to Financing Party pursuant to the Assigned Product Rights during the Assignment Period (the “Delivered Product Payment Obligation” and together with the Assigned Product Rights, collectively the “Assigned Rights and Obligations”). All other obligations of PPA Buyer under the PPA are expressly retained by PPA Buyer. To the extent Financing Party fails to pay for any Assigned Products by the due date for payment set forth in the PPA, PPA Buyer agrees that it will remain responsible for such payment within five (5) Business Days (as defined in the PPA) of receiving notice of such non-payment from PPA Seller.

(c) Financing Party hereby accepts and PPA Seller hereby consents and agrees to the assignment, transfer, conveyance and delegation described in clauses (a) and (b) above.

(d) All scheduling of Assigned Products and other communications related to the PPA shall take place between PPA Buyer and PPA Seller pursuant to the terms of the PPA; provided that (i) PPA Buyer and PPA Seller will provide to Financing Party copies of all scheduling communications, billing statements, generation reports and other notices delivered under the PPA during the Assignment Period contemporaneously upon delivery thereof to the other party to the PPA; (ii) title to Assigned Product will pass to Financing Party upon delivery by PPA Seller in accordance with the PPA; and (iii) PPA Buyer is hereby authorized by Financing Party to and shall act as Financing Party’s agent with regard to scheduling Assigned Product.

Exhibit S -

4124-8010-7043.28

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(e) PPA Seller acknowledges that (i) Financing Party intends to immediately transfer title to any Assigned Products received from PPA Seller through one or more intermediaries such that all Assigned Products will be re-delivered to PPA Buyer, and (ii) Financing Party has the right to purchase receivables due from PPA Buyer for any such Assigned Products. To the extent Financing Party purchases any such receivables due from PPA Buyer, Financing Party may transfer such receivables to PPA Seller and apply the face amount thereof as a reduction to any Delivered Product Payment Obligation.

2. Assignment Early Termination.

(a) The Assignment Period may be terminated early upon the occurrence of any of the following:

1. delivery of a written notice of termination by either Financing Party or PPA Buyer to each of the other Parties hereto;

2. delivery of a written notice of termination by PPA Seller to each of Financing Party and PPA Buyer following Financing Party’s failure to pay when due any amounts owed to PPA Seller in respect of any Delivered Product Payment Obligation and such failure continues for one (1) Business Day following receipt by Financing Party of written notice thereof;

3. delivery of a written notice by PPA Seller if any of the events described in [NOTE: Insert reference to bankruptcy event of default in PPA.] occurs with respect to Financing Party; or

4. delivery of a written notice by Financing Party if any of the events described in [NOTE: Insert reference to bankruptcy event of default in PPA.] occurs with respect to PPA Seller.

(b) The Assignment Period will end as of the date specified in the termination notice, which date shall not be earlier than the end of the last day of the calendar month in which such notice is delivered if termination is pursuant to clauses (a)(1) or (a)(2) above.

(c) All Assigned Rights and Obligations shall revert from Financing Party to PPA Buyer upon the expiration of or early termination of the Assignment Period, provided that (i) Financing Party shall remain responsible for the Delivered Product Payment Obligation with respect to any Assigned Product delivered to Financing Party prior to the end of the Assignment Period, and (ii) any legal restrictions on the effectiveness of such reversion (whether arising under bankruptcy law or otherwise) shall not affect the expiration or early termination of the Assignment Period.

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

Financing Party

__________________________
__________________________
Email: ________________

4. **Miscellaneous.** Sections [_] [Severability], [_] [Counterparts], [_] [Amendments] and [_] [No Agency, Partnership, Joint Venture or Lease] of the PPA are incorporated by reference into this Agreement, *mutatis mutandis*, as if fully set forth herein.

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

   (a) **Governing Law.** This Assignment Agreement and the rights and duties of the parties under this assignment agreement will be governed by and construed, enforced and performed in accordance with the laws of the state of New York, without reference to any conflicts of laws provisions that would direct the application of another jurisdiction’s laws; provided, however, that the authority of PPA Buyer to enter into and perform its obligations under this assignment agreement shall be determined in accordance with the laws of the State of California.

   (b) **Jurisdiction.** Each party submits to the exclusive jurisdiction of (a) the courts of the state of New York located in the Borough of Manhattan, (b) the federal courts of the United States of America for the Southern District of New York or (c) the federal courts of the United States of America in any other state.

   (c) **Waiver of Right to Trial by Jury.** Each party waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury in respect of any suit, action or proceeding relating to this assignment agreement.

   [Remainder of Page Intentionally Blank]
IN WITNESS WHEREOF, the Parties have executed this Assignment Agreement effective as of the date first set forth above.

PPA SELLER
By: ............................................
Name: 
Title:

PPA BUYER
By: ............................................
Name: 
Title:

FINANCING PARTY
By: ............................................
Name: 
Title:

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

[ISSUER]
By: ............................................
Name: 
Title:
Appendix 1

Assigned Rights and Obligations

PPA: The Power Purchase Agreement dated [___________] by and between PPA Buyer and PPA Seller.

“Assignment Period” means the period beginning on[___________] and extending until[___________], provided that in no event shall the Assignment Period extend past the earlier of (i) the termination of the Assignment Period pursuant to Section 4 of the Assignment Agreement and (ii) the end of the delivery period under the PPA.

Assigned Product: [Describe and define]

Further Information: [Include, if any]

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.
Staff Report – Agenda Item 7

To: Clean Power Alliance (CPA) Board of Directors

From: Natasha Keefer, Director of Power Planning & Procurement

Approved By: Ted Bardacke, Executive Director

Subject: 2020 Integrated Resource Plan (IRP)

Date: July 9, 2020

RECOMMENDATION
Delegate authority to the Energy Planning & Resources Committee (Energy Committee) to approve CPA’s 2019-2020 Integrated Resource Plan (IRP) for filing with the California Public Utilities Commission (CPUC).

SUMMARY
As discussed at the March 5, 2020, Board meeting, CPA is required to file an IRP to the California Public Utilities Commission (CPUC). The IRP is a long-term planning document that shows what type energy resources an LSE, including a CCA, plans to use to meet its load. The original filing date was May 1, 2020, but has been extended to September 1, 2020, in a CPUC ruling issued on April 13, 2020. This ruling also requires that load-serving entities (LSEs) submit two planning IRP portfolios, rather than one portfolio as originally ordered.

The last Board meeting before the September 1 deadline is on July 9 and due to the change in the submittal requirements, CPA’s IRP is not ready for submission. In order to make full use of the time available to complete the filing and afford flexibility to respond to possible last-minute changes adopted by the CPUC, staff recommends delegating final approval authority to the Energy Committee during its regularly scheduled August 26 meeting. This timing will enable staff to receive input from the full Board at this July Board meeting, the Community Advisory Committee in July, and the Executive Committee in
August prior to presenting the two final IRP portfolio plans to the Energy Committee at its August meeting.

This proposed delegation is similar to the action the Board took in June 2018, when the Energy Committee was authorized to approve the IRP filing after multiple changes to submission requirements by the CPUC extended the time necessary to complete for CPA staff and consultants to complete the work.

Preliminary results for the two 2020 IRP portfolios are provided in the presentation attached to this staff report. In addition to the recommended delegation to the Energy Committee, staff requests feedback from the Board on the content of the IRP.

**ATTACHMENTS**

1) 2020 IRP Presentation
2020 Integrated Resource Plan Update

Thursday, July 9, 2020
Background

• The submission deadline for the 2020 Integrated Resources Plan (IRP) has been extended to September 1\textsuperscript{st}

• Load serving entities (LSEs) are now required to submit two compliant plans, rather than one

• REQUESTED ACTION: Delegate Board approval of the two-portfolio submission to the Energy Committee

• CPA is conducting a joint CCA\textsuperscript{1} IRP modeling effort with support from a third-party resource planning consultant, Siemens

• \textbf{Modeling results presented today are preliminary and subject to change}

\footnotesize{(1) The Joint CCAs include CPA, East Bay Community Energy, Peninsula Clean Energy, and San Jose Clean Energy}
Requested Action: Board Approval of IRP

- The CPUC requires that IRPs be approved by CCAs’ governing boards
- Given the short timeframe to complete the IRP submission and because no August Board meeting is scheduled, staff is requesting the Board to delegate approval authority to the Energy Committee
- This is consistent with the Board Approval process implemented for the 2018 IRP
Conforming IRP Plan Requirements

- The CPUC requires all LSEs to submit “Conforming” Plans that must be consistent with the CPUC’s Reference System Plans (RSPs).
- The CPUC’s final decision requires LSEs to submit two conforming plans:
  - 46 million metric ton (MMT) statewide greenhouse gas (GHG) emissions target by 2030
  - 38 MMT statewide GHG emissions target by 2030
- The CPUC also prescribes other portfolio assumptions:
  - Assigned load forecast, including electric vehicle and behind-the-meter generation penetration assumptions
  - Representative resources recommended to be procured and associated resource costs
  - Other financial assumptions, e.g. gas and carbon price forecasts
# CPUC Reference System Plans (Statewide)

<table>
<thead>
<tr>
<th>Metric</th>
<th>46 MMT Case</th>
<th>38 MMT Case</th>
</tr>
</thead>
<tbody>
<tr>
<td>CAISO GHGs (MMT)</td>
<td>37.9</td>
<td>31.1</td>
</tr>
<tr>
<td>Selected Resources (by 2030)</td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td>2.8 GW wind (in state)</td>
<td>2.8 GW wind (in state)</td>
</tr>
<tr>
<td></td>
<td>0 GW wind (out state)</td>
<td>1.1 GW wind (out state)</td>
</tr>
<tr>
<td></td>
<td>11.8 GW solar</td>
<td>17.2 GW solar</td>
</tr>
<tr>
<td></td>
<td>11.4 GW battery storage</td>
<td>15.8 GW battery storage</td>
</tr>
<tr>
<td></td>
<td>0.9 GW of long-duration storage</td>
<td>1.6 GW of long-duration storage</td>
</tr>
<tr>
<td></td>
<td>0.2 GW shed DR</td>
<td>0.1 GW shed DR</td>
</tr>
<tr>
<td>Gas Capacity Not Retained</td>
<td>3.7 GW</td>
<td>6.5 GW</td>
</tr>
<tr>
<td>Selected In State Renewables</td>
<td>14.6 GW</td>
<td>19.8 GW</td>
</tr>
<tr>
<td>Total Resource Cost (TRC)</td>
<td>$45.4 billion/yr.</td>
<td>$46.5 billion/yr.</td>
</tr>
<tr>
<td>Incremental TRC (relative to 46 MMT)</td>
<td>-</td>
<td>$1.1 billion/yr.</td>
</tr>
</tbody>
</table>
Joint CCA Modeling Objectives

• Evaluate CPA’s current portfolio and a range of alternative future portfolios to meet customers’ electrical energy needs in an affordable, system-wide manner

• Planning balances the following procurement priorities:
CPA Targets

- For the purposes of this compliance filing, CPA has assumed conservative environmental targets reflecting the priorities of CPA’s communities and the JPA goals.

- Annual RPS targets assume current member jurisdictions’ default rate selections (Lean, Clean, and 100% Green) with growth in the overall renewable penetration to account for increasing annual RPS Program compliance targets that will impact the Lean and Clean products.

- GHG-free targets assume an annual decrease in GHG emissions commensurate with CPA’s JPA goal of having a lower overall GHG emissions intensity than SCE.
  
  - Additional GHG-free portfolio content above RPS portfolio content is being met with existing hydro resources (no new large hydro, no nuke).
CPA Resource Plan – 46 MMT

CPA New Resource Buildout (Cumulative MW)

- Utility-Scale Solar
- Battery Storage
- In-state Wind
- Out-of-state Wind
- Geothermal

Years:
- 2021
- 2022
- 2023
- 2024
- 2026
- 2030
CPA Resource Plan – 46 MMT

CPA RPS and GHG Free

- CPA RPS Target
- RPS % of Load
- CPA GHG Target
- GHG-Free % of Load

2020 2021 2022 2023 2024 2025 2026 2027 2028 2029 2030
Preliminary Modeling Results

- More Solar, In-state Wind, and Geothermal Resources are selected for the 38 MMT Case.
- Storage needs are similar for the 46 MMT vs 38 MMT Case.
- Total portfolio costs for the 38 MMT case is 2% higher relative to the 46 MMT case in 2030 for an ~20% reduction in emissions and more in-state resources.
Next Steps

• Staff is requesting the Board to delegate IRP approval authority to the Energy Committee

• The Joint CCAs are reviewing the CPUC’s filing requirements and working to finalize modeling

• Staff plans to vet preliminary modeling results with the Community Advisory Committee in July

• Staff expects to present the final IRP results to the Energy Committee on August 26th for approval consideration, with the final filing due on September 1st
To: Clean Power Alliance (CPA) Board of Directors
From: Allison Mannos, Sr. Manager of Marketing & Customer Engagement
Approved by: Ted Bardacke, Executive Director
Subject: Update on COVID-19 Relief Credits and “Stay Engaged” Marketing Campaign
Date: July 9, 2020

RECOMMENDATION
Receive and file.

Staff will provide an update to the Board of Directors on COVID-19 relief credits and marketing campaign.

ATTACHMENT
1) COVID-19 Relief Credits and Marketing Campaign Presentation
Status Update on COVID-19 Relief Credits and Marketing Campaign

July 9, 2020
Summary

• Timeline of COVID-19 Relief Efforts

• Communication Strategies to Market the Relief Programs

• Customer Participation Statistics

• Next Steps to Enhance Participation
Timeline of COVID-19 Relief Efforts

• March 13: Voluntary Suspension of Disconnections
• March 16: Shelter in Place Orders in Effect
• March 17: Mandatory Suspension of Disconnections
• March/April: CPA promotion of CARE / FERA / Medical Baseline and other SCE resources
• May 7: Board approves $1 million for COVID-19 Relief Credits, retroactive to March 16
• May/June: CPA promotion of Relief Credits available via CARE/FERA/MB and Payment Plan sign ups
• June 4: Board approves up to an additional $1 million available for COVID-19 Relief Credits
COVID Relief Marketing Campaign Strategies:

• Facebook ads (English, Spanish, and Chinese)
• Radio ads (English, Spanish, and Mandarin/Cantonese)
• Digital local newspaper ads (English and Chinese)
• Training CPA’s Community Based Organization partners to promote
• Chamber of Commerce and Member Agency Emails and Materials
Marketing Reach:

- In May, CPA reached over 1 million people through the multi-lingual marketing campaign to promote both COVID relief and CARE/FERA enrollment.
  - Many of these were monolingual and/or low-income customers in our service territory, as indicated by our targeted marketing and website and call center data.
  - Higher number of bilingual Spanish, Mandarin, and Cantonese call requests over May and June than usual.
Sample of Marketing Efforts

Has your business been affected by COVID-19?

Sign up for electric bill payment plans to get relief today!

El Poder de Conectar

Clean Power Alliance’s COVID-19 Relief Program

Clean Power Alliance (CPA) is here to help our customers during COVID-19. We understand choosing between rent, bills, and groceries or payroll is a situation no family or small business should have to face, especially during a crisis.

We believe our customers deserve reliable and affordable electricity with manageable payments. That’s why we’re allocating $1 million in bill assistance to COVID-19 impacted customers who sign up for financial assistance through Southern California Edison (SCE). We’re committed to supporting our communities most in need and doing our part during this difficult time. Learn more at cleanpoweralliance.org/covid19

How it Works

Residential Customers

Your Options:

1. CPA will provide a one-time $25 bill credit to residential customers who sign up for CARE, FIBRA, or Medical Baseline assistance through SCE on or after March 16.

2. Already on CARE, FIBRA, or Medical Baseline? CPA will give you a one-time $25 bill credit if you sign up for a payment plan through SCE on or after March 16.

No need to notify CPA once you sign up for the financial assistance programs or payment plans. SCE will notify us when your program enrollment or payment plan is set up, and then CPA will automatically apply your $25 bill credit as soon as your next electric bill. You can still get this electric bill assistance even if you’re also receiving unemployment benefits.

Small Business Customers

CPA will give a one-time $50 bill credit to small business customers (on GS-1 or GS-2 rates) who sign up for a payment plan through SCE on or after March 16.

No need to notify CPA once you sign up for a payment plan. SCE will notify us when your payment plan is set up, and then CPA will automatically apply your $50 bill credit as soon as your next electric bill. You can still get this electric bill assistance even if you’re also receiving federal CARES Act benefits.

Who to Contact

Clean Power Alliance will provide bill credits on a first-come, first-served basis until funds are exhausted. To sign up for a payment plan or get enrolled in financial assistance programs, please call SCE today at 800-655-4555 or visit scse.com/covid19.
Overall COVID-19 Relief Credit Uptake – As of June 21, 2020

<table>
<thead>
<tr>
<th>COVID Relief Credit Type</th>
<th>COVID Relief Funds Provided ($)</th>
<th>COVID Relief Credits Provided (#)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Residential: New CARE/FERA/Medical Baseline Customer Enrollments ($25 credit)</td>
<td>$448,925</td>
<td>17,957</td>
</tr>
<tr>
<td>Residential: Existing CARE/FERA/Medical Baseline Customers on New Payment Plans ($25 credit)</td>
<td>$118,250</td>
<td>4,730</td>
</tr>
<tr>
<td>Small Business: Customers on New Payment Plans ($50 credit)</td>
<td>$38,975</td>
<td>780</td>
</tr>
<tr>
<td>Grand Total</td>
<td>$606,150</td>
<td>23,467</td>
</tr>
</tbody>
</table>
**Recent Marketing Trends**

**CPA COVID-19 Credits Distributed 5/4 - 6/15**

*Prior to May 11, CPA issued one large batch of COVID credits to eligible customers going back to March 16.*
# Top 10 Jurisdictions: Overall COVID Relief Customer Participation as of June 21, 2020

<table>
<thead>
<tr>
<th>Jurisdictions with the highest volume of COVID-19 credits</th>
<th># of CPA Customers</th>
<th>% of CPA Customer Base</th>
<th># of COVID Credits</th>
<th>$ of COVID Credits</th>
<th>% of Total COVID Credits Given</th>
</tr>
</thead>
<tbody>
<tr>
<td>LA County</td>
<td>277,868</td>
<td>28%</td>
<td>8,566</td>
<td>$220,625</td>
<td>36.5%</td>
</tr>
<tr>
<td>Oxnard</td>
<td>54,523</td>
<td>5.6%</td>
<td>1,531</td>
<td>$39,850</td>
<td>6.52%</td>
</tr>
<tr>
<td>Downey</td>
<td>36,981</td>
<td>3.8%</td>
<td>1,225</td>
<td>$31,450</td>
<td>5.22%</td>
</tr>
<tr>
<td>Simi Valley</td>
<td>42,876</td>
<td>4.4%</td>
<td>973</td>
<td>$25,200</td>
<td>4.15%</td>
</tr>
<tr>
<td>Alhambra</td>
<td>33,844</td>
<td>3.5%</td>
<td>922</td>
<td>$23,375</td>
<td>3.93%</td>
</tr>
<tr>
<td>Ventura</td>
<td>42,698</td>
<td>4.4%</td>
<td>911</td>
<td>$23,650</td>
<td>3.88%</td>
</tr>
<tr>
<td>Hawthorne</td>
<td>28,293</td>
<td>2.9%</td>
<td>903</td>
<td>$23,050</td>
<td>3.85%</td>
</tr>
<tr>
<td>Carson</td>
<td>28,737</td>
<td>3.0%</td>
<td>851</td>
<td>$21,775</td>
<td>3.63%</td>
</tr>
<tr>
<td>Thousand Oaks</td>
<td>44,175</td>
<td>4.5%</td>
<td>824</td>
<td>$21,000</td>
<td>3.51%</td>
</tr>
<tr>
<td>Whittier</td>
<td>28,321</td>
<td>2.9%</td>
<td>817</td>
<td>$21,400</td>
<td>3.48%</td>
</tr>
</tbody>
</table>
## Top 10 Jurisdictions: Residential COVID Relief Customer Participation as of June 21, 2020

<table>
<thead>
<tr>
<th>Jurisdictions with the highest number of COVID-19 credits</th>
<th># of Res Customers</th>
<th>% of Res Customer Base</th>
<th># of Res COVID Credits</th>
<th>% of Res COVID Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>LA County</td>
<td>251,601</td>
<td>29.7%</td>
<td>8,306</td>
<td>36.61%</td>
</tr>
<tr>
<td>Oxnard</td>
<td>47,447</td>
<td>5.6%</td>
<td>1,468</td>
<td>6.47%</td>
</tr>
<tr>
<td>Downey</td>
<td>32,687</td>
<td>3.9%</td>
<td>1,192</td>
<td>5.25%</td>
</tr>
<tr>
<td>Simi Valley</td>
<td>37,738</td>
<td>4.5%</td>
<td>938</td>
<td>4.13%</td>
</tr>
<tr>
<td>Alhambra</td>
<td>29,464</td>
<td>3.5%</td>
<td>909</td>
<td>4.01%</td>
</tr>
<tr>
<td>Hawthorne</td>
<td>24,572</td>
<td>2.9%</td>
<td>884</td>
<td>3.90%</td>
</tr>
<tr>
<td>Ventura</td>
<td>35,730</td>
<td>4.2%</td>
<td>876</td>
<td>3.86%</td>
</tr>
<tr>
<td>Carson</td>
<td>24,463</td>
<td>2.9%</td>
<td>831</td>
<td>3.66%</td>
</tr>
<tr>
<td>Thousand Oaks</td>
<td>38,308</td>
<td>4.5%</td>
<td>808</td>
<td>3.56%</td>
</tr>
<tr>
<td>Whittier</td>
<td>24,611</td>
<td>2.9%</td>
<td>778</td>
<td>3.43%</td>
</tr>
</tbody>
</table>
# Top 10 Jurisdictions: Small Business COVID Relief Customer Participation as of June 21, 2020

<table>
<thead>
<tr>
<th>Jurisdictions with the highest number of COVID-19 credits</th>
<th># of Com Customers</th>
<th>% of Com Customer Base</th>
<th># of COVID Small Biz Credits</th>
<th>% of COVID Small Biz Credits</th>
</tr>
</thead>
<tbody>
<tr>
<td>LA County</td>
<td>26,267</td>
<td>21.1%</td>
<td>260</td>
<td>33.3%</td>
</tr>
<tr>
<td>Oxnard</td>
<td>7,076</td>
<td>5.7%</td>
<td>63</td>
<td>8.08%</td>
</tr>
<tr>
<td>Whittier*</td>
<td>3,710</td>
<td>3.0%</td>
<td>39</td>
<td>5.0%</td>
</tr>
<tr>
<td>Simi Valley</td>
<td>5,138</td>
<td>4.1%</td>
<td>35</td>
<td>4.49%</td>
</tr>
<tr>
<td>Ventura</td>
<td>6,968</td>
<td>5.6%</td>
<td>35</td>
<td>4.49%</td>
</tr>
<tr>
<td>Downey</td>
<td>4,294</td>
<td>3.4%</td>
<td>33</td>
<td>4.23%</td>
</tr>
<tr>
<td>Paramount*</td>
<td>2,824</td>
<td>2.3%</td>
<td>29</td>
<td>3.72%</td>
</tr>
<tr>
<td>Santa Monica*</td>
<td>7,917</td>
<td>6.3%</td>
<td>27</td>
<td>3.46%</td>
</tr>
<tr>
<td>West Hollywood*</td>
<td>3,739</td>
<td>3.0%</td>
<td>22</td>
<td>2.82%</td>
</tr>
<tr>
<td>Carson</td>
<td>4,274</td>
<td>3.4%</td>
<td>20</td>
<td>2.56%</td>
</tr>
</tbody>
</table>

*New to top 10 list or significantly higher on list as compared to Residential COVID credits*
Future COVID-19 Relief Program Marketing

• The next round will be focused on deepening outreach in Disadvantaged Communities and with small business customers, with some new channels, including disseminating printed fliers to member agencies and key service providers in our service territory.

• We will focus primarily on digital newspaper ads, Facebook ads, bus ads, and coordinating getting fliers to member agencies/community centers.
Staff Report – Agenda Item 9

To: Clean Power Alliance (CPA) Board of Directors

From: Christian Cruz, Community Outreach Manager

Approved By: Ted Bardacke, Executive Director

Subject: Voyager Clean Energy Career Pathways Scholarship Program

Date: July 9, 2020

RECOMMENDATION
Receive and File.

BACKGROUND
In October 2018, the Board approved a 15-year power purchase agreement (PPA) with the Voyager Wind project. The developer (Terra-Gen) agreed to fund a $150,000 workforce development and education program to be co-administered by CPA and the developer over four years. In April 2019, the Board approved the Voyager Scholarship Program to distribute $150,000 in scholarship funds over four years, in $1,000 increments, to students enrolled in eligible energy career pathways at four community colleges in Los Angeles County and three in Ventura County. The Community Advisory Committee was instrumental in helping define the parameters of the Voyager Scholarship Program and remains involved in monitoring its progress.

Staff has collaborated with community college representatives to distribute the funding and to date, 29 students have been awarded a total of $33,000.00 in scholarships. The academic and career pathway programs or disciplines that student recipients of the scholarship can pursue include:

- Alternative Fuels / Electric Vehicles & Advanced Transportation Technology
- Alternative Energy & Electronics
- Architecture & Architectural Technology
- Biotech Manufacturing; Drafting Technology
- Energy Systems Technology; Engineering; Energy & Environmental Science
- Industrial Systems Technology & Maintenance; Manufacturing & Product Design
- Utilities.
Listed below are the seven community colleges that administered the scholarship funds and an update on the funds awarded to date.

**Los Angeles County**

- **Antelope Valley College Funds Awarded to Date:** $6,000 to 6 scholarship recipients.
- **Compton College Funds Awarded to Date:** First round of awards anticipated by Summer 2020 (delayed due to COVID-19).
- **East Los Angeles College Funds Awarded to Date:** $5,000 to 5 scholarship recipients.
- **Rio Hondo College Funds Awarded to Date:** $6,000 to 6 scholarship recipients.

**Ventura County**

- **Ventura College Funds Awarded to Date:** $4,000 to 4 scholarship recipients.
- **Oxnard College Funds Awarded to Date:** $8,000 to 4 scholarship recipients. Oxnard College committed to matching CPA funding, dollar for dollar, for their students.
- **Moorpark College Funds Awarded to Date:** $4,000 to 4 scholarship recipients.

The attached materials contain additional details on the program and highlight student scholarship recipients (Attachments 1 - 3).

**Next Steps**

Staff will continue to provide updates to the CAC and the Board on the progress of the scholarship program for the current 2020/21 academic year and for the remaining three academic years. Staff also plans to stay engaged with the community college students receiving funds from CPA’s Voyager Scholarship to track their future plans for higher education and/or employment in the clean energy sector and to monitor how the scholarship program contributes to a local career pipeline for the green economy.

CPA’s lessons learned from this program may be used to inform future workforce development initiatives, including funds from the recently-approved Mohave County Wind Farm PPA, in which the developer agreed to donate $1 million for CPA-directed workforce development efforts in Los Angeles and Ventura County.

**ATTACHMENTS**

1) Scholarship Program Presentation
2) Scholarship Program Distribution Report
3) Student Correspondence
Item 9

Voyager Scholarship Program Update
Background

• In October 2018, the Board approved a 15-year power purchase agreement (PPA) with the Voyager Wind project.

• The developer (Terra-Gen) agreed to fund a $150,000 workforce development and community college education scholarship program to be co-administered by CPA and the developer over four years.

• In April 2019, the Board approved the Voyager Scholarship Program to distribute $150,000 in scholarship funds over four years, in $1,000 increments, to students enrolled in eligible energy career pathways at four community colleges in Los Angeles County and three in Ventura County.
Colleges Awarded Funding

- Staff worked with the Community Advisory Committee to establish program parameters and distribution allocation:

**Los Angeles County ($100,000)**
- Rio Hondo College
- Antelope Valley College
- East Los Angeles College
- Compton College

**Ventura County ($50,000)**
- Ventura College
- Oxnard College
- Moorpark College
Eligible Programs

• Scholarship funds can support students enrolled in the following academic programs that support clean energy career pathways:

1. Alternative Fuels / Electric Vehicles & Advanced Transportation Technology;
2. Alternative Energy & Electronics;
3. Architecture & Architectural Technology;
4. Biotech Manufacturing; Drafting Technology;
5. Energy Systems Technology;
6. Engineering; Energy & Environmental Science;
7. Industrial Systems Technology & Maintenance;
8. Manufacturing & Product Design; and
9. Utilities
Scholarships Awarded

• To-date **$33,000** in scholarship funds have been awarded to students.

• Oxnard College matched the Voyager Scholarship dollar-for-dollar for a total of $8,000 in scholarship funding.

• **Student Majors** (full list of scholarship recipients attached to staff report):
  - Engineering
  - Architecture
  - Biotech
  - Automotive Technology
  - Environmental Science
Student Scholarship Recipient Testimonials

Makayla Byerly, Environmental Science & Resource Management, Moorpark College

- I ventured into Environmental Science. I felt as though I was headed down the right path and moving forward, I needed to support myself and pay for my tuition. I was working half days, five days a week and taking night classes at Moorpark College. I was fortunate enough to earn the chance to take on an internship through the Moorpark College Biotechnology Department. I overcame difficult challenges and my advisors helped me with my challenges, offered guidance, wisdom and helpful advice. At the end of my internship, I achieved my goal and was incredibly proud of the work I performed even though I had made many learning mistakes along the way. I went back to taking classes in environmental science and applied to California State University Channel Islands for Fall 2020.

- I have never been so excited about school and am looking forward to the amazing program that CSUCI has to offer. Students in the environmental science program are able to travel and study on the local Channel Islands which is an incredibly rare and unique opportunity. I'm planning on finishing my major courses in three school semesters in order to save money in tuition.
Antelope Valley College Student Scholarship Recipient Testimonials
### Clean Power Alliance Voyager Wind Clean Energy Career Pathways Scholarship Update

<table>
<thead>
<tr>
<th>College</th>
<th>Awards</th>
<th>Amount</th>
<th>Semester Awarded</th>
<th>Anticipated Next Round of Awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Rio Hondo College</td>
<td>6</td>
<td>$6,000</td>
<td>Fall '19/ Spring '20</td>
<td>Fall '20</td>
</tr>
<tr>
<td>Antelope Valley College</td>
<td>6</td>
<td>$6,000</td>
<td>Spring '20</td>
<td>Spring '21</td>
</tr>
<tr>
<td>East Los Angeles College</td>
<td>5</td>
<td>$5,000</td>
<td>Spring '20</td>
<td>Fall '20</td>
</tr>
<tr>
<td>Compton College</td>
<td>TBD</td>
<td>TBD</td>
<td>TBD</td>
<td>TBD</td>
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</tbody>
</table>

#### Los Angeles County ($100,000)

<table>
<thead>
<tr>
<th>College</th>
<th>Amount</th>
<th>Semester Awarded</th>
<th>Anticipated Next Round of Awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ventura College</td>
<td>$4,000</td>
<td>Spring '20</td>
<td>Spring '20</td>
</tr>
<tr>
<td>Oxnard College</td>
<td>$8,000*</td>
<td>Fall '20</td>
<td>Spring '21</td>
</tr>
<tr>
<td>Moorpark College</td>
<td>$4,000</td>
<td>Fall '20</td>
<td>Spring '21</td>
</tr>
</tbody>
</table>

### Total All Colleges 29 $33,000.00

#### Ventura County ($50,000)

<table>
<thead>
<tr>
<th>College</th>
<th>Amount</th>
<th>Semester Awarded</th>
<th>Anticipated Next Round of Awards</th>
</tr>
</thead>
<tbody>
<tr>
<td>Oxnard College</td>
<td>$8,000*</td>
<td>Fall '20</td>
<td>Spring '21</td>
</tr>
</tbody>
</table>

### Student Majors by College

- **Rio Hondo College**
  - Student Awardees: Ajiduah Ndubuisi, Paulina De Luna, Miguel Diaz, Maria Nava, Marcos Rodriguez, Rebecca Tarango

- **Antelope Valley College**
  - Electronics Technology and Electrical Engineering
  - Student Awardees: Steven Beltran, Angel Garcia, Raphael Hinanay, Raquel Medina, Connie Ortiz, Andrew Salcedo

- **East Los Angeles College**
  - Engineering Technology, Electric Technology, Architect & Architectural Technology, Drafting Technology
  - Student Awardees: William Chan, Irvin Kim, Mohammad Osmani, Jessica Ramirez, Jessica Rodriguez

- **Compton College**
  - Student Awardees: TBD

- **Ventura College**
  - Chemistry, Mechanical Engineering, Environmental Science, Architecture
  - Student Awardees: Cameren Bahnser, Angela Calderon, Lesly Calderon, and Stephanie Garibay

- **Oxnard College**
  - Environmental Science, HVAC, Automotive Technology
  - Student Awardees: Martha Gomez Mateo, Anthony Pantoja, Mario Ramirez, Geovani, Vazquez

- **Moorpark College**
  - Environmental Science, Engineering, Biotechnology
  - Student Awardees: Bobby Lara, Sabrina Kennedy, Abbey Austin-Wood, Makayala Byerly

*Oxnard College matched CPA scholarship funds dollar for dollar. Each award was for a total of $2,000.00

**Anticipated Majors to be awarded
Dear Clean Power Alliance Company,

My name is Bobby Lara and I'm currently transferring to a 4 year university as an electrical engineer. I'm undecided in which college I'm transferring too, but my choices are between UC Santa Barbara and Cal Poly SLO

Thank you so much for awarding me this scholarship, this is the first scholarship I've ever received. This is very special to me. I plan to the best of my ability take advantage of this opportunity given by you to pursue my dreams in education.

Again, Thank you so much for this scholarship

Bobby Lara
Dear Wonderful People at Clean Power Alliance Company:

Thank you so much for awarding me the Clean Power Alliance Voyager Scholarship! This means so much to me.

I am passionate about the environment and being able to help fix it. I especially hope to work toward supporting other sources of fuel/power out there that do not harm the Earth. Receiving your scholarship the first year is an honor for me.

Thank you so much!

Sincerely,

Abbey Austin-Wood
Dear Clean Power Alliance:

I want to start by thanking your company for supporting Moorpark College students and their educational goals. I am so grateful for your scholarship.

I will be using the scholarship award towards my Environmental Science and Resource Management Bachelor’s degree at CSUCI. Not having to worry on how to pay for my tuition this fall semester will allow me to focus more of my energy on my classes.

Your company is also making a great impact on our local community by providing sustainable, clean energy and by promoting alternative forms of energy.

Thank you for everything you do!

Sincerely,

Makayla Byerly
Dear Clean Power Alliance Company:

I would like to take this opportunity to sincerely thank you for choosing me as your Voyager scholarship recipient. This scholarship eases my financial burden and inspires me to continue my academic career with passion. I pledge to continue to do my best for my future. In addition, I will attempt to make you, and everyone else who has supported me along the way, proud. I am incredibly grateful for this scholarship and feel honored to be supported by the Clean Power Alliance Company.

Sincerely,

Sabrina Kennedy
Staff Report – Management Update

To: Clean Power Alliance (CPA) Board of Directors
From: Ted Bardacke, Executive Director
Subject: Management Update
Date: July 9, 2020

Phase X Enrollment
As a result of the June legal settlement between CPA and Southern California Edison resolving a dispute over “missing enrollments”, over the course of July, August and September, CPA will be enrolling approximately 44,000 new customers who should have been enrolled in CPA service over the past 2 ½ years. This phase of enrollment is collectively being called Phase X to distinguish it from Phases 1 through 5 of mass enrollment and the ongoing weekly enrollments that take place when a customer signs up for new electricity service in CPA territory.

While all CPA jurisdictions have some Phase X customers, the vast majority are concentrated in just three locations: unincorporated Los Angeles County (64%); unincorporated Ventura County (7%); and the City of Whittier (7%). A list of missing enrollments by jurisdiction is attached (Attachment 1).

In addition to the standard mail communications with newly enrolled or enrolling customers – four notices for mass enrollment and two notices for new service customers – on July 3, 2020 CPA and SCE began sending out an extra joint notice to each customer explaining the delayed enrollment in CPA, rate and opt-out options, cost impacts, customer credits and other administrative items. A copy of that letter is attached (Attachment 2).
CPA’s Customer Service Center is up to date on the pending customer enrollments and is prepared to assist customers in their transition to CPA service. Staff is also conducting specific outreach to CPA’s member agencies and large commercial customers to provide additional support during Phase X.

**Financial Performance**

CPA’s financial performance was ahead of budget in the month of April, recording net income of $8.8 million compared to a budget forecast of $2.5 million. Results reflect higher load and revenue that budgeted, a one-time wholesale sale of energy, and low energy spot market prices. For year-to-date net income of $35.3 million was $29.9 million above budgeted net income of $5.4 million, keeping CPA in a good liquidity position to weather COVID-19 economic and social uncertainty. The monthly financial dashboard for April is attached (Attachment 3).

**Customer Engagement & Community Based Outreach**

All in-person events and community outreach have been postponed due to COVID-19 precaution measures. As a result, CPA’s external affairs team has re-focused attention on digital channels and how to help Community Based Organization (CBO) Outreach grantees adapt to increase online outreach. On June 22, 2020, CPA held its second training with the five recipients of the CBO Outreach Grant to provide these community partners with information and culturally tailored materials needed to help CPA customers in disadvantaged communities enroll in the CPA Power Response Program. Grantees were also trained to promote the DAC referral incentives for this program, which would allow CPA customers to earn financial incentives for enrolling other DAC customers into the program.

**Opt-Actions**

As of May June, CPA’s commercial (Phases 1, 2, 4, and 5) opt-out rate was 7.12% and Residential (Phase 3) opt-out rate is 5.9%. Both of these percentages now include opt-outs from Westlake Village, which began service on June 1. CPA’s customer base has essentially stabilized in terms of number of accounts, although there has been a slight uptick in opt-outs by 100% Green customers since the COVID-19 induced economic downturn. A summary of opt-action data by jurisdiction is attached (Attachments 4 and 5).

Total opt-out by load is also stable, estimated to be 15.53%, reflecting higher opt-out rates among large commercial customers. Opt-out rates among new customer accounts continue to be significantly lower than opt-outs from accounts that were active during the mass enrollment phases, with CPA showing a net gain (new accounts minus closed accounts/opt-outs) of 4,010 customers in the first six months of 2020.

**Customer Service Center Performance**

Incoming calls to CPA’s Customer Service Center have increased slightly in May and June, with rising call volume due to customers calling regarding COVID-19 bill assistance, Westlake Village enrollment, and recent SCE rate increases. Total call volume in June was 3,380, up from May’s volume of 3,090 and April’s volume of 2,901. In June, 98.7% of calls were answered within 60 seconds, and average wait time was 18 seconds, similar to performance in May.

**Staffing Update**

After more than 2 years at CPA, Jennifer Ward will be moving to Orange County to take a new position as Senior Vice President for Government Affairs & Advocacy at the Orange County Business Council. Jennifer’s last day with CPA is today, July 9. Jennifer’s major projects/task responsibilities, including Phase X enrollment, Default Change Implementation, Service Territory Expansion, and Board Meeting Logistics are being divided up among other senior staff. Meanwhile, to fulfill Jennifer’s management
responsibilities of the External Affair team, Karen Schmidt will become Interim Director of External Affairs.

Over the summer, CPA will begin a search for Jennifer’s successor. In the meantime, a job announcement has been posted for a new Ventura County External Affairs Manager to take those responsibilities off Karen’s plate and prepare for her eventual transition to another part of the organization.

**Contracts Executed in June Under Executive Director Authority**

Adobe was contracted for extra services to provide electronic signature control and document management services at an annual cost of $3,200.

A list of non-energy contracts executed under the Executive Director’s signing authority is attached (Attachment 6). The list includes all open contracts as well as all contracts, open or completed, executed in the past 12 months.

**ATTACHMENTS**

1) List of Missing Enrollments by Jurisdiction
2) Joint CPA/SCE Missing Enrollment Letter to Customers
3) April 2020 Financial Dashboard
4) Residential Opt-Actions Report by Jurisdiction
5) Non-Residential Opt-Actions Report by Jurisdiction
6) Non-energy Contracts Executed under Executive Director Authority
## Missing Enrollments (Active Accounts)

### 100% Green Power Default

<table>
<thead>
<tr>
<th>CPA Cities &amp; Counties</th>
<th>Total Missing Enrollments</th>
<th>2020</th>
<th>2019</th>
<th>2018 and Prior</th>
<th>Domestic</th>
<th>Non-Domestic</th>
</tr>
</thead>
<tbody>
<tr>
<td>CULVER CITY, CITY OF</td>
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<td>5</td>
<td>380</td>
<td>41</td>
<td>332</td>
<td>94</td>
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<tr>
<td>OJAI, CITY OF</td>
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<td>37</td>
<td>9</td>
<td>29</td>
<td>18</td>
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<tr>
<td>OXNARD, CITY OF</td>
<td>783</td>
<td>9</td>
<td>675</td>
<td>99</td>
<td>643</td>
<td>140</td>
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<tr>
<td>ROULING HILLS ESTATES, CITY OF</td>
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<td>4</td>
<td>115</td>
<td>5</td>
<td>91</td>
<td>32</td>
</tr>
<tr>
<td>SANTA MONICA, CITY OF</td>
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<td>9</td>
<td>616</td>
<td>96</td>
<td>549</td>
<td>172</td>
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<tr>
<td>SOUTH PASADENA, CITY OF</td>
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<td>3</td>
<td>122</td>
<td>8</td>
<td>66</td>
<td>67</td>
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<tr>
<td>THOUSAND OAKS, CITY OF</td>
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<td>6</td>
<td>313</td>
<td>95</td>
<td>305</td>
<td>109</td>
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<tr>
<td>VENTURA, CITY OF</td>
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<td>21</td>
<td>871</td>
<td>176</td>
<td>845</td>
<td>223</td>
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<tr>
<td>VENTURA, COUNTY OF</td>
<td>3,175</td>
<td>146</td>
<td>2,821</td>
<td>140</td>
<td>2750</td>
<td>357</td>
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<tr>
<td>WEST HOLLYWOOD, CITY OF</td>
<td>380</td>
<td>0</td>
<td>346</td>
<td>44</td>
<td>336</td>
<td>37</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>7,203</strong></td>
<td><strong>204</strong></td>
<td><strong>6,286</strong></td>
<td><strong>713</strong></td>
<td><strong>5,915</strong></td>
<td><strong>1288</strong></td>
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### Clean Power Default

<table>
<thead>
<tr>
<th>CPA Cities &amp; Counties</th>
<th>Total Missing Enrollments</th>
<th>2020</th>
<th>2019</th>
<th>2018 and Prior</th>
<th>Domestic</th>
<th>Non-Domestic</th>
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<tbody>
<tr>
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<td>260</td>
<td>47</td>
<td>264</td>
<td>46</td>
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<td>CARSON, CITY OF</td>
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<td>49</td>
<td>249</td>
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<tr>
<td>CLAREMONT, CITY OF</td>
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<td>141</td>
<td>45</td>
<td>143</td>
<td>44</td>
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<tr>
<td>DOWNNEY, CITY OF</td>
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<td>263</td>
<td>33</td>
<td>229</td>
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<tr>
<td>HAWAIIAN GARDENS, CITY OF</td>
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<td>0</td>
<td>12</td>
<td>4</td>
<td>12</td>
<td>4</td>
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<tr>
<td>LOS ANGELES, COUNTY OF</td>
<td>26,765</td>
<td>1,143</td>
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<td>24609</td>
<td>1156</td>
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<td>MALIBU, CITY OF</td>
<td>438</td>
<td>4</td>
<td>391</td>
<td>43</td>
<td>318</td>
<td>120</td>
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<td>MANHATTAN BEACH, CITY OF</td>
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<td>2</td>
<td>308</td>
<td>27</td>
<td>229</td>
<td>108</td>
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<tr>
<td>MOORPARK, CITY OF</td>
<td>66</td>
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<td>54</td>
<td>10</td>
<td>45</td>
<td>21</td>
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<td>REDONDO BEACH, CITY OF</td>
<td>415</td>
<td>5</td>
<td>368</td>
<td>42</td>
<td>319</td>
<td>96</td>
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<tr>
<td>SIERRA MADRE, CITY OF</td>
<td>34</td>
<td>1</td>
<td>27</td>
<td>8</td>
<td>28</td>
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<tr>
<td>WHITTIER, CITY OF</td>
<td>2,963</td>
<td>133</td>
<td>2,779</td>
<td>51</td>
<td>2919</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>32,260</strong></td>
<td><strong>1,299</strong></td>
<td><strong>29,616</strong></td>
<td><strong>1,345</strong></td>
<td><strong>29418</strong></td>
<td><strong>2842</strong></td>
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### Lean Power Default

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<tr>
<th>CPA Cities &amp; Counties</th>
<th>Total Missing Enrollments</th>
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<th>2019</th>
<th>2018 and Prior</th>
<th>Domestic</th>
<th>Non-Domestic</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGOURA HILLS, CITY OF</td>
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<td>56</td>
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<td>ARCADIA, CITY OF</td>
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<td>81</td>
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<td>CALABASAS, CITY OF</td>
<td>102</td>
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<td>CAMARILLO, CITY OF</td>
<td>658</td>
<td>9</td>
<td>582</td>
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<td>545</td>
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<td>HAWTHORNE, CITY OF</td>
<td>253</td>
<td>4</td>
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<td>75</td>
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<tr>
<td>PARAMOUNT, CITY OF</td>
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<td>SIMI VALLEY, CITY OF</td>
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<tr>
<td>TEMPLE CITY, CITY OF</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>2,459</strong></td>
<td><strong>37</strong></td>
<td><strong>2,113</strong></td>
<td><strong>309</strong></td>
<td><strong>1938</strong></td>
<td><strong>521</strong></td>
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</table>

### Total All Missing Enrollments Percentages by County (Active)

<table>
<thead>
<tr>
<th>Total Missing Accounts</th>
<th>Missing Enrollments % by Count</th>
<th>Domestic</th>
<th>% of Domestic by Count</th>
<th>Non-Domestic</th>
<th>% of Non-Domestic by Count</th>
</tr>
</thead>
<tbody>
<tr>
<td>LA County</td>
<td>35,191</td>
<td>83.94%</td>
<td>31,638</td>
<td>3,553</td>
<td>84.89%</td>
</tr>
<tr>
<td>Ventura County</td>
<td>6,731</td>
<td>16.06%</td>
<td>5,633</td>
<td>1,098</td>
<td>84.89%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>41,922</td>
<td>100.00%</td>
<td>37,271</td>
<td>4,651</td>
<td>100.00%</td>
</tr>
</tbody>
</table>
To Our Valued Customer,

On behalf of Clean Power Alliance and Southern California Edison (SCE), thank you for being our shared customer. This letter is to inform you of your upcoming automatic enrollment with Clean Power Alliance’s electricity generation service and provide details about why your enrollment is taking place later than your neighboring residents and businesses.

Clean Power Alliance is the locally controlled Community Choice Aggregator (CCA) that supplies electricity to 32 communities in Los Angeles and Ventura Counties, including yours. For Clean Power Alliance customers, SCE continues to deliver your power, send your bills and collect payment, and resolve outages or power delivery issues. Your community joined Clean Power Alliance in 2018 or 2019, automatically making Clean Power Alliance the default energy generation provider for customers in your area. However, due to an SCE system issue, you were not enrolled with Clean Power Alliance. SCE and Clean Power Alliance worked together to resolve the issue and scheduled your enrollment with Clean Power Alliance to take place with your first meter read date on or after <Start>.

After your switch to Clean Power Alliance, SCE will continue sending your bills with SCE charges for delivery and separate Clean Power Alliance charges for energy generation. Clean Power Alliance is not an added charge but replaces SCE’s charges for energy generation. Clean Power Alliance will send additional information on your options for changing rates, and special programs that may apply to your account(s).

### Your Options:
- If you do nothing, your account will automatically transition from SCE’s energy generation service to Clean Power Alliance’s <Default>.*

- You may also select a different Clean Power Alliance rate option at any time: <Options>. Visit cleanpoweralliance.org/compare to learn more.

- You can also opt out of Clean Power Alliance and remain with SCE for both energy generation and delivery services.

To change your rate or opt out, please contact Clean Power Alliance at 888-585-3788 (TTY: 323-214-1296) or customerservice@cleanpoweralliance.org, or visit cleanpoweralliance.org.

*Clean Power Alliance pricing for typical residential or business customer. Select commercial rates may be higher. Please contact Clean Power Alliance for more information.
Questions regarding SCE’s services should be directed to 800-974-2356, Monday - Friday, 7:00 a.m. - 7:00 p.m., Saturday, 8:00 a.m. - 5:00 p.m. For emergency services, such as reporting a power outage or downed power lines, SCE representatives are available 24 hours a day, 7 days a week, at 800-611-1911.

We apologize for the delay in your enrollment with Clean Power Alliance and we look forward to continuing to provide you with reliable electricity options and the highest quality customer service.

Sincerely,

Jennifer Ward
Director of External Affairs
Clean Power Alliance

Michael B. Williams
Principal Manager
Southern California Edison

Southern California Edison is not affiliated with Clean Power Alliance and does not set, influence, or verify Clean Power Alliance’s price comparison or portfolio content. Clean Power Alliance is locally controlled by its 32 member Cities and Counties and its generation rates are not regulated by the California Public Utilities Commission (CPUC). Questions related to Clean Power Alliance rates and portfolio content should be directed to Clean Power Alliance customer service at 888-585-3788 (TTY: 323 214-1296) or customerservice@cleanpoweralliance.org. Questions related to SCE’s rates and portfolio content should be directed to SCE customer service at 800-974-2356. For a joint rate comparison prepared by SCE and Clean Power Alliance, please visit sce.com/cca.
Financial Dashboard

Summary of Financial Results

<table>
<thead>
<tr>
<th></th>
<th>April</th>
<th>Year-to-Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Actual</td>
<td>Budget</td>
</tr>
<tr>
<td>Energy Revenues</td>
<td>$48.3</td>
<td>$44.6</td>
</tr>
<tr>
<td>Cost of Energy</td>
<td>$37.5</td>
<td>$39.8</td>
</tr>
<tr>
<td>Net Energy Revenue</td>
<td>$10.8</td>
<td>$4.8</td>
</tr>
<tr>
<td>Operating Expenditures</td>
<td>$1.9</td>
<td>$2.3</td>
</tr>
<tr>
<td>Net Income</td>
<td>$8.8</td>
<td>$2.5</td>
</tr>
</tbody>
</table>

Note: Numbers may not add up due to rounding.

- CPA recorded net income for the month that was ahead of budget. Results reflect higher load and revenue that budgeted, a one-time wholesale sale of energy, and low energy spot market prices. Wholesale sales of energy are netted from the cost of energy.

- For year-to-date:
  - Revenues of $644.9 million were $25.8 million or 4% above budget.
  - Cost of energy of $591.3 million was 1% below to budgeted energy costs.
  - Operating expenditures of $18.3 million were 14% lower than budgeted primarily due to lower than budgeted staffing, legal services, and Data & SCE service fees.
  - Net income of $35.3M was $29.9 million above budgeted net income of $5.4M.
  - Management believes that available liquidity and bank lines of credit are sufficient for CPA to continue to meet its obligations.

Definitions:
Accounts: Active Accounts represent customer accounts of active customers served by CPA per Calpine Invoice.
Opt-out %: Customer accounts opted out divided by eligible CPA accounts
YTD Sales Volume: Year to date sales volume represents the amount of energy (in gigawatt hours) sold to retail customers
Revenues: Retail energy sales less allowance for doubtful accounts
Cost of energy: Cost of energy includes direct costs incurred to serve CPA’s load
Operating expenditures: Operating expenditures include general, administrative, consulting, payroll and other costs required to fund operations
Net income: Net income represents the difference between revenues and expenditures before depreciation and capital expenditures
Cash and Cash Equivalents: Includes cash held as bank deposits.
Year to date (YTD): Represents the fiscal period beginning July 1, 2019
### Opt Percentage by City & County

<table>
<thead>
<tr>
<th>CPA Cities &amp; Counties</th>
<th>Default Option</th>
<th>Eligible Accounts</th>
<th>Opt Up %</th>
<th>Opt Mid %</th>
<th>Opt Down %</th>
<th>Opt Out %</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGOURA HILLS</td>
<td>Lean Power</td>
<td>7,536</td>
<td>0.40%</td>
<td>0.23%</td>
<td>0.00%</td>
<td>7.23%</td>
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<td>31,129</td>
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<td>Lean Power</td>
<td>20,026</td>
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<td>15,302</td>
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<td>1.54%</td>
<td>2.09%</td>
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<td>Lean Power</td>
<td>9,319</td>
<td>0.19%</td>
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<td>CAMARILLO</td>
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<td>26,818</td>
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<td>0.00%</td>
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</tr>
<tr>
<td>CARSON</td>
<td>Clean Power</td>
<td>25,589</td>
<td>0.09%</td>
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<td>1.11%</td>
<td>3.13%</td>
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<td>CLAREMONT</td>
<td>Clean Power</td>
<td>12,318</td>
<td>0.50%</td>
<td>0.00%</td>
<td>2.04%</td>
<td>7.48%</td>
</tr>
<tr>
<td>CULVER CITY</td>
<td>100% Green Power</td>
<td>16,767</td>
<td>0.00%</td>
<td>1.30%</td>
<td>4.02%</td>
<td>4.23%</td>
</tr>
<tr>
<td>DOWNEY</td>
<td>Clean Power</td>
<td>34,536</td>
<td>0.07%</td>
<td>0.00%</td>
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<tr>
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<td>Clean Power</td>
<td>3,273</td>
<td>0.03%</td>
<td>0.00%</td>
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<td>2.54%</td>
</tr>
<tr>
<td>HAWTHORNE</td>
<td>Lean Power</td>
<td>25,668</td>
<td>0.12%</td>
<td>0.04%</td>
<td>0.00%</td>
<td>1.94%</td>
</tr>
<tr>
<td>LOS ANGELES COUNTY</td>
<td>Clean Power</td>
<td>271,093</td>
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<td>0.00%</td>
<td>1.54%</td>
<td>3.94%</td>
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<td>MALIBU</td>
<td>Clean Power</td>
<td>5,744</td>
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<td>Clean Power</td>
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<td>0.31%</td>
<td>0.00%</td>
<td>3.06%</td>
<td>14.40%</td>
</tr>
<tr>
<td>OJAI</td>
<td>100% Green Power</td>
<td>3,200</td>
<td>0.00%</td>
<td>1.19%</td>
<td>5.16%</td>
<td>9.16%</td>
</tr>
<tr>
<td>OXNARD</td>
<td>100% Green Power</td>
<td>52,211</td>
<td>0.00%</td>
<td>0.49%</td>
<td>2.85%</td>
<td>6.85%</td>
</tr>
<tr>
<td>PARAMOUNT</td>
<td>Lean Power</td>
<td>13,094</td>
<td>0.05%</td>
<td>0.02%</td>
<td>0.00%</td>
<td>2.05%</td>
</tr>
<tr>
<td>REDONDO BEACH</td>
<td>Clean Power</td>
<td>30,245</td>
<td>0.35%</td>
<td>0.00%</td>
<td>1.93%</td>
<td>3.02%</td>
</tr>
<tr>
<td>ROLLING HILLS ESTATES</td>
<td>100% Green Power</td>
<td>2,999</td>
<td>0.00%</td>
<td>2.00%</td>
<td>7.57%</td>
<td>6.30%</td>
</tr>
<tr>
<td>SANTA MONICA</td>
<td>100% Green Power</td>
<td>49,128</td>
<td>0.00%</td>
<td>0.71%</td>
<td>3.34%</td>
<td>5.98%</td>
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<tr>
<td>SIERRA MADRE</td>
<td>Clean Power</td>
<td>4,927</td>
<td>0.73%</td>
<td>0.00%</td>
<td>2.33%</td>
<td>4.85%</td>
</tr>
<tr>
<td>SIMI VALLEY</td>
<td>Lean Power</td>
<td>42,703</td>
<td>0.16%</td>
<td>0.15%</td>
<td>0.00%</td>
<td>9.88%</td>
</tr>
<tr>
<td>SOUTH PASADENA</td>
<td>100% Green Power</td>
<td>11,052</td>
<td>0.00%</td>
<td>0.67%</td>
<td>3.46%</td>
<td>4.18%</td>
</tr>
<tr>
<td>TEMPLE CITY</td>
<td>Lean Power</td>
<td>11,842</td>
<td>0.14%</td>
<td>0.06%</td>
<td>0.00%</td>
<td>3.27%</td>
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<tr>
<td>THOUSAND OAKS</td>
<td>100% Green Power</td>
<td>47,159</td>
<td>0.00%</td>
<td>1.77%</td>
<td>7.44%</td>
<td>17.15%</td>
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<tr>
<td>VENTURA</td>
<td>100% Green Power</td>
<td>41,197</td>
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<td>1.11%</td>
<td>4.26%</td>
<td>10.64%</td>
</tr>
<tr>
<td>VENTURA COUNTY</td>
<td>100% Green Power</td>
<td>29,923</td>
<td>0.00%</td>
<td>1.02%</td>
<td>5.39%</td>
<td>12.89%</td>
</tr>
<tr>
<td>WEST HOLLYWOOD</td>
<td>100% Green Power</td>
<td>23,848</td>
<td>0.00%</td>
<td>0.48%</td>
<td>2.17%</td>
<td>2.61%</td>
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<td>WESTLAKE VILLAGE</td>
<td>Lean Power</td>
<td>3,266</td>
<td>0.15%</td>
<td>0.09%</td>
<td>0.00%</td>
<td>7.41%</td>
</tr>
<tr>
<td>WHITTIER</td>
<td>Clean Power</td>
<td>26,523</td>
<td>0.17%</td>
<td>0.00%</td>
<td>1.76%</td>
<td>4.97%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>924,496</strong></td>
<td><strong>0.13%</strong></td>
<td><strong>0.32%</strong></td>
<td><strong>2.14%</strong></td>
<td><strong>5.90%</strong></td>
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### Opt Percentage by Default Option

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<thead>
<tr>
<th>Default Option</th>
<th>Eligible Accounts</th>
<th>Opt Up %</th>
<th>Opt Mid %</th>
<th>Opt Down %</th>
<th>Opt Out %</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Green Power</td>
<td>277,484</td>
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<td>0.98%</td>
<td>4.32%</td>
<td>9.05%</td>
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<td>Clean Power Power</td>
<td>486,740</td>
<td>0.18%</td>
<td>0.00%</td>
<td>1.60%</td>
<td>4.09%</td>
</tr>
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<td>Lean Power</td>
<td>160,272</td>
<td>0.19%</td>
<td>0.13%</td>
<td>0.00%</td>
<td>5.94%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>924,496</strong></td>
<td><strong>0.13%</strong></td>
<td><strong>0.32%</strong></td>
<td><strong>2.14%</strong></td>
<td><strong>5.90%</strong></td>
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</tbody>
</table>
### Opt Percentage by City & County

<table>
<thead>
<tr>
<th>CPA Cities &amp; Counties</th>
<th>Default Option</th>
<th>Eligible Accounts</th>
<th>Opt Up %</th>
<th>Opt Mid %</th>
<th>Opt Down %</th>
<th>Opt Out %</th>
</tr>
</thead>
<tbody>
<tr>
<td>AGOURA HILLS</td>
<td>Lean Power</td>
<td>1,558</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
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<td>4,780</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.63%</td>
<td>7.55%</td>
</tr>
<tr>
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<td>Lean Power</td>
<td>3,520</td>
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<td>0.20%</td>
<td>0.00%</td>
<td>3.55%</td>
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<td>Clean Power</td>
<td>4,187</td>
<td>0.05%</td>
<td>0.00%</td>
<td>0.76%</td>
<td>2.67%</td>
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<td>Lean Power</td>
<td>1,243</td>
<td>0.00%</td>
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<td>0.00%</td>
<td>8.69%</td>
</tr>
<tr>
<td>CAMARILLO</td>
<td>Lean Power</td>
<td>4,732</td>
<td>1.39%</td>
<td>0.19%</td>
<td>0.00%</td>
<td>8.92%</td>
</tr>
<tr>
<td>CARSON</td>
<td>Clean Power</td>
<td>4,649</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.71%</td>
<td>6.97%</td>
</tr>
<tr>
<td>CLAREMONT</td>
<td>Clean Power</td>
<td>1,574</td>
<td>0.06%</td>
<td>0.00%</td>
<td>0.95%</td>
<td>5.46%</td>
</tr>
<tr>
<td>CULVER CITY</td>
<td>100% Green Power</td>
<td>3,402</td>
<td>0.00%</td>
<td>0.73%</td>
<td>1.73%</td>
<td>5.06%</td>
</tr>
<tr>
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<td>Clean Power</td>
<td>4,575</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.70%</td>
<td>4.48%</td>
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<td>Clean Power</td>
<td>608</td>
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<td>0.00%</td>
<td>0.49%</td>
<td>1.15%</td>
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<td>3,885</td>
<td>0.00%</td>
<td>0.03%</td>
<td>0.00%</td>
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</tr>
<tr>
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<td>Clean Power</td>
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<td>0.00%</td>
<td>0.99%</td>
<td>4.30%</td>
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<td>0.38%</td>
<td>4.88%</td>
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<td>1,782</td>
<td>1.12%</td>
<td>0.00%</td>
<td>0.95%</td>
<td>8.02%</td>
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<tr>
<td>OJAI</td>
<td>100% Green Power</td>
<td>775</td>
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<td>5.16%</td>
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<td>100% Green Power</td>
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<td>0.23%</td>
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<td>10.27%</td>
</tr>
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<td>PARAMOUNT</td>
<td>Lean Power</td>
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<td>0.00%</td>
<td>0.00%</td>
<td>5.00%</td>
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<td>Clean Power</td>
<td>4,713</td>
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<td>0.00%</td>
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<td>ROLLING HILLS ESTATES</td>
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<td>526</td>
<td>5.13%</td>
<td>0.19%</td>
<td>0.00%</td>
<td>7.98%</td>
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<tr>
<td>SANTA MONICA</td>
<td>100% Green Power</td>
<td>8,652</td>
<td>0.00%</td>
<td>0.83%</td>
<td>3.53%</td>
<td>7.14%</td>
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<td>494</td>
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<td>5,556</td>
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<td>1.38%</td>
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<td>Lean Power</td>
<td>1,341</td>
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<td>10.65%</td>
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<tr>
<td>VENTURA COUNTY</td>
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<td>6,793</td>
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<td>3.96%</td>
<td>20.98%</td>
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<td>100% Green Power</td>
<td>3,934</td>
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<td>0.28%</td>
<td>1.91%</td>
<td>3.71%</td>
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<td>Lean Power</td>
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<td>7.21%</td>
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<td>0.69%</td>
<td>3.21%</td>
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<tr>
<td><strong>Total</strong></td>
<td></td>
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<td><strong>0.32%</strong></td>
<td><strong>0.31%</strong></td>
<td><strong>2.10%</strong></td>
<td><strong>7.12%</strong></td>
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</table>

### Opt Percentage by Default Option

<table>
<thead>
<tr>
<th>Default Option</th>
<th>Eligible Accounts</th>
<th>Opt Up %</th>
<th>Opt Mid %</th>
<th>Opt Down %</th>
<th>Opt Out %</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Green Power</td>
<td>46,392</td>
<td>0.00%</td>
<td>0.86%</td>
<td>4.92%</td>
<td>11.18%</td>
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<td>63,157</td>
<td>0.46%</td>
<td>0.00%</td>
<td>0.89%</td>
<td>4.61%</td>
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<td>26,474</td>
<td>0.40%</td>
<td>0.08%</td>
<td>0.00%</td>
<td>5.98%</td>
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<tr>
<td><strong>Total</strong></td>
<td><strong>136,023</strong></td>
<td><strong>0.32%</strong></td>
<td><strong>0.31%</strong></td>
<td><strong>2.10%</strong></td>
<td><strong>7.12%</strong></td>
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</tbody>
</table>
## Clean Power Alliance

Non-energy contracts executed under Executive Director authority  
Rolling 12 months -- Open contracts shown in Bold

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Purpose</th>
<th>Month</th>
<th>NTE Amount</th>
<th>Status</th>
<th>Notes</th>
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<tr>
<td>801 South Grand Avenue (LA), LLC a Delaware limited liability comp</td>
<td>Storage Space Lease</td>
<td>July 2020</td>
<td>$1,980</td>
<td>Active</td>
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<tr>
<td>Adobe Inc.</td>
<td>CPA’s Internal Adobe Sign Electronic Signature Process</td>
<td>June 2020</td>
<td>$3,200</td>
<td>Active</td>
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<tr>
<td>NewGen Strategies and Solutions, LLC</td>
<td>Regulatory Support for 2021 ERRA forecast proceedings</td>
<td>May 2020</td>
<td>$71,240</td>
<td>Active</td>
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<tr>
<td>EZ Texting</td>
<td>Peak Management Pricing customer text messaging alerts</td>
<td>May 2020</td>
<td>$1,000</td>
<td>Active</td>
<td></td>
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<tr>
<td>Place and Page</td>
<td>Graphic Design Services</td>
<td>May 2020</td>
<td>$30,000</td>
<td>Active</td>
<td>FY2020-21 Contract</td>
</tr>
<tr>
<td>KnowledgeCity</td>
<td>Employee Training</td>
<td>May 2020</td>
<td>$3,745</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>SCS Engineers</td>
<td>CARB GHG Audit for 2019</td>
<td>May 2020</td>
<td>$4,500</td>
<td>Active</td>
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<tr>
<td>Davis Wright Tremaine, LLP</td>
<td>Legal Services Agreement (Regulatory Assistance)</td>
<td>April 2020</td>
<td>$4,000</td>
<td>Active</td>
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<tr>
<td>Snowflake Inc.</td>
<td>Cloud-Native Elastic Data Warehouse Service</td>
<td>April 2020</td>
<td>$36,000</td>
<td>Active</td>
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<td>Amazon Web Services</td>
<td>Cloud-based Database Hosting</td>
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<td>Abbot, Stringham and Lynch</td>
<td>2020 Green-E Certification - 100% Green Power Product</td>
<td>April 2020</td>
<td>$14,000</td>
<td>Active</td>
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<tr>
<td>Pinnacle Communication Services</td>
<td>Security, A/V, &amp; Cabling Infrastructure Design Services</td>
<td>April 2020</td>
<td>$25,540</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>AccuWeather Enterprise Solutions</td>
<td>Professional Forecasting Weather Services</td>
<td>April 2020</td>
<td>$6,400</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>ARUP</td>
<td>Local Programs Strategic Plan</td>
<td>March 2020</td>
<td>$12,500</td>
<td>Closed</td>
<td>10% NTE of original Board-approved contract amount of $125k</td>
</tr>
<tr>
<td>ICE Options Analytics LLC</td>
<td>Trading Platform Subscription Service</td>
<td>March 2020</td>
<td>$19,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Bold New Directions, Inc.</td>
<td>Management Training</td>
<td>March 2020</td>
<td>$17,995</td>
<td>Active</td>
<td>Increased to $20,328 in May 2020</td>
</tr>
<tr>
<td>Greenberg Glusker</td>
<td>Legal Services Agreement (PPA Negotiations)</td>
<td>March 2020</td>
<td>$59,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Energy Research Cooperative</td>
<td>Data &amp; Systems Strategic Plan</td>
<td>February 2020</td>
<td>$120,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Buchalter</td>
<td>Legal Services Agreement (Regulatory Support)</td>
<td>February 2020</td>
<td>$5,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>Clean Energy Counsel</td>
<td>Legal Services Agreement (PPA Negotiations/Energy Procurement)</td>
<td>January 2020</td>
<td>$114,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Burke, Williams, Sorenson, LLP</td>
<td>Legal Services Agreement (Brown Act, public entity governance issues and other legal services)</td>
<td>January 2020</td>
<td>$25,000</td>
<td>Active</td>
<td></td>
</tr>
</tbody>
</table>
## Clean Power Alliance

Non-energy contracts executed under Executive Director authority
Rolling 12 months -- Open contracts shown in Bold

<table>
<thead>
<tr>
<th>Vendor</th>
<th>Purpose</th>
<th>Month</th>
<th>NTE Amount</th>
<th>Status</th>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Omni Government Relations &amp; Pinnacle Advocacy, LLC</td>
<td>Lobbying Services</td>
<td>December 2019</td>
<td>$108,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Cameron-Cole, LLC</td>
<td>3rd Party Independent GHG Verification Services</td>
<td>November 2019</td>
<td>$9,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>CLG Group</td>
<td>Executive Training</td>
<td>November 2019</td>
<td>$15,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Elite Edge Consulting</td>
<td>Accounting system evaluation, selection, and implementation</td>
<td>November 2019</td>
<td>$100,000</td>
<td>Active</td>
<td>Extended to 9/30/2020 &amp; NTE increased from 50K to 100K</td>
</tr>
<tr>
<td>Surowski Design + Development</td>
<td>Web Development Services</td>
<td>October 2019</td>
<td>$12,000</td>
<td>Active</td>
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</tr>
<tr>
<td>Inventire Recruitment</td>
<td>Ongoing Recruitment Services</td>
<td>October 2019</td>
<td>$120,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>JLL</td>
<td>Real Estate Brokerage Services</td>
<td>October 2019</td>
<td>NA</td>
<td>Active</td>
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<tr>
<td>Siemens</td>
<td>Integrated Resource Planning for 2020 CPUC IRP Compliance</td>
<td>October 2019</td>
<td>$62,500</td>
<td>Active</td>
<td>25% cost share with 3 other CCAs</td>
</tr>
<tr>
<td>Jarvis, Fay &amp; Gibson, LLP</td>
<td>Legal Services Agreement (General Public Law, Commercial Real Estate Leases, and Environmental Matters)</td>
<td>September 2019</td>
<td>$30,000</td>
<td>Active</td>
<td>Increased from $10,000 to $30,000 in February 2020</td>
</tr>
<tr>
<td>Keyes &amp; Fox</td>
<td>Legal Services Agreement (Energy Procurement &amp; Legislative and Regulatory Issues)</td>
<td>September 2019</td>
<td>$25,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>The Harmon Press</td>
<td>Professional Printing Services</td>
<td>September 2019</td>
<td>$24,000</td>
<td>Active</td>
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</tr>
<tr>
<td>Place and Page</td>
<td>Graphic Design Services</td>
<td>September 2019</td>
<td>$15,000</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>The Climate Registry</td>
<td>2018 GHG Reporting</td>
<td>September 2019</td>
<td>$4,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Abbot, Stringham and Lynch</td>
<td>2018 CEC Power Source Disclosure Audit</td>
<td>August 2019</td>
<td>$12,400</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>West Coast Mailers</td>
<td>Bulk Mailing Services</td>
<td>August 2019</td>
<td>$20,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>InterEthnica</td>
<td>Written Translation Services, Typesetting, and Graphic Design in Spanish, Chinese, and Korean.</td>
<td>August 2019</td>
<td>$10,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Holland and Hart</td>
<td>NTE increase for NextEra PPA</td>
<td>August 2019</td>
<td>$19,800</td>
<td>Completed</td>
<td>10% increase of original contract NTE of $18,000</td>
</tr>
<tr>
<td>Baker Tilly</td>
<td>FY 2018/2019 Financial Audit</td>
<td>August 2019</td>
<td>$30,000</td>
<td>Completed</td>
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<tr>
<td>Manatt Phelps</td>
<td>Legal Services Agreement (JPA governance research)</td>
<td>May 2019</td>
<td>$15,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Polsinelli</td>
<td>Legal services Agreement (Employment Law)</td>
<td>March 2019</td>
<td>$75,000</td>
<td>Active</td>
<td>Increased from $18,000 to $75,000 in January 2020</td>
</tr>
<tr>
<td>Braun Blaising Smith Wynne, P.C.</td>
<td>Legal Services Agreement (Regulatory Support)</td>
<td>March 2018</td>
<td>$80,000</td>
<td>Active</td>
<td>Increased NTE to $80,000 in March 2020.</td>
</tr>
</tbody>
</table>