REGULAR MEETING of the Board of Directors of the
Clean Power Alliance of Southern California
Thursday, November 5, 2020
2:00 p.m.

SPECIAL NOTICE: 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 COVID-19, the Board of Directors will conduct this meeting remotely.

Click here to view a Live Stream of the Meeting on YouTube
*There may be a streaming delay of up to 60 seconds. This is a view-only live stream.

To Listen to the Meeting:
https://zoom.us/j/93832283244
or
Dial: (669) 900-9128  Meeting ID: 938 3228 3244

PUBLIC COMMENT: Members of the public may submit their comments by one of the following options:

- Email Public Comment: 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. Written public comments will be announced at the meeting and become part of the meeting record. Public comments received in writing will not be read aloud at the meeting.

- Provide Public Comment During the Meeting: Please notify staff via email at clerk@cleanpoweralliance.org at the beginning of the meeting but no later than immediately before the agenda item is called.
  o You will be asked for your name and phone number (or other identifying information) similar to filling out a speaker card so that you can be called on when it is your turn to speak.
  o You will be called upon during the comment section for the agenda item on which you wish to speak on. When it is your turn to speak, a staff member will unmute your phone or computer audio.
  o You will be able to speak to the Board for the allotted amount of time. Please be advised that all public comments must otherwise comply with our Public Comment Policy.
  o Once you have spoken, or the allotted time has run out, you will be muted during the meeting.

If unable to connect by Zoom or phone and you wish to make a comment, you may submit written comments during the meeting via email to: clerk@cleanpoweralliance.org.

While downloading the Zoom application may provide a better meeting experience, Zoom does not need to be installed on your computer to participate. After clicking the webinar link above, click "start from your browser."
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 October 1, 2020 Board of Directors Meeting

2. Approve 2021 Board of Directors and Standing Committees Meeting Schedule

3. Approve and Authorize the Executive Director to Execute a Professional Legal Services Agreement with (a) Keyes and Fox, LLP and (b) Clean Energy Counsel

4. Approve Professional Services Agreement with Energy Exemplar Pty Ltd for Production Cost Modeling Software and Related Services and Authorize the Executive Director to Execute Agreement

5. Approve Professional Services Agreement with EcoMotion for Consulting Engineering Services and Authorize the Executive Director to Execute Agreement
6. Receive and File Community Advisory Committee October Meeting Report

REGULAR AGENDA

Action Items

7. Approve a 15-Year Renewable Power Purchase Agreement with Estrella Solar, LLC and Authorize the Executive Director to Execute the Agreement

8. Approve Executive Director Salary Adjustment

Information Items


10. CPA Power Response Pilot Program Update

CLOSED SESSION

11. PUBLIC EMPLOYMENT- LABOR NEGOTIATION
   (Government Code Section 54957.6)

   CPA Designated Representatives: Chair Diana Mahmud, Vice Chair Sheila Kuehl, and Vice Chair Linda Parks
   Unrepresented Employee: Ted Bardacke, Executive Director

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 DECEMBER 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, October 1, 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 2:00 p.m. and Clerk of the Board Gabriela Monzon conducted roll call.

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All votes are unanimous unless otherwise stated.

GENERAL PUBLIC COMMENT

There was no public comment.

CONSENT AGENDA

1. Approve Minutes from September 3, 2020 Board of Directors Meeting
2. Approve Re-Appointments and New Appointments to Fill Vacancies on the Community Advisory Committee for 2020-2022 Term
3. Receive and File Community Advisory Committee September Monthly Report

Motion: Director Horvath, Redondo Beach
Second: Vice Chair Kuehl, Los Angeles County
Vote: The consent agenda was approved by a roll call vote.

REGULAR AGENDA

4. Approve a 15-year Renewable Energy Power Purchase Agreements (PPA) with Dagget Solar Power 3, LLC and a 15-year Amended and Restated Renewable Energy PPA with Arlington Energy Center II, LLC and Authorize Executive Director to Execute the Agreements

Natasha Keefer, Director of Power Planning and Procurement, reviewed projects currently under contract with CPA, described the organization’s compliance position, and indicated that the Arlington solar project already approved by the Board will be amended to include storage. Ms. Keefer discussed CPA’s current storage procurement noting that it is a critical resource to integrate a heavily
renewable energy portfolio and serves as a reliable and dispatchable resource that meets CPA’s resource adequacy obligations.

Ms. Keefer provided project overviews, reviewed rationales and evaluation summaries of both projects, and noted that the Daggett project is competitively priced and located on the site of a former natural gas power plant and that attaching storage to the Arlington Solar project will result in cost savings of 29% compared to the price of stand-alone storage on its own. Lastly, Ms. Keefer provided details on upcoming RFO activities, including the launch of the 2020 Clean Energy RFO with a target of procuring 1,500 – 2,000 GWh of annual generation including 5MW – 300 MW renewable, renewable +storage, and standalone storage; and the 100% Green Discount Program/Community Solar RFOs, the Clean Back-Up for Essential Facilities Program, and the Behind the Meter (BTM) Request for Proposals (RFPs), describing the status of each of the projects.

Director Monteiro asked if projects are committed to hiring union workers; Director Zuckerman inquired about the Behind the Meter RFPs and the new build projects. In response, Ms. Keefer clarified that both developers have signed, or committed to sign, Project Labor Agreements; noted that staff was still evaluating the structure and terms of a contract for the BTM RFPs; and provided more details on the 100% Green Discount Program RFO and Community Solar RFO/RFI, emphasizing that both programs are In Front of the Meter solar projects.

Director Ramirez thanked staff and requested more marketing around clean energy projects and Director Torres inquired about disposal or end of life of facilities. Ms. Keefer noted that the PPAs do not have terms related to decommissioning, but most facilities last longer than 50 years and there are decommissioning requirements through the local project permitting process. Director McKeown praised staff for their work on the PPAs and opined that more public education and outreach will benefit CPA.

Chair Mahmud requested that Board Members receive press releases.

Motion: Director McKeown, Santa Monica
Second: Director Ramirez, Oxnard
Vote: Item 4 was approved by a roll call vote.

5. Authorize Continuation of CPA’s COVID-19 Bill Assistance Program and Disbursement of up to $2 million in Bill Credits

Ted Bardacke, Executive Director, provided an oral report of the item, noting that since CPA surpassed its fiscal targets and remained compliant with its credit covenants in FY 19/20, and met the conditions put forth by the Board, staff was requesting the release of additional COVID-19 relief funds. Mr. Bardacke noted that staff will re-evaluate the need and benefits of the program in light of several factors including fiscal outlook; 2021 rates; Power Charge Indifference Adjustment (PCIA) fees; bad debt levels; the potential re-institution of customer disconnections in April 2021; and a potential new statewide ratepayer-funded program that would
reimburse both CPA and Southern California Edison (SCE) for bad debt write-offs of certain types of vulnerable customers.

Director McKeown asked about the marketing strategies for the program and Vice Chair Kuehl commended the program for its economic assistance to customers and stressed the importance of reaching out to ethnic media outlets. Mr. Bardacke noted that marketing included outreach through Community Based Organizations, and the use of social media and bus ad campaigns, but that staff identified the need for more targeted outreach for business customers.

**Motion:** Vice Chair Kuehl, Los Angeles County  
**Second:** Director Kulcsar, Carson  
**Vote:** Item 5 was approved by a roll call vote.

**MANAGEMENT UPDATE**

Mr. Bardacke discussed CPA’s successful debt repayment of $10 million to Los Angeles County, noting that CPA is debt-free and thanked the finance team. Additionally, Mr. Bardacke stated that CPA’s call center wait times have slightly increased due to high call volumes coupled with holidays and some staff turnover, but that the call center is adding both temporary and permanent staff to improve performance. Lastly, Mr. Bardacke announced that Sierra Madre and Malibu residents are receiving 100% Green Power.

Director Honig expressed concern for the complexity of SCE utility bills and asked for educational materials to help customers read their bills accurately. Mr. Bardacke noted that staff developed a webpage and flyer for reference that will be shared with Board Members. Chair Mahmud commented on recent formatting changes to customer bills and Mr. Bardacke added that a new subsection was recently created which was formerly embedded in the SCE generation cost and leads customers to believe it is a new charge when in fact it is not.

In response to Director Ashton’s and Ramirez’s questions, Mr. Bardacke noted that customers that have opted -up or -down are not impacted by changing default rates in their respective cities and clarified that several factors drive opt-out rates, including smaller media markets and some negative local press, rather than income levels, and noted that there are higher opt-out rates among business customers in cities with 100% Green Power rates. Director Zuckerman suggested adding a link leading to the Understanding your Bill web page on customer bill inserts.

**COMMITTEE CHAIR UPDATES**

Chair Horvath reported that the Legislative & Regulatory Committee received updates from lobbyists and discussed plans for next year’s legislative session.

Chair McKeown commented on the uncertainty in the energy market but expressed the Energy Committee’s excitement in continuing to recommend energy resources to meet CPA’s peak load and thanked staff for their work in approving 15-year renewable energy agreements.
BOARD MEMBER COMMENTS
Vice Chair Kuehl urged all cities to continue to encourage residents to participate in the 2020 Census. Director Ramirez commented that climate change will impact disadvantaged communities, people of color, and low-income families and hoped that residents are aware of and identify misinformation relating to climate change.

REPORT FROM THE CHAIR
Chair Mahmud encouraged Board Members to visit the California Independent System Operator (CAISO) website for information that illustrates the need and benefit of renewable power purchase agreements.

ADJOURN
Chair Mahmud adjourned the meeting at 3:33 p.m.
Staff Report – Agenda Item 2

To: Clean Power Alliance (CPA) Board of Directors
From: Gabriela Monzon, Clerk of the Board
Approved by: Ted Bardacke, Executive Director
Subject: 2021 Schedule of Meetings
Date: November 5, 2020

RECOMMENDATION
Approve the Board of Directors and Standing Committee meeting schedule for 2021.

SUMMARY
The 2021 Board of Directors and standing committees meeting schedule will follow CPA’s current standard monthly meeting cadence:

- Board of Directors, 1st Thursday, 2:00 p.m.
- Executive Committee, 3rd Wednesday, 1:30 p.m.
- Legislative & Regulatory Committee, 4th Wednesday, 10:00 a.m.
- Finance Committee, 4th Wednesday, 11:00 a.m.
- Energy Planning & Resources Committee, 4th Wednesday, 12:15 p.m.
- Community Advisory Committee, 2nd Thursday, 1:00 p.m.

While the Board and Committees continue to meet virtually, CPA’s new in-person meeting location will be its permanent office space in Downtown Los Angeles. Remote locations may be modified as the composition of standing committees change and will be identified on the agendas each month. Membership in the Legislative & Regulatory, Finance, and Energy Committees is open to any interested Directors or Alternate Directors of the Board.

ATTACHMENT
1) 2021 Schedule of Meetings
# Clean Power Alliance of Southern California

## 2021 Draft Meeting Schedule

In compliance with the Governor’s Executive Order N-29-20, all meetings will be held remotely until further notice.

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Red Strikeout indicates cancelled meeting, and Red Font indicates new meeting date. Agendas are available at www.cleanpoweralliance.org/agendas at least 72 hours prior to the meeting. For questions, please contact the Clerk of the Board at clerk@cleanpoweralliance.org or 213-713-5995.
To: Clean Power Alliance (CPA) Board of Directors
From: Nancy Whang, General Counsel
Approved by: Ted Bardacke, Executive Director
Subject: Legal Services Agreement between CPA and (a) Keyes and Fox, LLP and (b) Clean Energy Counsel
Date: November 5, 2020

RECOMMENDATION
Approve and authorize the Executive Director to execute the Professional Legal Services Agreement between CPA and (a) Keyes & Fox, LLP (KF) with a not-exceed (NTE) amount of $492,000 and (b) Clean Energy Counsel (CEC) with an NTE of $355,000.

BACKGROUND
In December 2019, staff ran a legal services solicitation to identify counsel to provide procurement support services for CPA’s Reliability and Clean Energy Request for Offers (“RFOs”). CEC and KF were selected from that solicitation.

In September 2019 and January 2020, staff executed legal services agreements (“LSAs”) with KF and CEC, respectively, under the Executive Director’s signing authority; each of the LSAs were subsequently expanded via Board amendments in 2019 and 2020. With the conclusion of negotiations for the Estrella Solar + Storage contract (Item 7 on the agenda), the scope of those two agreements are now complete. New LSAs are now required for the remainder of 2020 and into 2021 to provide legal support for CPA’s short-term and long-term energy procurement, as well as regulatory matters before the California Public Utilities Commission.
**Scope of Work**

**Keyes and Fox**

KF represented CPA in its negotiations in several of the long-term PPAs that were presented to the Board in 2020. In addition to KF’s support on long-term PPAs, staff anticipates needing RFO-related support for its Disadvantaged Community solar programs (discussed below), including the development of a pro forma agreement.

KF also provides CPA regulatory support services (including proceedings related to the Energy Resource Recovery Account (ERRA) and the Power Charge Indifference Adjustment (PCIA)). In addition to their ongoing assistance with ERRA and the PCIA Trigger proceedings, in 2020, KF advocated successfully to oppose the imposition of another non-bypassable charge upon CPA’s customers.

**CEC**

CEC represented CPA in its negotiations in several long-term PPAs that were presented to the Board in 2019 and 2020. In addition to CEC’s support on long-term PPAs, staff anticipates needing additional RFO support, including updates to its renewable-plus storage and stand-alone storage pro formas.

**Cost Effectiveness**

From a cost-effectiveness perspective, CEC and KF are between 25% to 40% less costly than their competitors and the LSAs leverage the rate structures used successfully in the 2018 and 2019 RFOs (i.e. no per project cost increases). CEC and KF have been effective partners for CPA representing CPA in its negotiations of all the long-term PPAs that were presented to the Board in 2020.

In addition, staff anticipates that the California Public Utilities Commission (CPUC) will approve CPA’s Disadvantaged Community Green Tariff (DAC-GT) and Community Solar Green Tariff (CS-GT) programs (DAC Programs) on November 5, 2020. The DAC Programs are intended to promote the development of renewable projects located in Disadvantaged Communities. Subsequent to the CPUC’s approval, CPA will need to
develop RFO materials and likely launch multiple RFOs, with the first RFO potentially launched as early as December. These LSAs will allow CPA to hit the ground running upon the anticipated CPUC approval. *Importantly, once CPA’s DAC Programs are approved by the CPUC in November, the CPUC will be reimbursing CPA for legal fees incurred for program administration costs.*

**FISCAL IMPACT**

Expenditures associated with the two Agreements are included in the Board approved FY2020/21 Budget.

**ATTACHMENTS**

1) Professional Legal Services Agreement with Keyes & Fox
2) Professional Legal Services Agreement with Clean Energy Counsel
AGREEMENT FOR

PROFESSIONAL LEGAL SERVICES

BY AND BETWEEN

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (“CPA”)

AND

KEYES & FOX, LLP

(“FIRM”)

November 1, 2020
(Date of Agreement)

Firm Address: 1580 Lincoln Street; Suite 880; Denver, CO 80203

Firm Tax ID No.: Federal EIN: 80-0237891

Firm Telephone: (510) 314-8200
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AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

("AGREEMENT")

RECITALS

WHEREAS, CPA desires to contract for professional legal services to support CPA's long-term energy projects arising from CPA's long-term energy Request for Offer ("the RFOs") or bilateral negotiations; CPA’s programs, including without limitation, disadvantaged community or behind-the-meter programs; CPA’s general energy procurement activities as well as regulatory support and representation (described in Exhibit A);

WHEREAS, FIRM has the legal competence and specialized expertise to provide professional legal services in the areas described above and in Exhibit A ("Legal Services");

WHEREAS, CPA desires to retain FIRM's services;

WHEREAS, FIRM has agreed to provide the Legal Services in accordance with this Agreement.

NOW, THEREFORE, CPA and FIRM agree as follows:

I. Term and Termination:

A. Period of Performance:

This AGREEMENT, including Exhibit A, shall begin on the date set forth on the cover page hereto and shall renew every 12 months ("contract year") for a maximum of three (3) years, unless earlier terminated as set forth herein.

B. Termination and/or Suspension:

1. Termination and/or Suspension for CPA's Convenience:

   a) Services performed under this AGREEMENT may be terminated or suspended in whole or in part by CPA at any time, when CPA, in its sole discretion, deems such termination or suspension to be in the CPA'S best interest. CPA shall terminate or suspend services by delivering to FIRM a written notice specifying the extent to which services are terminated or suspended and the effective date of the termination or suspension.
b) After receiving a Notice of Termination or Suspension, unless otherwise directed by CPA, FIRM shall:

1) Stop services on the date and to the extent specified in the Suspension or Termination Notice.

2) Complete services not terminated or suspended by the Notice.

3) Submit a Closing Report to CPA as set forth below.

4) Submit, no later than thirty (30) calendar days after the date of suspension or termination is effective, a final electronic invoice (e-bill) for all services performed prior to suspension or termination. If FIRM fails to submit a final e-billing within the time allowed, CPA may determine, on the basis of information available, the amount, if any, to be paid to FIRM. CPA's determination shall be final.

2. Termination For FIRM's Default:

a) Services performed under this AGREEMENT may be terminated in whole or in part by CPA when FIRM:

1) Fails to perform the service(s) within the time specified or any CPA approved extension, or

2) Fails to perform any of the AGREEMENT's other provisions or fails to make progress and endangers the performance of AGREEMENT's terms.

b) CPA shall give written notice to FIRM of FIRM's default. CPA, in its sole discretion, shall decide whether the default is of such a nature that the FIRM should be given a period to cure the default, and, if so, the cure period shall be specified in the notice.

c) If CPA wholly or partially terminates services under this AGREEMENT, replacement services may be obtained from another law firm or any other source with terms and in a manner CPA deems appropriate. FIRM shall be liable to CPA for any excess costs for these required services.

3. Termination for Professional Conflict of Interest:

If either FIRM or CPA determines a matter of professional conflict has arisen during FIRM's engagement which should not or cannot
be postponed until the conclusion of FIRM’s representation of CPA, FIRM or CPA may immediately give written notice to terminate this AGREEMENT. FIRM shall continue to provide high quality, professional legal representation until the appropriate substitutions can be made.

4. Closing Report Upon Termination or Suspension:

a) Immediately upon the termination or suspension of this AGREEMENT for any reason, FIRM shall deliver a Closing Report to CPA. The Closing Report shall include, for each case or matter assigned to FIRM which in whole or in part is terminated or suspended, the following:

1) A brief description of the facts and current status,

2) A discussion of the applicable law, and

3) A list and description of all future scheduled court appearances, and applicable deadlines.

b) Immediately upon any termination or suspension, FIRM shall, at its own cost, deliver to CPA all evidence, files and attorney work product for each case or matter for which work under this AGREEMENT has been terminated or suspended. This includes any computerized indices, programs and document retrieval systems created or used for the case or matter. If FIRM’s services include pending litigation, FIRM shall file the appropriate substitution of counsel with the court when instructed by CPA.

II. FIRM’s Services and Responsibilities:

A. Supervising Attorney:

1. FIRM shall appoint a Supervising Attorney for work performed under this AGREEMENT. The person designated as FIRM’s Supervising Attorney, and any changes in this designation, shall be promptly communicated in writing to the General Counsel.

2. FIRM’s Supervising Attorney shall have full authority to act for FIRM on all daily operational matters under this AGREEMENT and shall serve as or designate lead counsel for all law and motion appearances, pretrial and trial proceeding(s), settlement conference(s) or meetings of counsel for parties, depositions, document productions, and all court and other proceedings in which substantive rights of the parties may be determined. Designation of Lead Counsel shall be subject to approval by CPA.
B. Legal Representation:

1. FIRM recognizes that the CPA’s General Counsel is the authorized legal representative for the CPA and its officers and employees. Subject to the direction and control of CPA’s General Counsel, FIRM shall provide CPA with high quality legal advice and representation consistent with this AGREEMENT, the Rules of Professional Conduct, and all applicable laws and court rules.

2. FIRM shall provide representation with fully qualified staff at the least costly billing category. Consistent with this requirement, FIRM may use its discretion in determining which of FIRM's attorneys or paralegals will be assigned to work on CPA matters, except that FIRM will not utilize any attorney or paralegals on any CPA matter where the CPA has requested that the attorney or paralegals not be used.

3. FIRM represents and warrants that it is legally authorized to practice law in California as it pertains to the professional legal services described in the RECITALS.

4. FIRM shall keep CPA informed of all significant developments in each case or matter assigned to FIRM and shall provide CPA with copies of all significant documents.

5. FIRM acknowledges that nothing in this AGREEMENT is intended, nor will be construed, as creating any exclusive arrangement between CPA and FIRM. Nothing in this AGREEMENT will restrict CPA from obtaining similar services from other firms or sources.

III. CPA’s Duties and Responsibilities:

A. Supervising Attorney:

1. CPA shall appoint its General Counsel as CPA’s Supervising Attorney for each case or matter assigned to FIRM.

2. CPA’s Supervising Attorney shall have full authority to act for CPA on all daily operational matters under this AGREEMENT and shall review and approve all FIRM's reports, whether written or oral, and any change in FIRM's Supervising Attorney.

B. Duties and Responsibilities:

1. CPA shall make available to FIRM all documents and other information possessed by CPA which are relevant to any case or other matter assigned to FIRM under this AGREEMENT.
2. CPA shall assist FIRM in obtaining CPA records and/or information necessary to respond to discovery and to help familiarize the FIRM with CPA operations and policies.

3. CPA shall review and approve as appropriate:
   a) All reports, requests, and other services provided by FIRM under this AGREEMENT.
   b) Any proposed tactical maneuver or trial strategy.
   c) All recommended settlement proposals. Approval of proposed settlement recommendations is subject to CPA's settlement approval procedures.
   d) All billing statements in accordance with procedures referenced in this AGREEMENT.

4. CPA may review all correspondence and judicial, administrative and other documents.

5. CPA will evaluate FIRM's performance under this AGREEMENT and may report this evaluation to CPA's Board of Directors. CPA reserves the right to conduct an audit of any and all aspects of FIRM's compliance with this AGREEMENT. Any such audit may be conducted by CPA staff or a contract auditor, in CPA's sole discretion.

IV. Compensation:

A. CPA Counsel Billing Requirements:

All charges by FIRM, whether for fees or attorney work, or for reimbursement for expenses incurred shall be in accordance with the CPA Counsel Billing Requirements. Said Billing Requirements will be made available to FIRM and may be amended by CPA at any time. CPA shall provide FIRM with any amended Billing Requirements promptly after they are promulgated.

B. Fees:

1. FIRM shall provide professional legal services at the hourly billing rates for attorneys or paralegals set forth in Exhibit A, subject to the “Collar”, as defined in Exhibit A to this AGREEMENT. For any amounts that exceed the Collar amount, FIRM shall obtain CPA’s prior written authority.
The billing rates set forth in Exhibit A may be subject to periodic review and adjustment as agreed between CPA and FIRM with no less than 30 days written notice by FIRM.

C. Expenses:

1. Non-Reimbursable Expenses: Certain expenses incurred by FIRM in providing services under this AGREEMENT shall be considered FIRM overhead which shall not be reimbursed by CPA, but which shall be borne by FIRM as expenses included within the hourly billing rates set forth in Exhibit A. Expenses which will not be reimbursed and which should not be billed are the following:

   a) Postage.
   b) Telephone charges (both local and long distance).
   c) Facsimile/Telecopier charges.
   d) Mileage/Parking within the counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura.
   e) On-line subscription, connection or other costs for computerized research. (Attorney and paralegal time incurred conducting such research may be billed.)
   f) Document reproduction. (See below for large volume exception.)
   g) Staff time or overtime for performing secretarial, clerical, or word processing functions.
   h) Time spent complying with CPA audits or billing inquiries.
   i) Charges for services or expenses incurred which have not been authorized by CPA.

2. Reimbursable Ordinary Expenses: CPA shall reimburse FIRM for its actual out-of-pocket expenses, but without any additional costs for having advanced the funds, for the following:

   a) Deposition costs (other than video taping unless approved as set forth below).
   b) Transcript fees.
   c) Filing fees for which the CPA is not exempt.
d) Messenger service if specifically requested by the CPA’s Supervising Attorney, if required because of an emergency over which the FIRM has no control, or if necessary to ensure the safekeeping of sensitive documents or materials.

e) Process service fees.

3. Reimbursable Extraordinary Expenses: CPA shall reimburse FIRM for its actual out-of-pocket expenses, but without any additional costs for having advanced the funds, for the following, but only if FIRM has obtained prior written approval from the General Counsel:

a) Outside vendor document reproductions which, because of the volume or format requirements, are impractical to complete in-house.

b) Consultants.

c) Experts.

d) Investigative services.

e) Expenses for travel outside the Counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura. Reimbursement for such travel expenses will be limited to the amount CPA’s employees may claim for such travel. Information on such limits will be made available to FIRM upon request at the time FIRM seeks permission for such travel.

f) Videotaping of depositions.

g) Extraordinary computerized research requirements meeting the criteria set forth in the CPA Counsel Billing Requirements.

h) Other extraordinary expenses for which FIRM has obtained prior approval from CPA.

V. Invoices and Payments to FIRM:

A. Billing (E-Billing):

The FIRM shall submit all invoices for attorney fees and reimbursable expenses to CPA at accountspayable@cleanpoweralliance.org with a copy to CPA’s General Counsel at the email address specified in paragraph VI.B.
B. E-Bills:

1. FIRM shall submit invoices for services and for reimbursable expenses monthly in arrears, or quarterly in arrears if approved by CPA.

2. Each e-bill must also include a signed dated declaration of FIRM's Supervising Attorney with the following statement:

"I have personally examined this e-bill. All entries are in accordance with the AGREEMENT for Professional Legal Services, are correct and reasonable for the services performed and the cost incurred, and no item on this statement has been previously billed to CPA."

3. Each e-bill shall be itemized to include:
   
a) Staffing level(s), hourly rates and specific activities for each attorney and/or paralegal.
      
1) Each billing entry shall include a detailed description of specific activities for each attorney and/or paralegal.
      
2) All receipts for expenses shall be scanned and attached to the e-bill.
      
3) No attorney or paralegal may be utilized on a matter until an hourly billing rate for that person has been approved by the CPA. All time must be billed at the approved hourly rate.

4. FIRM shall maintain in a form subject to audit, and in accordance with generally accepted accounting principles, backup documentation to support all entries included in the monthly billing statement. Such documentation shall be available to CPA upon request.

C. Payments

1. CPA shall make payment(s) for services rendered under this AGREEMENT monthly (quarterly if approved by CPA) in arrears based on the itemized billing statement(s) FIRM submits to CPA.

2. CPA's legal and accounting staff shall review all billing statements for reasonableness of the time billed as well as full compliance with this AGREEMENT and all CPA Counsel Billing Requirements.
3. CPA shall make its best effort to process payments promptly after receiving FIRM’s e-bill. However, CPA shall not pay interest or finance charges on any outstanding balance(s).

4. Payments to FIRM are conditioned upon FIRM’s compliance with all provisions of this AGREEMENT, including but not limited to, Paragraphs II(B) and VIII(B).

VI. Notices:

All notices and required reports shall be written and hand-delivered or mailed by first class, postage prepaid, addressed to CPA or FIRM at the addresses below, or at any other address CPA or FIRM shall provide in writing to each other:

A. If to FIRM:

Keyes & Fox, LLP
Attn: Kevin Fox
1580 N Lincoln Street Suite 880
Denver, Colorado 80203
Email: kfox@keyesfox.com

B. If to CPA:

Clean Power Alliance of Southern California
Attn: Theodore Bardacke
801 S. Grand Ave., Suite 400
Los Angeles, California 90017
Email: tbardacke@cleanpoweralliance.org

With a copy to:

Nancy Whang
General Counsel, Clean Power Alliance
801 S. Grand Ave., Suite 400
Los Angeles, California 90017
Email: nwhang@cleanpoweralliance.org

VII. Assignment:

A. No part of this AGREEMENT or any right or obligation arising from it is assignable without CPA's written consent.
B. Any attempt by FIRM to assign or subcontract services relating to this AGREEMENT without CPA's consent shall constitute a material breach of this AGREEMENT.

VIII. Standard Terms and Conditions:

The following standard CPA contract terms and conditions are included herein as part of this AGREEMENT and are fully binding on the parties hereto:

A. Indemnification:

FIRM shall indemnify, defend and save harmless CPA, its agents, officers and employees from and against any and all liability expense, including defense costs and legal fees, and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage (including FIRM's property), in connection with FIRM's operations or its services, including any workers' compensation suits, liability or expense, arising from or connected with services performed under this AGREEMENT. Notwithstanding any provision to the contrary, FIRM'S indemnification obligations under this AGREEMENT are expressly subject to the terms and limits of Firm's insurance obligation set forth below.

B. Insurance:

Without limiting FIRM's indemnification of CPA and its officers, agents and employees, FIRM shall provide and maintain at its own expense the following programs of insurance covering FIRM's operations during the term of this AGREEMENT. FIRM shall use insurers satisfactory to CPA' Risk Manager and shall deliver evidence of a satisfactory insurance to CPA on or before the effective date of this AGREEMENT. Evidence shall specifically identify this AGREEMENT and shall contain express conditions that CPA is to be given written notice by registered mail at least thirty (30) days in advance of any modification or termination of any program insurance.

1. Liability: Such insurance shall be primary to and not contributing with any other insurance maintained by CPA, shall name the Clean Power Alliance of Southern California as an additional insured, and shall include, but not be limited to:

   a) Comprehensive General Liability insurance endorsed for Premises-Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than $1,000,000 per occurrence.

   If the above insurance is written on a Claims Made Form, the insurance shall be endorsed to provide an extended
reporting period of not less than five years following termination of this AGREEMENT.

b) Professional liability insurance with a liability limit of at least $1,000,000 per claim. In lieu of naming CPA as an additional insured, the policy may be endorsed as follows:

"Insurance afforded by this policy shall also apply to the liability assumed by the insured under the agreement with the Clean Power Alliance of Southern California for legal services, provided such liability results from an error, omission, or negligent act of the insured, its officers, employees, agents, or subcontractors. All other provisions of this policy remain unchanged."

c) Comprehensive Auto Liability endorsed for all owned, non-owned, and hired vehicles with a combined single limit of at least $300,000 per occurrence.

2. Workers’ Compensation: A program of Workers’ Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with a $1,000,000 limit, covering all persons providing services on behalf of FIRM and all risks to such persons under this AGREEMENT.

3. Failure to Procure Insurance: Failure on the part of FIRM to procure or maintain required insurance shall constitute a material breach for which CPA may immediately terminate or suspend this AGREEMENT.

C. Independent Contractor Status:

1. This AGREEMENT is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between CPA and FIRM.

2. FIRM understands and agrees that all FIRM personnel furnishing services to CPA under this AGREEMENT are employees solely of FIRM and not of CPA for purposes of workers’ compensation liability.

3. FIRM shall bear the sole responsibility and liability for furnishing workers’ compensation benefits to any FIRM personnel for injuries arising from services performed under this AGREEMENT.
D. Warranty Against Contingent Fees:

1. FIRM warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.

2. For breach or violation of this warranty, CPA shall have the right to terminate this AGREEMENT, and in its sole discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of any such commission, percentage, brokerage or contingent fee.

E. Governing Laws:

This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California and any action brought by either party on this AGREEMENT shall be brought in Los Angeles County.

F. Compliance with Applicable Law:

1. FIRM shall comply with all applicable Federal, State, and local laws, rules, regulations and ordinances, and all provisions required thereby to be included in this AGREEMENT are hereby incorporated herein.

2. FIRM shall indemnify and hold harmless the CPA, and its officers, agents, and employees, from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys’ fees, arising from or related to any violation on the part of FIRM or its employees, agents, or subcontractors of any such laws, rules, regulations, ordinances, or directives.

G. Record Retention and Inspection:

Within ten (10) days of CPA's written request, FIRM shall allow CPA or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this AGREEMENT. FIRM shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of four (4) years after termination or completion of this AGREEMENT unless CPA's written permission is given to dispose of material prior to the end of such period or until such time as all audits are complete, whichever is later. In the event that records are located outside Los Angeles, FIRM shall pay CPA for travel and per diem costs when an inspection or audit is required.
H. Confidentiality

1. FIRM shall maintain the confidentiality of all information which it may acquire arising out of or connected with activities under this AGREEMENT in accordance with all applicable Federal, State and CPA laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. FIRM shall inform all of its principals, employees and agents providing services hereunder of the confidentiality provisions of this AGREEMENT.

2. FIRM shall ensure that all attorneys, paralegals, and secretarial and clerical personnel having access to information relevant to FIRM's provision of services under this AGREEMENT, are aware of and acknowledge the confidentiality requirements set forth in paragraph 1, above.

3. These confidentiality obligations shall survive this AGREEMENT's termination or expiration.

I. Communications With CPA:

FIRM recognizes that its communications with CPA and its agents and employees, officers and/or representatives are subject to the attorney-client privilege. FIRM warrants that it shall not disclose, or use in any manner other than in the furtherance of FIRM's representation of CPA, any privileged information obtained from CPA or its officers, agents, or employees. FIRM understands that the CPA General Counsel is the legally empowered legal representative of the CPA and its officers and employees and FIRM shall not without specific direction from CPA General Counsel communicate with, advise or represent the CPA's Board of Directors or other CPA officers or employees.

J. Conflict of Interest:

1. No CPA employee whose position with CPA enables such employee to influence the award of this AGREEMENT or any competing AGREEMENT, and no spouse or economic dependent of such employee, shall be employed in any capacity by FIRM or have any other direct or indirect financial interest in this AGREEMENT. No officer or employee of FIRM who may financially benefit from the performance of work hereunder shall in any way participate in the CPA's approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence CPA's approval or ongoing evaluation of such work.

2. FIRM shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this AGREEMENT. FIRM warrants that it is not now aware of
any facts that create a conflict of interest. If FIRM hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to CPA. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this Paragraph shall be a material breach of this AGREEMENT.

K. Authorization Warranty:

FIRM represents and warrants that the signatory to this AGREEMENT is fully authorized to obligate FIRM and that all corporate acts necessary to the execution of this AGREEMENT have been accomplished.

L. Changes and Amendments of Terms:

CPA reserves the right to change any portion of the work required under this AGREEMENT, or amend its terms and conditions as may become necessary.

M. Validity:

The invalidity in whole or in part of any provision of this AGREEMENT shall not void or affect the validity of any other provision.

N. Waiver:

No waiver of a breach of any provision of this AGREEMENT by either party shall constitute a waiver of any other breach of the provision or any other provision of this AGREEMENT. Failure of either party to enforce any provision of this AGREEMENT at any time shall not be construed as a waiver of that provision. CPA's remedies as described in this AGREEMENT shall be cumulative and additional to any other remedies in law or equity.

O. Remedies Reserved to CPA:

The remedies reserved to CPA shall be cumulative and additional to any other remedies provided in law or equity.

P. Complete Agreement and Interpretation:

This AGREEMENT supersedes all prior communications and all previous written and oral agreements, and shall constitute the complete and exclusive statement of understanding between CPA and FIRM relating to the subject matter of this AGREEMENT. No provision of this
AGREEMENT is to be interpreted for or against either party because that party's legal representative drafted such provision.

Executed as of the date set forth on the cover page to this AGREEMENT:

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By

_____________________________
Theodore Bardacke
Executive Director

Approved as to Form:

By

_____________________________
Nancy Whang
General Counsel
Clean Power Alliance

FIRM: Keyes & Fox, LLP

Print Name of Firm

By

_____________________________
Kevin Fox, Partner
EXHIBIT A

HOURLY BILLING RATES

Keyes & Fox, LLP (“FIRM”)

Contemplated services include:

1. Power Purchase Agreements (“PPA”) Negotiations. Drafting and negotiating, whether arising out of a CPA RFO or bilateral negotiations (a) PPAs for renewable, renewable plus storage, standalone storage, or distributed energy projects, and (b) any ancillary or related documentation required or provided by project developers (e.g., amendments, collateral assignments, non-disclosure agreements (“NDAs”), letters of credit, parent guarantees, legal opinions, authority documents, or board resolutions) for up to 8 projects assigned to FIRM. The services provided under this Section 1 shall be referred to as “PPA Negotiations.”

The total amount of fees for PPA Negotiations shall not exceed $17,000.00 for each project assigned to FIRM (the “PPA NTE”) without prior written authorization from CPA. If FIRM billable fees exceed the PPA NTE for each assigned project, FIRM shall be responsible for all fees incurred between the PPA NTE and $20,000.00 (the “PPA Collar”) for that assigned project.

In the event, FIRM is assigned more than one project for a given counterparty within an RFO for a given contract year, the PPA NTE and PPA Collar shall apply for the first agreement, and for each additional agreement with the same counterparty, a not-to-exceed maximum amount of $14,000.00 shall apply.

The total NTE for PPA Negotiations shall not exceed $136,000.00 in a contract year.

2. Program RFO PPAs. Drafting and negotiating (a) PPAs for projects arising from RFOs related to CPA’s disadvantaged community and community solar green tariff energy programs, and (b) any ancillary or related documentation related to the project, the project developers, project sponsors, or other related third parties (e.g., non-disclosure agreements (“NDAs”), letters of credit, parent guarantees, legal opinions, authority documents and board resolutions) for up to 8 projects assigned to FIRM. The services provided under this Section 2 shall be referred to as “Program Negotiations”;

The total amount of fees for Program Negotiations shall not exceed $17,000.00 for each project assigned to FIRM (the “Program NTE”) without CPA’s written authorization. If FIRM's billable fees exceed the Program NTE for each assigned project, Firm shall be responsible for all fees incurred between the Program NTE and $20,000.00 (the “Program Collar”) for that assigned project.

In the event, FIRM is assigned more than one project for a given counterparty or project sponsor within an RFO for the Program Negotiations for a given contract year,
the Program NTE and Program Collar shall apply for the first agreement, and for each additional agreement with the same counterparty or project sponsor, a not-to-exceed maximum amount of $14,000.00 shall apply.

The total NTE for Program Negotiations shall not exceed $136,000.00 in a contract year.

3. **General Energy Procurement Services.** Contemplated services include

   a. Support for CPA’s short-term energy procurement by negotiating the following documentation with CPA’s selected energy suppliers and marketers: (i) EEI Master Agreements to enable transactions with counterparties, (ii) Confirmations for transactions for energy, renewable energy, carbon free energy and resource adequacy products using confirmations under the EEI Master Agreement and WSPP Agreements, (iii) agreements to establish a “Lockbox” structure to provide collateralization for transactions with CPA’s selected suppliers, (iv) ancillary documentation required or provided by energy suppliers and marketers (e.g., amendments, collateral assignments, NDAs, letters of credit, parent guarantees, legal opinions, authority documents and board resolutions, or any other documents needed to effectuate the underlying agreement); and (v) providing ongoing legal counsel, as directed by CPA, related to energy procurement.

   b. Providing advice, representation, or support related to CPA’s energy procurement activities, including without limitation, RFO support, pro forma agreements or revisions thereto, amendments, letters of credit, parent guarantees, authority documents, collateral assignments, confirmations, ancillary documentation, or other procurement support as requested by CPA.

   The services provided under this Section 3 shall be referred to as “Procurement Services.” The total amount of fees for Procurement Services shall not exceed $80,000.00. (the “Procurement Services NTE”) in a contract year.

4. **Legislative and Regulatory.** Contemplated services include analyses of or advice and counsel concerning energy-related legislation and regulatory issues, and when directed by CPA, representing CPA in regulatory proceedings before the California Public Utilities Commission or before the California Energy Commission. The services provided under this Section 4 shall be referred to as “Regulatory Services.”

   The total amount of fees for Regulatory Services shall not exceed $140,000.00 (the “Regulatory Services NTE”) in a contract year.

   In no event shall the cumulative NTE total for PPA Negotiations, Program Negotiations, Procurement Services, and Regulatory Services exceed $492,000.00 unless expressly authorized in writing by CPA.
CPA and the FIRM acknowledge that the Not to Exceed for are not estimates of the total costs required to complete this engagement.

**Staff Title**

**Attorneys:**
Kevin Fox (Partner), $360; Jason Keyes (Partner), $320; Tim Lindl (Partner), $295; Jacob Schlesinger (Partner); $275; Sheridan Pauker (Partner); $360; Lilly McKenna (Associate); $260, Melissa Birchard (Associate); $235; Beren Argetsinger (Associate), $210; Julia Kantor (Associate), $215.

**Paralegals:**
Miriam Makhyoun, $190; Justin Barnes, $180; Ben Inskeep, $145; Blake Elder, $120; Heather DePouw, $105; Vanessa Luthringer, $95; and Alicia Zaloga, $90.
AGREEMENT FOR

PROFESSIONAL LEGAL SERVICES

BY AND BETWEEN

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
(“CPA”)

AND

Clean Energy Counsel, LLP
(“FIRM”)

November 1, 2020
(Date of Agreement)

Firm Address: 555 Montgomery Street, Suite 1205, San Francisco, CA
Firm Tax ID No.: 47-1968415
Firm Telephone: 650-291-0444
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EXHIBIT A - SCOPE OF WORK AND HOURLY BILLING RATES
AGREEMENT FOR PROFESSIONAL LEGAL SERVICES

(“AGREEMENT”)

RECITALS

WHEREAS, CPA desires to contract for professional legal services to support CPA’s long-term energy projects arising from CPA’s long-term energy Request for Offer (“the RFOs”) or bilateral negotiations; and CPA’s general energy procurement (described in Exhibit A);

WHEREAS, FIRM has the legal competence and specialized expertise to provide professional legal services in the areas described above and in Exhibit A (“Legal Services”);

WHEREAS, CPA desires to retain FIRM’s services for the Legal Services; and,

WHEREAS, FIRM has agreed to provide the Legal Services in accordance with this Agreement.

NOW, THEREFORE, CPA and FIRM agree as follows:

I. Term and Termination:

A. Period of Performance:

This AGREEMENT, including Exhibit A, shall begin on the date set forth on the cover page hereto and shall renew every 12 months (“contract year”) for a maximum of three (3) years, unless earlier terminated as set forth herein.

B. Termination and/or Suspension:

1. Termination and/or Suspension for CPA’s Convenience:

   a) Services performed under this AGREEMENT may be terminated or suspended in whole or in part by CPA at any time, when CPA, in its sole discretion, deems such termination or suspension to be in CPA’s best interest. CPA shall terminate or suspend services by delivering to FIRM a written notice specifying the extent to which services are terminated or suspended and the effective date of the termination or suspension. The notice of termination or suspension shall be sent to the person identified in paragraph VI.A.; and,

   b) After receiving a notice of termination or suspension, unless otherwise directed by CPA, FIRM shall:
1) Stop services on the date and to the extent specified in the suspension or termination notice.

2) Complete services not terminated or suspended by the notice.

3) Submit a Closing Report to CPA as set forth in paragraph I.B.4., below.

4) Submit, no later than thirty (30) calendar days after the date of suspension or termination is effective, a final electronic invoice (e-bill) for all services performed prior to CPA’s notice of suspension or termination. If FIRM fails to submit a final e-bill within the time allowed, CPA may determine, on the basis of information available, the amount, if any, to be paid to FIRM. CPA’s determination shall be final.

2. Termination For FIRM’s Default:
   a) Services performed under this AGREEMENT may be terminated in whole or in part by CPA when FIRM:
      1) Fails to perform the service(s) within the time specified or any CPA approved extension, or
      2) Fails to perform any of the AGREEMENT’s other provisions or fails to make progress and endangers the performance of AGREEMENT’s terms.

   b) CPA shall give written notice to FIRM of FIRM’s default. CPA, in its sole discretion, shall decide whether the default is of such a nature that the FIRM should be given a period to cure the default, and, if so, the cure period shall be specified in the notice.

   c) If CPA wholly or partially terminates services under this AGREEMENT, replacement services may be obtained from another law firm or any other source with terms and in a manner CPA deems appropriate.

3. Termination for Professional Conflict of Interest:

   If either FIRM or CPA determines a matter of professional conflict has arisen during FIRM’s engagement which should not or cannot be postponed until the conclusion of FIRM’s representation of CPA, FIRM or CPA may immediately give written notice to terminate this AGREEMENT. FIRM shall continue to provide high quality, professional legal representation until the appropriate substitutions can be made.
4. Closing Report Upon Termination or Suspension:

a) Immediately upon the termination or suspension of this AGREEMENT for any reason, FIRM shall deliver a Closing Report to CPA. The Closing Report shall include, for each case or matter assigned to FIRM which in whole or in part is terminated or suspended, the following:

1) A brief description of the facts and current status,
2) A discussion of the applicable law, and
3) A list and description of all future scheduled court appearances, and applicable deadlines.

b) Immediately upon any termination or suspension, FIRM shall, at its own cost, deliver to CPA all evidence, files and attorney work product for each case or matter for which work under this AGREEMENT has been terminated or suspended. This includes any computerized indices, programs and document retrieval systems created or used for the case or matter. If FIRM’s services include pending litigation, FIRM shall file the appropriate substitution of counsel with the court when instructed by CPA.

II. FIRM’s Services and Responsibilities:

A. Supervising Attorney:

1. FIRM shall appoint a Supervising Attorney, who shall serve as the lead counsel for work performed under this AGREEMENT. The person designated as FIRM’s Supervising Attorney, and any changes in this designation, shall be promptly communicated in writing to CPA.

2. FIRM’s Supervising Attorney shall have full authority to act for FIRM on all daily operational matters under this AGREEMENT and shall serve as or designate lead counsel for all law and motion appearances, pretrial and trial proceeding(s), settlement conference(s) or meetings of counsel for parties, depositions, document productions, and all court and other proceedings in which substantive rights of the parties may be determined. Designation of lead counsel shall be subject to approval by CPA.

B. Legal Representation:

1. FIRM recognizes that the CPA General Counsel is the authorized legal representative for the CPA and its officers and employees.
Subject to the direction and control of CPA General Counsel, FIRM shall provide CPA with high quality legal advice and representation consistent with this AGREEMENT, the Rules of Professional Conduct, and all applicable laws and court rules.

2. FIRM shall provide representation with fully qualified staff at the least costly billing category. Consistent with this requirement, CPA may request that a particular attorney or specified attorneys work on a particular project or multiple projects specified in Exhibit A.

3. FIRM shall keep CPA informed of all significant developments in each case or matter assigned to FIRM and shall provide CPA with copies of all significant documents.

4. FIRM acknowledges that nothing in this AGREEMENT is intended, nor will be construed, as creating any exclusive arrangement between CPA and FIRM. Nothing in this AGREEMENT will restrict CPA from obtaining similar services from other firms or sources.

III. CPA’s Duties and Responsibilities:

A. Supervising Attorney:

1. CPA shall appoint its General Counsel as CPA’s Supervising Attorney for each case or matter assigned to FIRM.

2. CPA’s Supervising Attorney shall have full authority to act for CPA on all daily operational matters under this AGREEMENT and shall review and approve all FIRM’s reports, whether written or oral, and any change in FIRM’s Supervising Attorney.

B. Duties and Responsibilities:

1. CPA shall make available to FIRM all documents and other information possessed by CPA which are relevant to any case or other matter assigned to FIRM under this AGREEMENT.

2. CPA shall assist FIRM in obtaining CPA records and/or information necessary to respond to discovery and to help familiarize the FIRM with CPA operations and policies.

3. CPA shall review and approve as appropriate:

   a) All reports, requests, and other services provided by FIRM under this AGREEMENT.

   b) Any proposed tactical maneuver or trial strategy.
c) All recommended settlement proposals. Approval of proposed settlement recommendations is subject to CPA's settlement approval procedures.

d) All billing statements in accordance with procedures referenced in this AGREEMENT.

4. CPA may review all correspondence and judicial, administrative and other documents.

5. CPA will evaluate FIRM's performance under this AGREEMENT and may report this evaluation to CPA's Board of Directors. CPA reserves the right to conduct an audit of any and all aspects of FIRM's compliance with this AGREEMENT. Any such audit may be conducted by CPA staff or a contract auditor, in CPA's sole discretion.

IV. Compensation:

A. CPA Counsel Billing Requirements:

   All charges by FIRM, whether for fees or attorney work, or for reimbursement for expenses incurred shall be in accordance with the Agreement.

B. Fees:

   1. FIRM shall provide legal services at the hourly billing rates for attorney(s) and if applicable, paralegals set forth in Exhibit A to this AGREEMENT, subject to the “Collar”, as defined in Exhibit A. For any amounts that exceed the Collar amount, FIRM shall obtain CPA's prior written authority.

   2. The billing rates set forth in Exhibit A may be subject to review and adjustment as agreed between CPA and FIRM with no less than 30 days written notice by FIRM.

C. Expenses:

   1. Non-Reimbursable Expenses: Certain expenses incurred by FIRM in providing services under this AGREEMENT shall be considered FIRM overhead which shall not be reimbursed by CPA, but which shall be borne by FIRM as expenses included within the hourly billing rates set forth in Exhibit A. Expenses which will not be reimbursed and which should not be billed are the following:

   a) Postage.
b) Telephone charges (both local and long distance).

c) Copy charges.

d) Mileage/Parking within the counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura.

e) On-line subscription, connection or other costs for computerized research. (Attorney and paralegal time incurred conducting such research may be billed.)

f) Document reproduction. (See below for large volume exception.)

g) Staff time or overtime for performing secretarial, clerical, or word processing functions.

h) Time spent complying with CPA audits or billing inquiries.

i) Charges for services or expenses incurred which have not been authorized by CPA.

2. Reimbursable Ordinary Expenses: CPA shall reimburse FIRM for its actual out-of-pocket expenses, but without any additional costs for having advanced the funds, for the following:

a) Deposition costs (other than video taping unless approved as set forth below).

b) Transcript fees.

c) Filing fees for which the CPA is not exempt.

d) Messenger service if specifically requested by the CPA’s Supervising Attorney, if required because of an emergency over which the FIRM has no control, or if necessary to ensure the safekeeping of sensitive documents or materials.

e) Process service fees.

3. Reimbursable Extraordinary Expenses: CPA shall reimburse FIRM for its actual out-of-pocket expenses, but without any additional costs for having advanced the funds, for the following, but only if FIRM has obtained prior written approval from CPA:

a) Outside vendor document reproductions which, because of the volume or format requirements, are impractical to complete in-house.
b) Consultants.

c) Experts.

d) Investigative services.

e) Expenses for travel outside the Counties of Los Angeles, Orange, Riverside, San Bernardino and Ventura. Reimbursement for such travel expenses will be limited to the amount CPA's employees may claim for such travel. Information on such limits will be made available to FIRM upon request at the time FIRM seeks permission for such travel.

f) Videotaping of depositions.

g) Extraordinary computerized research requirements.

h) Other extraordinary expenses for which FIRM has obtained prior written approval from CPA.

V. Invoices and Payments to FIRM:

A. Billing (E-Billing):

The FIRM shall submit all invoices for attorney fees and reimbursable expenses to CPA at accountspayable@cleanpoweralliance.org with a copy to CPA's General Counsel at the email address specified in paragraph VI.B.

B. E-Bills:

1. FIRM shall submit invoices for services and for reimbursable expenses monthly in arrears, or quarterly in arrears if approved by CPA.

2. Each e-bill must also include a signed dated declaration of FIRM’s Supervising Attorney with the following statement:

   “I have personally examined this e-bill. All entries are in accordance with the AGREEMENT for Professional Legal Services, are correct and reasonable for the services performed and the cost incurred, and no item on this statement has been previously billed to CPA.”

3. Each e-bill shall be itemized to include:

   a) Staffing level(s), hourly rates and specific activities for each
attorney and/or paralegal.

1) Each billing entry shall include a detailed description of specific activities for each attorney and/or paralegal.

2) All receipts for expenses shall be scanned and attached to the e-bill.

3) No attorney or paralegal may be utilized on a matter until an hourly billing rate for that person has been approved in writing by the CPA. All time must be billed at the approved hourly rate.

4. FIRM shall maintain in a form subject to audit, and in accordance with generally accepted accounting principles, backup documentation to support all entries included in the monthly billing statement. Such documentation shall be available to CPA upon request.

C. Payments

1. CPA shall make payment(s) for services rendered under this AGREEMENT monthly in arrears based on the itemized billing statement(s) FIRM submits to CPA.

2. CPA’s legal and accounting staff shall review all billing statements for reasonableness of the time billed as well as full compliance with this AGREEMENT and all CPA Counsel Billing Requirements.

3. CPA shall make its best effort to process payments promptly after receiving FIRM’s e-bill. However, CPA shall not pay interest or finance charges on any outstanding balance(s).

4. Payments to FIRM are conditioned upon FIRM’s compliance with all provisions of this AGREEMENT, including but not limited to, paragraph VIII.B.

VI. Notices:

Unless otherwise specified herein, all notices and required reports shall be in writing and transmitted by electronic mail (“email”) to the CPA or FIRM representative at the email address specified below:

A. If to FIRM:

FIRM Name: Clean Energy Counsel, LLP
Attn: Todd A. Larsen
FIRM Address: 555 Montgomery Street, Suite 1205
VII. Assignment:

A. No part of this AGREEMENT or any right or obligation arising from it is assignable without CPA’s written consent.

B. Any attempt by FIRM to assign or subcontract services relating to this AGREEMENT without CPA’s consent shall constitute a material breach of this AGREEMENT.

VIII. Standard Terms and Conditions:

The following standard CPA contract terms and conditions are included herein as part of this AGREEMENT and are fully binding on the parties hereto:

A. Indemnification:

FIRM shall indemnify CPA, its agents, officers and employees from and against any and all liability and claims for damages of any nature whatsoever, including, but not limited to, bodily injury, death, personal injury, or property damage (including FIRM’s property), any breach by FIRM of this AGREEMENT, or any negligence or willful misconduct by FIRM arising from or connected with services performed under this Agreement. This provision is subject to existing and relevant laws concerning comparative and contributory fault principles. This provision shall not apply to any settlement or payment effected without prior written consent of FIRM.
B. Insurance:

Without limiting FIRM’s indemnification of CPA and its officers, agents and employees, FIRM shall provide and maintain at its own expense the following programs of insurance covering FIRM’s operations during the term of this AGREEMENT. FIRM shall use insurers satisfactory to CPA’s Chief Financial Officer and shall deliver evidence of a satisfactory insurance to CPA on or before the effective date of this AGREEMENT. Evidence shall specifically identify this AGREEMENT and FIRM shall provide CPA written notice by registered mail at least thirty (30) days in advance of any modification or termination of any program insurance.

1. Liability: Such insurance shall be primary to and not contributing with any other insurance maintained by CPA, and with respect to Comprehensive General Liability insurance shall name the Clean Power Alliance of Southern California as an additional insured, and shall include, but not be limited to:

   a) Comprehensive General Liability insurance endorsed for Premises- Operations, Products/Completed Operations, Contractual, Broad Form Property Damage, and Personal Injury with a combined single limit of not less than $1,000,000 per occurrence.

   If the above insurance is written on a Claims Made Form, the insurance shall be endorsed to provide an extended reporting period of not less than five years following termination of this AGREEMENT.

   b) Professional liability insurance with a liability limit of at least $5,000,000 per claim.

   c) Comprehensive Auto Liability endorsed for all owned, non-owned, and hired vehicles with a combined single limit of at least $300,000 per occurrence.

2. Workers’ Compensation: A program of Workers’ Compensation insurance in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employers Liability with a $1,000,000 limit, covering all persons providing services on behalf of FIRM and all risks to such persons under this AGREEMENT.

3. Failure to Procure Insurance: Failure on the part of FIRM to procure or maintain required insurance shall constitute a material breach for which CPA may immediately terminate or suspend this AGREEMENT.
C. Independent Contractor Status:
   1. This AGREEMENT is not intended, and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, or association, as between CPA and FIRM.
   2. FIRM understands and agrees that all FIRM personnel furnishing services to CPA under this AGREEMENT are employees solely of FIRM and not of CPA for purposes of workers’ compensation liability.
   3. FIRM shall bear the sole responsibility and liability for furnishing workers’ compensation benefits to any FIRM personnel for injuries arising from services performed under this AGREEMENT.

D. Warranty Against Contingent Fees:
   1. FIRM warrants that no person or selling agency has been employed or retained to solicit or secure this AGREEMENT upon an agreement or understanding for a commission, percentage, brokerage or contingent fee.
   2. For breach or violation of this warranty, CPA shall have the right to terminate this AGREEMENT, and in its sole discretion, to deduct from the AGREEMENT price or consideration, or otherwise recover, the full amount of any such commission, percentage, brokerage or contingent fee.

E. Governing Laws:
   This AGREEMENT shall be governed by and construed in accordance with the laws of the State of California and any action brought by either party on this AGREEMENT shall be brought in Los Angeles County.

F. Compliance with Applicable Law:
   1. FIRM shall comply with all applicable Federal, State, and local laws, rules, regulations and ordinances, and all provisions required thereby to be included in this AGREEMENT are hereby incorporated herein. FIRM shall comply with the governing Rules of Professional Responsibility in the jurisdiction in which FIRM performs the work.
   2. FIRM shall indemnify and hold harmless the CPA, and its directors, officers, agents, and employees, from and against any and all liability, damages, costs, and expenses, including, but not limited to, defense costs and attorneys’ fees, arising from or related to any violation on the part of FIRM or its employees, agents, or
subcontractors of any such laws, rules, regulations, ordinances, or directives.

G. Record Retention and Inspection: FIRM will maintain records related to this engagement in formats and organization that FIRM, in its sole professional judgment, determine are efficient and appropriate for the conduct of this engagement provided that FIRM gives written notice to CPA of the formats and organization used. After the engagement ends, meaning the date of FIRM’s last bill for services in this matter, FIRM will maintain or destroy these records in accordance with FIRM’s then-existing record retention policy. A copy of FIRM’s current record retention policy and any changes to the record retention policy shall be promptly provided to CPA. Notwithstanding the foregoing, FIRM will first give CPA written notice of its intention to destroy the records at CPA’s last known address and a copy of the notice shall be sent to CPA’s General Counsel at the email address provided herein. The notice will inform CPA that the records will be destroyed 60 days after the date of the notice unless CPA notifies FIRM in writing that CPA wants the records to be sent to CPA at your expense. If the notice is returned to FIRM as undeliverable, FIRM will destroy the records, as the lack of a correct forwarding address will indicate that CPA has abandoned them. If at any time CPA requests transfer of the records to which CPA is entitled, FIRM shall transfer such records in electronic formats and organized in a manner in which FIRM maintained them. In that event or if CPA requests destruction of the records, FIRM reserves the right to retain, at FIRM’s expense, a copy of any part of the records to comply with legal or ethical obligations. Within ten (10) days of CPA’s written request, FIRM shall allow CPA or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this AGREEMENT.

H. Confidentiality:

1. FIRM shall maintain the confidentiality of all information which it may acquire arising out of or connected with activities under this AGREEMENT in accordance with all applicable Federal, State and CPA laws, regulations, ordinances and directives relating to confidentiality, including the Code of Professional Responsibility. FIRM shall inform all of its principals, employees and agents providing services hereunder of the confidentiality provisions of this AGREEMENT.

2. FIRM shall ensure that all attorneys, paralegals, and secretarial and clerical personnel having access to information relevant to FIRM’s provision of services under this AGREEMENT, are aware of and acknowledge the confidentiality requirements set forth in
3. These confidentiality obligations shall survive this AGREEMENT’s termination or expiration.

4. FIRM is rendering legal services only to CPA and to no other person or entity in connection with the matters described above. As long as CPA keeps confidential FIRM’s advice, the attorney-client privilege and the confidential relationship will not be inadvertently waived.

I. Communications With CPA:

FIRM recognizes that its communications with CPA and its agents and employees, officers and/or representatives are subject to the attorney-client privilege. FIRM warrants that it shall not disclose, or use in any manner other than in the furtherance of FIRM’s representation of CPA, any privileged information obtained from CPA or its officers, agents, or employees. FIRM understands that the CPA General Counsel is the legally empowered legal representative of the CPA and its officers and employees and FIRM shall not without specific direction from CPA General Counsel communicate with, advise or represent the CPA’s Board of Directors or other CPA officers or employees.

J. Conflict of Interest: Failure to comply with the provisions of this paragraph shall be a material breach of this AGREEMENT.

1. No CPA employee whose position with CPA enables such employee to influence the award of this AGREEMENT or any competing AGREEMENT, and no spouse or economic dependent of such employee, shall be employed in any capacity by FIRM or have any other direct or indirect financial interest in this AGREEMENT. No officer or employee of FIRM who may financially benefit from the performance of work hereunder shall in any way participate in the CPA’s approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence CPA’s approval or ongoing evaluation of such work.

2. FIRM shall comply with all conflict of interest laws, ordinances, resolution, and regulations now in effect or hereafter to be enacted during the term of this AGREEMENT. FIRM warrants and represents that it is not now aware of any facts that create a conflict of interest. If FIRM hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately disclose the conflict in writing to CPA and shall resolve the issue in a manner satisfactory to CPA provided FIRM is ethically able to disclose any details. Full written disclosure
shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. FIRM agrees to notify CPA of any conflicts of interest and agrees to seek CPA’s consent and waiver before representing another client adverse to CPA.

K. Ownership

To the extent permitted by law or contract, CPA shall own, or retain all right, title and interest in and to all proprietary information provided by CPA to FIRM in connection with this AGREEMENT (“CPA Information”) and all finished or unfinished content, writing and materials including but not limited to materials, reports, plans, studies, documents and other writings prepared by FIRM, its partners, employees, contractors, and agents as deliverables for Exhibit A (“CPA Materials”).

CPA grants FIRM the right to use of CPA Information or CPA Materials during the Term of this AGREEMENT.

L. Authorization Warranty:

FIRM represents and warrants that the signatory to this AGREEMENT is fully authorized to obligate FIRM and that all corporate acts necessary to the execution of this AGREEMENT have been accomplished.

M. Changes and Amendments of Terms:

CPA reserves the right to change any portion of the work required under this AGREEMENT, or amend its terms and conditions as may become necessary.

N. Validity:

The invalidity in whole or in part of any provision of this AGREEMENT shall not void or affect the validity of any other provision.

O. Waiver:

No waiver of a breach of any provision of this AGREEMENT by either party shall constitute a waiver of any other breach of the provision or any other provision of this AGREEMENT. Failure of either party to enforce any provision of this AGREEMENT at any time shall not be construed as a waiver of that provision. CPA’s remedies as described in this AGREEMENT shall be cumulative and additional to any other remedies in law or equity.
P. Remedies Reserved to CPA:

The remedies reserved to CPA shall be cumulative and additional to any other remedies provided in law or equity.

Q. Complete Agreement and Interpretation:

This AGREEMENT supersedes all prior communications and all previous written and oral agreements, and shall constitute the complete and exclusive statement of understanding between CPA and FIRM relating to the subject matter of this AGREEMENT. No provision of this AGREEMENT is to be interpreted for or against either party because that party’s legal representative drafted such provision.

Executed as of the date set forth on the cover page to this AGREEMENT:

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

By

Theodore Bardacke
Executive Director

Approved as to Form:

By

Nancy Whang
General Counsel

FIRM: Clean Energy Counsel, LLP

(Print Name of Firm)

By

Todd A. Larsen
Lead Counsel
EXHIBIT A
SCOPE OF WORK AND HOURLY BILLING RATES

Clean Energy Counsel, LLP ("FIRM")

Contemplated services include:

1. **Power Purchase Agreements ("PPAs") Negotiations.** Drafting and negotiating, whether arising out of CPA’s RFO or bilateral negotiations, (a) PPAs for renewable, renewable plus storage, or standalone storage projects, and (b) any ancillary or related documentation required or provided by project developers (e.g., non-disclosure agreements ("NDAs"), letters of credit, parent guarantees, legal opinions, authority documents, or board resolutions) for up to 15 projects assigned to FIRM. The services provided under this Section 1 shall be referred to as “PPA Negotiations”;

   The total amount of fees for PPA Negotiations shall not exceed $17,000.00 for each project assigned to FIRM (the “PPA NTE”) without CPA’s written authorization. If FIRM’s billable fees exceed the PPA NTE for each assigned project, FIRM shall be responsible for all fees incurred between the PPA NTE and $20,000.00 (the “PPA Collar”) for that assigned project.

   In the event, FIRM is assigned more than one project for a given counterparty within an RFO for a given contract year, the PPA NTE and PPA Collar shall apply for the first agreement, and for each additional agreement with the same counterparty, a not-to-exceed ("NTE") maximum amount of $14,000.00 shall apply.

   The total NTE for PPA Negotiations shall not exceed $255,000.00 in a contract year.

2. **General Energy Procurement Services.** Providing advice, representation, or support related to CPA’s energy procurement activities, including without limitation, RFO support, pro forma agreements or revisions thereto, amendments, letters of credit, parent guarantees, authority documents, collateral assignments, confirmations, ancillary documentation, or other procurement support as requested by CPA ("Procurement Services").

   The total amount of fees for Procurement Services shall not exceed $100,000.00 (the “Procurement Services NTE”) in a contract year.

   In no event shall the cumulative total of the NTE for PPA Negotiations and Procurement Services exceed $355,000.00 unless expressly authorized in writing by CPA.

   CPA and FIRM acknowledge that the Not to Exceed for PPA Negotiations and Procurement Services are not estimates of the total costs required to complete this engagement.
Staff Title
Todd Larsen (Lead Counsel): $450/hr

Other attorneys or staff to be assigned to matters by FIRM only with prior approval by CPA’s General Counsel.
To: Clean Power Alliance (CPA) Board of Directors

From: Natasha Keefer, Director of Power Planning & Procurement

Approved by: Ted Bardacke, Executive Director

Subject: Professional Services Agreement with Energy Exemplar, LLC for Production Cost Modeling Software and Related Services

Date: November 5, 2020

RECOMMENDATION
Authorize the Executive Director to execute a Professional Services Agreement with Energy Exemplar LLC (EE) for Production Cost Modeling Software and Related Services for an initial one-year term and up to a three-year term for a total Not-To-Exceed (NTE) contract value of $630,726.

BACKGROUND
Production cost modeling software is commonly used for energy planning functions by simulating electric grid operations and producing a distribution of cost and reliability outcomes and their associated probabilities. This software tool can be used for asset valuation, short-term operations and planning, procurement portfolio risk and sensitivity analysis, price forecasting, long-term integrated resource planning (IRP), and policy evaluation.

The software solution will support CPA’s effort to bring a number of power portfolio planning and IRP functions in-house. The tool will be primarily used by CPA’s Energy Resource Planner as well as meet other analytical needs of the power procurement and risk management teams.
**Solicitation**

On August 7, 2020, CPA released a Request for Proposals (RFP) for Production Cost Modeling Software and Related Services. Applicable experience and qualifications included the following areas:

- Development and integration of a Production Cost Modeling Software solution for load-serving entities (LSEs)
- Development of resource plans for LSEs operating within the CAISO
- Valuation for sophisticated power portfolio resources, including storage or other emerging technologies
- Providing as-needed services such as training and customer service support

**Evaluation Process**

In response to the RFP, CPA received proposals from seven potential bidders. Proposals contained annual cost estimates ranging from $70,000 to $212,000. Based on staff’s review and evaluation, CPA short-listed five proposals that satisfied the minimum qualifications/experience specified in the solicitation and offered the best value to CPA. CPA staff engaged in further due diligence, including interviews, reference checks, and a proof of concept case study.

EE is being recommended for the contract award based on the robust functionality of their PLEXOS software, including its ability to model a variety of sophisticated resource technologies (e.g. storage) across the CAISO and the Western Electricity Coordination Council (WECC) and stochastic and risk management modeling capabilities, as well as extensive experience working with clients that are CAISO market participants.

With 190+ employees, EE has been serving the energy industry in developing resource plans and portfolio analysis with PLEXOS since 1999. PLEXOS is now used by over 350 organizations globally, including CAISO, CPUC, CEC, SCE, LADWP, PG&E, NCPA, SMUD, Turlock Irrigation District and Silicon Valley Power.
**CONTRACT OVERVIEW**

**Scope of Services**

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

- **Task 1**
  - One user cloud-based license to access the PLEXOS market simulation software
  - Customer support services including 24-hour, 5 day a week technical support accessible through online portfolio, email, and phone

- **Task 2**
  - Implementation services, including timely installation and calibration of a CPA specific data model
  - Training plan for CPA, including access to EE’s e-learning platform, a certification program to support CPA in training staff, one-on-one training, group training, and the PLEXOS documentation site
  - Customized reporting to generate reports that CPA requires

- **Task 3 – As needed consulting services to support CPA procurement planning modeling activities**

**Term and Pricing**

The term of the agreement will commence upon November 9, 2020 and continue for an initial one-year term. CPA may renew the agreement at its option for successive one-year terms for a maximum of two renewal years after the initial term.

Fees for Task 1 and Task 2 are summarized below:

<table>
<thead>
<tr>
<th></th>
<th>Year 1 Initial Term</th>
<th>Year 2 Renewal</th>
<th>Year 3 Renewal</th>
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</thead>
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<td>License</td>
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<tr>
<td>Cloud Services</td>
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<tr>
<td>Implementation Costs</td>
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<td><strong>Total PLEXOS Costs</strong></td>
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<td>Addl Consulting Services</td>
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<td><strong>Total Contract Costs</strong></td>
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<td><strong>196,866</strong></td>
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</tbody>
</table>
For Task 3 services, CPA will pay for consulting services based on hourly rates for an annual NTE of $30,000 for the initial term and $25,000 for years 2 and 3.

**FISCAL IMPACT**

The cost of the contract is incorporated into the FY 2020-21 budget, which includes implementation, ongoing licensing costs, and consulting services.

**ATTACHMENT**

This Professional Services Agreement (this “Agreement”) dated and effective as of November 9, 2020 (the “Effective Date”), is made by and between:

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, (“CPA”) and

ENERGY EXEMPLAR LLC (“Contractor”).

CPA and Contractor are sometimes collectively referred to herein as the “Parties” and each individually as a “Party.” In consideration of the terms of this Agreement, and for other good and valuable consideration, the Parties make the following acknowledgments and agreements:

RECITALS

WHEREAS, CPA may contract with a qualified and experienced firm to provide a production cost modeling software solution; to develop and integrate the software solution into CPA’s power resource procurement strategy to support procurement planning activities, including but not limited to the development of resource plans, short and long-term resource optimization, and the valuation of energy procurement contracts; and to provide as-needed services such as training and customer service support;

WHEREAS, CPA conducted a Request for Proposal (“RFP”) and CPA selected Contractor because Contractor has the expertise and experience to provide the specified services to CPA and offered CPA the best value;

WHEREAS, Contractor desires to provide these specified services to CPA;

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions upon which Contractor shall provide to the CPA.

NOW, THEREFORE, it is agreed by the parties to this Agreement as follows:

AGREEMENT

1. Definitions
   a. “CPA Data” shall mean all CPA data delivered to Contractor and produced by the Contractor for the performance of the Services pursuant to this Agreement, including any customer or customer-related data; for avoidance of doubt CPA Data does not include Contractor’s datasets delivered to CPA.
   b. “CPA Information” shall mean all proprietary information provided by CPA to Contractor in connection with this Agreement.
   c. “CPA Materials” shall mean all finished or unfinished content, writing and design of materials but not limited to messaging, design, personalization, or other materials, reports, plans, studies, documents and other writings prepared by Contractor, its officers, employees and agents for CPA in the course of implementing this Agreement.
   d. “CPA Product” includes collectively CPA Data, CPA Information, and CPA Materials.
   e. “Services” shall mean the scope of services Contractor provides to CPA as specified in Exhibit A.
2. **Exhibits and Attachments.**

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

Exhibit A – Scope of Work  
Exhibit B – Payments and Rates  
Exhibit C – Not Applicable  
Exhibit D – Contractor’s End-User License Agreement

Should a conflict arise between language in the body of this Agreement and any exhibit or attachment to this Agreement, the language in the body of this Agreement controls, followed by Exhibit A, B, C, and D in that order. Notwithstanding the foregoing, solely with respect to Contractor’s Software, Datasets, and related Intellectual Property Rights each as defined in Exhibit D, Exhibit D shall control.

3. **Services to be Performed by Contractor.**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for CPA in accordance with the terms, conditions, and specifications set forth in this Agreement and in the Description of Services set forth in Exhibit A (“Services”).

4. **Compensation.**

CPA agrees to compensate Contractor as specified in Exhibit B:

a. In consideration of the Services provided by Contractor in accordance with all terms, conditions and specifications set forth in this Agreement and Exhibit A. CPA shall make payment to Contractor in the manner specified in Exhibit B.

b. Unless otherwise indicated in Exhibit B, Contractor shall invoice CPA monthly for all fees related to Services performed during the previous month. Payments shall be due within thirty (30) calendar days after the date of invoice. All payments must be made in U.S. dollars.

5. **Term.**

Subject to compliance with all terms and conditions of this Agreement, the term of this Agreement shall be one (1) year from the Effective Date (“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 CPA, in its sole discretion, provides thirty (30) days prior written notice of its intent not to renew the term of the Agreement (“Renewal Notice”).

6. **Termination.**

a. Termination for Default.

   • (i) Party defaults in the observance or performance by a Party of any such Party’s material covenants or agreements in this Agreement (other than a default in a payment obligation) and such default continues uncured for thirty (30) business days after written notice is given to such Party failing to perform its covenants or agreements under this Agreement, provided, however, that for such events which require more than thirty (30) business
days to cure, then the defaulting Party shall have such additional time as may reasonably be required to effect such cure provided that the defaulting Party diligently and continuously pursues such cure; or,

- (ii) CPA may terminate Contractor for default, after reasonable advance warning or notice and an opportunity to cure, if CPA determines, in its reasonable discretion, that Contractor has failed to complete, meet, or otherwise satisfy any milestones and deliverables described in Task 2 in Exhibit A and such failure was not a result of CPA’s own delay, action or omission and constitutes a material breach. The effective date of the termination shall be the date specified in CPA’s written notice to Contractor. CPA shall have no obligation to compensate Contractor for any services under Task 2 for which CPA has not already submitted payment.

b. Effect of Termination. Upon the effective date of expiration or termination of this Agreement: (i) Contractor may immediately cease providing Services in its entirety or if a termination to a part of the Agreement, cease providing the Services that have been terminated; (ii) any and all payment obligations of CPA under this Agreement will become due immediately except with regard to Paragraph 6(a)(ii); and (iii) each Party will promptly either return or destroy (as directed by the other Party) all Confidential Information of the other Party in its possession as well as any other materials or information of the other Party in its possession.

c. Upon such expiration or termination, and upon request of CPA, Contractor shall reasonably cooperate with CPA to ensure a prompt and efficient transfer of all CPA Product to CPA in a manner such as to minimize the impact of expiration or termination on CPA’s customers.

7. **Contract Materials.**

CPA owns all right, title and interest in and to all CPA Product. Upon the expiration of this Agreement, or in the event of termination, CPA Product, in whatever form and in any state of completion, shall remain the property of CPA and shall be promptly returned to CPA in a mutually agreeable format. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law. For the avoidance of doubt, Contractor owns all right, title and interest in and to all Intellectual Property Rights subsisting in, relating to or arising out of the Software or Services as defined in Exhibit D. Upon the expiration of this Agreement, or in the event of termination, the Software and Services, in whatever form and in any state of completion, shall remain the property of Contractor and shall be promptly returned to Contractor in a mutually agreeable format.

8. **Payments of Permits/Licenses.**

Contractor bears responsibility to obtain any license, permit, or approval required for it to provide the Services to be performed under this Agreement at Contractor’s own expense prior to commencement of the Services.

9. **Relationship of Parties.**

CPA 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 the Joint Powers Agreement and is a public entity separate from its constitute members. CPA shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement.
Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CPA’s constituent members in connection with this Agreement.

10. Confidential Information.

a. Each of the parties hereto agree to hold all Confidential Information of the other party in confidence, and will not divulge, disclose, or directly or indirectly use, copy, digest, or summarize, any Confidential Information, except to the extent necessary to carry out its responsibilities pursuant to this Agreement.

b. “Confidential Information” shall mean, in whatever form: (a) information that the Parties exchange with each other in the course and scope of this Agreement; (b) information that either Contractor stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to CPA; (c) CPA Product; or (d) information concerning the business, products, services, systems, procedures and records (in whatever form, including in electronic format) of that Party and its affiliates, and their relationships with their customers and suppliers, including without limitation all information relating to the Software, the Services, and Intellectual Property Rights as defined in Exhibit D.

c. Confidential Information shall not include: (1) information that is generally available to the public or in the public domain at the time of disclosure; (2) information that becomes publicly known other than through any breach of this Agreement by the recipient or its Representatives; (3) information which is subsequently lawfully and in good faith obtained by the recipient or its Representatives from a third party, as shown by documentation sufficient to establish the third party as the source of the Confidential Information; provided that the disclosure of such information by such third party is not known by the recipient or its Representatives to be in breach of a confidentiality agreement or other similar obligation of confidentiality; (4) information that the recipient or its Representatives develop independently without use of or reference to Confidential Information provided by the other party; or (5) information that is approved for release in writing by the disclosing party.

d. California Public Records Act. The Parties acknowledge and agree that the Agreement including but not limited to any communication or information exchanged between the Parties, any deliverable, or work product 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 designate or 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.

e. Third Party Request for Confidential Information. Upon request or demand of any third person or entity not a Party hereto pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information (“Requested Confidential Information”), CPA will as soon as practical (but in any case prior to the release of any information) notify Contractor in writing via email that such request has been made. CPA will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release to the third party of the Confidential Information designated by Contractor. If Contractor takes no such action after receiving the foregoing notice from CPA, CPA 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 Contractor does take or attempt to take such action, Contractor agrees to indemnify and hold harmless CPA, its officers, directors, employees and agents (“CPA Indemnified Parties”), from any claims, liability, award of attorneys’ fees, or damages, and to defend any action, claim or lawsuit brought against any of CPA Indemnified Parties for Contractor’s attempt to prevent disclosure or CPA’s refusal to disclose any Confidential Information.

11. 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. The certificate(s) of insurance and required endorsement shall be furnished to CPA prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to CPA of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph (d) below which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor’s obligation under paragraph 6 of this Agreement to indemnify, defend, and hold CPA harmless from any and all liabilities arising from the Contractor’s negligence, recklessness or willful misconduct in the performance of this Agreement. CPA agrees to timely notify the Contractor of any negligence claim.

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 Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

(a) General Liability

The Contractor 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. CPA shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page.

(b) Auto Liability

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit ($1,000,000.00).

(c) Workers’ Compensation

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to CPA prior to commencement of work.
Coverages required by this paragraph may be provided on a claims-made basis with a “Retroactive Date” either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. Contractor shall maintain a policy limit of not less than $1,000,000 per incident. If the deductible or self-insured retention amount exceeds $100,000, CPA may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund or Contractor’s general insurance reserves are adequate to provide the necessary coverage and CPA may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

12. Indemnification.

Contractor agrees to indemnify, defend, and hold harmless CPA, its employees, officers, and agents, from and against, and shall assume full responsibility for payment of all wages, state or federal payroll, social security, income or self-employment taxes, with respect to Contractor’s performance of this Agreement. Contractor further agrees to indemnify, and save harmless Company from and against any and all third-party claims, liabilities, penalties, forfeitures, suits, costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney’s fees), which Company may hereafter incur, become responsible for, or pay out, as a result of any violation of governmental laws, regulations or orders, to the extent caused by Contractor’s grossly negligent acts, willful misconduct, or the grossly negligent acts, willful misconduct of Contractor’s employees, agents, or subcontractors while in the performance of the terms and conditions of the Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of CPA, elected and appointed officers, employees, agents and volunteers.

CPA further agrees to indemnify, and save harmless Company from and against any and all third-party claims, liabilities, penalties, forfeitures, suits, costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney’s fees), which Company may hereafter incur, become responsible for, or pay out, as a result of any violation of governmental laws, regulations or orders, to the extent caused by CPA’s grossly negligent acts, willful misconduct, or the grossly negligent acts, willful misconduct of CPA’s employees, agents, or subcontractors while in the performance of the terms and conditions of the Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of Contractor, elected and appointed officers, employees, agents and volunteers.

13. Independent Contractor.

a. Contractor acknowledges that Contractor, its officers, employees, or agents will not be deemed to be an employee of Company for any purpose whatsoever, including, but not limited to: (i) eligibility for inclusion in any retirement or pension plan that may be provided to employees of Contractor; (ii) sick pay; (iii) paid non-working holidays; (iv) paid vacations or personal leave days; (v) participation in any plan or program offering life, accident, or health insurance for employees of Contractor; (vi) participation in any medical reimbursement plan; or (vii) any other fringe benefit plan that may be provided for employees of Contractor.
b. Contractor declares that Contractor will comply with all federal, state, and local laws regarding registrations, authorizations, reports, business permits, and licenses that may be required to carry out the work to be performed under this Agreement. Contractor agrees to provide CPA with copies of any registrations or filings made in connection with the work to be performed under this Agreement.

14. Compliance with Applicable Laws.

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions affecting services covered by this Agreement.

15. Nondiscriminatory Employment.

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.


Subject to the ownership rights in Section 7 above, all tangible deliverables set forth in Exhibit A (“Deliverables”) and prepared by Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of CPA upon payment to Contractor for such work. CPA shall have the exclusive right to use such Deliverables in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at CPA’s expense, provide such Deliverables to CPA or any party CPA may designate, upon written request. Contractor may keep file reference copies of all Deliverables and documents prepared for CPA. For the avoidance of doubt, the Deliverables do not include Contractor’s Software, Datasets, the Services, or related Intellectual Property Rights as defined in Exhibit D.

17. Notices.

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.
18. Assignment.

Neither this Agreement nor any of the Parties’ rights or obligations hereunder may be transferred or assigned without the prior written consent of the other Party. Notwithstanding anything to the contrary in the foregoing, each of the Parties’ may assign this Agreement without the consent of the other in the event of a sale, merger, consolidation, or other corporate transaction involving the assigning party’s equity or assets or the division of the assigning party performing this Agreement. Subject to the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.


Contractor may not subcontract Services to be performed under this Agreement without the prior written consent of CPA for which consent shall be unreasonably withheld. If the CPA’s written consent to a subcontract is not obtained, Contractor acknowledges and agrees that CPA will not be responsible for any fees or expenses claimed by such subcontractor.

20. Retention of Records and Audit Provision.

Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records, employees’ time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. CPA shall have the right, no more than once in any 12-month period during the term of this Agreement and only during regular business hours, to review and audit all records relating to this Agreement during the Agreement period and for at least three (3) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor’s premises or, at CPA’s option, Contractor shall provide all records within a maximum of fifteen (15) days upon receipt of written notice from CPA. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings and shall
promptly refund any overpayments made by CPA based on undisputed audit findings.

21. **Conflict of Interest**

   a. No CPA employee whose position with the CPA enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the CPA’s approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the CPA’s approval or ongoing evaluation of such work.

   b. The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to CPA. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this paragraph shall be a material breach of this Agreement.

22. **Governing Law, Jurisdiction, and Venue**

   This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

23. **Amendments**

   None of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by the Parties.

24. **Severability**

   Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provisions, will continue in full force and effect and will in no way be impaired or invalidated.

25. **Complete Agreement**

   This Agreement constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

26. **Counterparts**

   This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.
IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above written.

ENERGY EXEMPLAR LLC

By: Dan Mooy  
Title: SVP - Americas

Clean Power Alliance of Southern California

By: Theodore Bardacke  
Title: Executive Director
Exhibit A – Scope of Work

Task 1: PLEXOS Market Simulation Software Access

1. One Cloud User License to Access PLEXOS
   a. Contractor shall provide the items as more fully set forth in the Order Form of Exhibit D as well as the following services:
   b. Prior to the commencement of any work, the Contractor will confirm the needs for one cloud user license to the PLEXOS unified platform for conducting multiple forms of analysis (Asset Valuation, Short Term Operations). At a minimum, the assessment should include CPA’s needs for:
      i. Planning, Risk & Sensitivity Analysis, Price Forecasting, Short Term Operations, Capacity Expansion for IRP, Contract or Resource Valuation, Policy Evaluation, and Transmission that can scale with CPA’s needs across its organization and co-optimization of multiple markets and commodities such as energy, ancillary services & gas;
      ii. Combined fundamental and stochastic analysis in a single model, comprehensive regional databases for conducting capacity expansion and price forecasting on both a zonal and nodal basis for up to a 20-year planning horizon;
      iii. Integrated fundamental modeling of resource addition/retirements for portfolio optimization, detailed renewable and storage modeling, detailed Combined Cycle Gas Turbine (CCGT) modeling, substantial automation capability, streamlined Graphical User Interface with topological visualization and easy to use output reporting features;
      iv. Full diagnostic capabilities and error messaging, enhanced performance and service through cloud deployment, extensive documentation through online tutorials, searchable software documentation, and in-software help functionality.

2. Support Services
   a. Contractor will provide direct Customer Support to CPA, accessible through our online portal, by email, and by phone.
   b. Contractor will provide customer support 24 hours a day, 5 days a week. Contractor’s response time to technical support requests will not exceed 24-hours from initial request submission.

Task 1 Deliverables
Contractor will provide PLEXOS user credentials, license keys, all requisite product versions, and the WECC nodal database, in accordance with Exhibit D.

Task 2: Implementation & Training

1. Implementation
   a. Contractor will assist CPA with customizing data for CPA’s specific needs, understanding software inputs and outputs, and assistance with setting up a CPA specific data model, including configuration of the WECC and CPA portfolio data, including CPA’s contracts. Contractor will work in close coordination with CPA to ensure the desired outputs of the model meets CPA’s needs as described in more detail in Table 1: Implementation Plan below.
   b. Contractor will provide timely installation, calibration, and transition to the production mode of the software and data model and will oversee integration into CPA’s established processes and workflows.
   c. Milestones or deliverables listed in the Implementation Plan will not be deemed complete without CPA’s acceptance, which acceptance shall be based on the specifications herein and at CPA’s reasonable discretion, and any missed or delayed milestone or deliverable in the
Implementation Plan may, after Contractor has received written notice of any failure and a reasonable opportunity to cure, result in a material breach and be subject to the termination for default provision in Section 6.

2. Training Plan
d. Contractor will provide a complete menu of training options for CPA and stakeholders. At CPA’s request, Contractor shall offer solutions using:
   i. E-Learning using Contractor’s xPert online self-learning service.
   ii. A certification program which will support CPA in training its staff as well as hiring PLEXOS trained employees.
   iii. One-on-one training.
   iv. Group training.
   v. Training offered through Contractor’s Learning Center.
   vi. The PLEXOS Documentation site, which provides detailed searchable user manuals including the Desktop User Interface Guide, the Power System Modelling Guide, and the Concise Modeling Guide

3. Customized Reporting
a. Contractor will provide any support needed to generate custom reports that CPA reasonably requires. The specific configurations and settings of the model to maximize performance and solution accuracy will also be provided during the implementation phase.

Task 2 Deliverables
Work will be performed in accordance with the Table 1 Implementation Plan on the next page. CPA agrees that the scheduled dates in Table 1 may need to be extended and will allow such extensions if Contractor submits reasonable cause in writing. Contractor shall provide a minimum of 16 hours of initial training to select CPA staff.

Task 3 As-Needed Consulting Services
1. As-Needed Support
   a. At CPA’s request, Contractor may perform additional consulting services on an hourly basis as described in Exhibit B for the development and implementation of CPA procurement planning modeling activities.
## Exhibit A

### Table 1: Contractor’s Implementation Plan

<table>
<thead>
<tr>
<th>Implementation Activity</th>
<th>Begin date</th>
<th>End date</th>
<th>Duration (Days)</th>
<th>EE Hours</th>
<th>Estimated CPA Hours</th>
<th>Deliverable</th>
</tr>
</thead>
<tbody>
<tr>
<td>Detailed Planning</td>
<td>11/9/2020</td>
<td>11/13/2020</td>
<td>5</td>
<td>1.2</td>
<td>1.2</td>
<td></td>
</tr>
<tr>
<td>Scoping</td>
<td>11/9/2020</td>
<td>11/10/2020</td>
<td>1</td>
<td>4</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Specifications</td>
<td>11/10/2020</td>
<td>11/11/2020</td>
<td>1</td>
<td>4</td>
<td>8</td>
<td></td>
</tr>
<tr>
<td>Design</td>
<td>11/11/2020</td>
<td>11/12/2020</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Quality Plan</td>
<td>11/12/2020</td>
<td>11/12/2020</td>
<td>1</td>
<td>4</td>
<td>2</td>
<td></td>
</tr>
<tr>
<td>Detailed requirement of integration</td>
<td>11/13/2020</td>
<td>11/13/2020</td>
<td>2</td>
<td>8</td>
<td>4</td>
<td>Defined Implementation Specification for above items</td>
</tr>
<tr>
<td>Introductory Training (Webinar)</td>
<td>11/11/2020</td>
<td>11/16/2020</td>
<td>4</td>
<td>0</td>
<td>32</td>
<td>Up to two days of webinar training via Support team plus xPert training through Portal</td>
</tr>
<tr>
<td>Data Exchange</td>
<td>11/17/2020</td>
<td>11/23/2020</td>
<td>5</td>
<td>2</td>
<td>4</td>
<td></td>
</tr>
<tr>
<td>CPA IRP Data Transfer and Conversion</td>
<td>11/17/2020</td>
<td>11/18/2020</td>
<td>2</td>
<td>16</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Additional Modeling detail for PLEXOS</td>
<td>11/19/2020</td>
<td>11/23/2020</td>
<td>3</td>
<td>12</td>
<td>8</td>
<td>(CPA deliverable - CPA IRP &amp; additional data inputs supplied to EE)</td>
</tr>
<tr>
<td>WECC Nodal</td>
<td>11/24/2020</td>
<td>2/3/2021</td>
<td>47</td>
<td>18.8</td>
<td>25</td>
<td></td>
</tr>
<tr>
<td>Dataset Updates</td>
<td>11/24/2020</td>
<td>12/2/2020</td>
<td>5</td>
<td>12</td>
<td>16</td>
<td></td>
</tr>
<tr>
<td>Carveouts (1)</td>
<td>12/3/2020</td>
<td>12/18/2020</td>
<td>12</td>
<td>40</td>
<td>24</td>
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</tr>
<tr>
<td>Benchmarking</td>
<td>12/21/2020</td>
<td>1/8/2021</td>
<td>12</td>
<td>32</td>
<td>32</td>
<td>Benchmark to regional capacity plan &amp; Backcast to appropriate values (e.g. prices)</td>
</tr>
<tr>
<td>Task</td>
<td>Start Date</td>
<td>End Date</td>
<td>Duration</td>
<td>Sub tasks</td>
<td></td>
<td></td>
</tr>
<tr>
<td>-----------------------------------------</td>
<td>------------</td>
<td>----------</td>
<td>----------</td>
<td>---------------------------------------------------------------------------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Calibration</td>
<td>1/11/2021</td>
<td>2/3/2021</td>
<td>24</td>
<td>96 48 Operational &amp; calibrated model with CPA provided inputs &amp; EE carveout</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Webinar Advanced Training</td>
<td>2/4/2021</td>
<td>2/5/2021</td>
<td>2</td>
<td>16 32 Two days of webinar with one day dedicated to automation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Automation (6)</td>
<td>2/8/2021</td>
<td>2/11/2021</td>
<td>4</td>
<td>0 4 (CPA deliverable - setup of automation with EE training and support)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Input Automation</td>
<td>2/8/2021</td>
<td>2/8/2021</td>
<td>1</td>
<td>0 16</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Execute Automation</td>
<td>2/9/2021</td>
<td>2/9/2021</td>
<td>1</td>
<td>0 8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Custom Reports</td>
<td>2/10/2021</td>
<td>2/11/2021</td>
<td>1</td>
<td>0 4 (CPA deliverable - setup of automation with EE training and support)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Implementation Training</td>
<td>2/12/2021</td>
<td>2/12/2021</td>
<td>1</td>
<td>8 16 Optional: additional training to address CPA issues encountered during automation</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Validation</td>
<td>2/15/2021</td>
<td>2/19/2021</td>
<td>5</td>
<td>1.2 4 Release to production within CPA workflow</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Functional Testing</td>
<td>2/15/2021</td>
<td>2/16/2021</td>
<td>1</td>
<td>8 8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Model Testing</td>
<td>2/17/2021</td>
<td>2/18/2021</td>
<td>1</td>
<td>8 8</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Integration Testing</td>
<td>2/18/2021</td>
<td>2/19/2021</td>
<td>1</td>
<td>8 8 Release to production within CPA workflow</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Total Implementation</td>
<td>11/9/2020</td>
<td>2/19/2021</td>
<td>303.2</td>
<td>338.2 Total Implementation</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Exhibit B – Payments and Rates

Contractor shall satisfactorily provide all the contemplated services detailed in Exhibit A at the price per Task specified in Table 2 below and in compliance with the terms and conditions of this Agreement.

<table>
<thead>
<tr>
<th>Task 1 – PLEXOS Market Simulation</th>
<th>Software Access</th>
</tr>
</thead>
<tbody>
<tr>
<td>Software and Datasets set forth in the Order Form of Exhibit D.</td>
<td>$120,000</td>
</tr>
<tr>
<td>Cloud Services set forth in the Order Form of Exhibit D.</td>
<td>$42,000</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Task 2 - Implementation</th>
<th>Payment due upon completed Task</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Detailed Planning</td>
<td>$3,750</td>
</tr>
<tr>
<td>2. Data Exchange</td>
<td>$3,750</td>
</tr>
<tr>
<td>3. WECC Nodal Carveout Calibration</td>
<td>$30,000</td>
</tr>
<tr>
<td>4. Advanced &amp; Implementation Training</td>
<td>$3,750</td>
</tr>
<tr>
<td>5. Validation</td>
<td>$8,750</td>
</tr>
<tr>
<td>Total Implementation</td>
<td>$50,000</td>
</tr>
</tbody>
</table>

Payment for Task 1 services will be due and payable upon the Effective Date (and any applicable anniversary thereof) and payment for Task 2 services will be due and payable upon the completion and CPA acceptance of Task 2 Services, subject to the terms and conditions in Section 6.

In addition, CPA will reimburse Contractor at the hourly rates identified in Table 3 for the as-needed consulting services identified in Task 3 of Exhibit A. The total Not-To-Exceed (“NTE”) for all of the as-needed consulting services identified in Task 3 shall not exceed $30,000 in the Initial Term or $25,000 in each of the subsequent renewal periods.

<table>
<thead>
<tr>
<th>Task 3</th>
<th>Hourly Rates</th>
</tr>
</thead>
<tbody>
<tr>
<td>Title</td>
<td>Hourly Rate</td>
</tr>
<tr>
<td>Director</td>
<td>$431</td>
</tr>
<tr>
<td>Technical Lead</td>
<td>$301</td>
</tr>
<tr>
<td>Senior Analyst</td>
<td>$246</td>
</tr>
<tr>
<td>Analyst 2, IT Analyst</td>
<td>$218</td>
</tr>
</tbody>
</table>

The Total Maximum Amount that CPA shall pay Contractor for all Services to be provided under this Professional Services Agreement (including but not limited to Exhibit D) shall not exceed six-hundred thirty thousand seven-hundred and twenty-six Dollars ($630,726.00) ("Not-to-Exceed" or "NTE").

CPA shall pay approved invoices within 30 days of receipt.
Exhibit D – Contractor’s End User License Agreement

[See Attached]
Energy Exemplar® Software License and Plexos Cloud Subscription Agreement

Dated November 9, 2020

Energy Exemplar LLC ("Energy Exemplar")

and

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA ("Customer")
## Agreement details

<table>
<thead>
<tr>
<th>Energy Exemplar details</th>
<th>Address: 420 East South Temple, Suite 300, Salt Lake City, UT 84111</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contact Name: Dan Mooy</td>
</tr>
<tr>
<td></td>
<td>Position: SVP - Americas</td>
</tr>
<tr>
<td></td>
<td>Email address: <a href="mailto:dan.mooy@energyexemplar.com">dan.mooy@energyexemplar.com</a></td>
</tr>
<tr>
<td></td>
<td>Telephone: +1 (208) 255-3900</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Customer details</th>
<th>Address: 801 S. Grand Ave, Ste. 400, Los Angeles, CA 90017</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>Contact Name: Theodore Bardacke</td>
</tr>
<tr>
<td></td>
<td>Position: Executive Director</td>
</tr>
<tr>
<td></td>
<td>Email address: <a href="mailto:tbardacke@cleanpoweralliance.org">tbardacke@cleanpoweralliance.org</a></td>
</tr>
<tr>
<td></td>
<td>Telephone: (213) 269-5890</td>
</tr>
</tbody>
</table>
## Order Form

### 1. Software Products

<table>
<thead>
<tr>
<th>Software Product</th>
<th>Type of License</th>
<th>Licensed Purpose</th>
<th>Subject matter</th>
<th>Quantity</th>
<th>Unit price</th>
<th>Total price</th>
<th>Payable</th>
<th>License start date</th>
<th>License period</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plexos® Electricity</td>
<td>Named User and Cores</td>
<td>Standard</td>
<td>Asset Valuation, Short Term Operations, Integrated Resource Planning</td>
<td>1 Named User limited to 16 Cores</td>
<td>$162,000</td>
<td>$162,000</td>
<td>Annually</td>
<td>11/5/2020</td>
<td>12 Months</td>
</tr>
</tbody>
</table>

Subtotal: $162,000

Datasets (e.g. Aurora or Plexos data, zonal / nodal by region, specify region)

<table>
<thead>
<tr>
<th>Dataset</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Plexos WECC Nodal</td>
<td>Dataset License included with the Software</td>
</tr>
</tbody>
</table>

### 2. Cloud Services

<table>
<thead>
<tr>
<th>Cloud Services</th>
<th>Quantity</th>
<th>Unit price</th>
<th>Start Date</th>
<th>Total Fees</th>
</tr>
</thead>
<tbody>
<tr>
<td>PLEXOS® Cloud Workspace Team subscription fee</td>
<td>1 Named User limited to 16 Cores</td>
<td>Included with Plexos Electricity</td>
<td>11/5/2020</td>
<td>Included with Plexos Electricity</td>
</tr>
</tbody>
</table>

Subtotal: $0

Total: $162,000
IN WITNESS WHEREOF, the Parties hereto have set forth their agreements and understandings of the day and date above first written.

Executed for and on behalf of Energy Exemplar by:

__________________________
Signature authorized representative

Dan Mooy, SVP - Americas
Print full name and Title

Executed for and on behalf of Customer by:

__________________________
Signature authorized representative

Theodore Bardacke, Executive Director
Print full name and Title
Terms and Conditions

1. Definitions
   Capitalized terms used in this Agreement have the meanings assigned to them in clause 21.

2. Term
2.1 Term of the Agreement
   This Agreement commences on the Effective Date and, unless terminated earlier in accordance with clause 16, continues until the last License Period of the Software expires ("Term").

2.2 Software Products - License Period renewals
   At the end of each then-current License Period:
   
   2.2.1 where the Licensed Purpose for the Software is an Academic License or where its License Period is 6 months or less, this Agreement will renew for any further period (if any) as agreed in writing by the Parties; and
   
   2.2.2 in any other situation, such License Period will automatically renew for a consecutive period equal to the previous License Period,

   unless and until terminated in accordance with clause 16.

3. Software License
   In respect of the Customer's license of the Software, these Terms and Conditions are supplemented by the terms contained in Annex 1 of this Agreement.

4. Cloud Services
   Where Cloud Services are specified in section 2 of an Order Form, these Terms and Conditions are supplemented by the terms contained in Annex 2 of this Agreement, with respect to that Order Form.

5. Professional Services
   Where Professional Services are to be provided by Energy Exemplar pursuant to any Statement of Work, these Terms and Conditions are supplemented by the terms contained in such Statement of Work.

6. Fees
6.1 The Customer agrees to pay Energy Exemplar the Fees in consideration for the Software and the Services specified in each Order Form.

6.2 Energy Exemplar may change the Fees for any renewal of the License Period by giving the Customer at least 60 days' notice in advance of the renewal of the License Period under clause 2.2, and the change will take effect from the commencement of that renewal.

7. Payment
7.1 The Fees must be paid within 30 days of the date of issue of an invoice from Energy Exemplar.

7.2 Payment is to be made by way of electronic transfer to Energy Exemplar's nominated bank account as specified in the Agreement Details or as otherwise notified to the Customer in writing by Energy Exemplar.

7.3 In the event that the Customer defaults or delays payment, Energy Exemplar will be entitled to charge interest on all amounts not paid on a daily basis from the due date until Energy Exemplar receives payment in full at the lower of:

   7.3.1 a rate of 18% per annum; and

   7.3.2 the highest rate permitted by applicable law.

7.4 All legal costs and all charges, duties and other expenses incurred by Energy Exemplar as a result of the Customer failing to perform its obligations contained in this Agreement will be paid by the Customer on an indemnity basis to Energy Exemplar.

7.5 The Customer must include in the Agreement Details or otherwise provide to Energy Exemplar all information that is required in relation to the issuing and payment of invoices, which may include proof of company registration, a tax declaration or a purchase order. Under no circumstances will Energy Exemplar's omission to request such information, or any errors or omissions on the part of the Customer regarding such information, justify the Customer not making timely payment.

8. Customer's Obligations – General
8.1 The Customer acknowledges and agrees that:

   8.1.1 it is responsible for undertaking its own inquiries and making its own checks in relation to the suitability and applicability of the Software and the Services (if applicable) for their required purpose, including whether the Type of License and the Licensed Purpose are sufficient and
appropriate for the Customer’s needs;

8.1.2 the Software and the Services (if applicable) are provided ‘as is’ and ‘as available’. Energy Exemplar does not represent, warrant or guarantee that the Software or the Services will be error or ‘bug’ free or available at any specific time required by the Customer;

8.1.3 the Customer must, at its own expense, provide and maintain all communications facilities required for the electronic delivery of the Software and accessing and using the Services (if applicable); and

8.1.4 the Customer is solely responsible for the accuracy of all Customer Data and acknowledges that the contents of any datasets or reports provided through the Software, including under a Dataset License, will reflect the accuracy of such Customer Data.

9. Warranties

9.1 Energy Exemplar’s Warranties
Energy Exemplar warrants that:

9.1.1 it has full power and authority to grant the licenses granted under this Agreement; and

9.1.2 any Professional Services will be performed in a professional and workmanlike manner.

9.2 Customer’s Warranties
The Customer represents and warrants to Energy Exemplar that:

9.2.1 it owns all right, title and interest in and to the Customer Data or has the necessary licenses, rights, consents and permissions to grant the rights to Energy Exemplar pursuant to clause 3.2.1 of Annex 2;

9.2.2 the provision of the Customer Data, and any use of the Customer Data by Energy Exemplar in connection with the Services, will not breach any applicable law;

9.2.3 the Customer Data will not infringe the Intellectual Property Rights or any other rights of any third party; and

9.2.4 it will carry out all of its obligations and other activities related to this Agreement in accordance with all applicable laws.

9.3 Mutual Warranties
Each Party represents and warrants to the other that:

9.3.1 this Agreement has been duly executed and delivered and constitutes a valid and binding agreement enforceable against such Party in accordance with its terms;

9.3.2 no authorization or approval from any third party is required in connection with such Party’s execution, delivery, or performance of this Agreement; and

9.3.3 the execution, delivery, and performance of this Agreement does not violate the applicable laws of any jurisdiction or the terms or conditions of any other agreement to which it is a party or by which it is otherwise bound.

10. Indemnity

10.1 The Customer will indemnify and hold harmless Energy Exemplar against any and all claims, demands, suits, losses, damages, and expenses (including legal expenses) sustained, incurred or suffered by Energy Exemplar as a result of:

10.1.1 the Customer’s or its Named Users’:

(a) use of the Software or the Services other than as permitted under this Agreement;

(b) breach of this Agreement;

(c) tortious (including negligent and intentional) acts or omissions; or

(d) violation of any law, rule or regulation;

10.1.2 any infringement claim or action against Energy Exemplar or a settlement thereof based on any alleged infringement of any Intellectual Property Rights in connection with the Customer Data; or

10.1.3 a third-party claim related to the Customer’s use of the Services (including any use by a Named User).

10.2 Energy Exemplar will, for the Term, defend,
indemnify, and hold harmless the Customer against any damages awarded in any third party infringement claim or action against the Customer or a settlement thereof based on any alleged infringement of any Intellectual Property Rights as a result of the use of the Software or the Cloud Services according to the terms and conditions of this Agreement, provided that:

10.2.1 the Customer gives Energy Exemplar prompt written notice of the claim;

10.2.2 Energy Exemplar has full and complete control over the defense and settlement of the claim;

10.2.3 the Customer provides such assistance in connection with the defense and settlement of the claim as Energy Exemplar may reasonably request;

10.2.4 the Customer complies with any settlement or court order made in connection with the claim, including in relation to the future use of any infringing material;

10.2.5 Energy Exemplar will have the right to settle any claims in its sole and absolute discretion; and

10.2.6 Energy Exemplar will have no obligation under this clause 10 for any infringement (and the Customer will reimburse Energy Exemplar for any costs or damages incurred in relation to such infringement) to the extent that it arises out of or is based upon:

(a) any unauthorized combination, operation, or other use of the Software or the Services other than in accordance with this Agreement;

(b) any additions, modifications or enhancements of the Software or the Services requested by Customer or not made by Energy Exemplar, if the alleged infringement would not have occurred but for such additions, modifications or enhancements; or

(c) the Customer's failure to comply with instructions, documentation or materials provided by Energy Exemplar, if the alleged infringement would not have occurred but for such failure.

10.2.7 This clause 10 states Energy Exemplar's sole and exclusive liability, and the Customer's sole and exclusive remedy, for the actual or alleged infringement by Energy Exemplar of any third party Intellectual Property Right by the Software or the Services.

10.2.8 If any person makes a claim that is subject to the indemnity in clause 10.2 in respect of Software or Cloud Services, or in Energy Exemplar's reasonable opinion such a claim is likely to be made, then Energy Exemplar may, at its option, either:

(a) procure for the Customer the right to continue using, possessing or receiving the Software or the Cloud Services free from any such claim;

(b) modify the Software or the Cloud Services so that the Customer's use of the Software or the Cloud Services ceases to infringe the rights of the relevant third party; or

(c) replace the Software or the Cloud Services with non-infringing goods or services, or, if none of the above are reasonably practicable, terminate this Agreement with immediate effect by providing written notice to the Customer.

11. Disclaimer and Limitation of Liability

11.1 DISCLAIMER OF WARRANTY

11.1.1 TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW BUT SUBJECT TO CLAUSES 11.2 AND 11.3: (A) ENERGY EXEMPLAR EXCLUDES ALL IMPLIED REPRESENTATIONS, WARRANTIES, TERMS AND CONDITIONS OF ANY KIND WHATSOEVER (WHETHER IMPLIED BY COMMON LAW, STATUTE OR OTHERWISE) AND THE APPLICATION OR AVAILABILITY OF ANY STATUTORY RIGHTS (INCLUDING ANY IMPLIED REPRESENTATIONS, WARRANTIES, TERMS OR
CONDITIONS OR ANY STATUTORY GUARANTEES THAT THE SOFTWARE OR SERVICES ARE OF SATISFACTORY QUALITY OR FIT FOR A PARTICULAR PURPOSE;
(B) THE CUSTOMER BEARS ALL RISK RELATING TO THE QUALITY AND PERFORMANCE OF THE SOFTWARE AND SERVICES AND TO THE ACCURACY AND USE OF THE INFORMATION RESULTING FROM THE USE OF THE SOFTWARE AND SERVICES; AND (C) WITHOUT LIMITING THE FOREGOING, ENERGY EXEMPLAR DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OR USE OF THE SOFTWARE OR SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE EXCEPT FOR SUCH LOSS OR DAMAGE ARISING FROM THE SOLE GROSS NEGLIGENCE OR WILFUL MISCONDUCT OF ENERGY EXEMPLAR.

The Customer acknowledges that the public internet is an inherently insecure environment and that Energy Exemplar has no control over the privacy of any communications or the security of any data outside of its internal systems.

The use of the public internet will be at the Customer's sole risk and Energy Exemplar is not liable for any losses, costs, damages or expenses arising in connection with such use of the public internet including all liability for any disclosure of Confidential Information when transmitted over the public internet.

11.2 LIMITATION OF LIABILITY
IN NO EVENT WILL ENERGY EXEMPLAR, ITS LICENSORS, SUPPLIERS, SHAREHOLDERS, OFFICERS, EMPLOYEES OR AGENTS BE LIABLE FOR ANY LOSS OF OPPORTUNITY, GOODWILL, PROFITS, ANTICIPATED SAVINGS OR BUSINESS, LOSS OR CORRUPTION OF DATA OR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE USE OF OR RELIANCE UPON THE SOFTWARE OR SERVICES OR ANY INFORMATION RESULTING FROM THE USE OF THE SOFTWARE OR SERVICES, EVEN IF ENERGY EXEMPLAR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. EXCEPT TO THE EXTENT CLAUSE 10.2.8(c) APPLIES, IN NO EVENT WILL ENERGY EXEMPLAR BE LIABLE FOR PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES OR ANY UNAUTHORIZED USE OR MISUSE OF ANY SOFTWARE OR SERVICES OR ANY INFORMATION RESULTING FROM THE USE OF THE SOFTWARE OR SERVICES. THE CUSTOMER ASSUMES RESPONSIBILITY FOR THE INSTALLATION, USE AND RESULTS OBTAINED FROM THE SOFTWARE OR SERVICES. UNDER NO CIRCUMSTANCES WILL ENERGY EXEMPLAR'S TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT (INCLUDING WARRANTY CLAIMS), REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), BREACH OF STATUTE OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID BY THE CUSTOMER TO ENERGY EXEMPLAR DURING THE IMMEDIATELY PRECEDING 6-MONTH PERIOD (DETERMINED AS OF THE DATE OF ANY FINAL JUDGMENT IN AN ACTION), THE CUSTOMER MAY NOT MAKE ANY CLAIM AGAINST ANY OF ENERGY EXEMPLAR'S SUPPLIERS IN CONNECTION WITH THIS AGREEMENT. THE PARTIES ACKNOWLEDGE THAT THE PRICES HAVE BEEN SET AND THE AGREEMENT ENTERED INTO IN RELIANCE UPON THESE LIMITATIONS OF LIABILITY AND THAT ALL SUCH LIMITATIONS FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN THE PARTIES. THE EXCLUSION AND LIMITATION OF CONSEQUENTIAL AND INCIDENTAL DAMAGES IN THIS CLAUSE 11.2 WILL NOT APPLY TO THE EXTENT THEY ARE NOT PERMITTED BY THE APPLICABLE JURISDICTION'S LAWS; PROVIDED THAT NOTHING CONTAINED HEREIN SHALL LIMIT CUSTOMER'S RIGHTS AND REMEDIES RELATING TO SECTIONS 10, 11, OR 12 OF THE PROFESSIONAL SERVICES AGREEMENT BETWEEN ENERGY EXEMPLAR AND CUSTOMER DATED NOVEMBER 9, 2020 ("UNDERLYING AGREEMENT").

11.3 REMEDIES
NOTHING IN THIS AGREEMENT IS INTENDED TO EXCLUDE, RESTRICT OR MODIFY ANY CONSUMER RIGHTS OR ANY OTHER LEGISLATION WHICH MAY NOT BE EXCLUDED, RESTRICTED OR MODIFIED BY AGREEMENT. IF ANY OTHER LEGISLATION IMPLIES A CONDITION, WARRANTY OR TERM INTO THIS AGREEMENT OR PROVIDES STATUTORY GUARANTEES IN CONNECTION WITH THIS AGREEMENT, IN RESPECT OF GOODS AND SERVICES SUPPLIED (IF ANY), ENERGY EXEMPLAR'S LIABILITY FOR BREACH OF SUCH A CONDITION, WARRANTY, OTHER TERM OR GUARANTEE IS LIMITED (AT ENERGY EXEMPLAR'S OPTION) TO REPAIRING OR REPLACING ANY DEFECTIVE GOODS OR SERVICES AT ITS OPTION, OR PAYING THE COST OF
REPLACING THE GOODS OR OF ACQUIRING EQUIVALENT GOODS; AND/OR (IV) PAYING THE COST OF HAVING THE GOODS REPAIRED; OR (B) IN THE CASE OF SUPPLY OF SERVICES, ENERGY EXEMPLAR DOING EITHER OR BOTH OF THE FOLLOWING: (I) SUPPLYING THE SERVICES AGAIN; AND/OR (II) PAYING THE COST OF HAVING THE SERVICES SUPPLIED AGAIN.

12. Confidentiality

12.1 Subject to the provisions of clauses 12.2 and 12.3, each Party must:

12.1.1 treat as strictly confidential and only use the other Party’s Confidential Information solely for the purposes contemplated by this Agreement; and

12.1.2 not, without the prior written consent of the Party from whom the Confidential Information was obtained (which may be withheld in that Party’s absolute discretion), publish, use or otherwise disclose to any person the other Party’s Confidential Information except for the purposes contemplated by this Agreement.

12.2 Each Party may disclose Confidential Information which would otherwise be subject to clause 12.1 if, but only to the extent, it can demonstrate that:

12.2.1 such disclosure is required by applicable law;

12.2.2 the Confidential Information was lawfully in its possession before its disclosure by the other Party and had not been obtained from the other Party; or

12.2.3 the Confidential Information was in, at the time of disclosure, or has come into the public domain other than as a result of a breach of this Agreement or any other obligation of confidence,

provided that any such disclosure must not be made without prior consultation with the Party from whom the Confidential Information was obtained (to the extent such consultation is not prohibited by applicable law) and in the case of disclosures under clause 12.2.1, must be made so as to minimize any such disclosure.

12.3 Each Party may for the purposes contemplated by this Agreement disclose the other Party’s Confidential Information to any of the following persons, provided that such persons have first been directed (Direction) by the disclosing Party to keep it confidential:

13. Intellectual Property

13.1 All Intellectual Property Rights subsisting in, relating to or arising out of the Software or Services are (as between the Parties) owned by and vest in Energy Exemplar, including all Software Updates, Updates, modifications, developments or enhancements made by or on behalf of either Party to such Intellectual Property Rights.

13.2 Nothing in this Agreement transfers any right, title or interest in Energy Exemplar’s Intellectual Property Rights in the Software or Services (including all Software Updates, Updates, modifications, developments or enhancements made by or on behalf of either Party to such Intellectual Property Rights) to the Customer or any other person, except as expressly granted in this Agreement.

13.3 The Customer must promptly give notice in writing to Energy Exemplar if it becomes aware of any unauthorized or suspected unauthorized disclosure to any third party of any of Energy Exemplar’s Confidential Information or of any infringement or suspected infringement by any third party of any of Energy Exemplar’s Intellectual Property Rights (including Energy Exemplar’s trademarks or trade secrets), and provide Energy Exemplar with all information and assistance reasonably required by Energy Exemplar in respect of such unauthorized disclosure or infringement.

13.4 Where Energy Exemplar extends the functionality of the Software under clause 5.2.1 of Annex 1 or otherwise modifies or alters the Software (including, for the avoidance of doubt, any Datasets), including as a result of any suggestions or recommendations of the Customer or being engaged to perform Services for the Customer (each being “Modifications”), the Customer acknowledges and agrees:

13.4.1 that all the Intellectual Property Rights in the Modifications will be owned by and assigned to Energy Exemplar;

13.4.2 to procure that the Intellectual Property Rights in the Modifications (including any source code) vest in Energy Exemplar upon creation; and

13.4.3 to hereby absolutely assign and transfer (and to procure that any of its employees, contractors or personnel promptly assign and transfer) to Energy Exemplar with
full title guarantee all existing and future Intellectual Property Rights throughout the entire world in the Modifications, including all statutory and common law rights attaching thereto.

13.5

13.6 If the Customer provides any information or datasets to Energy Exemplar solely to allow Energy Exemplar to provide support services (including troubleshooting and optimization) to the Customer with respect to such information or datasets, Energy Exemplar will only use such information or datasets to provide such support services.

13.7 If and to the extent that the Customer provides Energy Exemplar with feedback or recommendations on any features or functions of the Software or the Services, Energy Exemplar may use any such feedback or recommendations for its own purposes in its discretion.

13.8 The Customer hereby unconditionally and irrevocably assigns and transfers absolutely to Energy Exemplar with full title guarantee and free from all encumbrances all rights, title and interest it (or its personnel) may have or obtain in the Intellectual Property Rights and other rights in the Software and the Services, including all Software Updates, Updates and modifications, feedback, recommendations, developments and enhancements given or made by or on behalf of the Customer to such Intellectual Property Rights.

13.9 The Customer must:

13.9.1 do or procure to be done all such further acts and things, and execute or procure the execution of all such other documents, forms and authorizations as Energy Exemplar may from time to time reasonably require in order to give Energy Exemplar the full benefit of this clause 13, whether in connection with any registration of title or other similar right or otherwise; and

13.9.2 undertake to provide to Energy exemplar (at its request) all reasonable assistance with any proceedings which may be brought by or against Energy Exemplar against or by any third party relating to the rights assigned by this clause 13, for which Energy Exemplar and Customer will determine the reasonable costs incurred by Customer and compensate Customer for those costs.

14. Audit

14.1 During the Term, and for a period of 6 years after termination of this Agreement, Energy Exemplar may, with reasonable notice to the Customer, audit and inspect all records, procedures and systems of the Customer which relate to the use of the Software or the Services (if applicable) to verify the Customer’s compliance with this Agreement.

14.2 In relation to any audit or inspection conducted pursuant to clause 14.1:

14.2.1 the Customer must fully co-operate with Energy Exemplar; and

14.2.2 Energy Exemplar will conduct such audit or inspection in accordance with the reasonable security guidelines which may be applicable to the Customer’s premises and systems and use reasonable measures to ensure that it does not disrupt the Software or the Services and business practices of the Customer.

14.3 Each Party is liable for its own costs of any audit or inspection conducted pursuant to clause 14.1, except where Customer is found to have:

14.3.1 breached any obligation under or in connection with this Agreement relating to the calculation or invoicing of Fees; or

14.3.2 materially breached any other obligations under or in connection with this Agreement,

in which case the Customer must, within 20 Business Days of a request by Energy Exemplar, reimburse Energy Exemplar for its costs (including the costs of engaging any third-party auditor) in connection with such audit or inspection.

14.4 If the results of any audit or inspection reveal any unlicensed use of the Software then promptly, and in any event within 14 days of the results of such audit, the Customer must:

14.4.1 pay to Energy Exemplar the applicable additional fees in respect of the Customer’s unlicensed use of the Software (which will be calculated with reference to the applicable Fees set out in the applicable Order Form); and

14.4.2 order sufficient licenses for the applicable Software (which will be charged consistent with the
15. **Third Party Products or Services**

15.1 The Software and/or the Services (if applicable) may include, or Energy Exemplar may from time to time make available to the Customer, third-party products or services, including solvers, add-ons and plug-ins as well as implementation, customization, training and other consulting services ("Third-Party Products"). Such Third-Party Products may be essential in order for the Customer to receive full functionality, modelling or other benefits in using the Software and/or the Services.

15.2 The Customer's use of Third-Party Products will be governed by a separate license and usage agreement or terms and conditions between the Customer and the relevant third party.

15.3 Unless otherwise specified in any Order Form, as at the Effective Date, the Third-Party Product specified in Annex 3 is provided together with or as part of the Software, and the relevant terms specified in Annex 3 apply to such Third-Party Product.

15.4 Where Third Party Products other than those referred to in clause Error! Reference source not found. are provided together with or as part of the Software or the Services, Energy Exemplar will:

15.4.1 notify the Customer; and

15.4.2 specify the applicable terms which will apply to the Customer's use of such Third-Party Products.

15.5 In respect of Third-Party Products or any other third-party products or services which the Customer installs or enables for use with the Software and/or Services, the Customer acknowledges that Energy Exemplar:

15.5.1 may allow the third-party vendors of those products or their affiliates to have access to the Customer Data as required for the interoperation and support of such Third-Party Products or other third-party products or services with the Software and/or the Services;

15.5.2 does not warrant the use or performance of such Third-Party Products or other third-party products or services, nor does it provide any support for such Third-Party Products or other third-party products, irrespective of whether or not they are designated by Energy Exemplar as "verified", "approved" or similar;

15.5.3 disclaims all liability in relation to such Third-Party Products or other third party products and services; and

15.5.4 without limiting clause 15.5.3, will not be responsible for any disclosure, modification or deletion of Customer Data in connection with any access by the relevant third-party vendor to Customer Data.

16. **Termination**

16.1 Energy Exemplar may terminate all or part of this Agreement immediately on written notice if:

16.1.1 the Customer fails to comply with any material provision of this Agreement

16.2 The Customer may terminate this Agreement immediately on written notice to Energy Exemplar if:

16.2.1 Energy Exemplar is in material breach of this Agreement and has failed to remedy the breach within 30 days of receipt of a written notice from the Customer to do so; or

16.2.2 Energy Exemplar becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration.

17. **Effects of Termination**

17.1 On termination of this Agreement:

17.1.1 the license granted under clause 1 of Annex 1 automatically ceases;

17.1.2 the rights granted to the Customer under clause 2.1 of Annex 2, if applicable, automatically cease; and

17.1.3 any other rights granted to Customer, if applicable, under this Agreement automatically cease;

17.1.4 Energy Exemplar will be entitled to:

(a) invoice the Customer for the Fees for any Services which have been performed but are yet to be invoiced (with the Fees for any Services payable on a milestone or
fixed fee basis being pro-rated); and
(b) retain Fees paid by the Customer, including Fees paid in respect of any period after the date of termination;

17.1.5 the Customer must pay any Fees invoiced under clause 17.1.4(a) or otherwise owing or outstanding under this Agreement;

17.1.6 the Customer must promptly return to Energy Exemplar (or at Energy Exemplar’s option and instruction, destroy or otherwise dispose of) all of the Software (including any copies thereof) within the Customer’s possession or control;

17.1.7 the Customer must promptly cease using the Services, if applicable;

17.1.8 the obligations of confidentiality (but not the rights to use or disclose Confidential Information) under clause 12 will continue to apply to the Parties; and

17.1.9 clauses 3, 7.4, 9, 10, 11, 13, 14, 17, 18 and 21 will continue to apply to the Parties.

17.2 Termination of this Agreement for whatever reason does not affect the rights and obligations of the Parties which have accrued before the date of termination, including the right to claim damages as a result of a breach of this Agreement.

18. Dispute Resolution

18.1 A Party claiming that a dispute (“Dispute”) has arisen under or in connection with this Agreement must notify the other Party in writing giving details of the dispute.

18.2 During the ten (10) Business Day period after a notice is given under clause 18.1 (or any longer period agreed in writing between the Parties) (the “Initial DR Period”) the Parties must work in good faith to resolve the Dispute.

18.3 If the Dispute is not resolved by the Parties within the Initial DR Period, the Dispute must be referred to the Customer’s chief operating officer (or designee) and Energy Exemplar’s chief information officer (or equivalent) must work together in good faith to resolve the Dispute within a period of ten (10) Business Days (or any longer period agreed in writing between the Parties).

18.4 While the procedure set forth in this clause 18 is being followed, both Parties must continue to fulfil their obligations under this Agreement.

18.5 The procedure set out in this clause 18 does not limit or exclude a Party’s rights under this Agreement or at common law or equity (including the right to make applications for interim relief, including injunctions).

19. Regulatory

Without limiting clause 1.2.3 of Annex 1, in the United States, all load flows are subject to either US Federal Energy Regulatory Commission (“FERC”) Critical Energy Infrastructure Information (“CEII”) regulations or restricted use provisions of an originating entity. These load flows can only be delivered to entities which have received and can demonstrate approval from FERC or the appropriate originating entity. The Customer must provide proof of approval to Energy Exemplar as a condition precedent to the delivery of CEII regulated data and maintain CEII regulated data in a secure place pursuant to FERC regulations.

20. General

20.1 Assignment and Subcontracting

20.2 The Customer must not assign, novate, transfer, sub-contract or otherwise dispose of any or all of its rights and/or obligations under this Agreement without Energy Exemplar’s prior written consent.

20.3 Energy Exemplar may enter into any sub-contract with any third party for the performance of its obligations under this Agreement without the prior written consent of the Customer. Any such sub-contract does not excuse Energy Exemplar from performing its obligations under this Agreement.

20.4 Amendments

No amendment or modification of this Agreement will be effective unless agreed in writing and signed by authorized representatives of each of the Parties.

20.5 Entire Agreement

This Agreement constitutes the whole agreement between the Parties relating to its subject matter and supersedes and extinguishes any prior drafts, agreements, undertakings, representations, warranties and arrangements of any nature, whether in writing or oral, relating to such subject matter.

20.6 Rights Cumulative and Other Matters

The rights, powers, privileges and remedies provided under any provision of this Agreement are cumulative and are not exclusive of any rights, powers, privileges or remedies provided under any other provision of this Agreement or by applicable law or otherwise. No failure to exercise nor any delay in exercising by any Party of any right, power, privilege or remedy under this Agreement will impair or operate as a
20.7 **Exclusion of UN Convention and UCITA**

The terms of the United Nations Convention on Contracts for the Sale of Goods do not apply to this Agreement. The Uniform Computer Information Transactions Act (UCITA) shall not apply to this Agreement regardless of when or where adopted.

20.8 **Taxes**

20.8.1 Unless expressly stated to the contrary, all prices, fees and other charges specified in this Agreement are exclusive of any and all sales and value added taxes, withholding taxes, duties and other charges ("Taxes") imposed or levied in connection with the license of the Software and the provision of the Services or any goods under this Agreement.

20.8.2 Despite any other provision of this Agreement, Energy Exemplar may pass on as an addition to the prices, fees and charges the amount of any Taxes.

20.8.3 Without in any way limiting clause 20.8.2, to the extent that any supply made under or in connection with this Agreement is a taxable supply, then the consideration for that supply is increased by an amount equal to the amount of that consideration multiplied by the rate at which Tax is imposed in respect of that supply (except to the extent that the consideration is expressed to be inclusive of Tax) and is payable at the same time and in the same manner as the consideration to which it relates.

20.9 **Force Majeure**

Except with respect to payment of Fees, a Party will have no liability to the other Party in respect of anything which, apart from this provision, may constitute breach of this Agreement arising by reason of force majeure, namely circumstances beyond the control of the Party, which will include acts of God, perils of the sea, air, fire, flood and drought, explosion, sabotage, accident, embargo, riot, civil commotion, including acts of local government and parliamentary authority; epidemic, pandemic or public health emergency and any resulting governmental action including work stoppages, mandatory business, service or workplace closures, full or partial lockdowns or affected areas, quarantines, border closures and travel restrictions; breakdown of equipment and labour disputes ("Force Majeure Event").

20.10 **Costs**

Subject to any express provision in this Agreement to the contrary, each Party must pay its own costs of and incidental to the negotiation, preparation, execution and carrying into effect of this Agreement.

20.11 **Governing Law and Jurisdiction**

This Agreement will be governed by and construed in accordance with the laws of the State of Utah, and each Party submits to the exclusive jurisdiction of the courts of the State of Utah.

20.12 **Notices**

Any notice or other communication required to be given under this Agreement ("Notice") must be in writing (including email), in the English language and must be sent to each Party in accordance with the details set out in the Agreement Details.

21. **Definitions and Interpretation**

21.1 In this Agreement the following abbreviations, words and phrases have the following meanings, unless the context requires otherwise:

"Academic License" means the type of license for the Software specified in clause 3.1 of Annex 1.

"Agreement" means this agreement, which comprises the parts specified in clause 21.3.

"Agreement Details" means the section at the front of this Agreement headed “Agreement Details”.

"Aurora License" means a license for the Aurora Software (if applicable, as specified in section 1 of any Order Form).

"Business Day" means any day which is not a Saturday, Sunday or public holiday in the place where the Software is being used by the Customer.

"Business Hours" means the period from 9am to 5pm on Business Days.

"Cloud Fees" means the Fees (if any) payable for the Cloud Services as specified in section 2 of any Order Form or otherwise agreed in writing between the Parties.

"Cloud Services" means the services (if any) specified in section 2 (Cloud Services) of any Order Form.
“Confidential Information” means, in relation to a Party, all information relating to that Party and its affiliates, including all information concerning the business, products, services, systems, procedures and records (in whatever form, including in electronic format) of that Party and its affiliates, and their relationships with their customers and suppliers. Confidential information of Energy Exemplar includes the Software and the Services, all information relating to the Software and the Services (including data and information contained in or made available through a Dataset License or an Aurora License) and all Intellectual Property Rights existing in the same, and the terms and conditions of this Agreement and any other information delivered by Energy Exemplar, which, under the circumstances, would reasonably understood to be confidential or proprietary.

“Core” means an independent processing unit in a CPU within the Customer’s system (whether physical or virtual).

“Cores License” means the Type of License for the Software specified in clause 2.2 of Annex 1.

“Customer Account” means an account issued by Energy Exemplar to the Customer that will utilize unique log-in credentials to provide Named Users with access to use the Cloud Services in accordance with this Agreement.

“Customer Data” means any Customer data or information which the Customer uploads or inputs into the Software and/or the Services.

“Dataset” means the simulation ready dataset for the energy power market or other market specified in any applicable Order Form, including all updates, upgrades, enhancements or modifications to such dataset which are delivered by Energy Exemplar.

“Dataset License” means the license for the Dataset specified in clause 3.2 of Annex 1.

“Effective Date” means the date set out on the cover page of this Agreement.

“Error” means any repeatable design or programming error in the Cloud Services which prevents the Cloud Services from substantially complying with the functionality in the documentation delivered or provided with the Cloud Services, which adversely affects the use, function or performance of the Cloud Services.

“Fees” means the license fees for the Software, the Cloud Fees and the fees for the Professional Services, as specified in any Order Form, in any Statement of Work or otherwise agreed in writing between the Parties.

“Good Industry Practice” means, in relation to any undertaking and any circumstances, the exercise of the skill, diligence, prudence, foresight and judgment which would be expected from a person engaged in the same type of undertaking under the same or similar circumstances, applying the standards currently generally applied in Energy Exemplar’s industry.

“Intellectual Property Rights” means patents, trade secrets, trademarks, service marks, rights (registered or unregistered) in any designs, applications for any of the foregoing, trade or business names, copyright (including rights in computer software) and topography rights; inventions, know-how, secret formulae and processes, lists of customers and suppliers and other proprietary knowledge and information; internet domain names; rights protecting goodwill and reputation; database rights; and all rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world.

“License Period” means, for any Software licensed under this Agreement (as specified in any Order Form), the period commencing on the ‘License start date’ and continuing for the ‘License period’ (each as specified in the applicable Order Form), as may be renewed under clause 2.1 or terminated early under clause 16.

“Licensed Purpose” means the purpose for which any Software is licensed under this Agreement and the subject matter for which the Software may be used by the Customer, each as specified in the applicable Order Form.

“Named User” means an employee of Customer who has a specific individual login configured to them that enables such individual to access and use the Software and/or Cloud Services (if applicable).

“Name User License” means the Type of License for the Software specified in clause 2.1 of Annex 1.

“Order Form” means the section at the front of this Agreement headed “Order Form”, comprised of section 1 (Software Products) and section 2 (Cloud Services) and any subsequent “Order Form” agreed in writing by the Parties from time to time.

“Professional Services” means the professional services specified in any Statement of Work entered into by the Parties under this Agreement.
“Service Credits” means the service credits / rebates or price reductions (or similar) set out in the Service Level Agreement that are payable by Energy Exemplar if Energy Exemplar fails to meet the required levels of performance, including ensuring that the provision of Cloud Services meets any applicable Service Levels.

“Service Level Agreement” means the Service Level Agreement set out in Schedule 1 to Annex 2 of this Agreement.

“Service Levels” means the required levels of performance for the Cloud Services as set out or referred to in the Service Level Agreement.

“Services” means the Cloud Services and the Professional Services (as applicable).

“Software” means each of the Software products (including any Datasets) licensed to the Customer under this Agreement, as specified in section 1 of any Order Form.

“Software Updates” means any enhancements, modifications, improvements, extensions in performance, updates or upgrades, new releases or new versions of the Software.

“Statement of Work” means any Statement of Work entered into by the Parties under this Agreement for the provision of Professional Services, such Statement of Work to be in a form mutually acceptable to the Parties.

“System Infrastructure” means the physical infrastructure, including equipment, cabling and systems together with related computer software used to provide the Cloud Services, which may be provided by Energy Exemplar or a third party.

“Technical Support” means the support services described in clause 5 of Annex 1.

“Term” means the term of this Agreement as specified in clause 2.1.

“Terms and Conditions” means this section of this Agreement which is headed “Terms and Conditions” and comprises clauses 1 to 21.

“Third Party Products” has the meaning given in clause 15.1.

“Type of License” means the type of license for the Software as specified in the applicable Order Form.

“Updates” means an improvement, extension in performance, or update to the Cloud Services.

“Virus” means any disabling feature or device (including any software, code, file, programme, worm, trojan horse, virus or other similar things or devices) which is designed or intended to: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or, adversely affect the user experience.

In this Agreement, unless the context requires otherwise:

21.2 a reference to a ‘Party’ means a party to this Agreement;

21.2.1 any reference to a ‘person’ includes any individual, company, corporation, firm partnership, joint venture, association, organization or trust (in each case, whether or not having separate legal personality) and references to any of the same include a reference to the others;

21.2.2 Unless expressly stated otherwise in this Agreement, all monetary amounts expressed in this Agreement are in United States dollars, and all payments under or in connection with this Agreement will be made in United States dollars;

21.2.3 reference to clause(s) are references to clause(s) of and to this Agreement;

21.2.4 any phrase introduced by the words ‘including’, ‘include’, ‘in particular’, ‘for example’ or any similar expression must be construed as illustrative only and must not be construed as limiting the generality of any preceding words; and

21.2.6 references to the singular include the plural and to the masculine include the feminine, and in each case vice versa.

The Agreement comprises the following parts:

21.3.1 the Annexes;

21.3.2 the Schedules;

21.3.3 the Agreement Details;

21.3.4 the Order Form (and any subsequent Order Form agreed in writing by the Parties);
these Terms and Conditions; and

21.3.6 any other documents incorporated by reference into the Agreement.

21.4 To the extent that there is any conflict or inconsistency between any of the terms in those documents listed in clause 21.3, the terms in the document listed first will govern to the extent of the conflict or inconsistency.

21.5 No confirmation, shipment or delivery docket, invoice or other similar document issued by or on behalf of the Customer or Energy Exemplar (including the terms on any pre-printed purchase order form) will vary or form part of this Agreement.
Annex 1  Software License

These terms are applicable where Software is specified in section 1 (Software Products) of the applicable Order Form.

1. **License of the Software**

1.1 Subject to the Customer’s compliance with the terms and conditions of this Agreement, Energy Exemplar grants to the Customer a non-exclusive, non-transferable, non-sublicensable license during the License Period for any Software specified in section 1 (Software Products) of any Order Form solely for the Customer’s own internal purposes (and not for commercial distribution).

1.2 The Customer acknowledges and agrees that:

1.2.1 the Software is proprietary to Energy Exemplar;

1.2.2 it does not have any rights to the Software except as expressly granted in this Agreement; and

1.2.3 Energy Exemplar retains ownership of all Intellectual Property Rights in and in relation to the Software, including any Software Updates.

1.3 The Customer must:

1.3.1 use the Software only for the applicable Licensed Purpose and subject to the limitations (such as maximum number of Named Users, Cores or other quantities, locations etc.) specified in the applicable Order Form;

1.3.2 provide Energy Exemplar with the details of all Named Users of the Software and any updates to these details as they are changed in accordance with this Agreement; and

1.3.3 comply with all applicable laws and regulations in relation to its use of the Software.

1.4 Subject to clause 1.5, the Customer may request to increase the number of Named Users and/or Cores for the Software in respect of any year of the License Period (‘Change Request’).

1.5 The Customer acknowledges and agrees that it is only able to increase the number of Cores if the Customer has a subscription for PLEXOS Cloud Connect as specified in the applicable Order Form. In such circumstances, the Customer is only permitted to increase the number of Cores in increments of sixteen.

1.6 On receipt of a Change Request, Energy Exemplar will respond to the Change Request setting out whether it agrees to implement the Change Request and any additional Fees payable by the Customer for the change.

1.7 The Change Request will take effect when agreed in writing between the Parties.

2. **Type of License**

2.1 **Named User License**

Where a Named User License is specified in any Order Form, the license of the Software granted by Energy Exemplar under clause 1 of this Annex 1 is supplemented by the following terms:

2.1.1 the Customer must ensure that the Software is only used or accessed by the Named Users, and that the number of Named Users does not exceed the maximum number specified in the applicable Order Form; and

2.1.2 in the event that the Customer wants to change the identity of an individual who is a Named User under this Agreement then, provided that the maximum number of Named Users is not exceeded:

(a) where Energy Exemplar does not host the Software on behalf of the Customer, the Customer is able to change the identity of the Named User but must notify Energy Exemplar of such change; and

(b) where Energy Exemplar hosts the Software on behalf of the Customer:

(i) the Customer must notify Energy
Exemplar in writing, within the support area of Energy Exemplar’s website (http://energyexemplar.com/clientarea), of the email address of the individual who the Customer wants to become a Named User (“New User”) and the email address of the individual who they want to remove as a Named User (“Old User”); and

(ii) Energy Exemplar will remove the Old User as a Named User and provide the Customer with a new login configured to the New User in order for the New User to use the Software.

2.2 Cores License

2.2.1 Where a Cores License is specified in any Order Form, the license of the Software granted by Energy Exemplar under clause 1 of this Annex 1 is supplemented by the following term:

(a) the Customer must not use more than the maximum number of Cores specified in the applicable Order Form.

3. Licensed Purpose

3.1 Academic License

Where an Academic License is specified in any Order Form, the license of the Software granted by Energy Exemplar under clause 1 of this Annex 1 is supplemented by the following terms:

3.1.1 Energy Exemplar licenses the Software to the Customer only for academic research purposes that do not directly or indirectly support any commercial enterprise, government agency or industry body;

3.1.2 in order to receive an Academic License, the Customer represents, warrants and undertakes that:

(a) unless this requirement has been expressly waived in the applicable Order Form, it is an academic institution;

(b) either:

(i) it will offer and run at least one course per year using the Software; or

(ii) the Software will only be used by one Masters or PhD level student per year;

(c) halfway through the License Period, the Customer will provide a report detailing the progress of courses and academic research projects using the Software;

(d) at the end of each course and on the expiry of the License Period, Customer must complete and submit to Energy Exemplar a brief report, summarizing the course(s) in which the Customer used the Software, the number of students who attended, any feedback from the students in relation to the Software, details of academic research projects in which the Software was used and copies of publications which refer to the Software, and provide to Energy Exemplar the complete dataset used in connection with the Software for the completion of the work; and

3.1.3 in all publications and reports which use results obtained from the Customer and its Named Users’ use of the Software, the Customer must refer to the Software and prominently attribute ownership of the Software to Energy Exemplar, including an acknowledgement that “the results were obtained using software provided by Energy Exemplar pursuant to a research license”.

3.2 Dataset License

Where a Dataset License is specified in any Order Form, the license granted by Energy
Exemplar under clause 1 of Annex 1 is supplemented by the following terms:

3.2.1 each applicable Dataset is licensed to the Customer together with, and on the same terms as, the Software;

3.2.2 each Dataset is proprietary to Energy Exemplar, and Energy Exemplar retains ownership of all Intellectual Property Rights in and in relation to each Dataset;

3.2.3 in order to receive a Dataset License, the Customer represents, warrants and undertakes that:

(a) the Customer will use the Dataset solely for its own internal operation and purposes, including the Customer’s satisfaction of any applicable auditing, financial reporting or regulatory requirements under this Agreement and at law; and

(b) the Customer will not redistribute, sell, publish or disclose the Dataset in whole or in part to any third party;

3.2.4 the Customer may only include portions of a Dataset (which must not comprise a significant amount of the Dataset):

(a) in a report that is provided to third parties provided that:

(i) the inclusion of such portions of the Dataset in any such report is incidental to the primary focus of the report and is limited to the amount reasonably necessary to support the conclusions or positions contained in such report;

(ii) in all publications and reports which use results obtained from the Customer and its Named Users’ use of the Software, the Customer refers to the Software and prominently attributes ownership of the Software to Energy Exemplar, including an acknowledgement in the following form: “Energy Exemplar: [name of Dataset];” and

(iii) any use by the recipients of the report remains subject to the terms, conditions and limitations under this Agreement applicable to the Dataset, including the license grant and any license restrictions, and the Customer is responsible for all acts and omissions of the recipients of the report with respect to the Dataset, including any breach of the terms, conditions and limitations of this Agreement; and

(b) in regulatory proceedings in which the Customer is a party, provided that there is no disclosure of a material portion of the Dataset and the Customer keeps Energy Exemplar informed of developments except to the extent precluded by law.

4. Customer’s Obligations

4.1 The Customer acknowledges and agrees that:

4.1.1 this Agreement applies to any Software Updates provided or made available by Energy Exemplar to the Customer from time to time; and

4.1.2 it is liable for the acts and omissions of any Named User as if a Named User’s acts and omissions were those of the Customer itself.

4.2 The Customer must:

4.2.1 maintain accurate and up-to-date records of:
(a) the number and location of all copies of the Software licensed to the Customer, including the number, location and identity of any computer or device on which any such Software is installed; and

(b) the number and identity of Named Users licensed to use the Software (if applicable);

4.2.2 give reasonable access to the records referred to clause 4.2.1 of this Annex 1 on Energy Exemplar’s request;

4.2.3 properly supervise and control the use of the Software by the Named Users in accordance with the terms of this Agreement and ensure that only individuals (i.e. Named Users, where applicable) that are authorized under this Agreement to use or access the Software are using or accessing the Software (including on any computer or device on which the Software is installed);

4.2.4 maintain adequate security and safety for the protection and safe-keeping of the Software;

4.2.5 not copy, modify, translate or create any derivative work of all or any portion of the Software;

4.2.6 not display, disclose, sell, transfer, license, rent, lease, loan, provide or distribute all or any portion of the Software to any third party;

4.2.7 not reverse engineer, reverse assemble or otherwise attempt to gain access to the source code of all or any portion of the Software (except to the extent such acts may not be prohibited by law);

4.2.8 only operate the Software on the computers and devices and at the locations detailed in the applicable Order Form; and

4.2.9 ensure that all individuals (i.e. Named Users) access and use the Software in accordance with this Agreement, including clause 1 of this Annex 1.

5. Support

5.1 Provision of Technical Support

5.1.1 Energy Exemplar agrees to provide Technical Support for the Software, subject to the Customer’s payment of the Fees.

5.1.2 Technical Support is used to provide a rapid and prioritized response to technical issues affecting all versions of the Software in use.

5.1.3 In order to receive Technical Support, the Customer must log a request in respect of each technical issue within the support area of Energy Exemplar’s website (http://energyexemplar.com/client area). The Technical Support is made available by Energy Exemplar to the Customer during Business Hours.

5.1.4 Energy Exemplar will use commercially reasonable efforts to provide an initial response to a request made under clause 5.1.3 of this Annex 1 within 48 hours of the request.

5.1.5 Energy Exemplar neither warrants nor guarantees that all technical issues can be addressed in a particular timeframe or as required by the Customer.

5.1.6 In the event that the Customer requires:

(a) a guaranteed level of technical support, responsiveness or resolution;

(b) additional Technical Support; or

(c) technical support in relation to any items referred to in clause 5.1.7 of this Annex 1, then the agreed additional support and the applicable Fees for such additional support must be expressly specified in either the applicable Order Form or a variation of this Agreement.
5.1.7 Technical Support excludes:

(a) correction of errors or defects caused by the Customer’s use of the Software other than as expressly permitted by this Agreement;

(b) correction of errors or defects caused by the Customer’s modification, revision, variation, translation or alteration of the Software not authorized by Energy Exemplar;

(c) diagnosis or correction of faults or errors in the Software caused in whole or in part by the use of third-party products or services;

(d) diagnosis or correction of faults or errors on the Customer’s computer systems or network;

(e) correction of errors caused by the failure of the Customer to provide suitably qualified and adequately trained operating and programming staff for the operation of the Software;

(f) training of operating or programming staff;

(g) development of market datasets for use with Software;

(h) rectification of operator errors;

(i) rectification of errors caused by an equipment fault;

(j) equipment maintenance;

(k) the provision and / or maintenance of accessories, attachments, supplies, consumables or associated items, whether or not manufactured or distributed by Energy Exemplar; and

(l) correction of errors or defects which are the subject of a warranty or support under another agreement.

5.2 Software Updates

5.2.1 Energy Exemplar may, from time to time, offer Software Updates to the Customer free of charge from the support area within Energy Exemplar’s website (http://energyexemplar.com/client area). However, Energy Exemplar is under no obligation to provide any Software Updates to the Customer.

5.2.2 Energy Exemplar will use commercially reasonable efforts to make Software Updates available as follows:

(a) releases to maintain the Software are typically released every 2-3 months; and

(b) major releases which address the functionality of the Software are typically released every 6 months.

5.2.3 Where Energy Exemplar does not host the Software on behalf of the Customer and Energy Exemplar has released a Software Update, the Customer must use reasonable efforts to install the Software Update. In any event, the Customer agrees that the version of the Software installed by the Customer is no more than two versions behind Energy Exemplar’s latest version of the Software at any time.

5.2.4 Energy Exemplar neither warrants nor guarantees that Software Updates will be released in the timeframes in clause 5.2.2 of this Annex 1 or as required by the Customer.

5.2.5 When Software Updates are available, Energy Exemplar may notify the Customer through various communication channels, including by:

(a) alerts via the Software;

(b) email to Energy Exemplar’s mailing list;
(c) posting an announcement on Energy Exemplar’s website; and
(d) posting an announcement through social media, including LinkedIn.

5.3 Documentation

5.3.1 Energy Exemplar will make the then current documentation and other materials relating to the Software available from the support area within Energy Exemplar’s website (http://energyexemplar.com/client area).

5.3.2 The Customer acknowledges and agrees that:

(a) the documentation and materials may be updated by Energy Exemplar from time to time without notice to the Customer; and

(b) no printed documentation or materials are supplied with the Software.

6. Suspension

6.1 Energy Exemplar may suspend the Customer’s use of, license to and access to, any Software if:

6.1.1 Energy Exemplar believes, in its sole discretion, that the Customer has breached any of the material provisions of this Agreement or otherwise failed to perform any of its material obligations under this Agreement, including any payment obligations;

6.1.2 the Customer’s use of the Software:

(a) is fraudulent or may cause Energy Exemplar to be subject to liability; or

(b) breaches any applicable law; or

6.2 If Energy Exemplar suspends the Customer’s use of, license to or access to, any Software pursuant to clause 6.1 of this Annex 1, the Customer:

6.2.1 will not be entitled to use or access such Software during the suspension; and

6.2.2 will not be entitled to any relief or remedy as a result of the suspension.

The Customer acknowledges and agrees that, in order to enforce its rights under this Agreement, including clause 6.1 of this Annex 1, Energy Exemplar is entitled to issue “temporary” licenses for any Software (which licenses may expire prior to the end of the License Period) to the Customer. Once Energy Exemplar has received the Fees for the relevant License Period and is otherwise satisfied the Customer is complying with this Agreement, Energy Exemplar will issue a new license for the remainder of the License Period.
Annex 2  Cloud Services

These terms are applicable where Cloud Services are specified in section 2 (Cloud Services) of any Order Form.

1. Cloud Services

1.1. Cloud Services

Energy Exemplar must provide the Cloud Services in accordance with any documentation provided by Energy Exemplar pursuant to clause 1.2 of this Annex 2.

1.2. Documentation

Energy Exemplar will make the documentation and other materials relating to the Cloud Services available from the support area within Energy Exemplar’s website (http://energyexemplar.com/clientarea). Such documentation and materials may be updated by Energy Exemplar from time to time without notice to the Customer.

1.3. Support Services

1.3.1. Energy Exemplar agrees to:

(a) answer general questions on the use and operation of the Cloud Services;

(b) investigate and resolve reported problems with the Cloud Services in accordance with this clause 1.3 of this Annex 2; and

(c) provide Updates to the Cloud Services in accordance with clause 4 of this Annex 2 for the Term.

1.3.2. The Customer must nominate one or more representatives responsible for liaising with Energy Exemplar for maintenance services or general inquiries. The Customer may, from time to time, replace its representatives with reasonable notice to Energy Exemplar.

1.3.3. Upon receipt of a report from the Customer about an Error with the

Cloud Services, Energy Exemplar will:

(a) advise the Customer whether or not an Error exists; and

(b) where an Error exists, advise the Customer of any potential solution or workaround.

1.3.4. Energy Exemplar shall, acting reasonably and in consultation with the Customer, categorize, respond to and make commercially reasonable efforts to correct an Error or provide a workaround to an Error.

1.3.5. Energy Exemplar may, at any time and acting reasonably and in consultation with the Customer, vary the severity assigned to any reported Error under clause 1.3.4 of this Annex 2 where:

(a) the Error meets the criteria defined for the revised severity; or

(b) the resolution time designated for the original or upgraded severity has lapsed without resolution of the Error.

1.3.6. While every effort will be made to provide a resolution to an Error, including by workaround or patch, Energy Exemplar cannot guarantee a resolution within any specific time period.

1.4. Service Levels

1.4.1. The Customer must promptly notify Energy Exemplar of any faults in relation to the provision of the Cloud Services.

1.4.2. If Energy Exemplar fails to perform its required obligations with respect to any Service Level, then the Customer is entitled to receive (and Energy Exemplar must promptly pay) the applicable Service Credits in accordance with this clause 1.4 of this Annex 2 and Schedule 1.

1.4.3. The Customer’s rights and remedies under this clause 1.4 of this Annex 2 and Schedule 1 are
the sole and exclusive remedy available to the Customer under the terms and conditions of this Agreement for a failure to provide the Cloud Services or meet the Service Levels, and the Customer has no other rights or remedies in relation to any such failure by Energy Exemplar.

1.5. **Security**

Energy Exemplar implements security for the protection of Customer Data and the integrity of the Cloud Services, which includes encryption for data transmission and multiple layers of security to protect Customer Data. These security practices, which are frequently reviewed and updated by Energy Exemplar, are available at https://energyexemplar.com/ara-security/.

2. **Terms of Use**

2.1. **Access**

Subject to the Customer’s compliance with the terms and conditions of this Agreement, Energy Exemplar grants to the Customer a non-exclusive, non-transferable, non-sublicensable right to access and use the Cloud Services during the Term solely for the Customer’s own internal purposes.

2.2. **Customer Account**

2.2.1. In order to access the Cloud Services, the Customer must have a Customer Account.

2.2.2. The Customer is solely responsible for:

(a) all acts and activities that occur using the Customer Account, including any unauthorized use of the Customer Account or any unauthorized, excessive or incomplete use of the Cloud Services, whether undertaken by the Customer, its personnel or any third party; and

(b) all losses, costs, damages and expenses that are incurred as a result of lost, stolen or compromised login credentials for the Customer Account or any other unauthorized use of the Customer Account.

2.3. **Conditions**

2.3.1. In order to use the Cloud Services, the Customer must have a current license of the Software pursuant to this Agreement.

2.3.2. The Customer must only use the Cloud Services:

(a) in accordance with the terms of this Agreement; and

(b) in accordance with the normal operating procedures as notified by Energy Exemplar from time to time.

2.3.3. The Customer must not (directly or indirectly):

(a) copy, alter, modify or reproduce the Cloud Services;

(b) reverse engineer, reverse assemble, reverse compile or otherwise attempt to gain access to the source code of the whole or any part of the Cloud Services (except to the extent such acts may not be prohibited by applicable law);

(c) attempt to bypass any security measures within the Cloud Services; or

(d) display, disclose, sell, resell, transfer, license, sublicense, repurpose, rent, lease, loan, provide, distribute or redistribute all or any portion of the Cloud Services.

2.3.4. The Customer must only access the Cloud Services via equipment specified by Energy Exemplar as meeting the relevant operational requirements. The Customer must also maintain adequate internet connection bandwidth to be able to access the Cloud Services and download any Customer Data to its local hardware. The Customer acknowledges and agrees that, if the Customer chooses to access the Cloud Services via any other
equipment or does not maintain adequate bandwidth:

(a) the functionality of the Cloud Services may be reduced or materially affected; and

(b) the Customer will be using such alternative equipment at the Customer’s sole risk.

2.3.5. The Customer is not restricted to:

(a) the number of physical hardware systems or devices through which the Cloud Services are accessed; or

(b) the number of Named Users accessing or utilizing the Cloud Services,

provided that:

(a) each Named User must:

(i) be individually licensed to use the Software pursuant to this Agreement;

(ii) comply with the terms and conditions of this Agreement;

(iii) have individual log-in credentials for the Customer Account; and

(iv) use the Cloud Services solely for the purpose of and in connection with the Customer’s business; and

(b) the Customer remains liable for all actions and inactions of its Named Users who access and use the Cloud Services.

2.4. Suspension of Cloud Services

2.4.1. Energy Exemplar may suspend the Customer’s access to the Cloud Services if:

(a) Energy Exemplar believes, in its sole discretion, that the Customer has breached any of the provisions of this Agreement or otherwise failed to perform any of its obligations under this Agreement, including any payment obligations;

(b) the Customer’s use of the Cloud Services:

(i) is fraudulent or may cause Energy Exemplar to be subject to liability;

(ii) breaches any applicable law; or

(iii) otherwise poses a risk to the Cloud Services, Energy Exemplar, the System Infrastructure or any third party; or

(c) the Customer becomes, threatens or resolves to become or is in jeopardy of becoming subject to any form of insolvency administration.

2.4.2. If Energy Exemplar suspends the Customer’s access to the Cloud Services, the Customer:

(a) will not be entitled to access the Cloud Services during the suspension; and

(b) will not be entitled to any Service Credits or any other relief or remedies as a result of the suspension.

3. Customer Obligations

3.1. General

3.1.1. The Customer must:

(a) maintain accurate and up-to-date records of the number of Named Users and provide Energy Exemplar (or its nominated representative) with reasonable access to those records on Energy Exemplar’s request;

(b) properly supervise and control the use of the Cloud Services by the Named
Users in accordance with the terms of this Agreement;

(c) not do anything that would interfere with or otherwise disrupt the provision of the Cloud Services to, or the enjoyment of the Cloud Services by, the Customer or any other customer of Energy Exemplar;

(d) not use the Cloud Services to transmit any materials, or store any data, files or content, that is unlawful, immoral, libellous, pornographic, vulgar, defamatory, abusive, insulting, threatening, obscene, inflammatory, offensive or otherwise inappropriate or objectionable;

(e) not transmit any materials that contain Viruses;

(f) not use the Cloud Services, or its knowledge of the Cloud Services, to create (or engage or assist a third party to create) products or services that compete, whether in whole or in part, with Energy Exemplar’s products and services (including the Cloud Services);

(g) not access or attempt to access the System Infrastructure without Energy Exemplar’s prior written consent;

(h) not disclose log-in credentials supplied by Energy Exemplar to access the Cloud Services to any person other than Named Users;

(i) maintain adequate security and safety procedures for the protection and safe-keeping of the Cloud Services, including to protect against any malware;

(j) notify Energy Exemplar promptly of any actual or suspected unauthorized access to the Cloud Services or the Customer Account or any breach of the Customer’s security measures which relates to the Cloud Services or the Customer Account; and

(k) ensure that Named Users access and use the Cloud Services in accordance with the terms and conditions of this Agreement.

3.2. Customer Data

3.2.1. As between the Parties, the Customer owns all Intellectual Property Rights in the Customer Data. The Customer grants Energy Exemplar a royalty-free, non-exclusive, revocable license to host, copy, transmit, display and otherwise use the Customer Data during the Term for the sole purpose of providing the Cloud Services and performing Energy Exemplar’s other obligations under this Agreement.

3.2.2. Energy Exemplar is not responsible for:

(a) checking or validating the Customer Data or any simulations or calculations initiated by the Customer;

(b) ensuring that the Customer Data is free from any errors, inaccuracies or contamination;

(c) monitoring the Customer’s use of the Cloud Services or Customer Data or any of the Customer’s activities in connection with the Cloud Services (except as necessary in order to troubleshoot any Errors and determine the Customer’s use of the Cloud Services for purposes of billing for such use); or

(d) exercising any control over the content of any Customer Data.
3.2.3. The Customer acknowledges that it is solely responsible for:

(a) ensuring the Customer Data is accurate, complete and appropriate;

(b) all modifications to, or deletions of, the Customer Data;

(c) taking all necessary steps to secure, protect, backup and archive all of the Customer Data, including any encryption that may be required to prevent unauthorized access to the Customer Data;

(d) the security of all log-in credentials to access the Cloud Services; and

(e) ensuring that the Customer Data, and the use of the Customer Data by Energy Exemplar in connection with the Cloud Services, complies with all applicable laws.

4. Updates and Changes to the Cloud Services

4.1. Updates

4.1.1. Energy Exemplar may offer Updates to the Cloud Services from time to time, provided that if Energy Exemplar does so, it will only make such Updates after providing advance notice to the Customer. Energy Exemplar will use reasonable efforts to make available to the Customer, on a quarterly basis, a schedule of any Updates for the upcoming quarter, but in certain circumstances may be limited in the amount of notice it will be able to provide (i.e. for Updates that address an emergency).

4.1.2. This Agreement will continue to apply in all respects to any Update, which shall be deemed to be included in the Cloud Services for the purpose of this Agreement.

4.2. Changes

4.2.1. Energy Exemplar has the right to modify, change or discontinue the Cloud Services at any time and for any reason (including as the result of a change in a Third-Party Product) without penalty.

4.2.2. Prior to Energy Exemplar modifying, changing or discontinuing the Cloud Services or any part of the Cloud Services in a manner that results in a material change to the Cloud Services that adversely affects the Customer, Energy Exemplar will notify the Customer of the change.

4.2.3. Upon receiving the notice, the Customer may terminate this Agreement by providing written notice to Energy Exemplar within 30 days of receipt of the notice. In the event of a termination pursuant to this clause 4.2.3 of this Annex 2, Energy Exemplar will refund to the Customer a pro rata portion of any Cloud Fees previously paid by the Customer for any period of time after the date of termination.

4.2.4. If the Customer does not provide notice to Energy Exemplar that it is terminating this Agreement within this 30 day period, the Customer is deemed to have accepted the change to the Cloud Services and is not permitted to terminate this Agreement pursuant to this clause 4.2.4 of this Annex 2 as a result of such change.

5. Effect of Termination

Within 30 days of termination of this Agreement, on written request by the Customer, Energy Exemplar will make commercially reasonable efforts to make available to the Customer any Customer Data that is being stored at the time of termination or expiry of this Agreement in connection with the Customer’s use of, and access to, the Cloud Services.
Schedule 1  Service Level Agreement

Definitions

“Actual Uptime” means Scheduled Uptime minus any Outages.

“Available or Availability” means the amount of time that the Cloud Services are available for use by a Named User for any month during the Term. It will be expressed as a percentage based on the following calculation:

\[
\text{Availability} = \left( \frac{\text{Actual Uptime}}{\text{Scheduled Uptime}} \right) \times 100
\]

“Outage” means any interruption of the Cloud Services (other than as a result of a Force Majeure Event) for more than 30 minutes during which:

a. a Named User is unable to access the Cloud Services; or

b. the performance of the Cloud Services is sufficiently degraded such that a Named User is unable to use the Cloud Services for the intended purpose.

“Scheduled Outages” means any Outage that is scheduled by Energy Exemplar in advance.

“Scheduled Uptime” means the amount of time that the Cloud Services are scheduled to be Available, deducting time for any Scheduled Outages.

1. Availability

a. Energy Exemplar will use reasonable efforts to make the Cloud Services Available 24 hours a day, 365 days per year. If Energy Exemplar fails to meet the Availability target set out in clause 3.a of this, the Customer will be eligible to claim Service Credits in accordance with this Service Level Agreement.

b. Energy Exemplar will use reasonable efforts to provide at least 24 hours prior notice of any Scheduled Outage.

2. Response Time

a. Energy Exemplar will use reasonable efforts to respond to any issues regarding the Cloud Services raised by the Customer within four hours of notification of the issue from the Customer to Energy Exemplar (“Response Time”). If Energy Exemplar fails to meet the

3. Service Credits

a. If the Availability of the Cloud Services falls below 99.5% for any given month during the Term, the Customer may notify Energy Exemplar of the failure within 5 Business Days of the end of the applicable month with specifics regarding the Errors that caused the failure. If Energy Exemplar confirms that the Availability fell below 99.5% for that month, Energy Exemplar will pay to the Customer a Service Credit of 5% of the Cloud Fees for that month.

b. If the Response Time falls below 95% for any given month during the Term, the Customer may notify Energy Exemplar of the failure within 5 Business Days of the end of the applicable month with specifics as to the failures to respond within the Response Time. If Energy Exemplar confirms that the Response Time fell below 95% for that month, Energy Exemplar will pay the Customer a Service Credit of 5% of the Cloud Fees for that month.

c. Energy Exemplar will pay any Service Credits that are due to the Customer pursuant to this Service Level Agreement within 60 days of the determination by Energy Exemplar that the Service Credit is due and payable.

Notwithstanding anything to the contrary in this Service Level Agreement or the Agreement, the Customer will only be eligible to receive a Service Credit up to 3 times during the Term.
Annex 3  Third Party Product Terms

1. Unless otherwise specified in any Order Form, CPLEX, a Third-Party Product, is provided to the Customer together with or as part of the Software. The terms that apply to CPLEX are the terms at http://www-03.ibm.com/software/sla/sladb.nsf, which apply as between the Customer and IBM.

2. If any Order Form specifies that a Third-Party Product other than CPLEX will be provided together with or as part the Software, the associated terms for such Third Party Product will apply. Such terms are as follows for the specified Third-Party Product:

   2.1 for Xpress-MP: the terms at file:///C:/Users/bqt/Downloads/Xpress%20Shrinkwrap%20License%20Agreement.pdf, which apply as between the Customer and Fair Isaac Corporation;

   2.2 for Gurobi: the terms at https://www.gurobi.com/wp-content/uploads/2020/01/EULA.pdf, which apply as between the Customer and Gurobi Optimization, LLC; and

   2.3 for MOSEK: the terms at http://docs.mosek.com/license/license.pdf, which apply as between the Customer and MOSEK ApS,

3. By using the Software, the Customer agrees to and accepts the terms for the relevant Third Party Product as specified in clause 1 or clause 2 above (as applicable).
Staff Report – Agenda Item 5

To: Clean Power Alliance (CPA) Board of Directors
From: Tyler Aguirre, Customer Programs Manager
Approved By: Ted Bardacke, Executive Director
Subject: Agreement with EcoMotion for Consulting Engineering Services
Date: November 5, 2020

RECOMMENDATION
Approve and authorize the Executive Director to execute the agreement between CPA and EcoMotion for Consulting Engineering services to support planning of CPA’s Clean Backup Power for Essential Facilities program for a Not to Exceed (NTE) amount of $179,270.

BACKGROUND
In response to the increasing risk of weather and disaster related electricity outages, including Public Safety Power Shutoff (PSPS) events, in January 2020 CPA staff conducted a Request for Information (RFI) to member agencies. The purpose of this RFI was to gauge interest in a program that would provide a solar-paired battery energy storage system or standalone energy storage system to an essential facility in each of CPA’s 32 member jurisdictions. Subsequently the program was one of seven priority program concepts contained in the Board-approved Local Programs for a Clean Energy Future strategic plan.

After receiving the results of the RFI, CPA staff began conducting detailed planning and research for development of this program. The next step in this process is for CPA to facilitate a site selection process for each member jurisdiction. Once the sites are selected, a detailed feasibility study of each site will inform a RFO for the systems.
**DISCUSSION**

**Clean Backup Power for Essential Facilities Program**

In this program, CPA will work with its member agencies to host a solar-paired or standalone battery storage system at one essential facility in each of CPA’s 32 member jurisdictions, potentially on regional serving buildings. These solar and storage systems will provide resiliency in essential facilities for their communities by serving as clean backup power during PSPS events, natural disasters, or other outages, while also providing benefits to CPA during normal operation in the form of load shifting or wholesale demand response revenues. CPA anticipates that a potential developer will install these systems and that they will be installed and operate at no direct cost to member agencies.

Locating solar-paired battery storage at essential facilities with the capability to operate independently from the grid (“islanding”) creates a multitude of benefits that extend beyond the site host to the community at large. Locating these systems at essential community facilities such as first responder stations, community/cooling centers, evacuation shelters, or municipal yards can provide benefits to the greater CPA customer base by continuing fundamental public safety operations during grid disruptions like PSPS events or other emergencies (wildfire, flood, earthquake). Solar-paired systems that can remain islanded for extended periods of time that do not rely on the grid to recharge can eliminate local emissions associated with conventional diesel backup power generation. This program also benefits CPA’s member agencies by providing a chance for municipal staff to gain knowledge in the process of hosting solar and storage systems.

CPA staff anticipates releasing one or more RFOs in the second quarter of 2021 for the systems. To determine the optimal financing structure and to obtain accurate and efficient pricing, it is necessary for CPA to create an inventory and detailed technical study of the chosen site in each jurisdiction to inform the bidding process.

**Proposed Agreement for Consulting Engineering Services**

Staff is seeking approval to authorize the Executive Director to execute a Consulting Engineering Services agreement with EcoMotion. As CPA’s Consulting Engineer, EcoMotion will assist CPA and member agencies with selecting a site in each jurisdiction for a behind the meter solar and battery storage and conducting detailed feasibility studies.
for the chosen sites. EcoMotion may also serve as CPA’s Consulting Engineer during the anticipated RFO process, providing engineering expertise to shape the technical parameters of the RFO and if appropriate, participate in the selection process.

**Selection Process**

CPA issued a Request for Proposals (RFP) for Consulting Engineering services in July 2020. A total of seven proposals were received for the RFP to perform the contemplated scope of work, with proposals ranging in price from $176,770 to $994,350. A staff selection committee invited three of the seven proposers to participate in interviews based on the quality of their proposals, relevant experience and references, and price. Of the three vendors interviewed, EcoMotion offered the best value for this scope of work and was selected by the committee.

**EcoMotion**

EcoMotion is an LA-based sustainability solutions and clean energy consultant with expertise in areas of climate planning, energy management, and optimization of distributed energy resources. They have worked with a range of corporate, municipal, and institutional clients, including acting as LA Metropolitan Transit Authority’s (LA Metro) solar consultant for the past six years and managing the Climate Action Planning process for the Coachella Valley Association of Governments. Clients for whom EcoMotion has performed similar services to those contemplated in this agreement include LA Metro, Loyola Marymount University, multiple school districts, and the Irvine Ranch Water District.

**Scope of Work**

The Scope of Work contemplated in the agreement is organized into four main tasks:

- **Project Plan Development:** This task consists of project kickoff and definition of program parameters that will inform the development of the Project Plan.

- **Development of Site Inventory:** EcoMotion will work closely with CPA and member agencies to select one site in each member jurisdiction. EcoMotion will conduct webinars for member agency staff to introduce and provide an overview of the
process and review site criteria. Each member agency that chooses to participate will then provide a shortlist of sites meeting that criteria. EcoMotion will conduct high level analysis of the sites on each member agency’s shortlist and conduct follow up interviews with member agency staff to arrive at a final recommended site selection for each jurisdiction.

- Detailed Site Assessments: After the inventory is complete and a site has been selected for each jurisdiction, EcoMotion will conduct detailed technical and qualitative assessments of each chosen site, including at least one in-person or virtual visit to each selected site, resulting in a Final Report delivered to CPA by March 2021 that will become part of the anticipated RFO process.

- RFO Support: In support of the anticipated RFO process, EcoMotion may perform tasks such as assistance with development of the RFO(s), reviewing proposals, and facilitating bidder interviews.

**FISCAL IMPACT**

Authorized spending for this Consulting Engineer service is included in the Board-approved FY 2020-21 budget.

**ATTACHMENT**

1) Professional Services Agreement with EcoMotion for Consulting Engineering Services
Clean Power Alliance of Southern California

This Professional Services Agreement (this “Agreement”) dated and effective as of November 5, 2020 (the “Effective Date”), is made by and between:

CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA (“CPA”) and

ECOMOTION, INC. (“Contractor”).

CPA and Contractor are sometimes collectively referred to herein as the “Parties” and each individually as a “Party.” In consideration of the terms of this Agreement, and for other good and valuable consideration, the Parties make the following acknowledgments and agreements:

RECITALS

WHEREAS, CPA may contract with a qualified and experienced consulting engineer to develop a comprehensive inventory and technical assessment of the most suitable site in each of CPA’s 32 member jurisdictions (“Site Inventory & Assessment”) for development of Behind-The-Meter (“BTM”) solar photovoltaic (“PV”) paired or standalone energy storage;

WHEREAS, CPA conducted a Request for Proposal (“RFP”) and CPA selected Contractor because Contractor has the expertise and experience to provide the specified services to CPA and offered CPA the best value;

WHEREAS, Contractor desires to provide these specified services to CPA;

WHEREAS, the purpose of this Agreement is to set forth the terms and conditions upon which Contractor shall provide to the CPA.

NOW, THEREFORE, it is agreed by the parties to this Agreement as follows:

AGREEMENT

1. Definitions

a. “CPA Data” shall mean all data gathered or created by Contractor in the performance of the Services pursuant to this Agreement, including any customer or customer-related data

b. “CPA Information” shall mean all proprietary information provided by CPA to Contractor in connection with this Agreement.

c. “CPA Materials” shall mean all finished or unfinished content, writing and design of materials but not limited to messaging, design, personalization, or other materials, reports, plans, studies, documents and other writings prepared by Contractor, its officers, employees and agents for CPA for the performance of, the purposes of, or in the course of implementing this Agreement.

d. “CPA Product” includes collectively CPA Data, CPA Information, and CPA Materials.

e. “Services” shall mean the scope of services Contractor provides to CPA as specified in Exhibit A.
2. **Exhibits and Attachments**

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

Exhibit A – Description of Services
Exhibit B – Compensation
Exhibit C – Contractor’s Proposal
Exhibit D – [reserved]

Should a conflict arise between language in the body of this Agreement and any exhibit or attachment to this Agreement, the language in the body of this Agreement controls, followed by Exhibit A, B, C and D (if applicable), in that order.

3. **Services to be Performed by Contractor.**

In consideration of the payments set forth in this Agreement and in Exhibit B, Contractor shall perform services for CPA in accordance with the terms, conditions, and specifications set forth in this Agreement and in the Description of Services set forth in Exhibit A (“Services”).

4. **Compensation**

CPA agrees to compensate Contractor as specified in Exhibit B:

a. In consideration of the Services provided by Contractor in accordance with all terms, conditions and specifications set forth in this Agreement and Exhibit A. CPA shall make payment to Contractor in the manner specified in Exhibit B.

b. Unless otherwise indicated in Exhibit B, Contractor shall invoice CPA monthly for all fees related to Services performed during the previous month. Payments shall be due within thirty (30) calendar days after the date of invoice. All payments must be made in U.S. dollars.

5. **Term**

Subject to compliance with all terms and conditions of this Agreement, the term of this Agreement shall be one (1) year from the Effective Date (“Initial Term”).

6. **Termination**

a. Termination for Convenience. CPA may terminate the Agreement in accordance with this Section in whole, or from time to time in part, whenever CPA determines that termination is in CPA’s best interests. A termination for convenience, in part or in whole, shall take effect by CPA delivering to Contractor, at least thirty (30) calendar days prior to the effective date of the termination or prior to a Notice of Termination specifying the extent to which performance of the Services under the Agreement is terminated.

b. If the termination for convenience is partial, before the settlement of the terminated portion of this Agreement, Contractor may file with CPA a request in writing for equitable adjustment of price or prices specified in the Agreement relating to the portion of this
Agreement which is not terminated. CPA may, but shall not be required to, agree on any such equitable adjustment. Nothing contained herein shall limit the right of CPA and Contractor to agree upon amount or amounts to be paid to Contractor for completing the continued portion of the Agreement when the Agreement does not contain an established price for the continued portion. Nothing contained herein shall limit CPA’s rights and remedies at law.

c. Termination for Default. Party defaults in the observance or performance by a Party of any such Party’s covenants or agreements in this Agreement, including the provision of services specified in Exhibit A, (other than a default in a payment obligation), or violates any ordinance, regulation or law which applies to its performance herein and such default continues uncured for thirty (30) calendar days after written notice is given to such Party failing to perform its covenants or agreements under this Agreement, provided, however, that for such events which require more than thirty (30) calendar days to cure, then the defaulting Party shall have such additional time as may reasonably be required to effect such cure provided that the defaulting Party diligently and continuously pursues such cure.

d. Effect of Termination. Upon the effective date of expiration or termination of this Agreement: (i) Contractor may immediately cease providing Services in its entirety or if a termination to a part of the Agreement, providing the Services that have been terminated; (ii) any and all payment obligations of CPA under this Agreement will become due immediately except any equitable adjustment pursuant to Paragraph 5(a); (iii) and (iii) each Party will promptly either return or destroy (as directed by the other Party) all Confidential Information of the other Party in its possession as well as any other materials or information of the other Party in its possession.

e. Upon such expiration or termination, and upon request of CPA, Contractor shall reasonably cooperate with CPA to ensure a prompt and efficient transfer of all CPA Product to CPA in a manner such as to minimize the impact of expiration or termination on CPA’s customers.

7. Contract Materials

CPA owns all right, title and interest in and to all CPA Materials and CPA Data. Upon the expiration of this Agreement, or in the event of termination, CPA Materials and all CPA Information, in whatever form and in any state of completion, shall remain the property of CPA and shall be promptly returned to CPA. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

8. Payments of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required for it to provide the Services to be performed under this Agreement at Contractor’s own expense prior to commencement of the Services.

9. Relationship of Parties

CPA 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 the Joint Powers Agreement and is a public entity separate from its constitute members. CPA shall solely be
responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Contractor shall have no rights and shall not make any claims, take any actions or assert any remedies against any of CPA’s constituent members in connection with this Agreement.

10. **Confidential Information.**

a. Contractor agrees that Contractor will hold all Confidential Information in confidence, and will not divulge, disclose, or directly or indirectly use, copy, digest, or summarize, any Confidential Information, except to the extent necessary to carry out Contractor’s responsibilities as directed or authorized by CPA.

b. The following constitutes “Confidential Information” whether oral or written: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, (b) information, in whatever form, that CPA shares with Contractor in the course and scope of this Agreement, or (c) information that either Contractor stamps or otherwise identifies as “confidential” or “proprietary” before disclosing it to the other.

c. Confidential Information shall not include: (l) information that is generally available to the public or in the public domain at the time of disclosure; (2) information that becomes publicly known other than through any breach of this Agreement by Contractor or its Representatives; (3) information which is subsequently lawfully and in good faith obtained by Contractor or its Representatives from a third party, as shown by documentation sufficient to establish the third party as the source of the Confidential Information; provided that the disclosure of such information by such third party is not known by Contractor or its Representatives to be in breach of a confidentiality agreement or other similar obligation of confidentiality; (4) information that Contractor or its Representatives develop independently without use of or reference to Confidential Information provided by Contractor; or (5) information that is approved for release in writing by Contractor.

11. **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. The certificate(s) of insurance and required endorsement shall be furnished to CPA prior to commencement of work. Each certificate shall provide for thirty (30) days advance written notice to CPA of any cancellation or reduction in coverage. Said policies shall remain in force through the life of this Agreement and shall be payable on a per occurrence basis only, except those required by paragraph (d) below which may be provided on a claims-made basis consistent with the criteria noted therein.

Nothing herein shall be construed as a limitation on Contractor’s obligation under paragraph 6 of this Agreement to indemnify, defend, and hold CPA harmless from any and all liabilities arising from the Contractor’s negligence, recklessness or willful misconduct in the performance of this Agreement. CPA agrees to timely notify the Contractor of any negligence claim.

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 Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

(a) General Liability

The Contractor 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. CPA shall be named as an additional insured on the commercial general liability policy and the Certificate of Insurance shall include an additional endorsement page.

(b) Auto Liability

Where the services to be provided under this Agreement involve or require the use of any type of vehicle by Contractor in order to perform said services, Contractor shall also provide comprehensive business or commercial automobile liability coverage including non-owned and hired automobile liability in the amount of one million dollars combined single limit ($1,000,000.00).

(c) Workers’ Compensation

The Contractor acknowledges the State of California requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance or a copy of the Certificate of Consent to Self-Insure shall be provided to CPA prior to commencement of work.

(d) Professional Liability Insurance

Coverages required by this paragraph may be provided on a claims-made basis with a “Retroactive Date” either prior to the date of the Agreement or the beginning of the contract work. If the policy is on a claims-made basis, coverage must extend to a minimum of twelve (12) months beyond completion of contract work. If coverage is cancelled or non-renewed, and not replaced with another claims made policy form with a “retroactive date” prior to the Agreement effective date, the Contractor must purchase “extended reporting” coverage for a minimum of twelve (12) months after completion of contract work. Contractor shall maintain a policy limit of not less than $1,000,000 per incident. If the deductible or self-insured retention amount exceeds $100,000, CPA may ask for evidence that Contractor has segregated amounts in a special insurance reserve fund or Contractor’s general insurance reserves are adequate to provide the necessary coverage and CPA may conclusively rely thereon.

Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Agreement. Contractor shall monitor the safety of the job site(s) during the project to comply with all applicable federal, state, and local laws, and to follow safe work practices.

12. Indemnification

Contractor agrees to indemnify, defend, and hold harmless CPA, its employees, officers, and agents, from and against, and shall assume full responsibility for payment of all wages, state or federal payroll, social security, income or self-employment taxes, with respect to Contractor’s
performance of this Agreement. Contractor further agrees to indemnify, and save harmless CPA from and against any and all third-party claims, liabilities, penalties, forfeitures, suits, costs and expenses incident thereto (including costs of defense, settlement, and reasonable attorney’s fees), which Company may hereafter incur, become responsible for, or pay out, as a result of death or bodily injuries to any person, destruction or physical damage to tangible property, or any violation of governmental laws, regulations or orders, to the extent caused by Contractor’s negligent acts, errors or omissions, or the negligent acts, errors or omissions of Contractor’s employees, agents, or subcontractors while in the performance of the terms and conditions of the Agreement, except for such loss or damage arising from the sole negligence or willful misconduct of CPA, elected and appointed officers, employees, agents and volunteers.

13. Independent Contractor

a. Contractor acknowledges that Contractor, its officers, employees, or agents will not be deemed to be an employee of Company for any purpose whatsoever, including, but not limited to: (i) eligibility for inclusion in any retirement or pension plan that may be provided to employees of Contractor; (ii) sick pay; (iii) paid non-working holidays; (iv) paid vacations or personal leave days; (v) participation in any plan or program offering life, accident, or health insurance for employees of Contractor; (vi) participation in any medical reimbursement plan; or (vii) any other fringe benefit plan that may be provided for employees of Contractor.

b. Contractor declares that Contractor will comply with all federal, state, and local laws regarding registrations, authorizations, reports, business permits, and licenses that may be required to carry out the work to be performed under this Agreement. Contractor agrees to provide CPA with copies of any registrations or filings made in connection with the work to be performed under this Agreement.

14. Compliance with Applicable Laws

The Contractor shall comply with any and all applicable federal, state and local laws and resolutions affecting services covered by this Agreement.

15. Nondiscriminatory Employment

Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all federal, state and local statutes, regulations and ordinances.


All finished and unfinished reports, plans, studies, documents and other writings prepared by and for Contractor, its officers, employees and agents in the course of implementing this Agreement shall become the sole property of CPA upon payment to Contractor for such work. CPA shall have the exclusive right to use such materials in its sole discretion without further compensation to Contractor or to any other party. Contractor shall, at CPA’s expense, provide such reports, plans, studies, documents and writings to CPA or any party CPA may designate, upon written request. Contractor may keep file reference copies of all documents prepared for CPA.
17. Notices
Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of CPA, to:

Name/Title: Theodore Bardacke, Executive Director  
Address: 801 S. Grand Ave., Ste. 400  
Los Angeles, CA 90017  
Telephone: (213) 269-5890  
Email: tbardacke@cleanpoweralliance.org

With a copy to:

Name/Title: Chris Stephens,  
Address: 801 S. Grand Ave., Ste. 400  
Los Angeles, CA 90017  
Telephone: (213) 713-3113  
Email: cstephens@cleanpoweralliance.org

In the case of Contractor, to:

Name/Title: Ted Flanigan, President  
Address: 216 W Kenneth Road  
Glendale, CA 91202  
Telephone: (940) 292-7314  
Email: TFlanigan@EcoMotion.us

18. Assignment
Neither this Agreement nor any of the Parties’ rights or obligations hereunder may be transferred or assigned without the prior written consent of the other Party. Subject to the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

19. Subcontracting
Contractor may not subcontract Services to be performed under this Agreement without the prior written consent of CPA. If the CPA’s written consent to a subcontract is not obtained, Contractor acknowledges and agrees that CPA will not be responsible for any fees or expenses claimed by such subcontractor.

20. Retention of Records and Audit Provision
Contractor and any subcontractors authorized by the terms of this Agreement shall keep and maintain on a current basis full and complete documentation and accounting records,
employees’ time sheets, and correspondence pertaining to this Agreement. Such records shall include, but not be limited to, documents supporting all income and all expenditures. CPA shall have the right, during regular business hours, to review and audit all records relating to this Agreement during the Agreement period and for at least five (5) years from the date of the completion or termination of this Agreement. Any review or audit may be conducted on Contractor’s premises or, at CPA’s option, Contractor shall provide all records within a maximum of fifteen (15) calendar days upon receipt of written notice from CPA. Contractor shall refund any monies erroneously charged. Contractor shall have an opportunity to review and respond to or refute any report or summary of audit findings, and shall promptly refund any overpayments made by CPA based on undisputed audit findings.

21. Conflict of Interest

a. No CPA employee whose position with the CPA enables such employee to influence the award of this Agreement or any competing Agreement, and no spouse or economic dependent of such employee, shall be employed in any capacity by the contractor or have any other direct or indirect financial interest in this Agreement. No officer or employee of the Contractor who may financially benefit from the performance of work hereunder shall in any way participate in the CPA’s approval, or ongoing evaluation, of such work, or in any way attempt to unlawfully influence the CPA’s approval or ongoing evaluation of such work.

b. The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to CPA. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this paragraph shall be a material breach of this Agreement.

22. Governing Law, Jurisdiction, and Venue

This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. The Contractor agrees and consents to the exclusive jurisdiction of the courts of the State of California for all purposes regarding this Agreement and further agrees and consents that venue of any action brought hereunder shall be exclusively in the County of Los Angeles.

23. Amendments

None of the terms and conditions of this Agreement may be changed, waived, modified or varied in any manner whatsoever unless in writing duly signed by the Parties.

24. Severability

Should any provision of this Agreement be held invalid or unenforceable by a court of competent jurisdiction, such invalidity will not invalidate the whole of this Agreement, but rather, the remainder of the Agreement which can be given effect without the invalid provisions, will continue in full force and effect and will in no way be impaired or invalidated.
25. **Complete Agreement**

This Agreement constitutes the entire Agreement between the parties. No modification or amendment shall be valid unless made in writing and signed by each party. Failure of either party to enforce any provision or provisions of this Agreement will not waive any enforcement of any continuing breach of the same provision or provisions or any breach of any provision or provisions of this Agreement.

26. **Counterparts**

This Agreement may be executed in one or more counterparts each of which shall be deemed an original and all of which shall be deemed one and the same Agreement.

**IN WITNESS WHEREOF,** the parties have executed this Agreement on the date first above written.

EcoMotion, Inc.  
Clean Power Alliance of Southern California

By:  Ted Flanigan  
By:  
Title:  President  
Title:  

Exhibit A
Description of Services

Contractor will be responsible for developing a Site Inventory & Assessment for development of Behind-The-Meter (“BTM”) solar photovoltaic (“PV”) paired or standalone energy storage.

Task #1: Project Plan Development

A. Project Kick-off
   1. Prior to the commencement of any work, Consultant will conduct an initial assessment of project requirements that should include, at a minimum:
      i. Conducting a meeting with CPA project stakeholders
      ii. Establishing preliminary expectations and desired results from CPA personnel.

B. Develop Project Parameters
   1. Consultant will work with CPA to establish parameters for defining plausible project sites for development.

C. Develop Project Plan
   1. Consultant will use the information gathered in Task 1.A and Task 1.B., above, to construct a project plan.
   2. CPA will have the opportunity to review and provide feedback on the final project plan prior to the performance of any subsequent project work.

Task 1 Deliverables: Consultant will provide a final workplan with expected timelines along with guiding documents to CPA detailing the final project requirements and established project parameters.

Task #2: Development of Site Inventory

A. Development of Inventory of 32 Sites
   1. Development of Shortlist Criteria: Contractor will work with CPA to develop eligible project criteria for member agency shortlist nominations.
   2. Member Agency Webinars(s): Contractor will perform at least 1 but no more than 2 general webinars to provide CPA member agency staff with an introduction to Consultant and the site inventory and assessment process. The webinar should prepare them for what to expect in the individual meetings and outline the shortlist criteria for nominating sites.
   3. Site Shortlist: Contractor will request CPA’s member agencies to provide Contractor with a shortlist of 5 nominated sites that are of interest to the member agency and meet the CPA project criteria for a project maximum of 160 potential shortlisted sites.
   4. Member Agency Meetings: Contractor will conduct a virtual or phone meeting with each of the 32 member agencies and, if needed, 16 1-hour follow-up meetings with 16 cities or double follow-up meetings with 8 cities.
   5. Analysis of Shortlisted Sites: Contractor will conduct cursory reviews of each of the shortlisted sites using information supplied by agencies, as well as analysis of utility billing information, interval data provided by the CPA. These analyses will determine the benefits of solar and options for storage for each site.
6. **Ranking Shortlists:** Contractor will rank the projects on each member agency shortlists using criteria approved by CPA. These findings will be reviewed with CPA and each member agency, and final site selections made based on this ranking.

**Task 2 Deliverable(s):** Consultant will provide for CPA approval a final list of 32 selected sites, one for each member agency, that will be used to perform Task 3. Final list should include supplemental justification for selection.

**Task #3: Detailed Site Assessment**

Consultant will conduct a detailed assessment of each selected site identified in Task 2 as outlined below. Consultant will utilize multiple tools and software as well as at least one (1) on-site visit to each member agency’s selected site to gather all the required information for the assessments. Consultant will develop an online template to be used by Consultant’s professionals in the field for documenting site conditions. In addition, photographs will be taken to document electrical switchgear, roof conditions, etc. All this and other project information will be filed on a Google Drive shared by Consultant to CPA for complete information access and project transparency throughout the project.

**A. Developing Host Site Characteristics**

1. **Cataloging of Site Location and Details:** Contractor will document the physical site location and any pertinent site details (i.e. easements, annual fairs (that require open parking lots), airport glare or runway exhaust, etc.). This will be done initially with Google Earth and will be followed with onsite visits as necessary, following all Center for Disease Control guidelines and social distancing procedures.

2. **Document Site Control and Restrictions:** Consultant will document the required site permissions for hosting (if any).

3. **Document Site Management:** Consultant will determine how the community benefit would work, if the nominated sites straddle more than one parcel, and if the site is managed by one entity or more.

**B. Technical Assessment**

1. **Prior Feasibility Analyses:** Consultant will determine if any member agency already conducted any feasibility studies or assessments for the chosen site that may inform the Technical Assessment. This information will be gleaned during the one-on-one member agency meetings to discuss their short list sites. If analyses, audits or other documentation is available, Consultant will request it and analyze it as it pertains to the proposed energy resiliency project.

2. **Site Diagrams:** Consultant will gather project site drawings from the member agencies. Consultant will conduct site visits based on the site diagrams and can verify electric room conditions, likely conduit runs, and potential space for additional equipment.

3. **Space for Storage:** Consultant will determine the available space for storage. This will entail a determination of the amount of storage required for a project, thus the area – interior or exterior -- required for that amount of storage given lithium-ion and vanadium redox, and other storage technologies. Consultant will determine proximity to
interconnection, will flag issues with space, conduits, etc., and will present specific
locations plausible for storage after conferring with onsite building managers.

4. **Solar PV Generation Potential**: Consultant will fully evaluate the options for solar at
each of the 32 sites to present options of solar configurations. Consultant will use both
Google Earth and onsite verification to develop solar scenarios and layouts using
Helioscope, and will then model solar financials using Energy Toolbase which integrates
onsite interval data, rate offset scenarios, solar market prices, and proxy solar systems.
If a chosen member site cannot accommodate solar PV generation, Consultant will
present the reasons for this and explore alternative solutions.

5. **Critical Load Identification**: Working with onsite building managers, Consultant will
identify which loads are critical and which loads can be curtailed in the event of a grid
power outage and thus battery-mode operations. Consultant will analyze and measure
critical loads and identify critical systems/equipment for connection to backup power.

6. **Storage Duration Desired**: Consultant will determine optimal durations of islanded
back-up power at each site. Consultant will take direction from CPA on its purchase
criteria for Long Duration Energy Storage ("LDES") and will then work with building
managers to meet their resiliency desires and goals.

7. **Required Site Improvements**: Consultant will provide detailed descriptions of site
improvements required to support solar PV and/or battery storage installation for each
site. Consultant will document conditions and present a pragmatic plan for any required
upgrades. Consultant will also provide rough order of magnitude costs for each upgrade
to inform the decision process.

8. **Existing Solar**: Consultant will evaluate any existing solar on the 32 sites and provide
details about such systems, including relevant information about purchase model or
lease term, generating capacity, age, degradation, interconnection, pertinent electric
rate, and whether existing solar can be retrofitted to generate in conjunction with
battery storage and resilience.

9. **Existing Back-Up Generation**: Consultant will assess and describe integrating the new
energy resilience systems with existing on-site backup systems, such as diesel
generators.

10. **Load Shifting Potential**: Consultant will be responsible for identifying load shifting
potential for each of the 32 sites. As with determining critical loads, Consultant will be
informed by interval data, building managers, and onsite conditions to make
recommendations on load shifting potential. This will have been done in a cursory way
in Task 2A, and now will be more detailed with calculations of potential kW for demand
response or load shifting when needed by the CPA. Front of meter configurations and
leases that benefit the member agency host site will be considered where site loads are
small.

11. **Drop Out Protocol**: Consultant will determine the contingency plan in the event that a
member agency’s preferred site drops out for one reason or another.
**Task 3 Deliverable:** The final deliverable will be the detailed inventory and assessment containing the information outlined above of at least one priority site in each jurisdiction, to be delivered to CPA by March 2021. Consultant will present these deliverables in a Final Report and provide a PowerPoint Presentation to share with the CPA and ultimately member agencies. The Final Report will provide an overview of the project, the process that was followed, as well as lessons learned. Substantively, the Final Report will provide all requested project details above for each proposed project – preliminary spatial designs using Helioscope, and Energy Toolbase financial analyses. The PowerPoint will summarize the report for presentation purposes.

**Task 4: RFO(s) Support**

1. Should CPA need to retain Consultant to support with CPA’s RFO for development of the systems, Consultant may perform the RFO support tasks identified in Table 1 below for a maximum of 120 hours of support for each CPA RFO.

**Deliverables for Task #4**

At the request of CPA, Consultant shall provide the contemplated services identified in Table 1, below.

| Table 1: Description of Contemplated Task 4 Services |
|-----------------------------------------------|---------|
| Developing a scope of services                | 12 Hours|
| Developing a Request for Offers               | 12 Hours|
| Establishing and populating a drive with plans, utility data, etc. | 8 Hours|
| Managing the Question and Answer process      | 8 Hours|
| Managing the Proposers conference – virtual or in-person | 16 Hours|
| Reviewing proposals and providing detailed reviews of proposals | 20 Hours|
| Hosting and facilitating interviews           | 8 Hours|
| Checking references                           | 8 Hours|
| Populating Consultant’s Comparative Matrix review with CPA | 8 Hours|
| Providing Recommendations to CPA officials, discussions | 12 Hours|
| Helping to negotiate changes to winning proposals if necessary | 8 Hours|
## Project Schedule

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<th>Task 1: Project Plan Development</th>
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<tr>
<td>Project Kick-off</td>
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<td>Develop Project Parameters</td>
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<td>Develop Project Plan</td>
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<td>Coffe “critical facility” and “community benefit”</td>
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<tr>
<td>Assist CPA in developing shrink options</td>
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<tr>
<td>Review member agencies’ preliminary submittals</td>
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<td>Analysis phase and billing date for sites</td>
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<td>Assist CPA in leasing secondary RFA’s to agencies</td>
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<td>File and convene virtual meetings with agencies</td>
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<td>File and convene follow-up meetings as needed</td>
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<td>Convene second follow-up meetings as needed</td>
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<td>Rank member agencies’ shrinkage using criteria</td>
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<table>
<thead>
<tr>
<th>Task 2: Develop an Inventory of 32 Preferred Sites</th>
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<tbody>
<tr>
<td>Provides detailed information for each site</td>
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<tr>
<td>Determine site owner and operator</td>
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<tr>
<td>Describe critical nature of sites, community benefit</td>
</tr>
<tr>
<td>Determine opportunities for storage at sites</td>
</tr>
<tr>
<td>Determine if site is a CalEnvolGrown 3G DAC</td>
</tr>
<tr>
<td>Review prior analyses to inform assessment</td>
</tr>
<tr>
<td>Provide summaries of installation readiness</td>
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<tr>
<td>Develop site designs that show meter locations</td>
</tr>
<tr>
<td>Prepare solar and storage models, scenarios</td>
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<tr>
<td>Determine solar generation potential</td>
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<tr>
<td>Identify critical system/equipment with agencies</td>
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<tr>
<td>Determine backup power duration for critical loads</td>
</tr>
<tr>
<td>Describe site improvements needed for storage</td>
</tr>
<tr>
<td>Describe existing on-site photovoltaics</td>
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<tr>
<td>Describe integration with existing backup</td>
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<tr>
<td>Describe and assess on-site load shifting</td>
</tr>
<tr>
<td>Potential storage opportunities for alternatives</td>
</tr>
<tr>
<td>Evaluate the next-best site for inclusion</td>
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<tr>
<th>Task 3: Provide Detailed Assessment of 32 Sites</th>
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<tbody>
<tr>
<td>Adjust with development formation analysis/background</td>
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<tr>
<td>Participate in pre-bid comment sessions</td>
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<tr>
<td>Assist with response to technical questions</td>
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<tr>
<td>Review submittals; analyze technical merits</td>
</tr>
<tr>
<td>Participate in interviews with shortlisted proposers</td>
</tr>
<tr>
<td>Provide additional support in evaluating offers</td>
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<tr>
<th>Task 4: Construction Solicitation(s) Support</th>
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<tbody>
<tr>
<td>Adjust with development formation analysis/background</td>
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<tr>
<th>Date</th>
<th>Project Title</th>
<th>Company Name</th>
</tr>
</thead>
<tbody>
<tr>
<td>10/1/2020</td>
<td>Clean Power Alliance Member Resilience Project</td>
<td>EcoMotion</td>
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</table>
Consultant shall satisfactorily provide all the contemplated services detailed in Exhibit A at the fixed price per deliverable specified in Table 2 below and in compliance with the terms and conditions of this Agreement.

<table>
<thead>
<tr>
<th>Task Description</th>
<th>Price</th>
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<tbody>
<tr>
<td>Task 1: Project Plan Development</td>
<td>$1,280</td>
</tr>
<tr>
<td>Task 2: Site Inventory Development</td>
<td>$59,610</td>
</tr>
<tr>
<td>Task 3A: Qualitative “Deep Dive” Assessment of Potential Sites</td>
<td>$29,870</td>
</tr>
<tr>
<td>Task 3B: Technical Assessment</td>
<td>$46,800</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>$137,560</strong></td>
</tr>
</tbody>
</table>

In addition, CPA will reimburse Consultant at the hourly rates identified below for the solicitation support activities identified in Task 4. The total Not-To-Exceed (“NTE”) for all of the Task 4 solicitation support activities shall not exceed $39,210. Additionally, CPA shall pay Consultant at the hourly rates specified in Table 3 below for up to $2,500 provided that Consultant has obtained prior written approval from the CPA contact listed in Section 16 of the Agreement.

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Hourly Rate</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ted Flanigan</td>
<td>Project Director</td>
<td>$225</td>
</tr>
<tr>
<td>David Houghton, PE</td>
<td>Project Engineer</td>
<td>$185</td>
</tr>
<tr>
<td>Michael Ware</td>
<td>Senior Solar Specialist</td>
<td>$155</td>
</tr>
<tr>
<td>Brady Zaitoon</td>
<td>Staff Engineer</td>
<td>$155</td>
</tr>
<tr>
<td>Jibade Sandiford</td>
<td>Solar Specialist</td>
<td>$125</td>
</tr>
</tbody>
</table>

The Total Maximum Amount that CPA shall pay Contractor for all Services to be provided under this Professional Services Agreement shall not exceed one hundred seventy-nine thousand two hundred seventy Dollars ($179,270.00) ("Not-to-Exceed" or "NTE").
Proposal to Clean Power Alliance
Consulting Engineering for Site Inventory and Assessment and As-Need Solicitation Support
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Cover Letter

Dear Clean Power Alliance Officials:

Thank you so much for the opportunity to be considered as your consultant for the scope of work presented in the Request for Proposals for what we call the “CPA Member Resilience Project.” This project excites us: EcoMotion is ideally suited to serve your needs.

Salutations: The CPA is becoming an essential community service provider... moving well past being a green commodity provider. We commend the CPA for its vision with energy resilience: Public Safety Power Shutoff (PSPS) events are tough on customers. Back-to-back PSPS events are crippling. Diesel generators are a sorry solution for California. Low income customers generally have no back-up, and we commend California’s CCAs for developing new programs and services that address social equity issues. We also commend them for creating workforce standards that will legitimize distributed and dispatchable, “clean peaking resources;” finding strategic ways of retraining workers heretofore in the carbon-based fuels industry.

And yes, there is a win-win at hand. The CPA can build resilient systems that provide day-to-day benefits to the agency -- “giving these assets a day job” -- while being available for resilience in the event of a grid outage. EcoMotion did this in Monterey County at six school sites. There, day-to-day solar savings pays for energy resilience through a pioneering power purchase agreement. We’ll be happy to work to uncover these kinds of mutually beneficial situations. Finding synergies in operation, ideally across members’ jurisdictional boundaries, is a great challenge and goal.

Three EcoMotion projects help to paint a picture of our works: First, we were working for Kimco Realty, a New York based firm that owns 1,200 shopping malls across North America. Our job was to find the optimal sites for solar given solar insolation levels, state and local regulations, local market labor rates etc. That resulted in three large, rooftop installations in New Jersey and the formation of a new business unit, Kimco Solar LLC. For LA Metro, we’ve documented and analyzed hundreds of sites for solar, doing “deep dives” in 20+ sites, four of which are now slated for a solar PPA. We have managed the Solar Santa Monica program for 13 years, providing advice and expertise to advance solar. Last year, our team prioritized municipal sites for resiliency, modeling levels of resilience given different critical loads and durations desired.

EcoMotion is ready to tackle this work. Michael Ware is our Senior Solar Specialist, a notable solar expert in our region. Consulting Team member Dave Houghton, PE is our Chief Engineer.
Dave worked for me at Rocky Mountain Institute 30 years ago, since then he has run his own engineering firms in Colorado and California. The management team will be supported by Solar Specialist Jibade Sandiford, and two EcoMotion engineers, Terry Chan PE and Brady Zaitoon PE.

What we offer herein is a pragmatic process. We recommend and have based our proposal budget on practical parameters, for instance, keeping the microgrids as simple as possible in terms of facilities and their ownership and management. We recommend to the CPA that for this round of resilience, straightforward solutions make sense. We recommend establishing clear program parameters such that there are no more than five nominated sites per agency. We also recommend to CPA that these resilience projects are generally single facility projects, with a single meter, clear ownership, and above all, the member agency’s full support. For Task 2, we present a limited budget to support the CPA as a subject matter expert, assuming two contracts will be issued to split the work and tighten the timeline. If need be, EcoMotion can be retained for additional hours through 2022 at the rates stipulated in this proposal.

EcoMotion has a history of assessing and prioritizing sites for solar and storage, then promoting, procuring, and managing renewable energy projects. We enjoy working with diverse clients and rowing toward project success. Our team is an expert in financial analysis, understanding rate offsets, and risk factors. We are great communicators. We provide honest assessments and clarity to clients, so they make informed decisions. We’ve done this for campuses, corporations, and cities for years. This member resiliency project is down the stripe for our team. We relish the opportunity to serve the Clean Power Alliance. This is an exciting project nexus between the state of the climate and the state of clean energy technologies that can be deployed for multiple benefits.

Sincerely,

President, EcoMotion
Qualifications and Experience

EcoMotion is an S-Corporation, incorporated in 2001. We have a history of promoting renewable energy, smart energy management, and climate protection. EcoMotion’s President, Ted Flanigan, has spearheaded projects in the United States and overseas for 34 years. EcoMotion’s managers are a strong team, integral to our successful work. We also maintain a consulting team of experts for select projects, one of whom we will call upon for this project.

EcoMotion has a track record of steering society toward a sustainable energy future and a reputation of getting things done. The company raises awareness and spurs efficiency gains and renewable energy investments that make sense. This takes many forms, from solar + storage spatial and financial analyses and project support to carbon neutrality advising and implementation support.

EcoMotion has an able staff, a prestigious consulting team, and a network of professionals in the “green space.” We sustain our staff and offset our footprints through wellness days, subsidized mass transit, instruction in defensive driving, and flex time. We’re a paperless company, drive hybrids and EVs, recycle, drink city water, and practice what we preach. EcoMotion is proud to be part of the thriving clean-tech and energy innovation economy.

EcoMotion was incorporated in 2001 and began operations in the current mode in 2006. Since then, we have provided planning services for a host of clients that range from cities, to universities, to corporations. For thirteen years we have planned and managed the Solar Santa Monica program. For over six years, we have been the solar consultants for the LA Metro system, planning and prioritizing parcels and maintenance facilities for renewable energy deployment. We maintained an office in Palm Desert, California for several years to manage the Climate Action Planning for six cities and a tribe within the Coachella Valley Association of Governments. We maintained a Boston office for seven years, where we managed climate action planning for universities and schools in Massachusetts, Maine, and Virginia.

Owner’s Rep Services

EcoMotion is in the Sustainability Solutions business. We are an Owner’s Representative for solar and storage. EcoMotion helps clients strategize and optimize solar benefits, to frame up, and get the best deal for robust renewable energy infrastructure. Currently, we are doing the same thing for a number of clients. Here are some recent examples:
• **Capital Group Companies** first hired EcoMotion in 2008. The result was a 1 MW solar system (Orange County’s largest at the time) at its campus in Irvine, CA, covering three parking garage decks. It achieved a 4.1-year payback. Capital Group then retained EcoMotion to explore and become eligible for a new feed-in tariff program in San Antonio, Texas for its facilities there. Now EcoMotion is back “on campus” in Irvine, adding 1.6 MW on six major rooftops and a parking structure, slated to be complete in September.

• **Orange Unified School District** has recently retained EcoMotion for Phase 2 of its solar projects. In 2019, EcoMotion provided owners’ rep services for a nine campus solar project ultimately built by Ameresco. Just this past week, our solar team was on site – practicing social distancing -- in Orange and Anaheim doing site inspections for an additional 13 campuses slated for solar. EcoMotion’s independent financial analysis, as well as procurement support, has resulted in quality control and cost savings. In June, our solar team did a ten-year review of solar at 19 Murrieta Valley Unified School District campuses, as well as a spatial and financial analysis of additional solar at the District’s high and middle schools.

• **Loyola Marymount University** has been approached by competing fuel cell and solar interests and hired EcoMotion in January 2019 to work up a comprehensive renewable electricity master plan for the University. We’ve explored options from onsite fuel cells to microturbines and lots of solar photovoltaics, even parapet wind, as well as offsite renewable and offsets. Solar-wise, 2 MW of NEM solar and 3 MW of FIT solar has been proposed and is under consideration at this time. In July, EcoMotion provided a fuel cell validation study for Glendale Community College District, vetting the proposed project’s economics and environmental costs and benefits, while comparing fuel cells to solar.

• **Chula Vista Elementary School District** hired EcoMotion in February 2019 to provide a comprehensive solar and storage feasibility study for each of its 47 campuses and facilities. In March 2020, the District was awarded bonding authority for the project that
now includes a cutting-edge vehicle-to-grid resilience project. At this time, EcoMotion has completed analysis of interval bill data, SDG&E rate structures and time-of-use periods, as well as spatial and financial analysis of all 48 sites plus two new campuses, which now have a gross solar potential of 7 - 8 MW representing ~$80 million in savings potential over 25 years. In June, EcoMotion spearheaded the effort to develop an RFP, to identify suitable firms for installation, and managed the procurement process. Proposals are due later in August. Concurrently, EcoMotion is serving as Del Mar Unified School District’s solar consultant, analyzing each of its sites’ solar and storage feasibility while coordinating with its two-campus construction schedule.

- **Santa Rita Union School District:** In early 2019, the six campus, carbon-free microgrid project EcoMotion developed in Northern California for the Santa Rita Union School District was interconnected and given permission to operate. With seven-hour battery capabilities, each campus can island from the grid using a combination of solar (to cover each campus’s entire annual load), significant storage, and controls. Now the campuses can operate indefinitely in a carbon-free mode in a prolonged outage. EcoMotion helped to finance the systems “at parity,” where the annual cost to finance and operate the microgrids -- payments to Generate Capital -- equals the prior annual utility cost to Pacific Gas and Electric.

- **LA Metro** has been an EcoMotion client for seven years. EcoMotion has served as Metro’s “total” solar consultant... from prioritizing sites for solar, to granular feasibility studies, to managing procurements, to monitoring and maintaining all existing systems, to training facilities staff on solar maintenance. EcoMotion is the designated Subject Matter Expert on an RFP for solar at four Metro divisions for nearly 2 MW that will “hit the street” shortly.

- **Irvine Ranch Water District:** EcoMotion offers energy storage and levels of energy resilience as options for clients. We’ve advised on 7.5 MW of storage at 13 sites for the Irvine Ranch Water District, and for 14 campuses in San Diego County at Poway Unified School District. Given falling prices, many clients are exploring their options through solar + storage analyses. EcoMotion recently provided a webinar on energy resilience for the Local Government Commission.
• **Millbrook School**: For this prep school in Millbrook, New York, EcoMotion helped develop a carbon neutrality plan and then implemented its first phase... an eight-acre solar field. Now the 43-building campus is 100% solar powered. We earned a $1.25 million incentive from NYSERDA (New York State Energy and Research Development Authority). Thanks to the highly favorable PPA we negotiated, the school is now saving ~$50,000 per year with no money down while retaining the project’s environmental attributes.

• **Benefactor Investment Model**: For a Palm Desert benefactor, EcoMotion has developed a solar project at the Warner Unified School District in San Diego County. The benefactor had been granting solar systems to schools too small to engage in power purchase agreements due to their small power requirements. Working with EcoMotion’s associate, Mark Hopkinson, EcoMotion is now representing the benefactor and his LLC – Javkin Solar – in a project that will provide a 33% bill savings for the school, allow the benefactor to monetize tax credits and depreciation benefits, and “revolve” the savings generated into additional school projects. This variant of the Benefactor Investment Model (BIM) is known as Model R, a design featuring revolving savings.

**EcoMotion’s Solar Services**

EcoMotion has provided professional solar consulting services for all manner of configurations. We’ve done rooftop solar, ground-mount solar, solar-ports, and dual-axis tracking systems.

A favorite solar-port system that we developed is at the Cathay Bank headquarters in El Monte, California. There, with Gensler Architects, solar-ports cover 350 parking spaces, and our team earned a Los Angeles architectural award for the solar-ports’ chevron design with clad steel and LED lighting.

**The Suite of Solar + Storage Services**

**Project Planning**

• Conceptual planning and design- aesthetics, functionality
• Management education- solar and storage incentives, technologies, industry trends
• Harvesting incentives, grants, tax credits, depreciation benefits
Site Analysis
- Rooftop analysis - condition, tilt, orientation, etc.
- 365-day shading analysis
- Glare analysis; review of adjacent parcels
- Ownership/use analysis and opportunities
- Helioscope solar system layouts
- Meter location and interconnection
- Energy storage location

Proposal/Project Review
- Technical equipment reviews and analysis
- Assistance with module, inverter, racking, conduits
- Bill analysis and rate structure offset, rate scenarios
- Net energy metering aggregation, and Virtual NEM
- Special conditions - local ordinances, CC&Rs, historical, SEC, FAA, etc.

Financial Analysis
- Solar production estimates
- Energy storage scenario planning
- Net cost analysis (incentives, tax credits, NEM)
- Verification of financial returns (Proprietary Tools plus Energy Toolbase software)
- PPA review of costs, terms, buy-outs, escalators. guarantees

Project Management
- Comprehensive service through design, engineering, and installation
- Request for proposal development and bid analysis
- Weekly project facilitation, reporting, flagging key issues
- Expert electrical third-party reviews, field inspections, quality control
Public Relations
- Ribbon cutting
- Press release
- Articles in trade journals
- Communications with employees and building occupants
- Photographic documentation throughout

PV System Maintenance
- Technical and rooftop trainings
- Management of system repairs

Inspections and Ongoing Monitoring
- Solar system inspections (utility and electrical)
- Five-year third-party system monitoring
- Alarms and field recommendations

Recent Clients
- LeFiell Manufacturing – an aerospace manufacturer, rooftop solar
- Wine Warehouse – rooftop solar evaluation
- Santa Rita Union Elementary School District – 6 carbon-free microgrids
- Centralia School District – eight campuses in Orange County
- Cenveo Corporation – a printing corporation that also leases unused space
- City of West Hollywood – supporting its new, multi-family program
- Valley Indoor Swap Meet in Pomona - 650 kW rooftop, ballasted
- Bryant University, Smithfield, Rhode Island – offsite solar feasibility
- Orange Unified School District – 12 + 13 campus PPAs
- Gateway Unified School District – 6 campus solar feasibility analysis
- Warner Unified School District – Benefactor Investment Model Option R
- SolSmart – 8 South Bay cities; funded by the U.S. DOE and The Solar Foundation
- Campbell Union High School District – microgrid development
- Capital Group Companies – current 1.6 MW solar expansion (2.6 MW total)
- Millbrook School, New York – solar system performance verification
- Chula Vista Elementary School District – 50-site solar project + V2G
- Warner Springs Unified School District – benefactor investment model
- Panorama City Indoor Swap Meet – 476 kW high performance system
- Del Mar Unified School District – 8 campus solar project
- Charter Schools: Santa Rosa, Palm Desert, Sycamore, LA Leadership, Gorman, etc.
The EcoMotion Team

Ted Flanigan, President

Ted Flanigan, born and raised in New York City before moving to Syosset and then later Oyster Bay, is dedicated to fostering sustainable energy development. For the past 35 years, Ted has advocated smart and responsible energy management, working within two major electric utilities on both the East and West coasts – New York Power Authority and Los Angeles Department of Water & Power – providing strategic consulting services for schools, universities, cities, utilities, and others across the country and in many foreign countries. He lives in a solar-powered home and drives a solar-powered electric car.

Ted served as the Energy Program Director for Rocky Mountain Institute; then he was funded by the John D. and Catherine T. MacArthur Foundation to research the most successful efficiency and green power strategies throughout America and then in Europe and Asia. As Director of IRT Environment, Ted Flanigan was in the original consulting team for ICLEI’s Urban CO₂ Reduction Project, linking and developing emissions mitigation strategies, policies, and programs for major North American and European cities from Portland to Helsinki. He was Managing Director of The Energy Coalition in Southern California, designing and implementing successful and innovative efficiency and demand response partnerships for Southern California Edison, Pacific Gas & Electric Company, Southern California Gas, and San Diego Gas & Electric.

For the past 13 years, Ted Flanigan has led the EcoMotion team. He’s managed dozens of projects for schools and universities including Garden Grove Unified School District, Bryant University, Fisher College, St. Joseph’s College of Maine, Shenandoah University, Central New Mexico Community College, Poway Unified School District, Savannah School District, Cypress School District, the University of Southern California, and Loyola Marymount University. He’s managed projects for local governments including Santa Monica, Palm Desert, Rancho Mirage, Mammoth Lakes, Sonoma County, Association of Bay Area Governments, Anaheim Public Utilities, Burbank Water and Power, Corona Water and Power, and Moreno Valley Utilities. And he’s managed projects for corporate clients such as LA Metro, Sempra, Capital Group, Cathay Bank, Kimco Realty, and EcoMedia. Ted Flanigan is a Glendale Water and Power Commissioner.
Michael Ware, Senior Solar Specialist

Michael Ware joined the EcoMotion team in 2007 to be an “honest broker” of efficiency and solar systems. Today he is EcoMotion’s Senior Solar Specialist and involved in all facets of project management and energy management operations. Prior to working at EcoMotion, he worked at PermaCity Solar.

Michael has become one of the region’s foremost energy advisors. His expertise is applied to focusing on solar and storage opportunities, measuring potentials, and developing implementation strategies. For instance, Michael analyzed all the rooftops of Santa Monica College, then worked with the college’s director of operations to develop an implementation plan, based on remodeling, rate structures, and a sequenced approach. Some years ago, the College celebrated the installation of its first 400 kW of solar. The seed was planted for subsequent systems. Michael went on to assist the Santa Monica Malibu Unified School District with PPA financing for its elementary schools. He is currently deep in a PPA procurement for LA Metro.

As an expert in utility rate structures and how they impact the returns of a given investment, Michael has developed tools for weighing the value of different components and comparing different scenarios. With a sparkle in his eye, he calmly presents complicated findings to both expert and less experienced stakeholders in such a way as to facilitate decision-making.

Michael managed EcoMotion’s solar project in Millbrook, New York, where a private prep school has pledged to go carbon neutral. In addition to the 1.73 MW solar system – funded in part by a $1.25 million grant from the New York Energy and Research Administration -- the project involves energy efficiency in 43 buildings on campus, adding geothermal, and will potentially include a biofuel plant.

Michael has managed EcoMotion’s solar consulting for Metro for the past seven years. Metro, the local transportation agency, has more than 2,000 parcels of land in the greater Los Angeles area. Similar to a Los Angeles Unified School District project, he managed to identify best sites for solar from a vast array of school properties. Michael and his EcoMotion colleagues are guiding Metro to its best opportunities given rate offsets, the structural integrity of rooftops; development plans and contingencies; and unique considerations.
David Houghton, P.E.

David Houghton, PE joins the EcoMotion project team as chief engineer. Dave leads Avila Partners, specializing in research and engineering for the buildings sector to support the path to a cleaner energy future. Drawing on 25 years of experience in the energy efficiency field, Dave’s background includes building science, utility consulting and executive leadership, writing and presenting on energy-related topics, and hands-on experience in building systems engineering. Dave’s work at Avila Partners includes emerging technology development and validation, lab and field testing of energy-related innovations, and efforts to make existing buildings run better (such as auditing, commissioning, and data analytics). He served as a Prop 39 consultant for San Luis Coastal Unified School District and Bellevue Santa Fe Charter School.

Dave founded Resource Engineering Group, Inc. to bring efficiency, sustainability, and simplicity to building engineering. The company grew to ten engineers with registration in over a dozen states, and projects spread across North America, with a focus on engineering excellence, innovative thinking, and clear communication. REG was consulting engineer or engineer-of-record for hundreds of building projects, auditoriums, and resorts. Dave remains a consultant to REG, which is now owned and operated by the next generation of engineers.

Dave has served as Chairman of the Gunnison Planning Commission and on the Board of Directors for Gunnison County Electric Association in Gunnison, CO. He has authored over twenty reports on energy efficiency technologies, including LED traffic signals, rooftop HVAC units, and liquid flow meters. Currently he serves as a professor at Cal Poly San Luis Obispo teaching building sciences.

Jibade Sandiford, Solar Specialist

Jibade Sandiford joined the EcoMotion team as a Solar Project Manager in 2020. His primary responsibility is supporting EcoMotion’s contracts and clients such as Capital Group, Chula Vista, and the Del Mar Unified School District, Solar Santa Monica, and LA Metro. He provides solar consulting and support for projects related to energy resilience and electric transportation.

Jibade was born and raised in New York City (Queens) and graduated from Tufts University with a B.A. in Political Science and Environmental Studies, with a concentration
in Environmental Policy. He also attended Loyola University’s Institute for Environmental Communications Fellowship.

Prior to joining the EcoMotion team, Jibade worked as a Business Development Manager and Planning and Policy Strategist for Adaptation Strategies in New Orleans, Louisiana. He assisted with projects that addressed watershed management, environmental justice, environmental health, and climate change adaptation. He’s also worked as Sustainability Consultant for the Castleton Festival in Castleton, Virginia. Now settled in Los Angeles, Jibade brings his expertise in project management and strategic planning to EcoMotion, as well as a breadth of knowledge in the field of sustainability.

**Terry Chan P.E., Vice President Engineering Services**

Terry Chan P.E. is a Professional Engineer licensed in the State of California for 35 years. She holds a B.S. in Electrical Engineering from University of California at Los Angeles, an M.S. in Power Systems Engineering from University of Southern California, and an Executive MBA from the University of Southern California. In addition, she is a Certified Energy Manager and a certified Green Building Professional.

For 32 years, Terry held a number of positions within Los Angeles Department of Water and Power including responsibilities with power systems design, underground and overhead circuit design, load forecasting, rate design and customer services focused on major accounts. In addition, for eight years she has served as a Commissioner of Glendale Water and Power, including two terms as President. Terry has travelled extensively on EcoMotion’s International Solar Study Tours, was an advisor to EcoMotion for eight years prior to joining the team. She is fluent in Cantonese, Mandarin, Spanish, and English.

**Brady Zaitoon, PE, Staff Engineer**

Brady Zaitoon, PE + LEED AP is EcoMotion’s Staff Engineer. An advocate of reducing society’s ecological footprint, Brady is a big picture, but highly detailed kind of guy. A graduate of the Cockrell School of Engineering at the University of Texas in Austin, Brady ran a sustainability consulting firm for eight years, specializing in commissioning of commercial buildings and their HVAC systems. Having a firm understanding of how energy is being used in buildings, Brady helps EcoMotion in identifying energy-saving opportunities in energy management and climate
Brady has acted as a commissioning agent for over 30 projects, ranging from stand-alone health-care facilities to high-end restaurants. Working in the commercial, multi-family and residential building sectors, he is familiar with a multitude of sustainability rating systems. He has also been contracted by the City of Austin, acting as a consultant to help design teams of large-scale developments such as The W and Fairmont Hotels, meet the progressive energy standards set by the city. Prior work experience includes an internship at the Center for Maximum Potential Building Systems.

**Alizeh Siddiqui, Project Manager**

Alizeh Siddiqui brings experiences in project management to EcoMotion. Her primary responsibility has been supporting EcoMotion’s contract to establish an Office of Sustainability for the City of Glendale, a project that was wrapped up in June to the accolades of the City. She is a native of Mississippi and Summa Cum Laude graduate of the University of Mississippi.

Prior to joining the EcoMotion team, Alizeh worked in publishing for Thomas Reuters in Sydney, Australia and then remotely as a marketing specialist for Innovarge LLC, a Pakistani import/export firm. In addition to Spanish proficiency, she is fluent in Urdu and Hindi. She is a warm and talented communicator with strong interests in policy. Recent EcoMotion works that she managed include Strategic Energy Management Plans for Palm Desert Charter Middle School and Murrieta Valley Unified School District, and a Carbon-Free Pathways 2020 Plan for MAST, a magnet school in Miami, Florida. Each plan includes transportation energy use.
Methodology

The following section describes EcoMotion’s approach to the scope of services requested, with a little flare based on our past experiences with similar assignments! The section begins with a bulleted and brief overview of our project team, then touches on timeline, before digging into the meat of the scope of work.

The Project Team

- **Ted Flanigan, President**, will be responsible for overall project management. He will be especially involved in the recruiting of project sites and working with member agencies and the CPA on finding elegant and multi-dimensional solutions. Ted is on call 24/7.

- **Michael Ware, Senior Solar Specialist**, will be responsible for all solar and storage financial modelling. A utility rate expert, his independent analyses of costs and savings will be valuable to the CPA in determining each member agency’s optimal project.

- **David Houghton PE, Chief Engineer**, will be responsible for engineering services and assuring that the solar and storage and microgrid control systems are fully integrated into building and site systems. Dave is an intense systems engineer with a fine attention to design detail.

- **Jibade Sandiford, Solar Specialist**, will provide onsite analyses, spatial and system modelling with Helioscope. He’ll be key to developing presentations and maintaining project communications.

- **Terry Chan, PE**, is EcoMotion’s Vice President of Engineering. She is an Electrical Engineer with UCLA and USC degrees, worked at LADWP for 34 years, and has been licensed in the State of California for nearly 40 years. For this project she will provide oversight and guidance.

- **Brady Zaitoon, PE**, a native Texan with an engineering degree from the University of Texas in Austin, has worked for EcoMotion for five years, providing engineering expertise to many Prop 39 projects involving building efficiency as well as solar. For this project he will lend his expertise and provide engineering support as needed.
● **Alizeh Siddiqui, Project Manager** will provide logistical support, scheduling meetings, drafting meeting minutes, and providing project tracking.

EcoMotion will use no subcontractors or partners to fulfill the project scope of work.

**Project Timeline**

EcoMotion likes the tight timeline: We know that member agencies are primed and excited about this project. We’ll have to work expeditiously with each member agency in the first two months on Task 1A -- September and October - so that there is ample time for the detailed assessments (Task 1B) in November and December, and to be able to wrap Task 1 in January as stipulated. To adhere to this timeline, we propose a number of program parameters in the methodology below.

In February and March, we presume that decisions will be made by the CPA and its member agencies. Final selections on each member agency’s project will be made. Thereafter, EcoMotion will support Task 2, framing up and executing a procurement process for the design and installation of the systems. With proposals in hand, EcoMotion will support the District in selecting the optimal contractor(s) and will help to finalize contracts with them in the capacity as solar, storage, and microgrid operations subject matter expert.

**Task 1A: Development of Inventory of 32 Sites**

EcoMotion will be pleased to work closely with the CPA and, in turn, with its member agencies. We’re all about collaboration. What are the best sites for community resilience, and for the CPA? There’s a balance there. Our team will first work with the CPA to understand its design parameters -- maximum dollar per watt solar, maximum cost per kWh storage? Does a project have to achieve a certain threshold of returns to get a green light? These types of investment criteria will be key to establish early in the process.

**Dual-Benefit Projects:** It is our understanding that one of the important goals of this CPA project is to identify, and later to implement, solar + storage systems that provide both a) day-to-day operational savings and b) energy resilience in the event of an outage. This dual-benefit is a key
program tenet and guiding principle. We suggest that the CPA focus on single-facility projects, ruling out complex resilience projects that involve multiple buildings and which cross streets and utility rights of way... that become exponentially more complex and thus time consuming.

**Parameters**: Building on this notion of dual-benefit, we’ll work together to establish a set of parameters that define a plausible project and the most plausible projects. What is a “critical facility?” What does “community benefit” mean for the purposes of site selection? Design parameters -- eg. adequate space for solar, space for storage, community access, definition of critical systems, etc. -- will first be determined with the CPA, and then will be shared with the member agencies. EcoMotion proposes a member agency webinar to highlight these parameters, to feature the CPA’s interpretation of “the good, the bad, and the ugly!”

East Bay Community Energy’s experience with identifying facilities for its resiliency support is interesting and informative: Working with a Bay Air Quality Management District grant, East Bay and Peninsula Clean Energy identified critical facilities in their service territories. The inventory included some 500 buildings that included schools, fire stations, water pumping facilities, health care facilities and others that were deemed critical in the event of an outage... all targets for resiliency projects.

**Member Agency Meetings**: In addition to the parameters -- the guiding documents -- EcoMotion will meet at least once with each member agency and its designated staff. These meetings will flag members’ priority projects. They will help determine plausible projects, to cover basic questions, to make sure basic understanding is there. These “interviews” will be two-way, with the EcoMotion team explaining optimal projects, and the agencies asking specifics about facilities they have and that may be effective. Note that the budget reflects a meeting with each city, and then follow-up meetings with 16 of the cities, double follow-ups with 8 of the cities.

*A Tale of Woesome Solar Siting*

Some years ago, enough to protect the innocent, EcoMotion was hired to help locate a demonstration solar project within the City of Long Beach. Our solar experts were chagrined to visit the City’s select site for a solar demonstration... a nature center surrounded by large trees!
Shortlist: At this point, the member agencies will provide the CPA project team with a shortlist of sites that are of interest. (We assume that all 32 member agencies are interested in moving forward and have council or board approval to do so.) EcoMotion recommends limiting this short list to 5 sites, thus a project maximum of 160 sites.

EcoMotion and the CPA will review and comment on these sites, conducting virtual meetings with each member agency. In some cases, recommendations will be made to elevate in priority or eliminate sites that do not meet the dual-benefit criteria. Sites that may be eligible for additional state funding -- eg SGIP-DAC -- add to their appeal! We envision that managing the site selection process will require follow-up meetings 50% of the agencies, and that 25% of the agencies will require three meetings nailing down the optimal site for resilience that serves both the member and the CPA.

Analysis of Shortlisted Sites: EcoMotion will conduct cursory reviews of each of the shortlisted sites using information supplied by agencies, as well as analysis of utility billing information, interval data provided by the CPA. These analyses will determine the benefits of solar and options for storage for each site. If need be, EcoMotion and the CPA will send out, or call with, follow-up requests related to clarifying the costs and benefits of the shortlisted projects.

Ranking Shortlists: EcoMotion and the CPA will work together to rank the projects on the shortlists. These findings will be reviewed with each member agency, and final site selection will be made collaboratively.

Task 1B: Detailed Assessment of 32 Sites

We’re past the shortlist, with a recommended site in hand for each member agency. Now we dig into each site to assure its feasibility. At EcoMotion, we call these “deep dives.”

The RFP does a nice job of breaking apart a number of qualitative factors as well as technical factors that all are important for site selection and assessment.
Qualitative Assessment Factors

Host Site Characteristics

Site Location and Details: EcoMotion will document the physical location and any pertinent site details... for instance, easements, annual fairs (that require open parking lots), airport glare or runway exhaust, etc. EcoMotion has found Google Earth to be invaluable, and that onsite verification is critical to measure shading and to get the lay of the land.

Site Control and Restrictions: Are there any required permissions for installation? EcoMotion is dealing this morning with a school site in San Diego County that is plagued by a fire road, out of compliance for fire and life safety. A benefactor is willing to provide the school with a solar system and reduced power costs... but the pre-existing DSA condition is causing project delays. Facilities held in trusts have also proven to be problematic.

Site Management: In some instances, the site may be managed by one entity -- for instance, a county, while hosting a city’s functions. In such arrangements, EcoMotion will dig in to determine how the community benefit would work. We’ve worked with sites that straddle two parcels, and one with seven meters on varying rates. The more complex the ownership and management structure, generally, the less desirable / more time consuming is the project.

Key Project Benefits

Importance of the Facility: EcoMotion will provide a description of the critical nature of each of the chosen sites and community benefit provided by each facility should it become a resiliency site. For instance, it has good access for seniors as a cooling center, or it houses a fire department ever-the-more important in fire seasons. A resilience project could also power water pumping facilities or a community kitchen or a hospital.
Multi-Agency Benefit: EcoMotion will determine whether the installation of battery energy storage at a chosen site can provide critical community services to multiple agencies. For example, could a community center in one city also act as a cooling center for an adjacent city? These synergies will be explored especially in cases where one member agency cannot identify a plausible energy resilience project.

DAC or High-Risk Fire: Is the site in a Disadvantaged Community or High-Risk Fire Zone? EcoMotion will determine and document whether a chosen site is in a Disadvantaged Community as identified by CalEnviroScreen 3.0, or High-Risk Fire Zone as identified by Cal Fire.

Installation Readiness: For each site and after meetings with staff at each member agency, a summary of each projects’ “general installation readiness” will be prepared. It will include project goals, infrastructure proposed, as well as its physical footprint and interconnection details.

Technical Assessment

Prior Feasibility Analyses: We start off with the basics: Has any work been done on this before? Has the agency already conducted any feasibility studies or assessments for the chosen site that may inform the Technical Assessment? We know that Santa Monica commissioned a study on energy resiliency at ~10 municipal sites (since we did it), and that is certainly a useful starting point. We know that Culver City has been exploring its potential to develop a site for resilience. We’ll draw valuable information sources from each city.

Site Diagrams: EcoMotion will gather project site drawings from the member agencies. The drawings will show locations of circuits, electric meters, and other pertinent physical details, all of which are important for both the assessment of the project and in the event that it moves to procurement, as supporting documentation for the proposers. EcoMotion conducts site visits to verify electric room conditions, likely conduit runs, and potential space for additional equipment.

Space for Storage: In many city facilities, electrical rooms are small, and space is often at a premium. Most electrical rooms our team has seen do not have space for more gear, much less
large battery consoles. Locating storage can be a challenge. We’ve often had to look outside, but that gets into aesthetics and trenching/boring.

**Solar PV Generation Potential**: EcoMotion will fully evaluate the options for solar at each of the 32 sites -- what we call “deep dives” -- presenting options of solar configurations. If a chosen member site cannot accommodate solar PV generation, EcoMotion will present the reasons for this. Naturally, we will explore alternative solutions: Would wind energy be viable in coastal communities?

**Critical Load Identification**: EcoMotion’s engineering team for each site will determine which loads are critical. Led by Dave Houghton, our team will measure critical loads and identify critical systems/equipment for connection to backup power. Sometimes cooling can be cut; coffee pots are always in! Determination of critical loads informs system sizing, which in turn will result in CPA demand management benefits.

**Storage Duration Desired**: Closely related to sizing systems to be able to provide for critical loads, is the question of duration. How long will these facilities need to provide services... even during what we call “perfect storm” scenarios, rainy or overcast periods that limit generation. Working with the CPA -- and with member agency input as directed -- we’ll determine optimal durations of islanded back-up power at each site. Telecom sites generally seek 72-hour back-up, but the storage industry is moving to longer-term storage, thanks in part to the efforts of the Long Duration Energy Storage Association.

**Required Site Improvements**: All sites need some forms of improvements for solar and storage installations. Trees may need to be trimmed or removed. Concrete pads and fenced enclosures may be needed for battery banks. Conduit runs can be tricky. Bollards may be necessary for any infrastructure near cars and trucks. EcoMotion will provide detailed descriptions of site improvements required to make clear these custom issues are efficiently addressed, providing rough order of magnitude costs to inform the go/no-go process.

**Existing Solar**: EcoMotion’s solar team will evaluate any existing solar on the 32 sites, provide details about such systems, information including relevant information about purchase model or lease term, generating capacity, rate treatments that have already been tapped, and whether existing solar can be retrofitted to generate in conjunction with battery storage and resilience.

**Existing Back-Up Generation**: EcoMotion will assess and describe integrating the new energy resilience systems with existing on-site backup systems, such as diesel generators.
Load Shifting Potential: EcoMotion’s engineering team will be responsible for identifying load shifting potential for each of the 32 sites. This will have been done in a cursory way in Task 1A, and now will be more detailed with calculations of potential kW for demand response when needed by the CPA. Front of meter installations and leases that benefit the host site – member agency site -- will be considered where site loads are small.

Drop Out Protocol: In the event that a member agency’s preferred site drops out for one reason or another, there are two options: The first is to go back to the drawing board, going to the next highest ranked project on the agency’s shortlist as long as this can be accomplished within the project timeline. The second option is to describe the infeasibility in detail. As a consolation, could Agency A benefit from a site chosen by Agency B, perhaps a shared evacuation or cooling center in adjacent cities?

Deliverable: The final deliverable will be the detailed inventory and assessment as outlined above of at least one priority site in each jurisdiction, to be delivered to CPA by January 2021. EcoMotion will be pleased to present these deliverables in report format, as well as in a PowerPoint presentation format so that we will be prepared to share with the CPA and ultimately member agencies if called upon to do so.

Task 2: Construction Solicitation(s) Support

EcoMotion has experience assisting in competitive solicitation processes. This “procurement support” is critical for clients to get the best deal and then to back it with legal protection.

Developing RFPS We’ve just recently worked in collaboration with Chula Vista Elementary School District officials to develop and then release an RFP for 47 school sites and two district sites. We provided the technical specifications, the solar and storage sizing and requirements, and have been in touch with vendors keen on providing services. Proposals are due August 14.

Proposers Conference: Given the logistical challenges of a job walk for an anticipated 12 firms represented by ~48 individuals, and getting the entire posse to 49 locations… EcoMotion held a highly effective virtual proposers conference in July and it was a great success. With pre-pandemic field work, our team was able to present overhead images with solar layouts and designs, capacity to achieve maximum savings, switchgear, etc. The few follow-up questions
made clear the success of the virtual meeting, all backed up with an extensive Google Drive for each site.

**Questions and Answers:** The next step, as alluded to, is responding to proposers’ questions. EcoMotion often serves as the facilitator of all questions and responses, in coordination with clients and their counsels. Responses must be timely and provided to all proposers. In this case, we assume that the CPA would be the facilitator of this step and that EcoMotion will provide expertise to support the CPA.

**Reviewing Proposals:** Reviewing submissions is an exciting step as things start to get real, actual prices in hand. EcoMotion will be on hand to serve as the subject matter expert to review the proposals for their solar, storage, and controls aspects... while leaving procedural and legal issues to the CPA and its counsel.

**Making Recommendations:** With proposals in hand, our first step is to populate EcoMotion’s comparative matrix that lays out each proposers’ information, from costs to system components, performance guarantees, O&M/Asset management contracts, etc. We provide the populated matrix to our clients for their review.

EcoMotion is completely vendor neutral. While we are familiar with the field, and have worked with a number of leading vendors, EcoMotion has no ties to manufacturers or distributors of solar, storage, or microgrid projects. We have extensive experience inspecting systems -- even in Germany and Spain -- and seeing varying qualities of installations. We bring these perspectives to the table and will support the CPA in selecting the contractor(s) for the actual projects. For budgeting purposes, we assume that the CPA will interview no more than five firms.

**Preparing for and Conducting Interviews:** EcoMotion will be prepared and eager to help interview shortlisted proposers. Working in lockstep with the CPA, we will develop and ask questions on the project’s technical engineering and economics, take notes, tally comments, and support in the selection of the winning proposer(s).

**Providing Additional Support:** EcoMotion will be pleased to provide additional program support at the rates presented in the detailed work plan. This could take many forms: Some member agencies may take an inordinate amount of time and effort to reach the goal line. The CPA may elect to contract with more than two firms for project development and installation. While we recommend against highly complex resilience projects, there may be valuable installations that are inherently more complex, and that will involve more communications, analysis, and legal
reviews. For budgeting purposes, we assume that the CPA will contract with two firms to build the resilience projects.

**Pricing**

The spreadsheet attached to this narrative proposal provides detail on hours anticipated for each professional for each task in two-month increments for the year, September 2020 - August 2021. The RFP stipulates completing the site selection and preferred site analysis expeditiously, by January 2021. The timeframe for Task 2 covers the remaining seven months. The work plan presents each task, time for each professional, by time period. Each professional’s fully loaded rates are also provided.

**Fixed Price:** EcoMotion’s total, fixed-price for the scope of work requested is $176,770. If the CPA exercises this option, EcoMotion will be pleased to abide by this value and to bill in monthly progress payments.

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**Capped Budget:** EcoMotion normally provides clients with not-to-exceed contract amounts, and then bills monthly for hours actually expended. In this way, a project might come in under budget, and the savings go to the CPA. If the scope of work materially changes, then EcoMotion will discuss the issue with the CPA project manager and work to resolve the issue through a contract amendment or change order if need be.

**No Expenses:** Since we are local, EcoMotion will not charge the CPA for any travel, meals, or lodging expenses. Our transportation costs are absorbed into our rates, as is our corporate overhead. Thus no expenses are presented.
References

Chula Vista Elementary School District  
49-Site Solar + Storage Feasibility Analysis, Procurement Support  
2019 - ongoing

EcoMotion is serving as CVESD’s owners rep for a 49-site solar project in San Diego County. Onsite and financial analyses of each site determined system sizing. Bonding authority was granted in early 2020. Solar is projected to save the District $88 million over 25 years. Two sites are slated for energy resilience. Concurrently, EcoMotion is managing an Ebus project there involving Ebus and charger and charge management analysis and procurement.

Oscar Esquivel  
Assistant Superintendent for Business Services  
Chula Vista Elementary School District  
84 East J Street  
Chula Vista, CA  91910  
(619) 425, 9600, ext. 1371  
Oscar. Esquivel@cvesd.org

South Bay Cities Council of Governments  
SolSmart Program Administration  
2018 - 2019

EcoMotion worked with eight South Bay cities on the SolSmart program funded by the U.S. Department of Energy and administered by The Solar Foundation in Washington, DC. Each city had to amend its ordinances and document ways that it has eased the soft costs of going solar. All cities, as well as the Council of Governments, earned SolSmart designations, paving the way for more solar in these cities.

Jacki Bachrach  
Executive Director  
South Bay Cities Council of Governments  
2355 Crenshaw Boulevard, #125  
Torrance, CA 90511  
(310) 371 - 7222  
jacki@southbaycities.org

Capital Group Companies  
Irvine Solar Phase 1 and Phase 2  
2010 – ongoing

For the Capital Group Companies, and working in both Irvine, California and San Antonio, Texas, EcoMotion has served as Owner’s Rep, assuring robust solar deals in the process. Phase 1 in 2010 was Orange County’s largest solar system at the time; Phase 2 more than doubles the installation size with 2.5 MW on the Irvine campus.

Richard Jeng LEED AP BD+C  
Global Corporate Facilities
Solar Santa Monica Project Management
Santa Monica, California

EcoMotion has provided planning and implementation services for the City of Santa Monica since 2006. Our job has been to stimulate solar installations throughout the City. So far, solar capacity in town has risen from 376 kW to well over 5 MW. We also provide resiliency, building electrification, and transportation electrification services.

Drew Lowell Johnstone, CEM
Sustainability Analyst
City of Santa Monica
1717 4th Street Suite 100, Santa Monica, CA 90401
(310) 458-8391
Drew.Lowell@smgov.net

Solar Master Planning and Implementation
Los Angeles County Metropolitan Transportation Authority

EcoMotion has provided planning and implementation services for the Los Angeles County Metropolitan Transportation Authority since 2012. Our job has been to repair and monitor existing solar systems, and to plan and prioritize the installation of additional solar arrays. Our annual budget for our works with Metro has ranged from $100,000 - $250,000 per year. Currently managing four-site, ~2 MW solar PPA.

Alvin Kusumoto
Transportation Sustainability Energy Manager
Los Angeles Metropolitan Transportation Authority
1 Gateway Plaza, Los Angeles, CA 90012
(213) 922 - 7492
KUSUMOTOA@metro.net

Pro Forma Contract Approval

EcoMotion has reviewed the sample contract. We have no changes to request.
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) October Meeting Report
Date: November 5, 2020

RECOMMENDATION
Receive and file.

OCTOBER MEETING REPORT
In October 2020, the CAC received a presentation on a CPA Clean Energy Workforce Development Investment Landscape Analysis. The CAC was asked to provide feedback on the analysis to help inform the final draft for review by the Board of Directors at their December 2020 meeting.

Background on Clean Energy Workforce Development Planning
As part of the terms of its 2019 Power Purchase Agreement (PPA) with CPA, Mohave County Wind Farm, LLC agreed to invest $1 million over four years in workforce development efforts for Los Angeles and Ventura Counties at the direction of CPA.

CPA staff have prepared a landscape analysis of clean energy workforce development investment opportunities to explore options for investing the funds. This analysis identifies five considerations for evaluating investment opportunities:

1. Skills Gap – does the investment address an unmet need for workforce skills by clean energy employers?

2. Representation Gap – does investment address a gap between the demographic diversity of the potential clean energy workforce and the actual clean energy workforce due to current and historical structural, procedural, or distributional inequities?
3. Relevance – does investment have a clear nexus with CPA’s mission and can it help advance CPA’s goals and values?
4. Readiness – is the investment ready or nearly ready for implementation and can it be implemented with minimal administrative burden on CPA?
5. High-Road – will the investment support pathways to family-sustaining jobs for workers?

Staff reviewed with the CAC how these evaluation criteria overlap with four potential pathways for investment:

1. Academic – e.g., grants or scholarships for coursework, degrees, and certificates in topics related to clean energy; support for curriculum redevelopment and alignment with workforce opportunities; special programs such as campus incubators or endowed foundations.
2. Union Training Initiatives – Pre-apprenticeship training and apprenticeship programs that lay the foundation for union careers in clean energy related trades.
3. Life Skills – Job training combined with employment readiness skills and other wraparound services such as tutoring, self-discipline, or interpersonal skills, focused on serving one or more target populations such as high-risk transition-age youth or formerly incarcerated people.
4. Rapid Skills – Training focused on imparting high-demand clean technology skills, with or without certification, to workers or job seekers over a short period of time.

As part of the discussion, staff surveyed CAC members on their top two preferred workforce development investment categories.

**Next Steps**

Staff is compiling the input received from CAC members on their priorities and preferences for workforce investment to include as part of the Board’s review and consideration on funding allocation priorities at the December 3rd meeting.

**ATTACHMENTS**

1) CAC Meeting Attendance
## Community Advisory Committee Attendance

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<td></td>
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</tr>
<tr>
<td>Neil Fromer</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
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<td></td>
<td>✓</td>
</tr>
<tr>
<td>Kristie Hernandez</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>A</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td></td>
<td>✓</td>
</tr>
</tbody>
</table>

### Major Action Items and Presentations

#### January
- GHG Free Procurement Goals and Resources

#### February
- Integrated Resources Plan Update
- CBO Grant Update

#### March
- CPA operations update
- Local Programs Strategic Plan Update

#### April
- CPA operations update
- New Rates

#### May
- COVID-19 Bill Assistance Program
- FY 2020/21 Financial Outlook

#### July
- IRP Update
- CAC Visioning Session #1

#### August
- CAC Visioning Session #2

#### September
- CAC Visioning Session #3 and approval of 2020-2021 Workplan

#### October
- CPA Power Response Program Update
- Workforce Development Program Options
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 Estrella Solar, LLC
Date: November 5, 2020

RECOMMENDATION
Approve a 15-year Renewable Power Purchase Agreement with Estrella Solar, LLC (Estrella) 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, Kaweah Hydro, Azalea Solar + Storage, Chalan Solar + Storage projects approved by the Board in 2020. Per CPA’s Energy Risk Management Policy, any power purchase transactions greater than 5 years require approval by the Board.

CPA retained Todd Larsen with Clean Energy Counsel to represent CPA and its interests in the negotiation of these agreements. Mr. Larsen’s work was overseen by the General Counsel.

**Project Overview**

Estrella is a 56 MW solar and 28 MW / 112 MWh lithium-ion battery storage facility located in the North Antelope Valley in Los Angeles County, with a commercial operation date of December 31, 2022. The project has executed its interconnection agreement and will have Full Capacity Deliverability Status (FCDS), meaning it will provide resource adequacy attributes to CPA in addition to energy benefits.

The Estrella project interconnects with the California Independent System Operator (CAISO) system at the 220kV Antelope Substation. Site control has been fully secured for the entirety of the proposed delivery term. The project submitted a Conditional Use Permit application (CUP) to Los Angeles County in July 2020, and the County has deemed it complete. sPower anticipates that the CEQA document for the project will be an Initial Study Mitigated Negative Declaration (IS/MND) rather than an Environmental Impact Report (EIR). The project expects approval of the CUP by Q4 2021.

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.

**Developer**
sPower is an experienced renewable energy and storage developer and is currently operating 1.2 GW of capacity within the California market. sPower’s finance team has raised over $4.5 billion in committed capital (tax equity, construction debt, and permanent debt) since 2014. sPower has a strong balance sheet with assets of over $2.5 billion. With over 30 projects in Los Angeles County, totaling nearly 1,000 MW, sPower has significant local experience and strong relationships in the Antelope Valley. sPower has been actively growing into the storage market, with over 4,000 MW of storage in its development pipeline around the U.S. sPower has signed 505 MW of renewable energy and storage projects to date with California CCAs. sPower is also the developer of CPA’s 100 MW Luna Storage project, which was approved by the Board in April 2020.

**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 third quartile (Q3) of offer submissions ranked on value in the 2019 Clean Energy RFO (see chart below). Although the project ranked lower on value than other offers, the project was selected due to its high scores on other evaluation criteria, including project location and workforce development. Estrella was the sole local renewable energy project offered into the utility-scale track of the 2019 Clean Energy RFO.
The solar portion of the project is priced above current first quartile market prices as reflected in LevelTen’s Q2 PPA 2020 Price Index, which provides average “P25”\(^1\) solar PPA pricing in $/MWh terms recently offered for SP15 solar projects in California. This is typical for developments in higher-cost and more difficult to develop locations such as Los Angeles County. However, 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).

A similar publicly available benchmark for the storage portion of the project does not exist.

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\(^1\) [https://leveltenenergy.com/blog/ppa-price-index/q2-2020/](https://leveltenenergy.com/blog/ppa-price-index/q2-2020/). Represents the most competitive 25\(^{th}\) 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 expects approval of its CUP by Q4 2021.

Workforce Development
The project ranks High as sPower 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. Anticipated signatories to the PLA include IBEW Local 11, Ironworkers Locals 416 and 433, Laborers Local 12, Southwest Regional Council of Carpenters, and Operating Engineers Local 12. The project will also support apprenticeship programs and targeted local hires. The developer estimates this project will create 200 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 reconnaissance level surveys have been initiated through Los Angeles County, and no occupied habitat for endangered species or cultural resources were identified onsite. The site consists mostly of vacant scrubland and roads, is largely undeveloped and has historical agricultural uses.

Benefits to Disadvantaged Communities
The project ranks Medium as it is not located within a Disadvantaged Community (DAC) but will provide workforce opportunities and community benefits to this region. Specifically, the project has committed to outreach and targeted hires of local Disadvantaged Workers, a process sPower has used on previous Los Angeles County projects.

Project Location
The project ranks High as it is located within Los Angeles County.

Rationale
The projects selected in the 2019 Clean Energy RFO help CPA meet its customers’ large renewable energy demand, while maintaining competitiveness. The Board of Directors has already approved 11 long-term renewable contracts, which make up approximately 32.3% 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>Approximate % 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>6/16/2020</td>
<td>10</td>
<td>1.0%</td>
</tr>
<tr>
<td>Isabella Hydro</td>
<td>12.0</td>
<td>Contracted</td>
<td>12/8/2020</td>
<td>10</td>
<td>0.4%</td>
</tr>
<tr>
<td>Mohave (White Hills) Wind</td>
<td>300.0</td>
<td>Contracted</td>
<td>12/31/2020</td>
<td>20</td>
<td>7.1%</td>
</tr>
<tr>
<td>Golden Fields Solar</td>
<td>40.0</td>
<td>Contracted</td>
<td>3/31/2021</td>
<td>15</td>
<td>1.0%</td>
</tr>
<tr>
<td>Arlington Solar + Storage</td>
<td>233.0</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>100.0</td>
<td>Contracted</td>
<td>8/1/2021</td>
<td>15</td>
<td>2.6%</td>
</tr>
<tr>
<td>Azalea Solar + Storage</td>
<td>60.0</td>
<td>Contracted</td>
<td>12/31/2022</td>
<td>15</td>
<td>1.6%</td>
</tr>
<tr>
<td>Rexford Solar + Storage</td>
<td>300.0</td>
<td>Contracted</td>
<td>10/1/2023</td>
<td>15</td>
<td>7.0%</td>
</tr>
<tr>
<td>Daggett Solar + Storage</td>
<td>123.0</td>
<td>Contracted</td>
<td>3/31/2023</td>
<td>15</td>
<td>3.3%</td>
</tr>
<tr>
<td>Chalan Solar + Storage</td>
<td>64.9</td>
<td>Contracted</td>
<td>12/31/2023</td>
<td>15</td>
<td>1.5%</td>
</tr>
<tr>
<td>Estrella Solar + Storage</td>
<td>56.0</td>
<td>Pending Approval</td>
<td>12/31/2022</td>
<td>15</td>
<td>1.4%</td>
</tr>
<tr>
<td><strong>Total Contracted</strong></td>
<td><strong>1,330.5</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>33.6%</strong></td>
</tr>
</tbody>
</table>

The Estrella project will add another 56 MW of renewable generating resources, covering approximately 1.4% 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 Estrella contract, CPA must secure additional long-term energy contracts to meet its state mandate.

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2 CPA’s executed Luna Storage and 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>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%</td>
<td>49%</td>
</tr>
<tr>
<td>2</td>
<td>State Mandated % of Mandated RPS (Row #1) to be Contracted Under RPS LT Contracts</td>
<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>3</td>
<td>CPA’s LT RPS Mandate = Row #2 * Row #1</td>
<td>25.9%</td>
<td>32.1%</td>
</tr>
<tr>
<td>4</td>
<td>RPS Achieved by CPA with Existing LT Contracts</td>
<td>21.0%</td>
<td>31.4%</td>
</tr>
<tr>
<td>5</td>
<td>Open Position relative to State Mandate (Row 3,4) +Above/ (-) Short</td>
<td>-4.9%</td>
<td>-0.6%</td>
</tr>
<tr>
<td>6</td>
<td>RPS Achieved by CPA with Existing LT Contracts + Pending Contracts (Estrella)</td>
<td>21.7%</td>
<td>32.8%</td>
</tr>
<tr>
<td>7</td>
<td>Open Position relative to State Mandate (Row 3,6) +Above/ (-) Short</td>
<td>-4.2%</td>
<td>0.7%</td>
</tr>
</tbody>
</table>

ENVIRONMENTAL REVIEW

This PPA for the purchase of energy does not fall under the definition of “project” under Section 21065 of the Public Resources Code and under California Environmental Quality Act (CEQA) Guidelines Section 15378(a). In addition, the PPA is exempt under CEQA Guidelines Section 15061(b)(3). The project developer of Estrella, sPower, is responsible for acquiring necessary CEQA review, including any mitigated negative declarations, and permits with the Los Angeles County Department of Regional Planning, the lead agency. CPA has no role, jurisdiction, or authority whatsoever with respect to that CEQA review or project approval.

ATTACHMENTS

1) Estrella Power Purchase Agreement Presentation
2) Renewable Power Purchase Agreement with Estrella Solar, LLC

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3 Consistent with industry practice, portions of the agreement have been redacted to protect market sensitive information.
Renewable Power Purchase Agreement with Estrella Solar, LLC

Thursday, November 5, 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 Estrella 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>
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<tbody>
<tr>
<td>Estrella</td>
<td>Solar + Storage</td>
<td>56 MW solar + 28 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 requirements

(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 11 long-term renewable energy contracts to date:

<table>
<thead>
<tr>
<th>Project</th>
<th>Renewable MWs</th>
<th>Status</th>
<th>Commercial Operation Date</th>
<th>Term (Years)</th>
<th>County</th>
<th>Approximate % 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>Kern, CA</td>
<td>0.6%</td>
</tr>
<tr>
<td>Kaweah Hydro</td>
<td>20.1</td>
<td>Online</td>
<td>6/16/2020</td>
<td>10</td>
<td>Tulare, CA</td>
<td>1.0%</td>
</tr>
<tr>
<td>Isabella Hydro</td>
<td>12.0</td>
<td>Contracted</td>
<td>12/8/2020</td>
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<td>300.0</td>
<td>Contracted</td>
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<td>7.1%</td>
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<td>Golden Fields Solar</td>
<td>40.0</td>
<td>Contracted</td>
<td>3/31/2021</td>
<td>15</td>
<td>Kern, CA</td>
<td>1.0%</td>
</tr>
<tr>
<td>Arlington Solar + Storage</td>
<td>233.0</td>
<td>Contracted</td>
<td>12/31/2021</td>
<td>15</td>
<td>Riverside, CA</td>
<td>6.1%</td>
</tr>
<tr>
<td>High Desert Solar + Storage</td>
<td>100.0</td>
<td>Contracted</td>
<td>8/1/2021</td>
<td>15</td>
<td>San Bernardino, CA</td>
<td>2.6%</td>
</tr>
<tr>
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<td>Contracted</td>
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<td>15</td>
<td>Los Angeles, CA</td>
<td>1.4%</td>
</tr>
<tr>
<td>Total Contracted</td>
<td>1,330.5</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>33.6%</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>State Mandated RPS per Compliance Period - % of Retail Sales</th>
<th>2021-2024</th>
<th>2025-2027</th>
<th>2028-2030</th>
</tr>
</thead>
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<td>65%</td>
<td>65%</td>
</tr>
<tr>
<td>2</td>
<td>CPA’s LT RPS Mandate = Row #2 * Row #1</td>
<td>25.9%</td>
<td>32.1%</td>
<td>36.8%</td>
</tr>
<tr>
<td>3</td>
<td>RPS Achieved by CPA with Existing LT Contracts</td>
<td>21.0%</td>
<td>31.4%</td>
<td>30.8%</td>
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<tr>
<td>4</td>
<td>Open Position relative to State Mandate (Row 3,4) +Above/ (-) Short</td>
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<td>-0.6%</td>
<td>-6.0%</td>
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<tr>
<td>5</td>
<td>RPS Achieved by CPA with Existing LT Contracts + Pending Contracts (Estrella)</td>
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<td>32.2%</td>
</tr>
<tr>
<td>6</td>
<td>Open Position relative to State Mandate (Row 3,6) +Above/ (-) Short</td>
<td>-4.2%</td>
<td>0.7%</td>
<td>-4.7%</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 location)
Project Summary
Estrella Solar + Storage Summary

Project Overview
- 56 MW solar and 28 MW / 112 MWh lithium-ion battery storage facility
- Located in North Antelope Valley in Los Angeles County
- New build project with a December 31, 2022 online date
- Developer: sPower

Rationale
- High evaluation criteria scores, in particular Project Location and Workforce Development
- Online date to meet SB350 and IRP Procurement Track compliance

<table>
<thead>
<tr>
<th>Criteria</th>
<th>Rank</th>
</tr>
</thead>
<tbody>
<tr>
<td>Value</td>
<td>3rd 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>Medium</td>
</tr>
<tr>
<td>Project Location</td>
<td>High</td>
</tr>
</tbody>
</table>
CONFIDENTIAL

Execution Draft

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Estrella Solar, LLC, a Delaware limited liability company

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

Description of Facility: A 56 MW solar photovoltaic Generating Facility combined with a 112 MWh (28 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>10/1/2021</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>Complete</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>11/15/2022</td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the Transmission Provider)</td>
<td>11/30/2022</td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td>12/31/2022</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>166,561</td>
</tr>
<tr>
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<td></td>
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<tr>
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<td>12</td>
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<td>13</td>
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<td>14</td>
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<td>15</td>
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**Guaranteed Capacity:** 84 MW of total Facility capacity

**Guaranteed Storage Capacity:** 28 MW of Installed Storage Capacity at four (4) hours of continuous discharge

**Guaranteed PV Capacity:** 56 MW of Installed PV Capacity

**Guaranteed Efficiency Rate:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Guaranteed Efficiency Rate</th>
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</thead>
</table>
### Contract Price

The Renewable Rate shall be:

<table>
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<tr>
<th>Contract Year</th>
<th>Renewable Rate</th>
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<tbody>
<tr>
<td>1 – 15</td>
<td>$XXX/MWh (flat) with no escalation</td>
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The Storage Rate shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Storage Rate</th>
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</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>$XXX/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 (subject to Section 3.7(d))
☒ Full Capacity Deliverability Status: for the Storage Facility
  a) 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 as of Effective Date
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RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("Agreement") is entered into as of ________, 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.

“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, and the Cover Sheet.

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

“Ancillary Services” means spinning reserve, non-spinning reserve, regulation up, regulation down, 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 applicable Law, the Interconnection Agreement, and 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 Forecast” has the meaning set forth in Section 4.3(a).

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

“Approved Forecast Vendor” means (a) the CAISO 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.

“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) and (b):

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

(b) either:

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

(ii) 

If the Generating Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period (excluding 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 due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

“Buyer Curtailment Order” means the instruction from Buyer to Seller to reduce PV Energy from the Generating 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 PV Energy from the Generating Facility pursuant to or as a result of (a) 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 PV Energy to the
Delivery Point; provided, the duration of any Buyer Curtailment Period shall be inclusive of the
time required for the Generating 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 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, Alternative Dispatches 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, Storage Capacity Test, or any other 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 PV 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, in calculating ownership percentages for all purposes of the foregoing:

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

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

“Charging Energy” means all PV Energy produced by the Generating Facility and delivered to the Storage Facility (including pursuant to a Charging Notice), as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses and Station Use. All Charging Energy shall be used solely to charge the Storage Facility, and unless authorized in writing by Seller, all Charging Energy shall be generated solely by the Generating Facility. The Parties acknowledge that, with reference to Exhibit R, prior to the Grid Charging Effective Date all Charging Energy will originate at, and flow directly from, the Generating Facility (after passing through the Generating Facility Meter) to the Storage Facility and will not cross the Facility’s high voltage transformer or Delivery Point.
“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 Charging Energy at a specific MW rate for a specified period of time or amount of MWh; provided (a) any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) subject to Section 7.1(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”, the MW rate in such “Charging Notice” shall be deemed to be automatically adjusted to the actual power level of the Generating Facility (adjusted for Electrical Losses). 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 to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the 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, 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) ninety (90).

“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 PV Energy expressed in MWh that the Generating Facility would have produced and delivered to the Generating Facility Meter, 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 PV 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 PV 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, 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 (0), 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, as measured at the Storage Facility Metering Point by the Storage Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use. All Discharging Energy shall have originally been delivered to the Storage Facility as Charging Energy.

“Discharging 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 discharge Discharging Energy at a specific MW rate for a specified period of time or amount of MWh; provided: (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed to be discharging, the sum of PV Energy and Discharging Energy delivered to the Delivery Point would exceed the Interconnection Capacity Limit, such “Discharging Notice” shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy delivered to the Delivery Point does not exceed the Interconnection Capacity Limit, until such time as Buyer’s SC or the CAISO issues a further modified Discharging Notice; provided, if any such automatic adjustment is prohibited by, or would result in Seller incurring any penalties or charges under, the CAISO Tariff, then Seller shall instead reduce deliveries of PV Energy as necessary to avoid exceeding the Interconnection Capacity Limit and all such reduced PV Energy deliveries shall constitute (and be treated as) Deemed Delivered Energy. Any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

“Dispatch Operating Target” has the meaning set forth in the CAISO Tariff.

“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 calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

“Electrical Losses” means, subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission and transformation losses (a) between the Generating Facility Metering Point and the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) as applicable, between the Generating Facility and the Storage Facility Metering Point associated with delivery of Charging Energy. 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, measured in kilowatt-hours or multiple units thereof.

“Energy In” has the meaning set forth in Part 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 Part 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 PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each 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 PV Energy and/or Discharging Energy, as applicable, during any Settlement Interval or Settlement Period.
“FERC” means the Federal Energy Regulatory Commission or any successor government agency.

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

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

“Force Majeure Unavailability” has the meaning set forth in Exhibit C.

“Forced Facility Outage” means an unexpected failure of one or more components of the Facility that prevents Seller from generating PV 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(a).

“Forecasting Penalty” has the meaning set forth in Section 4.3(f).

“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, which written confirmation may only identify the Storage Facility indirectly as it is part of a larger project using the same CAISO queue position.

“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, the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

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

“Generating Facility Metering Point” means the location(s) of the Generating Facility Meter shown on Exhibit R.

“Generating Facility Testing Condition” has the meaning set forth in Part I.B.4 of Exhibit O.

“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, “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 hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (3) the reporting rights to 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 PV 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” has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

“Guaranteed Construction Start Date” has the meaning set forth 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 generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to 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 Energy, as measured in MW AC at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to 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 PV Energy, Charging Energy or Discharging 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 generating capacity of the Generating Facility, as measured in MW AC at the Delivery Point (i.e., measured at the Generating Facility Meter and adjusted for Electrical Losses to 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 Energy for four (4) hours of continuous discharge, as measured in MW AC at the Storage Facility Meter and adjusted for Electrical Losses to 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 shall never be deemed to exceed the Guaranteed Storage Capacity, and Buyer shall have no rights 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 the Interconnection Agreement, in the amount of 56 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 the Effective Storage Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

“**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 Instruction” has the meaning in the CAISO Tariff.

“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. 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, 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 (failing such operations experience) 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.

“The 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).

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

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

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

“The 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.

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

“The 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.

“The 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.

“The 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.

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

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

“The 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 all Energy that is delivered from the Generating Facility, as measured at the Generating Facility Metering Point by the Generating Facility Meter, as such meter readings are adjusted by the CAISO for any applicable Electrical Losses or Station Use (if any).

“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 Full Capacity Deliverability Status.

“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, and “Scheduled” has a corollary meaning.

“Scheduled Energy” means the PV Energy, Charging Energy or Discharging 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, 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 (i) the level of charge of the Storage Facility relative to (ii) the Effective Storage Capacity multiplied by four (4) hours, based on the then-current Effective Storage 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 (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems and other electrical loads that are necessary for operation of the Facility; provided, Station Use does not include Electrical Losses (including transformation losses in the transformer) that exist (a) between the Generating Facility Meter and the Delivery Point, (b) between the Storage Facility Meter and the Delivery Point, and (c) between the Generating Facility Meter and the Storage Facility Meter.

“**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 Meter**” means the CAISO-approved bi-directional revenue quality meter or meters (with a 0.3 accuracy class), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy delivered to the Storage Facility Metering Point and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point 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 Point**” means the location(s) of the Storage Facility Meter 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. The Parties acknowledge that, taking into account Electrical Losses, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time will be greater than the Stored Energy Level as defined in the preceding sentence.

“**Supplementary Capacity Test Protocol**” has the meaning set forth in Part 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 or battery storage 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 PV Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver 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 P.

“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.

“UIE” has the meaning set forth in Section 4.5(k)(i).

“Ultimate Parent” means sPower, LLC, a Delaware limited liability company.

“Unavailability Notice” means any Seller Notice or schedule of Planned Outages with respect to unavailability of the Storage Facility and provided to Buyer pursuant to Sections 4.3(e) and 4.6.

“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:

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

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

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

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

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

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

(g) the 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;

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

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

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

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

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

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions set forth herein ("Contract Term"); provided, 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 the Installed Capacity on the Commercial Operation Date;

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

(c) An Interconnection Agreement 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 of the Storage Facility (for general charging and discharging into the CAISO market [redacted]), 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;

(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 that are reasonably capable of being completed prior to the Commercial Operation Date, including (as applicable) 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; 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. 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 or other Buyer breach hereunder which directly prevents Seller from achieving such Milestone, 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 shall 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, 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 shall 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, no such re-sell or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any components 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 PV 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 PV 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 PV Energy, Charging Energy, and/or Discharging Energy delivered from the Generating Facility and/or received or delivered by the Storage Facility may deviate from the
amounts thereof scheduled with the CAISO. Following the Commercial Operation Date, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer, except as expressly set forth in this Agreement.

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

3.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and to Section 3.5(b), 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, 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 of the Generating Facility 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”). Following such ninety (90) day period, for a subsequent period of up to an additional ninety (90) days prior to the Commercial Operation Date, Buyer shall schedule Test Energy and any associated Products of the Generating Facility and pay to Seller the lesser of (i) all CAISO payments, credits and revenues
therefrom and (ii) fifty percent (50%) of the Renewable Rate for each MWh of Test Energy delivered to Buyer. The price for any Test Energy delivered to Buyer after such one hundred eighty (180) days shall be zero dollars ($0) per MWh. 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 3.7(d) and 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) Seller shall use commercially reasonable efforts to obtain and deliver Capacity Attributes or Resource Adequacy Benefits for the Generating Facility for Buyer’s benefit, including applying for a deliverability allocation for the Generating Facility one (1) time after the Effective Date, at no cost to Buyer, and thereafter applying for a deliverability allocation from time to time at Buyer’s request and Buyer shall reimburse Seller for Seller’s costs associated therewith.

3.8 **Resource Adequacy Failure.** Subject to Section 19.12:

(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, 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, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written 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 material 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 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 PV 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 shall be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions”; provided, 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.

provided, Seller shall obtain Buyer’s written approval prior to taking any Compliance Action which is reasonably likely to cause the Storage Facility to have reduced capacity and/or availability; provided further, Buyer shall be deemed to have waived any failure by Seller to comply with the requirements of this Agreement to the extent such failure results from any delay in Seller taking any Compliance Action as directed by Buyer, or due to Buyer’s delay in providing, the approval set forth in the immediately preceding proviso.

(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 shall 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 until such time as Buyer agrees to pay such costs (as may be revised and updated by Seller at its reasonable discretion after a Buyer rejection of the previously proposed compliance costs); provided, 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, subject to the provisions of Section 3.12(a).

(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 (subject to the provisions of Section 3.12(a)), 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 shall discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities, including the use of grid energy (i.e., energy not produced by the Generating Facility) to provide Charging Energy or conversion from two (2) to one (1) CAISO Resource IDs; *provided,* 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 to permit the use of grid energy to provide Charging Energy 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 (except for PV Energy used as Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for PV Energy used as Charging Energy) in accordance with the terms of this Agreement. Seller shall be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including 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 PV Energy, Charging Energy and Discharging Energy shall be scheduled with 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 PV 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 and Ancillary Services Products.** If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including 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 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 for First Contract Year.** No less than forty-five (45) days before the first day of the first Contract Year of the Delivery Term, and as updated by Seller from time to time thereafter in its discretion or as may be required below, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month’s average-day hourly expected Energy from the Generating Facility (the “**Forecasted Product**”), by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F, or as reasonably requested by Buyer (the “**Annual Forecast**”).

(b) **[Reserved]**

(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 (or arrange for an Approved Forecast Vendor to 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 (or the Approved Forecast Vendor’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 (or the Approved Forecast Vendor) 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 Annual Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) **Real-Time Forecasts.** During the Delivery Term, Seller shall notify (or arrange for an Approved Forecast Vendor to 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 Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the 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 (or arrange for an Approved Forecast Vendor to notify) Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy (including those provided by an Approved Forecast Vendor) shall contain information regarding the beginning date and time of the event resulting 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. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided, 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 (or the Approved Forecast Vendor, as applicable) shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, with respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify (or arrange for an Approved Forecast Vendor to notify) Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller or the Approved Forecast Vendor 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.

(f) Forecasting Penalties. If with respect to any given hour Seller has failed to provide the forecast required in Section 4.3(d) and has failed to arrange for an Approved Forecast Vendor to provide such forecast, and due to such failures 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 PV Energy for such hour set forth in the Day-Ahead Forecast (or Annual Forecast to the extent no Day-Ahead Forecast was Delivered to Buyer), and (ii) the actual PV 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 shall 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 shall 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 PV Energy and/or Discharging 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; provided further, delivery of excess Facility Energy during a Settlement Interval in which the Generating Facility and/or Storage Facility is ramping down or ramping up to the Dispatch Operating Target or Operating Instruction shall not be considered a failure by Seller to comply with a Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that the Generating Facility and/or Storage Facility meets the Dispatch
Operating Target or Operating Instruction as required by the CAISO Tariff.

(b) **Buyer Curtailment.** Buyer shall have the right to order Seller to curtail deliveries of PV Energy through Buyer Curtailment Orders; provided, Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.

(c) **Failure to Comply.** Subject to the provisos in Section 4.4(a), if Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of PV Energy that is delivered by the Generating 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, (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 the 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. 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. Except as expressly set forth in this Agreement, including Section 4.5(c), Section 4.5(k)(i), and Section 4.9(d)(i), Buyer shall be responsible for paying all CAISO costs and charges associated with charging of the Storage Facility. The Parties acknowledge and agree that, although Charging Energy will exclusively be PV Energy delivered directly from the Generating Facility to the Storage Facility prior to the Grid Charging Effective Date, for purposes of CAISO financial settlements the Parties understand that CAISO will treat Charging Energy as being procured by Buyer from the CAISO Grid as if such Charging Energy were grid energy, and that as a result the CAISO will have separate financial settlements (i) for deliveries of PV Energy to the Generating Facility Meter and (ii) for deliveries of Charging Energy to the Storage Facility Meter. If CAISO rules or protocols become inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

(b) Charging Notices. Buyer shall 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, the CAISO Tariff, the provisions of Section 4.5(a), and the availability of Charging Energy. Each Charging Notice issued in accordance with this Agreement shall be effective unless and until such Charging Notice is modified with an updated Charging Notice (including as automatically updated in accordance with the definition of Charging Notice).

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice, in connection with a Buyer Dispatched Test or 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; provided, if Seller receives a Charging Notice that is not in compliance with the Operating Restrictions, Seller shall notify the SC as soon as reasonably practicable, but in no event later than one (1) hour following receipt of such non-compliant Charging Notice, and Seller shall comply with the Charging Notice to the fullest extent possible without violating the Operating Restrictions until such time as Seller receives a modified Charging Notice. 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 Section 4.5(k) shall apply and 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. 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) Discharging Notices; No Unauthorized Discharging. Buyer shall have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement, the CAISO Tariff including the Operating Restrictions and the existing level of charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement shall be effective unless and until Buyer’s SC or the CAISO modifies such Discharging Notice by providing the Facility with an updated Discharging Notice (including as
automatically updated in accordance with the definition of Discharging Notice). Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice, in connection with a Buyer Dispatch Test or 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 (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 and shall not result in a breach of or give rise to Seller liability under this Section 4.5(d)); provided, if Seller receives a Discharging Notice that is not in compliance with the Operating Restrictions, Seller shall notify the SC as soon as reasonably practicable, but in no event later than one (1) hour following receipt of such non-compliant Discharging Notice, and Seller shall comply with the Discharging Notice to the fullest extent possible without violating the Operating Restrictions until such time as Seller receives a modified 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 and 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 and shall not give rise to Seller liability under any other provisions hereof (including Sections 4.5(c), (d), and (f)), it shall be a breach by Seller and Seller shall reimburse Buyer for any costs (including the cost of Energy used for charging the Storage Facility, and any other CAISO costs, charges or penalties) 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 a Seller Event of Default.

(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, etc. 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. Buyer and Buyer’s SC shall reasonably coordinate and cooperate with Seller with respect to Facility testing (including for Test Energy) prior to (and after) the Commercial Operation Date, and Seller shall only charge and discharge the Storage Facility in connection with
installation, commissioning and testing of the Storage Facility, and Seller shall be entitled to all CAISO revenues and other amounts paid by CAISO in respect of the Storage Facility installation, commissioning and testing for periods prior to the Commercial Operation Date and as otherwise expressly set forth hereinafter.

(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 Notices 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 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.

(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, 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. Except as set forth in Section 4.5(k)(ii), 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 either (A) fails to respond at all to an Ancillary Services Dispatch, or (B) is not certified by the CAISO to provide Ancillary Services, 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 any such failure to respond at all to an Ancillary Services Dispatch or to be certified by the CAISO to provide Ancillary Services.

(iv) In any case where preceding Sections 4.5(k)(ii) or (iii) are applicable, Section 4.5(k)(i) shall be inapplicable.

(I) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), and (ii) the supply of such Station Use shall not be deemed a deviation for purposes of Section 4.5(k)(i) or a violation of this Agreement, including Sections 4.5(c), (d), and (f).

4.6 Reduction in Energy Delivery Obligation. Without limiting Section 3.1 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(a) Facility Maintenance. Seller shall 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 Planned Outages shall be scheduled during the period 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 shall in good faith take into account any such comments. Seller shall 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. Subject to the restrictions set forth in this Section 4.6(a), 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; provided, Buyer shall cooperate with Seller to make changes to each such schedule, including on less than sixty (60) days advance notice, and shall permit any changes if doing so would not have a material adverse impact on Buyer, provided that (i) such proposed
change is not during the period from each June 1 through October 31 during the Delivery Term unless (x) with respect to maintenance on the Storage Facility, such maintenance is conducted between the hours of 10 p.m. and 6 a.m. and would not cause more than 5 MWs of the Effective Storage Capacity to be unavailable, and (y) with respect to maintenance on the Generating Facility, such maintenance is conducted during the time after sunset and prior to sunrise, and (ii) Seller agrees to reimburse Buyer for any costs or charges associated with 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.** Subject to Article 10, Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) **Health and Safety.** Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

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, Seller shall deliver to Buyer an amount of PV 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 PV 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 Buyer failure to perform that directly prevents Seller from being able to deliver PV 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) PV 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, 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 \textit{percent} (\%) \textit{(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 is Seller’s payment of liquidated damages made pursuant to Section (f) of Exhibit C.

(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; \textit{provided}, Buyer’s initial CAISO Certification associated with the Installed Storage Capacity; \textit{provided}, Buyer’s exclusive remedies for Seller’s failure to satisfy such obligation are as set forth in Section 4.5(k).

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, subject to applicable NERC requirements and other applicable Laws.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, 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 such Storage Capacity 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".

(i) For any Seller Initiated Test, other than as required by Exhibit O, 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 shall 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 and Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test. For all Seller Initiated Tests, Seller shall reimburse Buyer the amount of Buyer’s payment for the Charging Energy for such Seller Initiated Test, and Seller shall be entitled to all CAISO revenues associated with the discharge of such Energy. 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 PV 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 (g) below. In addition:

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

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of PV Energy generated, any fractional MWh amounts (i.e., kWh) shall 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 PV 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 PV 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 is the result of an error or omission of Seller, then the amount of PV Energy in the Deficient Month shall be reduced by three (3) 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, 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 PV 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 (to the extent such steps are reasonably capable of being taken prior to the first delivery under this Agreement) will be taken prior to the first Energy delivery under this Agreement.

(h) The Parties acknowledge and agree that this Section 4.10 reflects an understanding between the Parties that WREGIS Certificates will be created equivalent to the amount of PV Energy that is generating by the Generating Facility. If the RPS (or other applicable Law) is applied or changes in a manner inconsistent with such understanding, the Parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonably delayed, conditioned or withheld.

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*, 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, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of the Product and 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 Shared Facilities and Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided*, 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.**

(a) Subject to Section 7.1(b) (with respect to the entirety of the following Section 7.1(a)), unless the Parties agree otherwise pursuant to Section 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 PV Energy using the Generating Facility Meter. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter. Seller shall segregate and separately meter Station Use to the extent reasonably possible for the technology selected by Seller for the Facility in accordance with Prudent Operating Practice and CAISO requirements, and any such meter(s) shall have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes. Upon the reasonable request from time
to time by Buyer, Seller shall provide Buyer a report of the metered quantities of Station Use consumed by the Storage Facility. All meters shall 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 Meter and Generating Facility Meter shall be programmed to adjust for all Electrical Losses from such meters to the Delivery Point in a manner subject to Buyer’s prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter and Generating Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer’s Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

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

7.2 Meter Verification. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer’s reasonable request, Seller shall make commercially reasonable efforts to cause the meter to be tested. 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 shall 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, (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, Charging Energy, Discharging Energy, Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of 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 shall be considered late and shall bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “Interest Rate”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 Books and Records. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. 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 (12)-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, C 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.

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 such obligations are satisfied in full.

8.10 **Buyer Financial Statements.** Buyer shall provide to Seller: (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; (c) as available, Buyer’s annual report, which shall include an overview of customer rate
classes and retention rates (and may include opt-out rates), procurement activities, customer
programs, and a list of Buyer’s member agencies and board members; (d) committed, unused bank
line of credit as of the end of each fiscal quarter; and (e) other financial and operational information
for the prior fiscal quarter as may be reasonably requested by Seller’s financing parties.

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 in 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
(including the COVID-19 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 or 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, 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)-day 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 any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision) 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)-day 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 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, or (B) to achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, in each case (A) and (B) as such dates may be extended in accordance with 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 forecast provided 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 such 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 (1) cash, (2) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit or (3) a replacement Guarantor and Guaranty acceptable to Buyer in its sole discretion, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;

(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(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 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that terminates this Agreement (the "Terminated Transaction") and ends the Delivery Term effective as of the Early Termination Date;
(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment or (ii) the Termination Payment, as applicable, 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, 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 shall be immediately due and payable by Seller to Buyer. There shall 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 shall 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 shall 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 on or after the Commercial Operation Date (“Termination Payment”) shall be the aggregate of all Settlement Amounts plus any and all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party’s duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (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 (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60) days period despite exercising commercially reasonable efforts), 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 to Buyer on terms and conditions (including price) materially similar to those set forth in this Agreement, 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 of the Facility) 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 and except where liquidated damages or other express remedy or measure of damages are provided herein 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 Seller Pre-COD Termination. 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, 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 OR OTHERWISE.

12.2 Waiver and Exclusion of Other Damages. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER’S LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR 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(f), 4.5(k), 4.7, 4.8(b), 4.8(c), 10.4, 11.2, 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 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 shall 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) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed; provided, 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 the 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 (with such changes as may be reasonably requested by Lenders):

(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, 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 shall 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 shall 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 shall have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender shall receive prior written notice of and the right to approve material amendments to this Agreement, which approval shall 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 remaining 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 remaining obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to Lender’s cure of any Events of Defaults under this Agreement required to be cured in accordance with Section 14.2(f), (i) if 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 its designee must, promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof; provided, 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 shall 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.

Except as provided in the preceding sentence, 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, 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, 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.

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) for (i) 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, 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 shall 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 One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller’s obligations under this Agreement and 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.** Seller, if it has employees, shall maintain Employers’ Liability insurance shall not be less than One Million Dollars ($1,000,000) 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 shall 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. 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. The general liability, auto liability and worker’s compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

(h) **Failure to Comply with Insurance Requirements.** If Seller fails to comply with any of the provisions of this Article 17, then without restricting Buyer’s remedies under Article 11, the Law or otherwise, Seller shall (in accordance with the applicable provisions of Section 16.2) indemnify and defend Buyer against all claims and liability for which, and to the same extent that, Buyer would have been covered by Seller’s insurance pursuant to this Article 17 if Seller had not failed to comply with the provisions of this Article 17.

**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 shall as soon as practical notify Seller in writing via email that such request has been made. Seller shall 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 shall 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* 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.

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 another provision of 11 U.S.C. § 101-1532.

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,
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.

ESTRELLA SOLAR, LLC, a Delaware limited liability company

By: ____________________________
Name: ____________________________
Title: ____________________________

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

By: ____________________________
Name: ____________________________
Title: ____________________________
Site Name: Estrella Solar


City: North Antelope Valley

County: Los Angeles County

Zip Code: 93536

Latitude and Longitude: -118.3133, 34.8509

Delivery Point: Pnode for the Generating Facility

Generating Facility Metering Point: See Metering Diagram in Exhibit R

Storage Facility Metering Point: See Metering Diagram in Exhibit R

P-node applicable to Facility’s CAISO IDs: As established by CAISO for POI at SCE Antelope Substation 220 kV Bus.

Transmission Provider: Southern California Edison

Additional Information: N/A

Facility Description: Estrella Solar is a 56 MW AC photovoltaic solar project which includes a 28MW / 112MWh AC-connected battery energy storage facility located in Los Angeles County, California. The Facility will be located within a portion of the green area set forth in the Site.
Diagram, below.
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 full 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 amount of Daily Delay Damages previously paid. If requested by Seller, the Parties

Exhibit B - 1
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 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 _____ days of cumulative extensions by payment of Daily Delay Damages and/or 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 Daily Delay Damages and/or Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for up to _____ 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

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(as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates.** Independent of Seller’s extension rights under Sections 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 receive approval for initial synchronization and 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; provided, the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Daily Delay Damages, 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 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 (i.e., ninety (90) days after the Commercial Operation 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 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.
EXHIBIT C

COMPENSATION

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

(a) **Renewable Rate.** Buyer shall pay Seller the Renewable Rate for each MWh of PV 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 PV 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 PV Energy and/or Deemed Delivered Energy shall be $0.00/MWh.

(c) **Excess Settlement Interval Deliveries.** If during any Settlement Interval, Seller delivers PV 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) **Monthly Capacity Payment.**

(i) Each calendar 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 on the first day of a 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 for a given Contract Year 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 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 $A \times B - C$, where:

- **A** = The sum of the year-to-date Monthly Capacity Payments for a given Contract Year
- **B** = The Capacity Availability Factor
- **C** = The sum of any Storage Capacity Availability Payment True-Up Amounts previously subject to withholding 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) – (Force Majeure Unavailability * 0.5)

“Force Majeure Unavailability” means total YTD unavailable Calculation Intervals that resulted from a Force Majeure Event for which Seller is the claiming party divided by the total YTD Calculation Intervals.

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

(f) **Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate.** If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall

Exhibit C - 2
be calculated by multiplying (i) the total Charging Energy for such month, by (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, by (iii) the Renewable Rate.

(g) **Tax Credits.** The Parties agree that neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller’s or the Facility’s eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller’s accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller’s obligation to deliver Facility Energy and Product, shall be effective regardless of whether 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

(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, expeditiously 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 shall 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 by (in order of preference) telephone or 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 in this part (c) or as otherwise expressly provided in the Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy and Charging Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy and Charging 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) 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. Subject
to Section 4.5(k) of the Agreement, 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 shall 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 such 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 shall take all actions necessary to terminate the designation of Buyer or Buyer’s designated SC 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, or cause its designated SC to 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, or its designated SC’s possession, as applicable, that Buyer (as Scheduling Coordinator) or its designated SC, as applicable, has provided to the CAISO related to the Facility.
or actions taken by Buyer (as Scheduling Coordinator) or its designated SC, as applicable, related to Seller’s compliance with applicable NERC reliability standards.
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the Site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that are 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

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

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

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

\[ \text{[(A} - \text{B)} \times (\text{C} - \text{D})] \]

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 SP15 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: PV 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.

“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 Performance Measurement Period, Buyer shall 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.
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 of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.

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]______.

7. Seller has segregated and separately metered Station Use to the extent reasonably possible for the technology selected by Seller for the Facility in accordance with Prudent Operating Practice and CAISO requirements, and any such meter(s) have the same or greater level of accuracy as is required for CAISO certified meters used for settlement purposes.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _______ day of _____________, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: ________________________________

Its: _________________________________

Date: _______________________________

Exhibit H - 1
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 nameplate capacity of the Generating Facility 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 an Efficiency Rate of __%, (i) a Battery Charging Factor of __%, 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: __________________________

Exhibit I-1

Agenda Page 274
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 (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: ________________________________
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”);

and

(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]
APPLICANT: [TO BE ADVISED (SHOULD BE A SINGLE ENTITY)]
AMOUNT: [TO BE ADVISED]
EXPIRY: 1 YEAR FROM ISSUANCE

Beneficiary:

Clean Power Alliance of Southern California,
a California joint powers authority
801 S Grand, Suite 400
Los Angeles, CA 90017

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”), 801 S Grand, Suite 400, Los Angeles, CA 90017, for an amount not to exceed the aggregate sum of U.S. $[XXXXXX] (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., New York 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 New York, New York.

Funds under this Letter of Credit are available to Beneficiary by valid presentation on or before 5:00 p.m. New York 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.

Drawing(s) under this Letter of Credit may be presented to us by facsimile transmission to facsimile number [XXX] (if presented by fax it must be followed up by a phone call to Issuer at [XXX] to confirm receipt. In the event of a presentation via facsimile transmission, no mail
confirmation is necessary and the facsimile transmission shall constitute the operative drawing documents.
Issuer hereby agrees that all drafts drawn under and in compliance with the terms of this Letter of Credit shall 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 Exhibit A.

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 shall expire on its then-current Expiration Date. No presentation made under this Letter of Credit after such Expiration Date shall 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 New York, 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 [XXXXXXX], referring specifically to Issuer’s Letter of Credit No. [XXXXXXXX]. For telephone assistance, please contact Issuer’s Standby Letter of Credit Department at [XXX-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Clean Power Alliance of Southern California, a California joint powers authority, Chief Financial Officer, 801 S Grand, Suite 400, Los Angeles, CA 90017. 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, Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed ________ Dollars ($__________). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty.
and may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or
(ix) any other event or circumstance that may now or hereafter constitute a defense to payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided, 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 Paragraph 9, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller;

(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 7.

If delivered to Buyer, to it at [___]
Attn: [___]
Fax: [___]

If delivered to Guarantor, to it at [___]
Attn: [___]
Fax: [___]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in the 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 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 WAIVER 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 SHALL 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:____________________________
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:

Unit Information

<table>
<thead>
<tr>
<th>Name</th>
<th></th>
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</thead>
<tbody>
<tr>
<td>Location</td>
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<tr>
<td>CAISO Resource ID</td>
<td></td>
</tr>
<tr>
<td>Unit SCID</td>
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<tr>
<td>Prorated Percentage of Unit Factor</td>
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<tr>
<td>Resource Type</td>
<td></td>
</tr>
<tr>
<td>Point of Interconnection with the CAISO Controlled Grid (“substation or transmission line”)</td>
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<tr>
<td>Path 26 (North or South)</td>
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<tr>
<td>LCR Area (if any)</td>
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<tr>
<td>Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment</td>
<td></td>
</tr>
<tr>
<td>Run Hour Restrictions</td>
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<tr>
<td>Delivery Period</td>
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<table>
<thead>
<tr>
<th>Month</th>
<th>Unit CAISO NQC (MW)</th>
<th>Unit Contract Quantity (MW)</th>
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<tbody>
<tr>
<td>January</td>
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<tr>
<td>December</td>
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</tbody>
</table>

1 To be repeated for each unit if more than one.
## EXHIBIT N

### NOTICES

<table>
<thead>
<tr>
<th>ESTRELLA SOLAR, LLC, a Delaware limited liability company (“Seller”)</th>
<th>CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA, a California joint powers authority (“Buyer”)</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>All Notices:</strong></td>
<td><strong>All Notices:</strong></td>
</tr>
<tr>
<td>Street: 2180 South 1300 East, Suite 600</td>
<td>Street: 801 S Grand, Suite 400</td>
</tr>
<tr>
<td>City: Salt Lake City, Utah 84106</td>
<td>City: Los Angeles, CA 90017</td>
</tr>
<tr>
<td>Attn: General Counsel</td>
<td>Attn: Executive Director</td>
</tr>
<tr>
<td>Phone: (801) 679-3506</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Email: <a href="mailto:notices@spower.com">notices@spower.com</a></td>
<td>Email: <a href="mailto:tbaradacke@cleancpoweralliance.org">tbaradacke@cleancpoweralliance.org</a></td>
</tr>
<tr>
<td><strong>Reference Numbers:</strong></td>
<td><strong>Reference Numbers:</strong></td>
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<td>Federal Tax ID Number:</td>
<td>Federal Tax ID Number:</td>
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<td><strong>Invoices:</strong></td>
<td><strong>Invoices:</strong></td>
</tr>
<tr>
<td>Attn: Accounts Payable</td>
<td>Attn: Director, Power Planning &amp; Procurement</td>
</tr>
<tr>
<td>Phone: (801) 679-3512</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>E-mail: <a href="mailto:accountspayable@spower.com">accountspayable@spower.com</a></td>
<td>E-mail: <a href="mailto:settlements@cleancpoweralliance.org">settlements@cleancpoweralliance.org</a></td>
</tr>
<tr>
<td><strong>Scheduling:</strong></td>
<td><strong>Scheduling:</strong></td>
</tr>
<tr>
<td>Attn: Control Room</td>
<td>Attn: TBD</td>
</tr>
<tr>
<td>Phone: (855) 679-3553</td>
<td>Phone:</td>
</tr>
<tr>
<td>Email: <a href="mailto:ControlRoom@spower.com">ControlRoom@spower.com</a></td>
<td>Email:</td>
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<td><strong>Confirmations:</strong></td>
<td><strong>Confirmations:</strong></td>
</tr>
<tr>
<td>Attn: Director, Utility Power Marketing</td>
<td>Attn: Director, Power Planning &amp; Procurement</td>
</tr>
<tr>
<td>Phone: (415) 692-7572</td>
<td>Phone: (213) 269-5870</td>
</tr>
<tr>
<td>Email: <a href="mailto:tkalbag@spower.com">tkalbag@spower.com</a></td>
<td>Email: <a href="mailto:nkeef@cleancpoweralliance.org">nkeef@cleancpoweralliance.org</a></td>
</tr>
<tr>
<td><strong>Payments:</strong></td>
<td><strong>Payments:</strong></td>
</tr>
<tr>
<td>Attn: Accounts Payable</td>
<td>Attn: Director, Power Planning &amp; Procurement</td>
</tr>
<tr>
<td>Phone: (801) 679-3512</td>
<td>Phone: (213) 269-5870</td>
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<tr>
<td>E-mail: <a href="mailto:accountspayable@spower.com">accountspayable@spower.com</a></td>
<td>E-mail: <a href="mailto:settlements@cleancpoweralliance.org">settlements@cleancpoweralliance.org</a></td>
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<tr>
<td><strong>Wire Transfer:</strong></td>
<td><strong>Wire Transfer:</strong></td>
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<tr>
<td>BNK:</td>
<td>BNK: River City Bank</td>
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<tr>
<td>ABA:</td>
<td>ABA:</td>
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<tr>
<td>ACCT:</td>
<td>ACCT:</td>
</tr>
</tbody>
</table>
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 Storage 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 Storage 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 Storage 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).

B. Conditions Prior to Testing.
(1) **EMS Functionality.** The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange DNP3, or equivalent, 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 Seller’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 Seller’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 the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period (the “**Generating Facility Testing Condition**”); provided, Seller may waive such Generating Facility Testing Condition at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the Generating Facility Testing Condition 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 (including pursuant to Part I.B.4). The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the CT shall still be deemed “complete,” and any adjustments necessary to the Effective Storage Capacity or to the Efficiency Rate resulting from such CT, if applicable, will be made in accordance with this Exhibit O (including pursuant to Part I.B.4).

(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 SOC 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 SOC reaches 100%, not to exceed five (5) hours of total charging time, as may be adjusted per Part I.B.4 above, if applicable.

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 Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
3. Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter); and
4. SOC (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, including, if applicable, as adjusted pursuant to Part I.B(4) above;
3. The maximum sustained charging level for four (4) consecutive hours pursuant to A(2) above, including, if applicable, as adjusted pursuant to Part I.B(4) above;
4. Amount of time between the Storage Facility’s electrical output going from 0 to the maximum sustained discharging level registered during the CT (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 CT (for purposes of calculating the ramp rate);
6. Amount of Charging Energy and Energy In, registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC; and
7. Amount of Discharging Energy and Energy Out, registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

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.** Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT (including ambient air temperature above 40°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.** Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, 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 Part II.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, 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 on a reasonable basis 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 Storage 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 modifications and additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design, equipment and vendor selection for 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 modifications and 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 Discharging 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.

2. The total amount of Energy Out (as reported under Part II.D(7) above) divided by the total amount of Energy In (as reported under Part II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate, and shall be used for the calculation of liquidated damages (if any) under Section (f) of Exhibit C until updated pursuant to a subsequent Capacity Test.

**PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.**

**A. Effective Storage Capacity and Efficiency Rate Test**

- **Procedure:**
  
  1. System Starting State: The Storage Facility shall 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 of (a) the Storage Facility has reached 100% SOC or (b) five (5) hours have elapsed since the Storage Facility commenced charging.
(4) Record and log 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 log the total AC energy (in MWh) charged to the Storage Facility as measured at the Storage Facility Meter (without adjusting for Electrical Losses) (“Energy In”).

(6) Following an agreed-upon rest period (taking into account operating conditions of the Facility and the Interconnection Capacity Limit), 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 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 zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for four (4) consecutive hours pursuant to Part III.A(6)(a), the SOC will be deemed 0% for purposes of calculating the Battery Discharging Factor.

(8) Record the total AC Energy discharged (in MWh) as measured at the Storage 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 Part III.A(6), continue discharging the Storage Facility until it reaches a 0% SOC.

(10) Record the AC Energy discharged (in MWh) as measured at the Storage Facility Meter for determining the Effective Storage Capacity and/or Efficiency Rate. “Energy Out” means the total AC Energy discharged (in MWh) as measured at the Storage Facility Meter (without adjusting for Electrical Losses) from the commencement of discharging pursuant to Part III.A(6) until the Storage Facility has reached a 0% SOC pursuant to either Part III.A(6) or Part 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 (without adjusting for Electrical Losses).
The resulting Effective Storage Capacity measurement is calculated as the total Energy discharged pursuant to Part III.A(8) at the Storage Facility Meter divided by four (4) hours.

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 shall 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 shall be configured to follow a predefined agreed-upon active power profile.
- **Procedure:**
  1. Record the Storage Facility active power level at the Storage Facility Meter.
  2. Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.
  3. Record the Storage Facility active power response (in seconds).
- **System end state:** The Storage Facility shall 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 shall 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 shall be configured to follow a predefined agreed-upon active power profile.
- **Procedure:**
  1. Record the Storage Facility active power level at the Storage Facility Meter.
  2. Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.
  3. Record the Storage Facility active power response (in seconds).
- **System end state:** The Storage Facility shall be in the on-line state and at a commanded active power level of 0 MW.
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:

\[
\text{Annual Storage Capacity Availability (\%) = } \frac{1 - \text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}
\]

“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.

\[
\text{Unavailable Calculation Interval} = 1 \text{ C.I.} \times \left(1 - \min\left(A, \frac{\text{Effective Storage Capacity}}{\text{Effective Storage Capacity} \times 4 \text{ hrs}}\right)\right)
\]

“Unavailable Calculation Intervals” means the sum of year-to-date Unavailable Calculation Intervals (as defined in the above formula) for the applicable Contract Year, where for each Calculation Interval:

“\(A\)” is the “available Effective Storage Capacity”, which shall be calculated as the sum of the available capacity of each of the system inverters, in MW AC (measured at the Storage Facility Meter), expected from all available system inverters in such Calculation Interval (based on actual operating conditions), but “\(A\)” shall never exceed the then Effective Storage Capacity.

“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 actual operating conditions).
"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)(A) for “available Effective Storage Capacity,” such amount equal to the Effective Storage Capacity minus the amount of unavailable capacity (in MWs) identified by Seller in an applicable Unavailability Notice for such Calculation Interval, and (B) for “Storage Capability,” such amount equal to (1) the Effective Storage Capacity multiplied by four (4) hours minus (2) the unavailable MWhs of battery charging and discharging capability identified by Seller in an applicable Unavailability Notice for such Calculation Interval. 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) Seller shall design the Storage Facility so that the final stamped design drawings used for construction of the Storage Facility have a total rated power for the Storage Facility inverters associated with the Installed Storage Capacity (taking into account Electrical Losses to the Delivery Point) of no less than 28 MW charging and 28 MW discharging at [ ]° C. If requested by Buyer, Seller shall provide Buyer with such technical documentation as may be reasonably designated by Buyer related to the foregoing, including for example a derate table for temperatures that exceed [ ]° C.

(d) 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 such period of time.
EXHIBIT Q

OPERATING RESTRICTIONS

The Parties shall 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, 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) shall, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) shall 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.

STORAGE FACILITY OPERATING RESTRICTIONS

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<tr>
<th>File Update Date:</th>
<th>[XX/XX/20XX]</th>
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</thead>
<tbody>
<tr>
<td>Technology:</td>
<td>Lithium Ion Battery Energy Storage</td>
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<tr>
<td>Storage Unit Name:</td>
<td>[Unit Name and Number]</td>
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</table>

A. Contract Capacity

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<tr>
<th>Guaranteed Storage Capacity (MW):</th>
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<td>Effective Storage Capacity (MW):</td>
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</table>

B. Total Unit Dispatchable Range Information

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<th>Interconnect Voltage (kV)</th>
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<tr>
<td>Maximum Storage Level (MWh):</td>
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<tr>
<td>Minimum Storage Level (MWh):</td>
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</tr>
<tr>
<td>Stored energy capability (MWh):</td>
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<td>Maximum Discharge (MW):</td>
<td>28</td>
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<td>Maximum Charge (MW):</td>
<td>28</td>
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</table>

Guaranteed Efficiency Rate: See Cover Sheet

Maximum energy throughput (BED) (MWh/year):

C. Charge and Discharge Rates

<table>
<thead>
<tr>
<th>Mode</th>
<th>Maximum (MW)</th>
<th>Ramp Rate (MW/m) Description¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Energy (Charge)</td>
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<td></td>
</tr>
<tr>
<td>Energy (Discharge)</td>
<td>28</td>
<td></td>
</tr>
</tbody>
</table>

D. Ancillary Services

Frequency regulation is included: Yes
Spin is included: Yes

E. Additional Restrictions

1. The Storage Facility shall be charged exclusively with PV Energy before the Grid Charging

¹ Stated Ramp Rate assumes ramp from 0 MW to full power. The Parties acknowledge that the Ramp Rate as stated (in MW/min, with the minutes measured as the time between when the signal is received to when the energy is recorded at the Storage Facility Meter) is provided only for the ramping of the system at Maximum Charge or Maximum Discharge. Ramping to a lower output than the Maximum Charge or Maximum Discharge (in absolute value) will require an identical amount of time, and therefore the Ramp Rate as expressed in MW/min will be lower.

Exhibit Q - 1

Agenda Page 300
Effective Date.

2. No Cycles per Contract Year maximum. Two (2) Cycles per day maximum.

3. Seller shall not be required to operate the Facility in a manner that would cause Facility Energy to exceed the Interconnection Capacity Limit.

4. Average resting SOC of the Storage Facility in each Contract Year must be less than ___%.

5. [Blacked out text]

6. Minimum ambient operating temperature without de-rate: -20 Degrees C. Below -20 C, the Facility may shut down in Seller’s discretion; provided, any such derate or Facility shut down shall not be considered in calculating any Annual Storage Capacity Availability under Exhibit P.
EXHIBIT R
METERING DIAGRAM

[Preliminary]

M1 = Generating Facility Meter
M2 = Storage Facility Meter
POI = Delivery Point
**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 shall 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, (i) PPA Buyer and PPA Seller shall 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 shall 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.

   (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 shall 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 shall 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

Exhibit S - 2
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 shall 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, 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:  

Exhibit S - 4
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, 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.\(^2\)

Assigned Product: [Describe and define]

Further Information: [Include, if any]\(^3\)

Projected P99 Generation: The “Projected P99 Generation” is attached hereto on a monthly basis.

---

\(^2\) The Assignment Period must end no less than 18 months following the Assignment Period Start Date and no later than the end of the delivery period under the PPA.

\(^3\) To include transfer and settlement mechanics for RECs, as applicable.
Staff Report – Agenda Item 8

To: Clean Power Alliance (CPA) Board of Directors
From: Nancy Whang, General Counsel
Subject: Executive Director Salary Adjustment
Date: November 5, 2020

RECOMMENDATION
1) Increase the Executive Director’s salary by 10%
2) Award the increase in the Executive Director’s salary retroactive to April 2020
3) Accept the Executive Director’s commitment not to seek a salary adjustment during the 2021 annual performance review process

BACKGROUND
On April 4, 2019, the Board approved an Employment Agreement (Agreement) with the Executive Director. The Agreement specifies that for the second and third years of the term (i.e. 2020 and 2021), the Executive Director “is eligible for a base salary increase of up to 10% in each year, awarded at the discretion of the Board and following completion of the Executive Director’s Annual Performance Evaluation as set forth in Section 7 of the Agreement.”

At its March 18, 2020 meeting, the Executive Committee (ExCom) conducted its annual performance review of the Executive Director and discussed his 2020/21 priorities in Closed Session. At its May 7, 2020 meeting, amid significant economic uncertainty brought about by the recent onset of the COVID-19 pandemic, the Board reviewed the Executive Director’s performance review and priorities in Closed Session.

At its October 21, 2020 meeting, ExCom once again reviewed the Executive Director’s performance in the context of CPA’s recent financial and operational outcomes.


**DISCUSSION**
Since May 7, Clean Power Alliance has achieved several significant financial milestones, including:

- Recording audited FY2019/20 financial results that meet and exceed the minimum $30 million increase to the net position that CPA’s creditors and power suppliers require and expect
- Placing an additional $27 million in CPA’s Fiscal Stabilization Fund to prepare for energy market, rate, and PCIA uncertainty in 2021
- Maintaining the healthy liquidity levels necessary to launch and expand the COVID-19 bill relief program while still increasing allowance levels of bad debt by 2.5 times to prepare for an expected increase in write-offs in 2021
- Repaying the $10 million LA County start-up loan in full

In addition, despite COVID-19 economic uncertainty, CPA has been successful over the summer and fall in negotiating several long-term renewable energy and stand-alone storage contracts with several of the nation’s leading renewable energy developers. These contracts are key to CPA’s rate competitiveness, environmental and reliability goals.

While market and regulatory uncertainty remain a constant challenge for CPA, the organization’s financial condition, as detailed in subsequent Agenda Item 9, is such that the Executive Director’s 2020 salary adjustment can now be considered.

**Current Recommendation**
It is recommended that the Executive Director be awarded a 10% salary increase (the maximum allowed under the Agreement) and that this increase be retroactive to April 2020.

As part of the current recommendation, the Executive Director agrees not to seek a salary adjustment in March 2021, during the next annual performance review period.
Future salary discussions with the Executive Director would only take place in the context of the expiry of Executive Director’s current contract in April 2022.

A 10% salary increase would put the Executive Director’s salary at $308,000 annually. The recommended salary adjustment represents an increase of $28,000 per year, plus up to $2,800 annually in additional contributions to the Executive Director’s 403(b) defined contribution retirement account.

See Attachment 1 for a salary comparison of the CEO/Executive Directors of California’s seven large CCAs organized as Joint Powers Authorities.

FISCAL IMPACT
A 7% increase in the Executive Director’s salary, retroactive to April 2020, was included in the Board-approved FY 2020/21 staffing budget. The additional 3% would be funded via the contingency portion of the FY 2020/21 staffing budget.

ATTACHMENT
1) CCA CEO/Executive Director Salary Levels
### CCA CEO/Executive Director Salary Levels (as of April 2020)

<table>
<thead>
<tr>
<th>CCA</th>
<th>Title</th>
<th>Salary</th>
<th>Est. Annual Revenue (FY 20/21)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Central Coast Community Power</td>
<td>CEO</td>
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<td>$322,600,000</td>
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<td>Marin Clean Energy</td>
<td>CEO</td>
<td>$370,280</td>
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<td>Sonoma Clean Power</td>
<td>CEO</td>
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<td>$203,270,000</td>
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<tr>
<td>East Bay Community Energy</td>
<td>CEO</td>
<td>$318,000</td>
<td>$393,000,000</td>
</tr>
<tr>
<td>Peninsula Clean Energy</td>
<td>Executive Director</td>
<td>$315,000</td>
<td>$248,000,000</td>
</tr>
<tr>
<td>Silicon Valley Clean Energy</td>
<td>CEO</td>
<td>$315,000</td>
<td>$318,220,000</td>
</tr>
<tr>
<td>Clean Power Alliance</td>
<td>Executive Director</td>
<td>$280,000 (current)</td>
<td>$746,500,000</td>
</tr>
<tr>
<td></td>
<td></td>
<td>$308,000 (+10%)</td>
<td></td>
</tr>
</tbody>
</table>
Staff Report – Agenda Item 9

To: Clean Power Alliance (CPA) Board of Directors
From: David McNeil, Chief Financial Officer
Approved by: Ted Bardacke, Executive Director
Subject: Fiscal Year (FY) 2019-20 Financial Statements and FY 2019-20 Budget to Actual Report
Date: November 5, 2020

RECOMMENDATION


BACKGROUND

Each year CPA publishes fiscal year-end financial statements. Staff is responsible for the preparation and fair presentation of the financial statements. CPA’s Bylaws require the Finance Committee to select an independent auditor to perform a financial audit of the accounts of CPA on an annual basis. The independent auditor performs tests to assure that the financial statements are free from material misstatement.

In May 2020, the Finance Committee selected Baker Tilly to perform an audit of CPA’s Fiscal Year (FY) 2019-20 financial statements. On October 28, 2020, Baker Tilly reported its audit findings to the Finance Committee.

The FY 2019-20 Financial Statements (Attachment 1) consist of the following:

- Independent Auditors' Report (Auditors' Report)
- Management’s Discussion and Analysis
- Notes to the Financial Statements
DISCUSSION

Auditors’ Report

The Auditors’ Report includes its opinion that CPA’s FY 2019-20 Financial Statements “present fairly, in all material respects, the financial position of Clean Power Alliance as of June 30, 2020…in accordance with accounting principles generally accepted in the United States of America.” The Auditors’ Report contains what is generally regarded as an unqualified or “clean” audit opinion. The Auditor observed no material issues with CPA’s reporting or controls.

Financial Highlights

- Operating revenues increased to $752 million in FY 2019-20 from $254 million in FY 2018-19 reflecting the full year impact of Phase 3 and 4 enrollments that occurred in February and May 2019, respectively.

- FY 2019-20 operating revenues include a $521 million increase in electricity sales arising from the enrollment of new customers in the prior fiscal year, a $27 million increase in the Fiscal Stabilization Fund recorded as negative operating revenue pursuant to CPA’s Fiscal Stabilization Fund Policy approved by the Board in September 2020 and; proceeds from settlements with Southern California Edison.

- Operating expenses increased to $722 million in FY 2019-20 from $223 million in 2018-19. The increase arises from the enrollment of new customers and the build out of the agency’s staff and operational capabilities.

- The net position increased by $30.6 million in FY 2019-20 bringing the net position to $46.6 million at the close of the year. The increase in net position is consistent with CPA’s Board approved Reserve Policy.

- As of June 30, 2020, debt consisted of a $9.9 million loan payable to the County of Los Angeles, which was repaid in September 2020, CPA had no bank debt outstanding and $970,000 of letters of credit issued to various suppliers.

- The financial results comply with CPA’s credit covenants.
Key financial metrics and additional analysis of FY 2019-20 results are presented in the Presentation of FY 2019-20 Financial Results (Attachment 3).

FY 2019-20 Budget to Actual Report
The FY 2019-20 Budget to Actual Report (Attachment 2) compares actual results for the 12 months ending June 30, 2020 with the FY 2019-20 Budget as amended by the Board at its June 4, 2020 meeting. CPA was within approved limits for all budget line items. The increase in net position of $30.6 million exceeded the $28.263 million budget target.

Additional analysis of Budget to Actual results, including a comparison of actual FY 2019/20 results with the FY 2019-20 Base Budget approved by the Board in June 2019, appears in the Presentation of FY 2019-20 Financial Results (Attachment 3).

Summary
Staff views CPA’s financial results for the year ending June 30, 2020 as positive. CPA is in sound financial health and is well positioned to serve its customers and deliver on its mission.

ATTACHMENTS
1) FY 2019-20 Financial Statements
2) FY 2019-20 Budget to Actual Report
3) Presentation of FY 2019-20 Financial Results
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

Basic Financial Statements with Independent Auditor’s Report

For the Fiscal Years Ended June 30, 2020 and 2019
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Management’s Discussion and Analysis .................................................. 3

Basic Financial Statements:

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</thead>
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<td>11</td>
</tr>
<tr>
<td>Statements of Cash Flows</td>
<td>12</td>
</tr>
<tr>
<td>Notes to the Basic Financial Statements</td>
<td>14</td>
</tr>
</tbody>
</table>
INDEPENDENT AUDITORS' REPORT

To the Board of Directors
Clean Power Alliance of Southern California
Los Angeles, California

Report on the Financial Statements

We have audited the accompanying financial statements of Clean Power Alliance of Southern California, as of and for the years ended June 30, 2020 and 2019, and the related notes to the financial statements, which collectively comprise the Clean Power Alliance of Southern California's basic financial statements as listed in the table of contents.

Management's Responsibility for the Financial Statements

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

Auditors' Responsibility

Our responsibility is to express an opinion on these financial statements based on our audits. We conducted our audits in accordance with auditing standards generally accepted in the United States of America. Those standards require that we plan and perform the audits to obtain reasonable assurance about whether the financial statements are free from material misstatement.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditors' judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers internal control relevant to the Clean Power Alliance of Southern California's preparation and fair presentation of the financial statements in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the Clean Power Alliance of Southern California's internal control. Accordingly, we express no such opinion. An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

We believe that the audit evidence we have obtained is sufficient and appropriate to provide a basis for our audit opinion.

Baker Tilly US, LLP, trading as Baker Tilly, is a member of the global network of Baker Tilly International Ltd., the members of which are separate and independent legal entities.
Opinion

In our opinion, the financial statements referred to above present fairly, in all material respects, the financial position of Clean Power Alliance of Southern California as of June 30, 2020 and 2019, and the respective changes in financial position and cash flows thereof for the years then ended in accordance with accounting principles generally accepted in the United States of America.

Other Matter

Required Supplementary Information

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

Baker Tilly US, LLP

Baker Tilly US, LLP (formerly known as Baker Tilly Virchow Krause, LLP)
Madison, Wisconsin
October 23, 2020
The Management’s Discussion and Analysis provides an overview of Clean Power Alliance of Southern California’s (CPA) financial activities as of and for the years ended June 30, 2020, and 2019. The information presented here should be considered in conjunction with the audited financial statements.

Contents of this Report

This report is divided into the following sections:

- Management’s discussion and analysis.

- The Basic Financial Statements:
  
  - The *Statements of Net Position* include all of CPA’s assets, liabilities, and net position and provide information about the nature and amount of resources and obligations at a specific point in time.

  - The *Statements of Revenues, Expenses, and Changes in Net Position* report all of CPA’s revenue and expenses for the years shown.

  - The *Statements of Cash Flows* report the cash provided and used by operating activities, as well as other sources and uses, such as non-capital financing activities.

  - Notes to the Basic Financial Statements, which provide additional details and information related to the Basic Financial Statements.
BACKGROUND

CPA was formed pursuant to California Assembly Bill 117 which enables communities to purchase power on behalf of their residents and businesses and creates retail choice for electric generation services.

CPA, formerly Los Angeles Community Choice Energy (LACCE), was created as a California Joint Powers Authority on June 27, 2017. CPA was established to study, promote, develop, conduct, operate and manage energy programs in Southern California. Governed by an appointed board of directors (Board), CPA has the authority to set rates for the services it furnishes, incur indebtedness, and issue bonds or other obligations. CPA acquires electricity from commercial suppliers and delivers it through existing physical infrastructure and equipment managed by the California Independent System Operator (CAISO) and Southern California Edison (SCE).

The parties to CPA’s Joint Powers Agreement consist of local governments whose governing bodies elect to join CPA. Pursuant to the Public Utilities Code, when new parties join CPA, all electricity customers in its jurisdiction, with the exception of customers served under California’s Direct Access Program, automatically become default customers of CPA for electric generation, provided that customers are given the option to “opt out”.

CPA began operations by serving approximately 1,800 municipal and commercial accounts in February 2018. In June 2018, it enrolled approximately 28,000 municipal and commercial accounts. In February 2019, CPA enrolled approximately 900,000 residential customer accounts. In May 2019, CPA enrolled approximately 100,000 commercial accounts. CPA enrolled approximately 4,000 residential and commercial accounts from Westlake Village during June 2020.

CPA’s goal is to provide customers with competitively priced and affordable electricity with high renewable energy content and low greenhouse gas emissions. CPA offers its customers three electricity services to choose from: Lean Power, Clean Power and 100% Green Power. Lean Power provides 36% renewable energy content, Clean Power provides 50% renewable energy content and 100% Green Power provides 100% renewable energy content.

Financial Reporting

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

The following table is a summary of CPA’s assets, liabilities, deferred inflows of resources and net position, and a discussion of significant changes for the fiscal years (FY) ending June 30:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current assets</td>
<td>$185,856,666</td>
<td>$142,619,616</td>
<td>$9,521,793</td>
</tr>
<tr>
<td>Noncurrent assets</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets, net</td>
<td>97,388</td>
<td>35,948</td>
<td>-</td>
</tr>
<tr>
<td>Other noncurrent assets</td>
<td>188,710</td>
<td>128,000</td>
<td>107,250</td>
</tr>
<tr>
<td>Total assets</td>
<td>186,141,764</td>
<td>142,783,564</td>
<td>9,629,043</td>
</tr>
<tr>
<td>Current liabilities</td>
<td>109,893,729</td>
<td>97,158,978</td>
<td>2,470,275</td>
</tr>
<tr>
<td>Noncurrent liabilities</td>
<td>2,662,400</td>
<td>29,635,608</td>
<td>9,835,608</td>
</tr>
<tr>
<td>Total liabilities</td>
<td>112,556,129</td>
<td>126,794,586</td>
<td>12,305,883</td>
</tr>
<tr>
<td>Deferred inflows of resources</td>
<td>27,000,000</td>
<td>-</td>
<td>-</td>
</tr>
<tr>
<td>Net position</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment in capital assets</td>
<td>97,388</td>
<td>35,948</td>
<td>-</td>
</tr>
<tr>
<td>Restricted for collateral</td>
<td>4,897,000</td>
<td>7,952,000</td>
<td>-</td>
</tr>
<tr>
<td>Unrestricted (deficit)</td>
<td>41,591,247</td>
<td>8,001,030</td>
<td>(2,676,840)</td>
</tr>
<tr>
<td>Total net position</td>
<td>$46,585,635</td>
<td>$15,988,978</td>
<td>$(2,676,840)</td>
</tr>
</tbody>
</table>

Current Assets

Current assets were approximately $185,856,000 at the end of FY 2019-20 and are mostly comprised of $56,159,000 of cash and cash equivalents, $65,532,000 of accounts receivable, $49,193,000 of accrued revenue, $6,346,000 of prepaid expenses and $4,897,000 in restricted cash.

Current assets were approximately $142,620,000 at the end of FY 2018-19 and are mostly comprised of $7,259,000 of cash and cash equivalents, $50,674,000 of accounts receivable, $68,779,000 of accrued revenue, $2,025,000 of prepaid expenses and $7,952,000 in restricted cash.

Total current assets increased year-over-year, particularly cash and cash equivalents, prepaid expenses, and deposits. The combined total of accounts receivable and accrued revenue held fairly flat year over year. Restricted cash decreased pursuant to credit and security agreements. In FY 2019-20, CPA deposited funds in the California Local Agency Investment Fund (LAIF) in order to diversify where its funds are held and to earn interest on its unused funds pursuant to its Board approved Investment Policy.
Current Liabilities

Current liabilities consist mostly of the cost of electricity delivered to customers that is not yet due to be paid by CPA to its suppliers. Other components include trade accounts payable, taxes and surcharges due to governments, and various other accrued liabilities. A loan with the County of Los Angeles was previously classified as noncurrent and became current during FY 2019-20.

Current liabilities increased each year mostly due to increased energy costs related to new customer enrollments.

Noncurrent Liabilities

Noncurrent liabilities decreased significantly from FY2018-19 to FY 2019-20. As of June 30, 2019, noncurrent liabilities totaled $29,636,000 compared to $2,662,000 at June 30, 2020. In FY 2018-19 noncurrent liabilities include loans and notes payable to the County of Los Angeles and River City Bank respectively as described in the notes to the financial statements.

Noncurrent liabilities decreased as of June 30, 2020 as a result of the repayment of loans from River City Bank in September 2019 and the reclassification of the loan from the County of Los Angeles as a current liability.

Deferred Inflows of Resources

In 2020 CPA deferred revenue of $27,000,000 to the Fiscal Stabilization Fund pursuant to CPA’s Board approved Fiscal Stabilization Fund Policy. The funds may be used in later years when financial results are negatively impacted by uncontrollable events as described in the Policy. Deferring revenue for use in future years reduces the likelihood of unplanned rate changes that would be necessary to meet CPA’s financial objectives.

Revenues and Expenses

The following table is a summary of CPA’s results of operations and a discussion of significant changes for the years ending June 30:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
<th>2018</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating revenues</td>
<td>$ 752,070,114</td>
<td>$ 253,919,018</td>
<td>$ 3,382,705</td>
</tr>
<tr>
<td>Interest income</td>
<td>361,022</td>
<td>121,962</td>
<td>7,126</td>
</tr>
<tr>
<td>Total income</td>
<td>752,431,136</td>
<td>254,040,980</td>
<td>3,389,831</td>
</tr>
<tr>
<td>Operating expenses</td>
<td>721,593,329</td>
<td>235,128,858</td>
<td>6,066,671</td>
</tr>
<tr>
<td>Nonoperating expenses</td>
<td>241,150</td>
<td>246,304</td>
<td>-</td>
</tr>
<tr>
<td>Total expenses</td>
<td>721,834,479</td>
<td>235,375,162</td>
<td>6,066,671</td>
</tr>
<tr>
<td>Change in net position</td>
<td>$ 30,596,657</td>
<td>$ 18,665,818</td>
<td>$ (2,676,840)</td>
</tr>
</tbody>
</table>
Total Income

Operating revenues increased from approximately $253,913,000 in FY 2018-19 to $752,070,000 in FY 2019-20. Revenue increased as a result of new customer enrollments as described in the background section of this report. Operating revenues arise from electricity sales to customers reduced by a deferral of revenue to CPA’s Fiscal Stabilization Fund. CPA reports electricity revenues net of an allowance for uncollectable accounts as described in the Notes to the Financial Statements. Revenues were reduced in FY 2019-20 by approximately $580,000 of bill credits provided to customers under CPA’s Covid-19 Bill Assistance Program.

Year over year changes in interest income reflect higher average balances in interest-earning accounts.

Total Expenses

Operating expenses increased from approximately $235,129,000 in FY 2018-19 to $721,593,000 in FY2019-20. Operating expenses include the cost of energy and electric capacity used to serve CPA’s customers and meet its regulatory obligations, contracts with service providers, staff compensation and general and administrative expenses. Non-operating expenses consist primarily of interest and other expenses associated with CPA’s credit agreement with River City Bank. Electricity and service provider costs increased in FY 2019-20 as a result of the enrollment of new customers as described in the background section of this report. Operating expenses such as staffing and general and administrative costs increased year over year as CPA hired staff and built out its operating capabilities to serve a larger customer base.

Change in Net Position

The change in net position increased from approximately $18,666,000 in FY 2018-19 to $30,597,000 in FY 2019-20. The increase in the net position in FY 2019-20 arises from increased revenue, and positive operating margins and is consistent with CPA’s Board approved Reserve Policy and Fiscal Stabilization Fund Policy. The change in net position in FY 2017-18 reflects the start-up nature of the agency at that time.

PURCHASE COMMITMENTS AND ECONOMIC OUTLOOK

During the normal course of business, CPA enters into various agreements, including renewable energy agreements and other power purchase agreements to purchase power and electric capacity. CPA enters into power purchase agreements in order to comply with state law and voluntary targets for renewable and greenhouse gas (GHG) free products. California law established a Renewable Portfolio Standard (RPS) that requires load-serving entities, such as CPA, to gradually increase the amount of renewable energy they deliver to their customers. In October 2015, the California Governor signed SB 350, the Clean Energy and Pollution Reduction Act of 2015, into law. SB 350 became effective January 1, 2016, and increases the amount of renewable energy that must be
PURCHASE COMMITMENTS AND ECONOMIC OUTLOOK (continued)

delivered by most load-serving entities, including CPA, to their customers from 33% of their total annual retail sales by the end of the 2017-2020 compliance period, to 50% of their total annual retail sales by the end of the 2028-2030 compliance period, and in each three-year compliance period thereafter, unless changed by legislative action. In September 2018, the California Governor signed SB 100, the 100 Percent Clean Energy Act of 2018, into law. SB 100 increases the amount of renewable energy that must be delivered by most load-serving entities, including CPA, to their customers to 60% of their annual retail sales by the end of the 2028-2030 compliance period. SB 100 also further establishes as state policy that eligible renewable energy resources and zero carbon resources supply 100 percent of all retail sales of electricity to California end-use customers and 100 percent of electricity procured to serve all state agencies by December 31, 2045.

SB 100 provides compliance flexibility and waiver mechanisms, including increased flexibility to apply excess renewable energy procurement in one compliance period to future compliance periods. SB 350 requires that for the 2021-24 compliance period, at least 65% of the procurement a retail seller, such as CPA, counts toward the renewables portfolio standard requirement of each compliance period shall be from its contracts of ten years or more in duration.

CPA enters into long term purchase agreements to bring new solar, wind and other renewable energy generating facilities on-line, to meet its regulatory RPS and GHG free targets, to accomplish its mission of providing renewable energy, reducing greenhouse gas emissions, serving its customers and managing energy market risks. CPA manages risks associated with these commitments by aligning purchase commitments with expected demand for electricity and assuring diversity of technologies, geographical locations, and suppliers.

Commitments under power purchase agreements increased from $1.42 billion as of June 30, 2019 to $2.68 billion as of June 30, 2020 consistent with CPA’s Board approved Energy Risk Management Policy.

State and local governments in California have taken actions to address the Covid-19 pandemic that are impacting Clean Power Alliance, most notably Governor Newsome’s Safer at Home order requiring all individuals living in the State of California to stay home, with certain exceptions.

CPA is conducting its work from home consistent with its business contingency protocol. Apart from staff working remotely, CPA’s internal operations have not been affected by the pandemic. CPA has not received any notifications from its bank or suppliers that would impact operations, its ability to serve customers, or meet its compliance and other obligations as agreed.

CPA is actively monitoring the impacts of COVID-19 and related events on its customers. Management believes the impacts of changing customer usage are manageable.
PURCHASE COMMITMENTS AND ECONOMIC OUTLOOK (continued)

In March 2020, SCE, CPA’s billing and collections agent, SCE, temporarily suspended customer disconnections due to non-payment. CPA is working closely with SCE’s collections team and is closely monitoring customer payment performance. Customer payments that are more than 90 days past due have increased and it is unknown how much of past due payments will ultimately be recovered. Management believes that the allowance for uncollectable accounts reflects a conservative estimate of customer non-payment and that CPA’s cash flow and gross margins are sufficient to manage slowing customer payments.

Management intends to continue its conservative use of financial resources and expects to generate ongoing operating surpluses in future years.

REQUEST FOR INFORMATION

This financial report is designed to provide CPA’s customers, creditors and other stakeholders with a general overview of the organization’s finances and to demonstrate CPA’s accountability for the funds under its stewardship.

Please address any questions about this report or requests for additional financial information to Chief Financial Officer, 801 S. Grand Avenue, Suite 400, Los Angeles, CA 90017.
BASIC FINANCIAL STATEMENTS
## CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

### STATEMENTS OF NET POSITION

**JUNE 30, 2020 AND 2019**

<table>
<thead>
<tr>
<th>ASSETS</th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Current assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$56,158,767</td>
<td>$7,258,580</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance</td>
<td>65,532,476</td>
<td>50,674,048</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>49,192,550</td>
<td>68,779,327</td>
</tr>
<tr>
<td>Market settlements receivable</td>
<td>147,873</td>
<td>5,573,657</td>
</tr>
<tr>
<td>Other receivables</td>
<td>348,545</td>
<td>357,454</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>6,345,580</td>
<td>2,024,550</td>
</tr>
<tr>
<td>Deposits</td>
<td>3,232,875</td>
<td>-</td>
</tr>
<tr>
<td>Restricted cash</td>
<td>4,897,000</td>
<td>7,952,000</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td><strong>185,855,666</strong></td>
<td><strong>142,619,616</strong></td>
</tr>
<tr>
<td>Noncurrent assets</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets, net of depreciation</td>
<td>97,388</td>
<td>35,948</td>
</tr>
<tr>
<td>Deposits</td>
<td>188,710</td>
<td>128,000</td>
</tr>
<tr>
<td><strong>Total noncurrent assets</strong></td>
<td><strong>286,098</strong></td>
<td><strong>163,948</strong></td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td><strong>186,141,764</strong></td>
<td><strong>142,783,564</strong></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>LIABILITIES</th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Current liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>2,303,802</td>
<td>2,641,021</td>
</tr>
<tr>
<td>Accrued cost of electricity</td>
<td>86,772,867</td>
<td>89,051,637</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>3,144,362</td>
<td>2,495,683</td>
</tr>
<tr>
<td>User taxes and energy surcharges due to other governments</td>
<td>4,959,748</td>
<td>2,970,637</td>
</tr>
<tr>
<td>Loans payable to County of Los Angeles</td>
<td>9,945,750</td>
<td>-</td>
</tr>
<tr>
<td>Security deposits from energy suppliers</td>
<td>2,767,200</td>
<td>-</td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td><strong>109,893,729</strong></td>
<td><strong>97,158,978</strong></td>
</tr>
<tr>
<td>Noncurrent liabilities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loans payable to County of Los Angeles</td>
<td>-</td>
<td>9,835,608</td>
</tr>
<tr>
<td>Note payable to bank</td>
<td>-</td>
<td>19,050,000</td>
</tr>
<tr>
<td>Security deposits from energy suppliers</td>
<td>2,662,400</td>
<td>750,000</td>
</tr>
<tr>
<td><strong>Total noncurrent liabilities</strong></td>
<td><strong>2,662,400</strong></td>
<td><strong>29,635,608</strong></td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td><strong>112,556,129</strong></td>
<td><strong>126,794,586</strong></td>
</tr>
</tbody>
</table>

### DEFERRED INFLOWS OF RESOURCES

- Fiscal Stabilization Fund: 27,000,000
- Note payable to bank: - 19,050,000
- Security deposits from energy suppliers: 2,662,400 750,000

### NET POSITION

- Investment in capital assets: 97,388 35,948
- Restricted for collateral: 4,897,000 7,952,000
- Unrestricted: 41,591,247 8,001,030
- **Total net position** $46,585,635 15,988,978

The accompanying notes are an integral part of these financial statements.
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

STATEMENTS OF REVENUES, EXPENSES
AND CHANGES IN NET POSITION

YEARS ENDED JUNE 30, 2020 AND 2019

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>OPERATING REVENUES</strong></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Electricity sales, net</td>
<td>$774,817,064</td>
<td>$253,913,018</td>
</tr>
<tr>
<td>Revenue transferred to Fiscal Stabilization Fund</td>
<td>(27,000,000)</td>
<td>-</td>
</tr>
<tr>
<td>Other revenue</td>
<td>4,253,050</td>
<td>6,000</td>
</tr>
<tr>
<td>Total operating revenues</td>
<td>752,070,114</td>
<td>253,919,018</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>OPERATING EXPENSES</strong></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Cost of electricity</td>
<td>699,782,409</td>
<td>223,125,906</td>
</tr>
<tr>
<td>Contract services</td>
<td>16,680,152</td>
<td>9,123,988</td>
</tr>
<tr>
<td>Staff compensation</td>
<td>4,147,412</td>
<td>2,133,751</td>
</tr>
<tr>
<td>General and administration</td>
<td>983,356</td>
<td>745,213</td>
</tr>
<tr>
<td>Total operating expenses</td>
<td>721,593,329</td>
<td>235,128,858</td>
</tr>
<tr>
<td>Operating income</td>
<td>30,476,785</td>
<td>18,790,160</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>NONOPERATING REVENUES (EXPENSES)</strong></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Interest income</td>
<td>361,022</td>
<td>121,962</td>
</tr>
<tr>
<td>Interest and related expenses</td>
<td>(241,150)</td>
<td>(246,304)</td>
</tr>
<tr>
<td>Total nonoperating revenues (expenses)</td>
<td>119,872</td>
<td>(124,342)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th><strong>CHANGE IN NET POSITION</strong></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>Net position at beginning of year</td>
<td>15,988,978</td>
<td>(2,676,840)</td>
</tr>
<tr>
<td>Net position at end of year</td>
<td>$46,585,635</td>
<td>$15,988,978</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA

STATEMENTS OF CASH FLOWS

YEARS ENDED JUNE 30, 2020 AND 2019

The accompanying notes are an integral part of these financial statements.  

Noncash Non-Capital Financing Activities during the year ended June 30, 2020

Expenses arising from services performed by the County of Los Angeles in the amount of $110,142 were financed directly from loan proceeds.
### RECONCILIATION OF OPERATING INCOME TO NET CASH PROVIDED (USED) BY OPERATING ACTIVITIES

<table>
<thead>
<tr>
<th>Description</th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Operating income</td>
<td>$30,476,785</td>
<td>$18,790,160</td>
</tr>
<tr>
<td>Adjustments to reconcile operating income to net cash provided (used) by operating activities</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Depreciation expense</td>
<td>22,249</td>
<td>7,522</td>
</tr>
<tr>
<td>Revenue adjusted for allowance for uncollectible accounts</td>
<td>8,285,071</td>
<td>1,275,944</td>
</tr>
<tr>
<td>(Increase) decrease in:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts receivable</td>
<td>(23,143,499)</td>
<td>(51,306,203)</td>
</tr>
<tr>
<td>Market settlements receivable</td>
<td>5,425,784</td>
<td>(5,537,198)</td>
</tr>
<tr>
<td>Other receivables</td>
<td>11,116</td>
<td>(304,693)</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>19,586,776</td>
<td>67,871,779</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>(4,321,030)</td>
<td>(1,997,093)</td>
</tr>
<tr>
<td>Deposits</td>
<td>(3,293,585)</td>
<td>1,829,250</td>
</tr>
<tr>
<td>Increase (decrease) in:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>(367,412)</td>
<td>1,819,934</td>
</tr>
<tr>
<td>Market settlements payable</td>
<td>-</td>
<td>(109,534)</td>
</tr>
<tr>
<td>Accrued cost of electricity</td>
<td>(2,278,770)</td>
<td>87,538,939</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>816,519</td>
<td>2,411,559</td>
</tr>
<tr>
<td>User taxes due to other governments</td>
<td>1,989,111</td>
<td>2,951,544</td>
</tr>
<tr>
<td>Fiscal Stabilization Fund</td>
<td>27,000,000</td>
<td>-</td>
</tr>
<tr>
<td>Security deposits from energy suppliers</td>
<td>4,679,600</td>
<td>750,000</td>
</tr>
<tr>
<td>Net cash provided (used) by operating activities</td>
<td>$64,888,715</td>
<td>(9,751,648)</td>
</tr>
</tbody>
</table>

The accompanying notes are an integral part of these financial statements.
1. REPORTING ENTITY

Clean Power Alliance of Southern California (CPA) is a joint powers authority created on June 27, 2017. As of June 30, 2020, parties to its Joint Powers Agreement consist of the following local governments:

<table>
<thead>
<tr>
<th>Counties</th>
<th>Cities</th>
</tr>
</thead>
<tbody>
<tr>
<td>Los Angeles</td>
<td>Agoura Hills</td>
</tr>
<tr>
<td>Ventura</td>
<td>Ojai</td>
</tr>
<tr>
<td></td>
<td>Alhambra</td>
</tr>
<tr>
<td></td>
<td>Oxnard</td>
</tr>
<tr>
<td></td>
<td>Arcadia</td>
</tr>
<tr>
<td></td>
<td>Paramount</td>
</tr>
<tr>
<td></td>
<td>Beverly Hills</td>
</tr>
<tr>
<td></td>
<td>Redondo Beach</td>
</tr>
<tr>
<td></td>
<td>Calabasas</td>
</tr>
<tr>
<td></td>
<td>Rolling Hills Estates</td>
</tr>
<tr>
<td></td>
<td>Carson</td>
</tr>
<tr>
<td></td>
<td>Santa Monica</td>
</tr>
<tr>
<td></td>
<td>Camarillo</td>
</tr>
<tr>
<td></td>
<td>Sierra Madre</td>
</tr>
<tr>
<td></td>
<td>Claremont</td>
</tr>
<tr>
<td></td>
<td>Simi Valley</td>
</tr>
<tr>
<td></td>
<td>Culver City</td>
</tr>
<tr>
<td></td>
<td>South Pasadena</td>
</tr>
<tr>
<td></td>
<td>Downey</td>
</tr>
<tr>
<td></td>
<td>Temple City</td>
</tr>
<tr>
<td></td>
<td>Hawaiian Gardens</td>
</tr>
<tr>
<td></td>
<td>Thousand Oaks</td>
</tr>
<tr>
<td></td>
<td>Hawthorne</td>
</tr>
<tr>
<td></td>
<td>Ventura</td>
</tr>
<tr>
<td></td>
<td>Malibu</td>
</tr>
<tr>
<td></td>
<td>West Hollywood</td>
</tr>
<tr>
<td></td>
<td>Manhattan Beach</td>
</tr>
<tr>
<td></td>
<td>Westlake Village</td>
</tr>
<tr>
<td></td>
<td>Moorpark</td>
</tr>
<tr>
<td></td>
<td>Whittier</td>
</tr>
</tbody>
</table>

CPA is separate from and derives no on-going financial support from its members. CPA is governed by a Board of Directors whose membership is composed of elected officials representing the parties.

CPA’s mission is to provide cost competitive electric services, reduce electric sector greenhouse gas emissions, stimulate renewable energy development, implement distributed energy resources, promote energy efficiency and demand reduction programs, and sustain long-term rate stability for residents and businesses through local control. CPA provides electric service to retail customers as a Community Choice Aggregation Program under the California Public Utilities Code Section (CPUC) 366.2.

Electricity is acquired from commercial suppliers and delivered through existing physical infrastructure and equipment managed by Southern California Edison (SCE).
2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES

BASIS OF ACCOUNTING

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

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

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

CASH AND CASH EQUIVALENTS

For purposes of the Statements of Cash Flows, CPA defines cash and cash equivalents to include cash on hand, demand deposits, and short-term investments. As of June 30, 2020, cash and cash equivalents were held in various interest and non-interest earnings accounts at River City Bank and in the California Local Agency Investment Fund (LAIF).

CAPITAL ASSETS AND DEPRECIATION

CPA’s policy is to capitalize furniture and equipment valued over $1,000 that is expected to be in service for over one year. Depreciation is computed according to the straight-line method over estimated useful lives of three years for electronic equipment and seven years for furniture. Leasehold improvements are depreciated over the shorter of 1) the useful life of the leasehold improvement, or 2) the remaining years of the lease.

DEPOSITS

Deposits consist primarily of security deposits held by suppliers as required under certain energy contracts entered into by CPA. Deposits are generally held by the energy supplier for the term of the contract. Deposits held by energy suppliers are classified as current or noncurrent assets depending on the length of the time the deposits will be held. While these energy contract related deposits make up the majority of this item, other components of deposits include those for regulatory and other operating purposes.
2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

**FISCAL STABILIZATION FUND**

In September 2020, CPA created a Fiscal Stabilization Fund to allow CPA to defer revenue in years when financial results are strong to be used in future years when financial results are negatively impacted by uncontrollable events. In accordance with GASB 62, the amount recognized as an addition to the fund is shown as a reduction of operating revenues and reported on the statements of net position as a deferred inflow of resources.

CPA transferred $27,000,000 to the Fiscal Stabilization Fund for the year ended June 30, 2020. The Fiscal Stabilization Fund is fully funded with cash.

**NET POSITION**

Net position is presented in the following components:

*Investment in capital assets:* This component of net position consists of capital assets, net of accumulated depreciation and reduced by outstanding borrowings that are attributable to the acquisition, construction, or improvement of those assets. CPA did not have any outstanding borrowings as of June 30, 2020 and 2019 attributable to those assets.

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

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

**OPERATING AND NON-OPERATING REVENUE**

Operating revenues include revenue derived from the provision of energy to retail customers. Electricity sales are reported net of changes to the allowance for uncollectable accounts. Other revenue consists of revenue that is not related to sales of electricity to CPA customers. Operating revenues are decreased (increased) by contributions to (distributions from) the Fiscal Stabilization Fund.

Interest income is considered “non-operating revenue”.

16
2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

REVENUE RECOGNITION

CPA recognizes revenue on the accrual basis. This includes invoices issued to customers during the reporting period and electricity estimated to have been delivered but not yet billed. Management estimates that a portion of the billed amounts will be uncollectible. Accordingly, an allowance for uncollectible accounts has been recorded. During FY 2019-20 CPA changed the methodology used to calculate the allowance for doubtful accounts and increased the allowance for doubtful accounts to account for the impact of the recession and the suspension of customer electricity disconnections and the levy of late payment charges by SCE.

OPERATING AND NONOPERATING EXPENSES

Operating expenses include the cost of sales and services, administrative expenses, and depreciation on capital assets. Expenses not meeting this definition are reported as non-operating expenses.

ELECTRICAL POWER PURCHASED

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

ELECTRICAL POWER PURCHASED (CONTINUED)

To comply with the State of California’s Renewable Portfolio Standards (RPS) and other product content targets, CPA acquires RPS eligible renewable energy evidenced by Renewable Energy Certificates (Certificates) recognized by the Western Renewable Energy Generation Information System (WREGIS). CPA obtains Certificates with the intent to retire them and does not sell or build surpluses of Certificates with a profit motive. CPA purchases capacity commitments from qualifying generators to comply with the California Energy Commission’s Resource Adequacy Program. The goals of the Resource Adequacy Program are to provide sufficient resources to the CAISO to ensure the safe and reliable operation of the grid in real time and to provide appropriate incentives for the siting and construction of new resources needed for reliability in the future. CPA is in compliance with external mandates and self-imposed benchmarks.
2. SUMMARY OF SIGNIFICANT ACCOUNTING POLICIES (continued)

STAFFING COSTS

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

SECURITY DEPOSITS FROM ENERGY SUPPLIERS

Various energy contracts entered into by CPA require the supplier to provide CPA with a security deposit. These deposits are generally held for the term of the contract or until the completion of certain benchmarks. Deposits are classified as current or noncurrent depending on the length of the time the deposits will be held.

INCOME TAXES

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

USER TAXES AND ENERGY SURCHARGES DUE TO OTHER GOVERNMENTS

CPA is required by governmental authorities to collect and remit user taxes on certain customer sales. These taxes do not represent revenues or expenses to CPA.

ESTIMATES

The preparation of financial statements in conformity with accounting principles generally accepted in the United States of America requires management to make estimates and assumptions that affect certain reported amounts and disclosures. Accordingly, actual results could differ from those estimates.

RECLASSIFICATIONS

Certain amounts in the prior-year financial statements have been reclassified for comparative purposes to conform to the presentation of the current-year financial statements.
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
NOTES TO THE BASIC FINANCIAL STATEMENTS
YEARS ENDED JUNE 30, 2020 AND 2019

3. CASH AND CASH EQUIVALENTS

As of June 30, 2020 CPA, maintains its cash in both interest-bearing and non-interest-bearing bank accounts with River City Bank and in the California Local Agency Investment Fund (LAIF).

California Government Code Section 16521 requires banks to collateralize amounts of public funds in excess of FDIC limit of $250,000 in an amount equal to 110% of deposit balances. CPA’s Board approved Investment Policy requires that when managing Funds, CPA’s primary objectives, in the following order of importance, shall be to (1) safeguard the principal of the Funds, (2) meet the liquidity needs of CPA, and (3) achieve a return on investment on Funds in CPA’s control. Risk is monitored on an ongoing basis.

CPA maintains cash with LAIF, managed by the State Treasurer, for the purpose of increasing interest earnings through pooled investment activities. These funds are not registered with the Securities and Exchange Commission as an investment company but are required to be invested according to the California State Code. Participants in the pool include voluntary and involuntary participants, such as special districts and school districts for which there are legal provisions regarding their investments. The Local Investment Advisory Board (LIAB) has oversight responsibility for LAIF. LIAB consists of four members as designated by State Statute.

On June 30, 2020, CPA’s pooled investment position in LAIF was $2,500,000, which approximates fair value and is the same value of pooled shares. Fair value is based on information provided by the State for LAIF. The balances are available for withdrawal on demand and are based on accounting records maintained by LAIF, which are recorded on an amortized cost basis. Liquidity fees are not charged.

The LAIF pooled investments are not subject to reporting within the hierarchy as described in GASB Statement No. 72, Fair Value Measurement and Application.

FAIR VALUE MEASUREMENT

GASB Statement No. 72, Fair Value Measurement and Application, sets forth the framework for measuring fair value. That framework provides a fair value hierarchy that prioritizes the inputs to valuation techniques used to measure fair value. Level 1 inputs are quoted prices in active markets for identical assets; Level 2 inputs are significant other observable inputs; and Level 3 inputs are significant unobservable inputs.

In instances where inputs used to measure fair value fall into different levels in the above fair value hierarchy, fair value measurements in their entirety are categorized based on the lowest level input that is significant to the valuation. CPA’s assessment of the significance of particular inputs to these fair value measurements requires judgment and considers factors specific to each...
3. CASH AND CASH EQUIVALENTS (continued)

asset or liability. Deposits and withdrawals from LAIF are made on the basis of $1 which is substantially equal to fair value.

As of June 30, 2020, CPA held no individual investments subject to classification under the fair value hierarchy.

INTEREST RATE RISK

Interest rate risk is the risk that changes in interest rates will adversely affect the fair value of an investment. Duration is a measure of the price sensitivity of a fixed income portfolio to changes in interest rates. The longer the duration of a portfolio, the greater its price sensitivity to changes in interest rates. CPA’s Investment Policy governs the management of interest rate risk. The Investment Policy limits interest rate risk by prioritizing the investment objective of preserving principal, prescribing maximum terms to maturity of investments that give rise to interest rate risk and by proscribing certain types of investments.

As of June 30, 2020, CPA did not hold cash or investments that give rise to material interest rate risk.

CREDIT RISK

State law limits investments in various securities to a certain level of risk ratings issued by nationally recognized statistical rating organizations. It is CPA’s policy to comply with State law regarding security risk ratings. The State Investment Pool was unrated.

CONCENTRATION OF CREDIT RISK

Concentration of credit risk is the risk of loss attributed to the concentration of CPA’s investment in a single issuer.

CPA’s Investment Policy governs the management of credit concentration risk. The Investment Policy limits credit concentration risk by prescribing the maximum percent of the portfolio that may be invested in securities that give rise to credit risk and by prescribing the maximum percent of the portfolio that can be invested in the securities of a single issuer that would give rise to interest rate risk.

As of June 30, 2020, CPA did not hold investments that give rise to credit concentration risk.
3. CASH AND CASH EQUIVALENTS (continued)

CUSTODIAL CREDIT RISK

For deposits, custodial risk is the risk that in the event of a bank failure, CPA’s deposits may not be returned to it. CPA’s policy for deposits is that they be insured by the FDIC. CPA maintains cash in bank accounts, which at times may exceed federally insured limits. Bank accounts are guaranteed by the FDIC up to $250,000. CPA has not experienced any losses in such accounts. CPA manages custodial credit risk for bank deposits during the normal course of business and consistent with its Investment Policy.

Custodial credit risk for investments is the risk that, in the event of the failure of the counterparty to a transaction, CPA would not be able to recover the value of the investment or collateral securities that are in possession of an outside party. Investment securities are exposed to custodial credit risk if the securities are uninsured, are not registered in CPA’s name, and held by the counterparty. CPA does not believe it is exposed to significant custodial credit risk for investments arising from its investments in LAIF.

4. ACCOUNTS RECEIVABLE

Accounts receivable were as follows:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>2019</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accounts receivable from customers</td>
<td>$75,110,208</td>
<td>$51,966,709</td>
</tr>
<tr>
<td>Allowance for uncollectible accounts</td>
<td>(9,577,732)</td>
<td>(1,292,661)</td>
</tr>
<tr>
<td>Net accounts receivable</td>
<td>$65,532,476</td>
<td>$50,674,048</td>
</tr>
</tbody>
</table>

The majority of account collections occur within the first few months following customer invoicing. CPA estimates that a portion of the billed amounts will not be collected. The allowance for uncollectible accounts at the end of a period includes amounts billed during the current fiscal year.

5. MARKET SETTLEMENTS RECEIVABLE

During the normal course of business, CPA receives generation scheduling and other services from a registered CAISO scheduling coordinator. Market settlements due from the scheduling coordinator were $148,000 and $5,574,000 as of June 30, 2020 and 2019, respectively.
6. CAPITAL ASSETS

Capital asset activity for the years ended June 30, 2020 and 2019, was as follows:

<table>
<thead>
<tr>
<th></th>
<th>Furniture &amp; Equipment</th>
<th>Leasehold Improvements</th>
<th>Accumulated Depreciation</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td>Balances at June 30, 2018</td>
<td>$</td>
<td>$</td>
<td>$</td>
<td>$</td>
</tr>
<tr>
<td>Additions</td>
<td>44,080</td>
<td>-</td>
<td>(8,132)</td>
<td>35,948</td>
</tr>
<tr>
<td>Balances at June 30, 2019</td>
<td>44,080</td>
<td>-</td>
<td>(8,132)</td>
<td>35,948</td>
</tr>
<tr>
<td>Additions</td>
<td>64,534</td>
<td>19,155</td>
<td>(22,249)</td>
<td>61,440</td>
</tr>
<tr>
<td>Balances at June 30, 2020</td>
<td>$108,614</td>
<td>$19,155</td>
<td>$(30,381)</td>
<td>$97,388</td>
</tr>
</tbody>
</table>

Depreciation expense is included under general and administration on the Statements of Revenues, Expenses and Changes in Net Position.

7. DEBT

In August 2017, CPA and the County of Los Angeles executed a memorandum of understanding (MOU) to provide a non-interest-bearing loan to CPA in an amount not to exceed $10 million to be repaid June 30, 2018. In April 2018, the County’s Board of Supervisors approved an extension of the repayment term of the loan to June 30, 2019. In August 2018, County’s Board of Supervisors approved a further extension of repayment of the loan to September 30, 2020. The purpose of the loan was to investigate the feasibility of implementing a community choice aggregation program as well as to provide for other working capital needs.

In August 2018 CPA entered into a $20 million Credit Agreement with River City Bank. The Credit Agreement is a revolving credit facility that CPA uses to provide letters of credit and to borrow funds to provide working capital. The Credit Agreement expires in August 2019.

In April 2019 CPA entered into the First Amendment to the Credit Agreement with River City Bank (First Amendment). The First Amendment increases available credit facility amount from $20 million to $37 million, extends the term of the agreement through March 31, 2021, reduces the interest rate on borrowing from 2% over the one-month London Interbank Borrowing Rate (Libor) to 1.75% over one-month Libor, adjusts the amount required to be held as cash collateral from 10% of the credit facility amount to 10% of the outstanding balance and updates the credit covenants. The First Amendment is intended to provide CPA with greater working capital and financial flexibility and contribute to the financial strength of the agency. The interest rate at June 30, 2020 was 1.92%.

The credit covenants were amended in September 2019.
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
NOTES TO THE BASIC FINANCIAL STATEMENTS
YEARS ENDED JUNE 30, 2020 AND 2019

7. DEBT (continued)

As of June 30, 2020, CPA had no notes outstanding under the credit facility and is in compliance
with credit covenants. As of June 30, 2019 CPA, had notes outstanding under the credit facility
in the amount of $19.05 million.

Loan principal activity and balances were as follows for the following direct borrowings:

<table>
<thead>
<tr>
<th></th>
<th>Beginning</th>
<th>Additions</th>
<th>Payments</th>
<th>Ending</th>
</tr>
</thead>
<tbody>
<tr>
<td>County of Los Angeles</td>
<td>9,835,608</td>
<td></td>
<td>-</td>
<td>9,835,608</td>
</tr>
<tr>
<td>River City Bank</td>
<td>19,050,000</td>
<td></td>
<td>-</td>
<td>19,050,000</td>
</tr>
<tr>
<td>Total</td>
<td>28,885,608</td>
<td></td>
<td>-</td>
<td>28,885,608</td>
</tr>
</tbody>
</table>

Amounts due within one year
Amounts due after one year

8. DEFINED CONTRIBUTION RETIREMENT PLAN

The Clean Power Alliance of Southern California Plan (Plan) is a defined contribution
retirement plan established by CPA to provide benefits at retirement to its employees. The Plan
is administered by Nationwide Retirement Solutions. In July 2018 CPA adopted the Employee
Handbook which included an employer contribution to the Plan equal to 3.5% of the employee
salary. In September 2019 CPA amended its Employee Handbook to increase the employer
contribution from 3.5% to 6% of the employee salary and added a 4% employer match
contribution, for a maximum annual employer contribution to the Plan equal to 10% of the
employee salary. As of June 30, 2020, there were 29 plan members. CPA contributed $288,000
and $152,000 during the years ended June 30, 2020 and 2019, respectively. Plan provisions and
contribution requirements are established and may be amended by the Board of Directors.
9. RISK MANAGEMENT

CPA is exposed to various insurable risks of loss related to: torts; theft of, damage to, and destruction of assets; and errors and omissions. During the year, CPA purchased insurance policies from investment grade commercial carriers to mitigate risks that include those associated with earthquakes, theft, general liability, errors and omissions, and property damage. Settled claims have not exceeded the commercial liability in any of the past three years. There were no significant reductions in coverage compared to the prior year.

On July 12, 2018 CPA’s Board adopted the Energy Risk Management Policy (ERMP). The ERMP establishes CPA’s Energy Risk Program and 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 and monitor, measure and report on the effectiveness of the ERMP. Risks covered by the ERMP include market price risk, credit risk, volumetric risk, operational risk, opt-out risk, legislative and regulatory risk and other risks arising operating as a Community Choice Aggregation and participating in California energy markets.

CPA maintains other risk management policies, procedures and systems that help mitigate and manage credit, liquidity, financial, regulatory and other risks not covered by the ERMP.

Credit guidelines include a preference for transacting with investment grade counterparties, evaluating counterparties’ financial condition and assigning credit limits as applicable. These credit limits are established based on risk and return considerations under terms customarily available in the industry. In addition, CPA enters into netting arrangements whenever possible and where appropriate obtains collateral and other performance assurances from counterparties.

10. PURCHASE COMMITMENTS

POWER AND ELECTRIC CAPACITY

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

CPA enters into power purchase agreements in order to comply with state law and elective targets for renewable and greenhouse gas (GHG) free products and to ensure stable and competitive electric rates for its customers.
10. PURCHASE COMMITMENTS (continued)

The following table represents the expected, undiscounted, contractual obligations for power and electric capacity outstanding as of June 30, 2020:

<table>
<thead>
<tr>
<th>Year ended June 30,</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>598,465,012</td>
</tr>
<tr>
<td>2022</td>
<td>428,670,607</td>
</tr>
<tr>
<td>2023</td>
<td>222,225,427</td>
</tr>
<tr>
<td>2024</td>
<td>116,567,304</td>
</tr>
<tr>
<td>2025</td>
<td>100,802,239</td>
</tr>
<tr>
<td>2026-41</td>
<td>1,216,151,486</td>
</tr>
<tr>
<td>Total</td>
<td>2,682,882,075</td>
</tr>
</tbody>
</table>

As of June 30, 2020, CPA had noncancelable contractual commitments to professional service providers through July 31, 2022 for services yet to be performed. Fees associated with these contracts are based on volumetric activity and are expected to be approximately $23,000,000.

11. OPERATING LEASE

Rental expense for CPA’s office space was $253,000 and $134,000 for the years ended June 30, 2020 and 2019, respectively. CPA entered into a new eight-year lease agreement. Obligations arising from the lease agreement commence following the substantial completion of leasehold improvements which are expected to occur in November 2020. CPA has an option to extend the lease for two additional years. The table below represents the scheduled future lease payments under this agreement.

<table>
<thead>
<tr>
<th>Year ended June 30,</th>
<th>$</th>
</tr>
</thead>
<tbody>
<tr>
<td>2021</td>
<td>32,436</td>
</tr>
<tr>
<td>2022</td>
<td>299,711</td>
</tr>
<tr>
<td>2023</td>
<td>439,727</td>
</tr>
<tr>
<td>2024</td>
<td>468,317</td>
</tr>
<tr>
<td>2025</td>
<td>482,367</td>
</tr>
<tr>
<td>2026-2028</td>
<td>1,713,097</td>
</tr>
<tr>
<td>Total</td>
<td>3,435,656</td>
</tr>
</tbody>
</table>
12. LEGAL SETTLEMENTS

CPA entered into a settlement agreement with SCE in January 2020 arising from a dispute concerning services SCE provided to CPA under SCE’s tariffs and received a payment of $3.5M in March 2020. This was recorded as an offset to the cost of electricity under operating expenses. In June 2020, CPA entered into another settlement agreement with SCE for enrollment data errors which resulted in missing revenue for CPA. CPA received a settlement amount from SCE of $4.25M in June 2020. This amount was recorded as other income under operating revenue.

13. COVID-19 RELIEF FUND

In June 2020, the CPA Board authorized expenditure of up to $2 million for bill assistance to residential and small business customers impacted by the economic downturn. This assistance is available in the form of credits on customer bills for customers who sign up for CARE/FERA/Medical Baseline programs, and for existing CARE/FERA/Medical Baseline and small business customers who sign up for extended payment plans. As of June 30, 2020, $580,773 of the bill credits were used and recorded as a revenue reduction.

14. FUTURE GASB PRONOUNCEMENTS

The requirements of the following GASB Statement are effective for future fiscal years ending after June 30, 2020:

GASB has approved GASB Statement No. 84, Fiduciary Activities, GASB Statement No. 87, Leases, GASB 94, Public-Private and Public-Public Partnerships and Availability Payment Arrangements, GASB 96, Subscription-Based Information Technology Arrangements; and GASB No. 97, Certain Component Unit Criteria and Accounting and Financial Reporting for Internal Revenue Code Section 457 Deferred Compensation Plans. Management is evaluating the effect of these new pronouncements.

15. SUBSEQUENT EVENTS

In December 2019, a novel strain of coronavirus disease (“COVID-19”) was first reported in Wuhan, China. Less than four months later, on March 11, 2020, the World Health Organization declared COVID-19 a pandemic. The response to and impacts of Covid-19 have resulted in changing patterns of electricity usage and slowing of customer payments. The extent to which the ongoing response to and impacts of COVID-19 will affect CPA’s operational and financial performance are unknown at this time and will be monitored by management.
CLEAN POWER ALLIANCE OF SOUTHERN CALIFORNIA
NOTES TO THE BASIC FINANCIAL STATEMENTS
YEARS ENDED JUNE 30, 2020 AND 2019

15. SUBSEQUENT EVENTS (continued)

In July 2020 CPA’s Board approved amendments to the Energy Risk Management Policy.

In September 2020 CPA repaid the outstanding loan balance of $9,945,750 to the County of Los Angeles.
<table>
<thead>
<tr>
<th>A</th>
<th>B</th>
<th>C</th>
<th>D</th>
<th>E</th>
<th>F</th>
<th>G</th>
<th>H</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating Revenues</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Revenue - electricity, net</td>
<td>$ 794,725,000</td>
<td>$ 774,817,064</td>
<td>(19,907,937)</td>
<td>97%</td>
<td>$ 794,725,000</td>
<td>$ 19,907,937</td>
<td>3%</td>
</tr>
<tr>
<td>Transfer to Fiscal Stabilization Fund</td>
<td>-</td>
<td>(27,000,000)</td>
<td>(27,000,000)</td>
<td>n/a</td>
<td>10,000</td>
<td>(4,243,050)</td>
<td>-4243%</td>
</tr>
<tr>
<td>Other revenues</td>
<td>10,000</td>
<td>4,253,050</td>
<td>42531%</td>
<td>9%</td>
<td>10,000</td>
<td>4,253,050</td>
<td>42531%</td>
</tr>
<tr>
<td><strong>Total Operating Revenues</strong></td>
<td>794,735,000</td>
<td>752,070,114</td>
<td>(42,664,887)</td>
<td>95%</td>
<td>794,735,000</td>
<td>15,664,887</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Energy Costs</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Energy procurement</td>
<td>738,943,000</td>
<td>699,782,409</td>
<td>(39,160,589)</td>
<td>95%</td>
<td>738,943,000</td>
<td>39,160,589</td>
<td>5%</td>
</tr>
<tr>
<td><strong>Operating Revenues less Energy Costs</strong></td>
<td>55,792,000</td>
<td>52,287,702</td>
<td>(3,504,298)</td>
<td>94%</td>
<td>55,792,000</td>
<td>3,504,298</td>
<td>6%</td>
</tr>
<tr>
<td><strong>Operating Expenses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Staffing</td>
<td>4,646,000</td>
<td>4,147,412</td>
<td>(498,587)</td>
<td>89%</td>
<td>4,646,000</td>
<td>498,587</td>
<td>11%</td>
</tr>
<tr>
<td>Technical services</td>
<td>1,677,000</td>
<td>1,470,982</td>
<td>(206,018)</td>
<td>88%</td>
<td>1,677,000</td>
<td>206,018</td>
<td>12%</td>
</tr>
<tr>
<td>Legal services</td>
<td>1,099,000</td>
<td>743,848</td>
<td>(355,152)</td>
<td>68%</td>
<td>1,099,000</td>
<td>355,152</td>
<td>32%</td>
</tr>
<tr>
<td>Other services</td>
<td>942,000</td>
<td>705,397</td>
<td>(236,603)</td>
<td>75%</td>
<td>942,000</td>
<td>236,603</td>
<td>25%</td>
</tr>
<tr>
<td>Communications and marketing</td>
<td>248,000</td>
<td>146,551</td>
<td>(101,449)</td>
<td>59%</td>
<td>248,000</td>
<td>101,449</td>
<td>41%</td>
</tr>
<tr>
<td>Customer notices and mailing</td>
<td>400,000</td>
<td>227,268</td>
<td>(172,732)</td>
<td>57%</td>
<td>400,000</td>
<td>172,732</td>
<td>43%</td>
</tr>
<tr>
<td>Data management services</td>
<td>11,930,000</td>
<td>11,396,227</td>
<td>(533,773)</td>
<td>96%</td>
<td>11,930,000</td>
<td>533,773</td>
<td>4%</td>
</tr>
<tr>
<td>Service fees- SCE</td>
<td>2,215,000</td>
<td>1,765,877</td>
<td>(449,123)</td>
<td>80%</td>
<td>2,215,000</td>
<td>449,123</td>
<td>20%</td>
</tr>
<tr>
<td>Local Programs</td>
<td>1,450,000</td>
<td>1,224,000</td>
<td>(226,000)</td>
<td>15%</td>
<td>1,450,000</td>
<td>1,450,000</td>
<td>100%</td>
</tr>
<tr>
<td>Covid-19 Bill Assistance (1)</td>
<td>2,000,000</td>
<td>-</td>
<td>(2,000,000)</td>
<td>0%</td>
<td>2,000,000</td>
<td>2,000,000</td>
<td>100%</td>
</tr>
<tr>
<td>General and administration</td>
<td>757,000</td>
<td>703,535</td>
<td>(53,465)</td>
<td>93%</td>
<td>757,000</td>
<td>53,465</td>
<td>7%</td>
</tr>
<tr>
<td>Occupancy</td>
<td>414,000</td>
<td>257,572</td>
<td>(156,428)</td>
<td>62%</td>
<td>414,000</td>
<td>156,428</td>
<td>38%</td>
</tr>
<tr>
<td><strong>Total Operating Expenditures</strong></td>
<td>27,778,000</td>
<td>21,788,670</td>
<td>(5,989,330)</td>
<td>78%</td>
<td>27,778,000</td>
<td>5,989,330</td>
<td>22%</td>
</tr>
<tr>
<td><strong>Operating Income</strong></td>
<td>28,014,000</td>
<td>30,499,032</td>
<td>2,485,032</td>
<td>109%</td>
<td>28,014,000</td>
<td>2,485,032</td>
<td>-9%</td>
</tr>
<tr>
<td><strong>Non-Operating and Other Revenues (Expenses)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Interest income</td>
<td>649,000</td>
<td>361,022</td>
<td>(287,978)</td>
<td>56%</td>
<td>649,000</td>
<td>287,978</td>
<td>44%</td>
</tr>
<tr>
<td>Finance and interest expense</td>
<td>(388,000)</td>
<td>(241,150)</td>
<td>146,850</td>
<td>62%</td>
<td>(388,000)</td>
<td>146,850</td>
<td>38%</td>
</tr>
<tr>
<td>Depreciation</td>
<td>(12,000)</td>
<td>(22,248)</td>
<td>(10,248)</td>
<td>185%</td>
<td>(12,000)</td>
<td>10,248</td>
<td>-85%</td>
</tr>
<tr>
<td><strong>Total Non-Operating Revenues (Expenses)</strong></td>
<td>249,000</td>
<td>97,624</td>
<td>(151,376)</td>
<td>39%</td>
<td>249,000</td>
<td>151,376</td>
<td>61%</td>
</tr>
<tr>
<td><strong>Change in Net Position</strong></td>
<td>28,263,000</td>
<td>30,596,657</td>
<td>2,333,656</td>
<td>108%</td>
<td>28,263,000</td>
<td>2,333,656</td>
<td>-8%</td>
</tr>
<tr>
<td><strong>Other Uses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital outlay</td>
<td>1,074,000</td>
<td>83,689</td>
<td>(990,311)</td>
<td>8%</td>
<td>1,074,000</td>
<td>990,311</td>
<td>92%</td>
</tr>
<tr>
<td>Depreciation</td>
<td>(12,000)</td>
<td>(22,248)</td>
<td>(10,248)</td>
<td>185%</td>
<td>(12,000)</td>
<td>10,248</td>
<td>-85%</td>
</tr>
<tr>
<td><strong>Total Other Uses</strong></td>
<td>1,062,000</td>
<td>61,441</td>
<td>(1,000,559)</td>
<td>6%</td>
<td>1,062,000</td>
<td>1,000,559</td>
<td>94%</td>
</tr>
<tr>
<td><strong>Change in Fund Balance</strong></td>
<td>$ 27,201,000</td>
<td>$ 30,535,215</td>
<td>$ 3,334,215</td>
<td>112%</td>
<td>$ 27,201,000</td>
<td>(3,334,215)</td>
<td>-12%</td>
</tr>
</tbody>
</table>

Item 9
FY 2019-20 Financial Results

November 5, 2020
Summary of Financial Results

- CPA met its financial objectives in FY 2019-20 and entered the current fiscal year in sound financial health

- CPA recorded operating revenues of $754 million, increased the net position by $30.6 million and added $27 million to the recently created Fiscal Stabilization Fund.

- Equity, consisting of the net position plus the Fiscal Stabilization Fund, increased from $15 million at the beginning of FY 2019-20 to $73.6 million by June 30, 2020

- CPA paid off its bank debt during FY 2019-20 reducing financial leverage and interest expenses and increased its liquidity (cash plus unused bank lines) from $24.5 million to $92.2 million during the fiscal year

- CPA finished the year within budget limits established by the FY 2019-20 Budget as amended by the Board in June 2020 and met its target of increasing the net position by an amount equal to 4% of revenue.
Balance Sheet Components, as of June 30:

<table>
<thead>
<tr>
<th>Asset Category</th>
<th>2020</th>
<th>% Ttl</th>
<th>2019</th>
<th>% Ttl</th>
<th>% Ch</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current assets</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Cash and cash equivalents</td>
<td>$56,158,767</td>
<td>30.2%</td>
<td>$7,258,580</td>
<td>5.1%</td>
<td>674%</td>
</tr>
<tr>
<td>Accounts receivable, net of allowance</td>
<td>65,532,476</td>
<td>35.2%</td>
<td>50,674,048</td>
<td>35.5%</td>
<td>29%</td>
</tr>
<tr>
<td>Accrued revenue</td>
<td>49,192,550</td>
<td>26.4%</td>
<td>68,779,327</td>
<td>48.2%</td>
<td>-28%</td>
</tr>
<tr>
<td>Market settlements receivable</td>
<td>147,873</td>
<td>0.1%</td>
<td>5,573,657</td>
<td>3.9%</td>
<td>-97%</td>
</tr>
<tr>
<td>Other receivables</td>
<td>348,545</td>
<td>0.2%</td>
<td>357,454</td>
<td>0.3%</td>
<td>-2%</td>
</tr>
<tr>
<td>Prepaid expenses</td>
<td>6,345,580</td>
<td>3.4%</td>
<td>2,024,550</td>
<td>1.4%</td>
<td>213%</td>
</tr>
<tr>
<td>Deposits</td>
<td>3,232,875</td>
<td>1.7%</td>
<td>-</td>
<td>0.0%</td>
<td></td>
</tr>
<tr>
<td>Restricted cash</td>
<td>4,897,000</td>
<td>2.6%</td>
<td>7,952,000</td>
<td>5.6%</td>
<td>-38%</td>
</tr>
<tr>
<td><strong>Total current assets</strong></td>
<td>185,855,666</td>
<td>99.8%</td>
<td>142,619,616</td>
<td>99.9%</td>
<td>30%</td>
</tr>
<tr>
<td><strong>Noncurrent assets</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Capital assets, net of depreciation</td>
<td>97,388</td>
<td>0.1%</td>
<td>35,948</td>
<td>0.0%</td>
<td>171%</td>
</tr>
<tr>
<td>Deposits</td>
<td>188,710</td>
<td>0.1%</td>
<td>128,000</td>
<td>0.1%</td>
<td>47%</td>
</tr>
<tr>
<td><strong>Total noncurrent assets</strong></td>
<td>286,098</td>
<td>0.2%</td>
<td>163,948</td>
<td>0.1%</td>
<td>75%</td>
</tr>
<tr>
<td><strong>Total assets</strong></td>
<td>186,141,764</td>
<td>100.0%</td>
<td>142,783,564</td>
<td>100.0%</td>
<td>30%</td>
</tr>
</tbody>
</table>
**Balance Sheet Components, as of June 30:**

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>% Ttl</th>
<th>2019</th>
<th>% Ttl</th>
<th>% Ch</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Current liabilities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Accounts payable</td>
<td>2,303,802</td>
<td>2%</td>
<td>2,641,021</td>
<td>2%</td>
<td>-13%</td>
</tr>
<tr>
<td>Accrued cost of electricity</td>
<td>86,772,867</td>
<td>77%</td>
<td>89,051,637</td>
<td>70%</td>
<td>-3%</td>
</tr>
<tr>
<td>Other accrued liabilities</td>
<td>3,144,362</td>
<td>3%</td>
<td>2,495,683</td>
<td>2%</td>
<td>26%</td>
</tr>
<tr>
<td>User taxes and energy surcharges due to other</td>
<td>4,959,748</td>
<td>4%</td>
<td>2,970,637</td>
<td>2%</td>
<td>67%</td>
</tr>
<tr>
<td>Loans payable to County of Los Angeles</td>
<td>9,945,750</td>
<td>9%</td>
<td>-</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td>Security deposits from energy suppliers</td>
<td>2,767,200</td>
<td>2%</td>
<td>-</td>
<td>0%</td>
<td></td>
</tr>
<tr>
<td><strong>Total current liabilities</strong></td>
<td>109,893,729</td>
<td>98%</td>
<td>97,158,978</td>
<td>77%</td>
<td>13%</td>
</tr>
<tr>
<td><strong>Noncurrent liabilities</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Loans payable to County of Los Angeles</td>
<td>-</td>
<td>0%</td>
<td>9,835,608</td>
<td>8%</td>
<td>-100%</td>
</tr>
<tr>
<td>Note payable to bank</td>
<td>-</td>
<td>0%</td>
<td>19,050,000</td>
<td>15%</td>
<td>-100%</td>
</tr>
<tr>
<td>Security deposits from energy suppliers</td>
<td>2,662,400</td>
<td>2%</td>
<td>750,000</td>
<td>1%</td>
<td>255%</td>
</tr>
<tr>
<td><strong>Total noncurrent liabilities</strong></td>
<td>2,662,400</td>
<td>2%</td>
<td>29,635,608</td>
<td>23%</td>
<td>-91%</td>
</tr>
<tr>
<td><strong>Total liabilities</strong></td>
<td>112,556,129</td>
<td>100%</td>
<td>126,794,586</td>
<td>100%</td>
<td>-11%</td>
</tr>
</tbody>
</table>
Balance Sheet Components, as of June 30:

<table>
<thead>
<tr>
<th></th>
<th>2020</th>
<th>% Ttl</th>
<th>2019</th>
<th>% Ttl</th>
<th>% Ch</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fiscal Stabilization Fund</td>
<td>27,000,000</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investment in capital assets</td>
<td>97,388</td>
<td>0%</td>
<td>35,948</td>
<td>0%</td>
<td>171%</td>
</tr>
<tr>
<td>Restricted for collateral</td>
<td>4,897,000</td>
<td>11%</td>
<td>7,952,000</td>
<td>50%</td>
<td>-38%</td>
</tr>
<tr>
<td>Unrestricted</td>
<td>41,591,247</td>
<td>89%</td>
<td>8,001,030</td>
<td>50%</td>
<td>420%</td>
</tr>
<tr>
<td><strong>Total net position</strong></td>
<td>$ 46,585,635</td>
<td>100%</td>
<td>$ 15,988,978</td>
<td>100%</td>
<td>191%</td>
</tr>
</tbody>
</table>
Select Financial Indicators

<table>
<thead>
<tr>
<th>Description</th>
<th>% Ch</th>
<th>6/30/2020</th>
<th>6/30/2019</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Working Capital</td>
<td>67%</td>
<td>75,961,937</td>
<td>45,460,638</td>
<td>Current Assets less Current Liabilities</td>
</tr>
<tr>
<td>Current Ratio</td>
<td>15%</td>
<td>1.69</td>
<td>1.47</td>
<td>Current Assets divided by Current Liabilities</td>
</tr>
<tr>
<td>Days Sales Outstanding</td>
<td>-58%</td>
<td>31</td>
<td>73</td>
<td>Accounts receivable divided by Sales divided by 365</td>
</tr>
<tr>
<td>Equity</td>
<td>360%</td>
<td>73,585,635</td>
<td>15,988,978</td>
<td>Net Position plus Fiscal Stabilization Fund</td>
</tr>
<tr>
<td>Equity to Assets</td>
<td>253%</td>
<td>40%</td>
<td>11%</td>
<td>Equity (Net Position + FSF) divided by Total Assets</td>
</tr>
<tr>
<td>Available Cash</td>
<td>674%</td>
<td>56,158,767</td>
<td>7,258,580</td>
<td>Total cash less restricted cash</td>
</tr>
<tr>
<td>Available Line of Credit</td>
<td>109%</td>
<td>36,030,000</td>
<td>17,250,000</td>
<td>Total Line of Credit less Borrowing and Letters of Credit</td>
</tr>
<tr>
<td>Total Liquidity</td>
<td>276%</td>
<td>92,188,767</td>
<td>24,508,580</td>
<td>Sum of Available Cash and Line of Credit</td>
</tr>
<tr>
<td>Days Liquidity on Hand (TTM)</td>
<td>276%</td>
<td>47</td>
<td>12</td>
<td>Total Liquidity divided by trailing 12 month expenses divided by 365</td>
</tr>
<tr>
<td>Gross Margin</td>
<td>-43%</td>
<td>7.0%</td>
<td>12.1%</td>
<td>Operating revenue less energy cost divided by operating revenue</td>
</tr>
<tr>
<td>Net Margin</td>
<td>-35%</td>
<td>4.1%</td>
<td>6.3%</td>
<td>Change in net position divided by operating revenue</td>
</tr>
</tbody>
</table>

- CPA reduced leverage (equity to assets) and increased liquidity (days liquidity on hand) as a result of the increase in net position and by holding most surplus assets in cash and cash equivalents.
- Gross and net margins fell largely because the timing of enrollments in FY 2018-19 increased margins beyond normal operating levels. Days sales outstanding as of 6/30/2019 were inflated for similar reasons.
### Budget to Actual Analysis

#### Operating Revenues

<table>
<thead>
<tr>
<th></th>
<th>2019/20 Amended Budget</th>
<th>2019/20 Base Budget</th>
<th>2019/20 Actual</th>
<th>2019/20 Base Budget Variance (Under) Over</th>
<th>2019/20 Base Budget Variance %</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Revenue - electricity, net</td>
<td>$794,725,000</td>
<td>$743,350,000</td>
<td>$774,817,064</td>
<td>$31,467,064</td>
</tr>
<tr>
<td>2</td>
<td>Transfer to Fiscal Stabilization Fund</td>
<td>-</td>
<td>(27,000,000)</td>
<td>(27,000,000)</td>
<td>n/a</td>
</tr>
<tr>
<td>3</td>
<td>Other revenues</td>
<td>10,000</td>
<td>10,000</td>
<td>4,253,050</td>
<td>4,243,050</td>
</tr>
<tr>
<td>4</td>
<td>Total Operating Revenues</td>
<td>794,735,000</td>
<td>743,360,000</td>
<td>752,070,114</td>
<td>8,710,114</td>
</tr>
</tbody>
</table>

- Revenue electricity, net was 4% above the Base Budget. Factors increasing electricity revenue were lower than budgeted opt-outs arising from CPA’s May 2019 enrollment and a small rate increase in September 2019, offset by increasing bad debt expenses beginning in March 2020.

- Operating revenues were reduced by a $27 million transfer to the Fiscal Stabilization Fund pursuant to CPA’s Board approved Fiscal Stabilization Fund Policy.

- Other revenues are primarily composed of proceeds from a settlement with SCE.
Energy procurement costs were 2% above the base budget reflecting lower than budgeted opt outs and higher load, and the over procurement of energy in calendar Q3 2019 resulting from data errors coupled with a subsequent drop in energy market prices.

Energy procurement costs were reduced by the sale of CRRs in the annual auction in November 2019 and from lower than budgeted energy prices in calendar Q4 2019 and the first half of 2020.

Operating revenue less energy costs (gross margin) was $3.5 million below the Base budget largely as a function of the transfer to the Fiscal Stabilization Fund. Reduced gross margin was offset by operating expenses that were $3.9 million below budget as described in the next slide.
Budget to Actual Analysis

<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Staffing</td>
<td>4,646,000</td>
<td>4,147,412</td>
<td>(704,588)</td>
<td>-15%</td>
</tr>
<tr>
<td>8</td>
<td>Technical services</td>
<td>1,677,000</td>
<td>1,470,982</td>
<td>(306,018)</td>
<td>-17%</td>
</tr>
<tr>
<td>9</td>
<td>Legal services</td>
<td>1,099,000</td>
<td>743,848</td>
<td>(355,152)</td>
<td>-38%</td>
</tr>
<tr>
<td>10</td>
<td>Other services</td>
<td>942,000</td>
<td>166,397</td>
<td></td>
<td>31%</td>
</tr>
<tr>
<td>11</td>
<td>Communications and marketing</td>
<td>248,000</td>
<td>146,551</td>
<td>(202,449)</td>
<td>-58%</td>
</tr>
<tr>
<td>12</td>
<td>Customer notices and mailing</td>
<td>400,000</td>
<td>227,268</td>
<td>(72,732)</td>
<td>-24%</td>
</tr>
<tr>
<td>13</td>
<td>Data management services</td>
<td>11,930,000</td>
<td>11,396,227</td>
<td>(533,773)</td>
<td>-4%</td>
</tr>
<tr>
<td>14</td>
<td>Service fees- SCE</td>
<td>2,215,000</td>
<td>1,765,877</td>
<td>(449,123)</td>
<td>-20%</td>
</tr>
<tr>
<td>15</td>
<td>Local Programs</td>
<td>1,450,000</td>
<td>224,000</td>
<td>(1,226,000)</td>
<td>-85%</td>
</tr>
<tr>
<td>22</td>
<td>Covid-19 Bill Assistance (1)</td>
<td>2,000,000</td>
<td>-</td>
<td></td>
<td>-</td>
</tr>
<tr>
<td>23</td>
<td>General and administration</td>
<td>757,000</td>
<td>703,535</td>
<td>(53,465)</td>
<td>-7%</td>
</tr>
<tr>
<td>24</td>
<td>Occupancy</td>
<td>414,000</td>
<td>257,572</td>
<td>(156,428)</td>
<td>-38%</td>
</tr>
<tr>
<td>25</td>
<td>Total Operating Expenses</td>
<td>27,778,000</td>
<td>21,788,670</td>
<td>(3,989,330)</td>
<td>-15%</td>
</tr>
</tbody>
</table>

- Actual results were within Base Budget for all line items with the exception of Other services.
- Staffing was 15% under the Base Budget as a result of delayed hiring and the non utilization of contingencies. CPA increased staffing from 16 to 29 full time employees during the year.
- COVID-19 Bill Assistance totaling $581,000 was netted from operating revenue.
- Total operating expenditures were 15% below base budget due primarily to non utilization of contingencies, conservative use of funds, and slow distribution of local program incentives.
### Budget to Actual Analysis

<table>
<thead>
<tr>
<th></th>
<th>2019/20 Amended Budget</th>
<th>2019/20 Base Budget</th>
<th>2019/20 Actual</th>
<th>2019/20 Base Budget Variance</th>
<th>2019/20 Base Budget Variance %</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Operating Income</strong></td>
<td>28,014,000</td>
<td>30,014,000</td>
<td>30,499,032</td>
<td>485,032</td>
<td>2%</td>
</tr>
<tr>
<td><strong>Non-Operating and Other Revenues (Expenditures)</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>27 Interest Income</td>
<td>649,000</td>
<td>849,000</td>
<td>361,022</td>
<td>(487,978)</td>
<td>-57%</td>
</tr>
<tr>
<td>28 Finance and interest expense</td>
<td>(388,000)</td>
<td>(588,000)</td>
<td>(241,150)</td>
<td>346,850</td>
<td>-59%</td>
</tr>
<tr>
<td>29 Depreciation</td>
<td>(12,000)</td>
<td>(12,000)</td>
<td>(22,248)</td>
<td>(10,248)</td>
<td>85%</td>
</tr>
<tr>
<td>30 Total Non-Operating Revenues (Expenditures)</td>
<td>249,000</td>
<td>249,000</td>
<td>97,624</td>
<td>(151,376)</td>
<td>-61%</td>
</tr>
<tr>
<td>31 Change in Net Position</td>
<td>28,263,000</td>
<td>30,263,000</td>
<td>30,596,657</td>
<td>333,657</td>
<td>1.1%</td>
</tr>
<tr>
<td><strong>Other Uses</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>32 Capital outlay</td>
<td>1,074,000</td>
<td>574,000</td>
<td>83,689</td>
<td>(490,311)</td>
<td>-85%</td>
</tr>
<tr>
<td>33 Depreciation</td>
<td>(12,000)</td>
<td>(12,000)</td>
<td>(22,248)</td>
<td>(10,248)</td>
<td>85%</td>
</tr>
<tr>
<td>34 Total Other Uses</td>
<td>1,062,000</td>
<td>562,000</td>
<td>61,441</td>
<td>(500,559)</td>
<td>-89%</td>
</tr>
<tr>
<td><strong>Change in Fund Balance</strong></td>
<td>$ 27,201,000</td>
<td>29,701,000</td>
<td>$ 30,535,215</td>
<td>834,215</td>
<td>3%</td>
</tr>
</tbody>
</table>

- Operating income was within 2% of the base budget target
- Interest income was lower than budgeted due to lower than planned income and cash flow in Q3 2019 and falling interest rates beginning in March 2020
- Capital expenditures were lower than budgeted as a result of construction timing pushing leasehold improvements to CPA’s new office into FY 2020-21
- The change in net position represents 4.1% of Operating revenues and was 1.1% over the Base budget
Thank You! Questions?
To: Clean Power Alliance (CPA) Board of Directors
From: Tyler Aguirre, Customer Programs Manager
Approved By: Ted Bardacke, Executive Director
Subject: CPA Power Response Pilot Program Update and Future Direction
Date: November 5, 2020

BACKGROUND
In July 2018, the Board approved a 4-year contract with Calpine Energy Solutions for data management and call center services. Included in the contract scope was the planning and implementation of a 12-18 month Distributed Energy Resources (DER) Pilot Program in partnership with subcontractor Olivine, Inc. After a detailed planning process, in October 2019 the Board approved a tripartite DER Services Agreement between CPA, Calpine, and Olivine for the implementation of the DER Pilot Program, now named CPA Power Response.

Goals for CPA’s Power Response pilot program were to gather valuable data and experience in how to implement these types of programs and begin to build a platform upon which CPA could build other DER programs that emerged from the local programs strategic planning process. The program was also intended to achieve benefits to customers and to allow CPA to test the management of DER resources to provide wholesale energy cost savings and revenue generation from wholesale market participation. Calpine has funded the planning and implementation costs of the pilot ($1.4 million), while CPA has funded the customer incentive ($800,000) and marketing budgets ($300,000). The program launched in February 2020 for customer enrollment and is now in its 9th month.
DISCUSSION

CPA Power Response and Demand Response Overview

The CPA Power Response pilot program provides incentives to customers with existing behind-the-meter DER technologies to participate in demand response. Behind-the-meter DERs are customer-sited, geographically dispersed energy resources or technologies, like rooftop solar or EV chargers, that enable customers to generate electricity or shift/reduce their load during certain times of the day. DERs can be used individually or in aggregate to provide value to the grid, individual customers, or both.

Demand response provides an opportunity for consumers to play a role in the operation of the electric grid by reducing their electricity usage during peak demand days when wholesale prices are highest (referred to as “events”) in exchange for financial incentives.

The specific technology options in the Power Response pilot are as follows:

- **Smart Thermostats**: Residential and small business customers with smart thermostats increase their thermostat set point during events
- **Solar + Storage**: Commercial and residential customers with solar-charged battery storage discharge their batteries (rather than drawing power from the grid) during events
- **EV Charging**: Commercial customers with EV charging equipment reduce the rate of charging or cease charging altogether during events

Customers with these technologies can participate in demand response programs by adjusting their equipment manually, or through the use of direct load control programs in which customers agree to allow their equipment to be controlled automatically by a demand response implementer during events.

Key features of Power Response program events include:

- Day ahead notification to customers of events
• Limited to 5 events per month, and maximum of 35 events per year
• Default duration 2 hours (though they can be up to 4 hours)
• Limited to 4-9pm
• Option for customers to decline a certain number of events per year

Each of these customer segments are offered enrollment incentives to sign up for the program, as well as participation incentives that are based on the percentage of events they participate in. Higher incentives are provided to customers that are in a Disadvantaged Community.

**Benefits and Costs of Demand Response**

Power Response provides financial benefits to CPA that can offset program costs. In the next phase of implementation, staff will seek to balance the desire for broad program reach with budgetary constraints. A program with more generous incentives may be less cost effective and therefore be available to fewer customers given CPA budget constraints. A program with less generous incentives will be available to more customers, but customer acquisition could be more difficult.

**Benefits**

Demand response can help CPA reduce costly wholesale energy purchases during the evening peak, as customers use less energy during demand response events. It can also allow CPA to earn revenue from wholesale market participation, as the reduced load from DERs can be aggregated and sold as a resource in the CAISO market.

Demand response also provides benefits to customers who choose to participate. Customers who choose to invest in DER technologies can earn incentives for participating in demand response, which can offset the cost of their equipment, and can reduce their monthly energy costs by lowering their consumption during events. This will become even more beneficial to CPA’s residential customers after the implementation of default
residential Time of Use (TOU) rates in 2022, which will increase the cost of electricity for residential customers during the 4-9 pm evening peak.

Demand response also creates additional non-monetary benefits such as improved air quality and reduced GHG emissions because of less demand during the evening peak, and improved grid reliability.

**Costs**

There are costs to CPA to run demand response programs. Direct costs include marketing and outreach, program administration and operations, and customer incentives. Indirect costs associated with demand response include lost retail energy revenues during events.

Aside from the up-front cost of DER equipment, there are generally no costs to customers associated with participation in demand response. Some demand response programs include penalties for non-performance, but CPA has not implemented this type of program.

**CPA Power Response - Current State**

CPA has seen steady enrollment in the residential smart thermostat segment of the program, however other areas (commercial EV/battery storage and residential battery storage) are currently under target for enrollment. The program entered its operational phase in late August 2020, when it called the first demand response event for smart thermostat customers. The program was also activated during CAISO Flex Alert and Grid Alert events during August and September to reduce strain on the grid.

To date, fifteen Power Response events have been called. Though wholesale market participation of DERs has yet to be tested as current program enrollment does not yet meet the minimum CAISO aggregation levels, per customer event performance has so far exceeded initial projections. This is in part due to a successful integration with smart thermostat company Ecobee, which has allowed CPA to test direct load control.
Residential Marketing and Enrollment
A wide array of channels have been utilized to market the CPA Power Response program, including email, CPA website, social media, direct mail, radio, Community Based Organization (CBO) partnerships, and outreach has been conducted in multiple languages. Residential customers enroll in the program using a mobile application, and CPA has been able to gather valuable demographic information about program participation through optional enrollment surveys (see Appendix for detail). In July, Olivine also launched integration with the smart thermostat company Ecobee, which allowed CPA to market Power Response to its customers directly through the Ecobee app.

Commercial Marketing and Enrollment
The commercial enrollment process is more high-touch than for residential customers due to CAISO requirements. Customers are required to determine what level of reduction they are able to commit to during events and complete multiple forms. Therefore, rather than mass marketing strategies like those employed for residential customers, CPA focused on direct customer engagement methods to reach commercial customers. The CPA Key Accounts team developed lead lists and reached out to customers directly, and CPA hosted webinars to promote Power Response to commercial customers and promoted the program through regional Chambers of Commerce.

Lessons Learned
Although the Power Response program design is robust, customer acquisition requires an updated approach. Customer acquisition challenges have been significant, especially for commercial customers. These challenges include CPA having limited access to information regarding existing installed customer DERs, making targeted outreach limited. Additionally, staff learned that customers with previously installed technologies were less likely or unable to participate in Power Response due to the existing value propositions of their DER equipment agreements. Lastly, while the pilot has shown that trade ally (DER vendors/installers) partnerships are a successful way to drive customer acquisition, negotiating these trade ally partnerships on an ad-hoc basis during the pilot
has been complicated and inefficient. The uncertain length and limited scope of the pilot also made it difficult to negotiate these partnership agreements.

To address these challenges, CPA should adjust the program delivery model to work in partnership with trade allies who are already engaging customers in the market to drive customer acquisition and make Power Response part of the up-front value proposition for customers. Additionally, CPA should consider broadening the program’s focus beyond leveraging existing infrastructure to include customers who are installing new equipment and potentially providing installation incentives. This could substantially increase the program cost but also lead to greater benefits to both customers and CPA as it would drive increased installation of DER equipment and broaden the reach of Power Response. As an example, Power Response will be coordinated with CPA’s upcoming CALeVIP electric vehicle charger incentive program to increase demand response participation.

**Future Program Direction and Next Steps**

CPA Power Response is an important tool to realize the objectives identified in the Resiliency and Grid Management category of the CPA Local Programs for a Clean Energy Future plan. Robust demand response programs can help contribute to grid resiliency and reliability, provide incentives and savings to customers, lower CPA’s procurement costs, and shift customer usage to less GHG intensive times of day. Leveraging and building upon existing DER market activity by working with a program implementer (like Olivine) and a trade ally network will help CPA Power Response more efficiently reach its customer acquisition goals. Continuing Power Response with an added focus on newly installed equipment, rather than only existing equipment, will also allow CPA to reach customers before they have committed to other programs or methods to optimize their DER equipment.

Next steps for staff will be preparing to make adjustments to the Power Response program delivery model to address the customer acquisition challenges in the pilot, while maintaining program branding and building upon pilot successes. Staff plans to release
this RFP in early 2021 for an implementer to deliver a demand response program model that is focused on customer acquisition through the development of a trade ally network. In this program model, CPA will retain oversight of program implementation, marketing, and trade ally selection and management, which will be critical to the quality and success of the program. Staff will also be continuing financial analysis to determine the optimal scope and scale of Power Response going forward.

ATTACHMENTS

1) Summary of Power Response Pilot Incentive Budget
2) Survey Results
3) Enrollment Map Highlighting Residential DAC Participation
4) CPA Power Response Program Update Presentation
# Summary of Power Response Pilot Incentive Budget

<table>
<thead>
<tr>
<th>Technology Pillar</th>
<th>Units</th>
<th>Estimated # of Participants</th>
<th>Enrollment Incentive</th>
<th>Participation Incentive / Year</th>
<th>Total</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>I. Smart Thermostats</strong></td>
<td><strong>600 existing/ 300 new</strong></td>
<td><strong>600 existing/ 300 new</strong></td>
<td>$100</td>
<td>$100</td>
<td>$155,000</td>
</tr>
<tr>
<td>Residential</td>
<td>775</td>
<td>775</td>
<td>$100</td>
<td>$100</td>
<td>$155,000</td>
</tr>
<tr>
<td>Residential – DAC/low-income</td>
<td>125</td>
<td>125</td>
<td>$125</td>
<td>$125</td>
<td>$31,250</td>
</tr>
<tr>
<td><strong>Pillar I Total</strong></td>
<td><strong>900</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$186,250</strong></td>
</tr>
<tr>
<td><strong>II. Solar + Storage</strong></td>
<td><strong>Committed Capacity (kW)</strong></td>
<td><strong>$/kW-year</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Residential</td>
<td>85</td>
<td>85</td>
<td>$100</td>
<td>$100</td>
<td>$17,000</td>
</tr>
<tr>
<td>Residential – DAC/low-income</td>
<td>15</td>
<td>15</td>
<td>$125</td>
<td>$125</td>
<td>$3,750</td>
</tr>
<tr>
<td>Commercial</td>
<td>1800</td>
<td>90</td>
<td>$250</td>
<td>$100</td>
<td>$202,500</td>
</tr>
<tr>
<td>Commercial – DAC</td>
<td>600</td>
<td>30</td>
<td>$300</td>
<td>$125</td>
<td>$84,000</td>
</tr>
<tr>
<td>Direct Installation Incentive</td>
<td>2,500</td>
<td></td>
<td></td>
<td></td>
<td><strong>172,300</strong></td>
</tr>
<tr>
<td><strong>Pillar II Total</strong></td>
<td><strong>220</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$307,250</strong></td>
</tr>
<tr>
<td><strong>III. Commercial EV Charging</strong></td>
<td><strong>Committed Capacity (kW)</strong></td>
<td><strong>$/kW-year</strong></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Commercial</td>
<td>750</td>
<td>42</td>
<td>$250</td>
<td>$100</td>
<td>$85,000</td>
</tr>
<tr>
<td>Commercial – DAC</td>
<td>250</td>
<td>14</td>
<td>$300</td>
<td>$125</td>
<td>$39,200</td>
</tr>
<tr>
<td><strong>Pillar III Total</strong></td>
<td><strong>56</strong></td>
<td></td>
<td></td>
<td></td>
<td><strong>$134,200</strong></td>
</tr>
<tr>
<td><strong>Pillar Incentive Totals</strong></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td><strong>$800,000</strong></td>
</tr>
</tbody>
</table>
Enrollment Survey Results (Residential Only)

How Did You Hear About Power Response?

Enrolled Customers by Race

Household Income
Household Type

- Single family home: 204 (80.0%)
- Mobile home: 1 (0.4%)
- Low-rise apartment or condo building (3 stories or fewer): 37 (14.5%)
- Duplex/Triplex: 5 (2.0%)
- High-rise apartment or condo building (4 stories or more): 8 (3.1%)
Enrollment Map Highlighting Residential DAC Participation
CPA Power Response

Pilot Program Update and Future Directions

November 5, 2020
Agenda

- What is Demand Response?
- Pilot Program Background
- Current State and Lessons Learned
- Plans to Scale in 2021 and Beyond
What is Demand Response?
Demand Response

- Demand response provides an opportunity for consumers to play a role in the operation of the electric grid by reducing or shifting their electricity usage during peak periods in response to time-based rates, financial incentives, and/or reliability events.

- Demand response programs are being used to balance supply and demand and were effective this past summer during extreme heat events.

- Demand response programs often use assets that are deployed across the grid, usually behind the meter, which can save customers money.

- When aggregated, these assets can also provide value to the grid.

- Assets that can be used for demand response include solar, storage, energy efficiency technologies, electric vehicle infrastructure and modified customer behavior – these assets are often referred to as Distributed Energy Resources (DERs).
Customers and Demand Response

- Customers can participate in demand response events by adjusting their equipment manually or automatically through an agreement to allow their equipment to be controlled by a demand response implementer during events.

- Customers receive incentives for both signing up for the program and for participation in events in addition to potential bill savings.

Key features of CPA's Power Response demand response events are:

- Day ahead notification to customers.
- Limited to 5 events per month, and maximum of 35 events per year.
- Option for customers to decline a certain number of events per year.
- Events last between 2 and 4 hours.
- Limited to 4-9pm.
CPA and Demand Response

Power Response can provide financial benefits to CPA that offset some or all of program costs, as well as other benefits, while engaging with customers to be co-managers of the energy system. Benefits include:

- Reduced wholesale energy purchases
- Wholesale market revenues from aggregated customer reductions
- Avoided GHG emissions during evening peak
- Grid reliability benefits
CPA Power Response
Pilot Program Background
Program History

- In October 2019, the CPA Board approved a services agreement with Calpine and Olivine as an amendment to the Calpine Data Management contract for the implementation of a 12-18 month demand response pilot program (CPA Power Response).

- After four months of implementation planning, the program launched in February of 2020 for customer enrollment.

- Calpine funded the planning and implementation costs ($1.4 million).

- CPA funded incentive ($800,000) and marketing costs ($300,000).
Program Implementor: Olivine Inc.

- An industry leader in DER program design, deployment and operations, Olivine has successfully implemented DER programs for other utilities and CCAs

- Olivine has had lead responsibility for implementation activities and operations of the CPA Power Response pilot program

- Olivine has also acted as CPA’s Demand Response Implementer and Scheduling Coordinator for DER Resources, with the ability to aggregate load reduction from DERs for bidding into the wholesale market
Pilot Program Goals

- Gain experience implementing demand response programs within the CPA territory and Southern California industry landscape
- Further develop our customer relationships by offering program services and resources
- Customer bill savings from shifting energy consumption and reducing demand charges
- Maximize value for customers of their existing assets
- Management of DER resources to provide maximum wholesale cost savings and revenue generation from wholesale market participation
- Meet enrollment goals (1,000 residential customers, 170 commercial)
- Provide energy expertise to commercial/non-residential customers
# Power Response Program Pillars

The Power Response pilot program is comprised of three pillars targeting different customer segments and designed to leverage existing customer equipment.

<table>
<thead>
<tr>
<th>Pillar</th>
<th>Description</th>
<th>Target Segment</th>
</tr>
</thead>
<tbody>
<tr>
<td>EV Charging</td>
<td>Pays customers to allow CPA to shed EV charging load during events</td>
<td>Commercial &amp; Municipal</td>
</tr>
<tr>
<td>Solar + Storage</td>
<td>Pays customers with onsite solar and battery to discharge batteries during events and help CPA shift load</td>
<td>Commercial &amp; Residential, including Disadvantaged Communities (DACs)</td>
</tr>
<tr>
<td>Smart Thermostat</td>
<td>Pays customers who manually reduce their A/C load during events or allow CPA to control smart thermostats remotely</td>
<td>Residential, including Disadvantaged Communities (DACs)</td>
</tr>
</tbody>
</table>
Current State and Lessons Learned
Current State

- The CPA Power Response Pilot Program is now in its 9th month

- Steady enrollment has occurred in the residential smart thermostat segment of the program

- Commercial/residential battery and commercial EV have had far less customer enrollment

- First demand response event called in August 2020 for smart thermostat customers

- The program was also activated during CAISO Flex Alert and Grid Alert events during August and September

- Wholesale market aggregation of DERs has yet to be tested as current program enrollment does not meet the minimum CAISO aggregation levels
Residential Marketing and Enrollment

- Wide array of channels utilized to market the program, including email, CPA website, social media, direct mail, radio, and CBO partnerships

- Outreach conducted in multiple languages – English, Spanish, Chinese, Tagalog

- In July, Olivine also launched a direct integration with thermostat company Ecobee, which allowed CPA to market Power Response to its customers through their app

- Residential customers enroll using a mobile application and CPA has been able to gather valuable demographic information about program participation through optional enrollment surveys
Sample Residential Postcard Mailer

The Power of Working Together for Sustainable Solutions

Clean Power Alliance customers who already own smart thermostats can earn financial rewards and help the environment at the same time!

Learn more & enroll in our CPA Power Response program today!

cleanpoweralliance.org/respowerresponse
Sample Residential Social Media Marketing

Go all out at the cookout!
Save money and energy during the summer quarantine!

¡Ponte las pilas!
¡Ahorra energía con el termostato inteligente, ahorra dinero!

動動手指就能省
電省錢又友善地球
# Residential Enrollment Stats

<table>
<thead>
<tr>
<th>Residential Enrollment (including DAC)</th>
<th>Program Target</th>
<th>Current Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thermostats</td>
<td>900</td>
<td>402</td>
</tr>
<tr>
<td>Battery Energy Storage</td>
<td>100</td>
<td>15</td>
</tr>
<tr>
<td>Enrollment Incentives</td>
<td>$103,500</td>
<td>$43,625</td>
</tr>
<tr>
<td>Participation Incentives</td>
<td>$103,500</td>
<td>$10,878</td>
</tr>
<tr>
<td>Total Incentives</td>
<td>$207,000</td>
<td>$54,503</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>DAC residential only</th>
<th>Program Target</th>
<th>Current Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Thermostats</td>
<td>125</td>
<td>56</td>
</tr>
<tr>
<td>Battery Energy Storage</td>
<td>15</td>
<td>1</td>
</tr>
<tr>
<td>Enrollment Incentives</td>
<td>$17,500</td>
<td>$7,125</td>
</tr>
<tr>
<td>Participation Incentives</td>
<td>$17,500</td>
<td>$1,781</td>
</tr>
<tr>
<td>Total Incentives</td>
<td>$35,000</td>
<td>$8,906</td>
</tr>
</tbody>
</table>
## Residential Program Performance Stats

<table>
<thead>
<tr>
<th>Program Target</th>
<th>Current Status</th>
<th>Highlights</th>
</tr>
</thead>
<tbody>
<tr>
<td>Events Held</td>
<td>15</td>
<td>• Increased auto control to 83 thermostats</td>
</tr>
<tr>
<td>Thermostat Impact (per event)</td>
<td>0.63 kW</td>
<td>• High event engagement / acceptance rate (~50%)</td>
</tr>
<tr>
<td>Storage Impact (per event)</td>
<td>0.74 kW</td>
<td>• High effectiveness per thermostat</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Low customer dissatisfaction / event-related tickets</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Successfully navigated and helped alleviate early heat</td>
</tr>
<tr>
<td></td>
<td></td>
<td>waves and energy shortages</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Program Target</th>
<th>Target</th>
<th>Current Status</th>
<th>Program Target</th>
<th>Target</th>
<th>Current Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>Events Held</td>
<td>Up to 35/yr</td>
<td>15</td>
<td>Thermostat Impact (per event)</td>
<td>0.325 kW</td>
<td>0.63 kW</td>
</tr>
<tr>
<td>Storage Impact (per event)</td>
<td>1 kW</td>
<td>0.74 kW</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Commercial Marketing and Enrollment

- Rather than mass marketing strategies like those employed for residential customers, CPA focused on direct customer engagement methods to reach commercial customers.

- CPA Key Accounts team developed lead lists and reached out to customers directly, and CPA also hosted a webinar to promote Power Response to commercial customers.

- CPA also conducted targeted email outreach to commercial customers and promoted the program through regional Chambers of Commerce.

- The Commercial customer enrollment process is more high touch, and requires the customer to commit to a certain level of reduction during events and complete paper enrollment forms.
# Commercial Enrollment Stats

<table>
<thead>
<tr>
<th></th>
<th>Program Target</th>
<th>Current Status</th>
</tr>
</thead>
<tbody>
<tr>
<td>EV Chargers</td>
<td>56 customers (1.25 MW)</td>
<td>3 (60 MW)</td>
</tr>
<tr>
<td>Battery Energy Storage</td>
<td>120 customers (2.4 MW)</td>
<td>0</td>
</tr>
<tr>
<td>Enrollment Incentives</td>
<td>$46,200</td>
<td>$500</td>
</tr>
<tr>
<td>Participation Incentives</td>
<td>$374,500</td>
<td>$3,000</td>
</tr>
<tr>
<td>Total Incentives</td>
<td>$420,700</td>
<td>$3,500</td>
</tr>
</tbody>
</table>
Lessons Learned

- The Power Response program is robust in terms of incentives offered, event parameters and other program details, but customer acquisition requires an updated approach.

- Customer acquisition challenges have been significant, especially in the commercial sector:
  - Access to information regarding existing installed customer DER technology is limited, making targeted outreach challenging.
  - Customers with previously installed technologies were less likely to participate in Demand Response by adding to existing agreements.
  - Negotiating trade ally* partnerships on an ad hoc basis was complicated and inefficient.

*Trade Ally refers to installers and vendors that can help deliver energy programs to customers in course of their existing activities (i.e. installing solar paired with storage)
Lessons Learned

- CPA should work in partnership with trade allies who are already in the market space to enhance customer acquisition.

- CPA should consider broadening its focus beyond leveraging existing infrastructure to include more equipment installation incentives – this could substantially increase the program cost but also lead to greater benefits to both customers and CPA.

- Coordination of Power Response with CPA’s upcoming electric vehicle charger incentives can increase demand response participation in this part of the program.
Future Program Direction
The Future of Power Response

- Demand response is an important tool to realize CPA’s policy/procurement/program objectives identified in the Local Programs Plan.

- Robust demand response programs can help contribute to grid resiliency and reliability.

- Power Response can leverage and build upon existing market activity by working with a program implementer and a trade ally network to more efficiently reach our customer acquisition goals.

- Continuing Power Response with a focus on newly installed equipment, rather than existing equipment, will allow CPA to reach customers before they have committed to other programs.
Costs/Benefit Considerations

Power Response provides financial benefits to CPA that can offset some or all of the program costs, *if program participation is broad enough*

- In the next phase of Power Response implementation, staff will seek to balance the desire for broad program reach with budgetary constraints.

- A program with more generous incentives may be less cost effective and therefore be available to fewer customers given CPA budget constraints.

- A program with less generous incentives will be available to more customers, but customer acquisition could be more difficult.
# Benefits and Costs of Power Response

<table>
<thead>
<tr>
<th>CPA</th>
<th>Customer</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Benefits</strong></td>
<td><strong>Customer</strong></td>
</tr>
<tr>
<td>Avoided wholesale purchases</td>
<td>Bill savings</td>
</tr>
<tr>
<td>Aggregated wholesale market delivery revenues</td>
<td>Incentives to offset cost of DER equipment</td>
</tr>
<tr>
<td>Avoided GHG emissions</td>
<td>Grid reliability</td>
</tr>
<tr>
<td>Grid reliability</td>
<td></td>
</tr>
<tr>
<td><strong>Costs</strong></td>
<td><strong>DER equipment cost, if applicable</strong></td>
</tr>
<tr>
<td>Marketing, education, and outreach</td>
<td></td>
</tr>
<tr>
<td>Program implementation, administration, and operations</td>
<td></td>
</tr>
<tr>
<td>CPA staffing costs</td>
<td></td>
</tr>
<tr>
<td>Customer incentives</td>
<td></td>
</tr>
<tr>
<td>Lost retail energy revenues during events</td>
<td></td>
</tr>
</tbody>
</table>
Next Steps

- Maintain program branding, programmatic framework, and build upon program success while addressing the challenges in customer acquisition

- Prepare to release an RFP in early 2021 for a third-party implementer to deliver a demand response program model that is focused on customer acquisition through the development of a trade ally network
  - Focus on trade ally partnerships that will increase value of DR through options for direct load control

- CPA will retain oversight of program implementation, marketing, and trade ally selection and management, which is critical to the quality and success of the program

- Continue financial analysis to determine optimal scope and scale of Power Response going forward
2019 Power Content Label Customer Communications

In December, CPA will be delivering its annual Power Content Label (PCL) for 2019 to all customers who were served by CPA during that calendar year, per its statutory requirement. The mailer will include both the official PCL itself as well as general information about CPA.

CPA received its final 2019 PCL from the California Energy Commission (CEC) on October 26, 2020, based on independently audited data. The format and content of the PCL is highly regulated by the CEC and is undergoing a significant transition for the 2019 and 2020 reporting years as a result of AB 1110 (2016). The intention of AB 1110 was to provide enhanced information and transparency around both the sources of energy customers receive and the Greenhouse Gas intensities of those resources.

How these statutory changes and resulting regulations treat CPA’s one-time use of Unbundled RECs during the 2019 calendar year are likely to cause inquiries from customers and stakeholders. Unbundled RECs consist of the environmental attributes of renewable energy sold separate and apart from the energy itself, similar to a GHG offset. As an environmental compliance product, in 2019 they cost approximately nine times less than the vast majority of CPA’s other renewable energy purchases.

In order to overcome financial challenges during CPA’s first full year of operations, including the application of a PCIA trigger amount from SCE’s 2018 $850 million under-collection, in July 2019 the Board authorized purchases of Unbundled RECs, which are
discouraged but not prohibited by CPA’s Joint Powers Authority agreement. CPA then purchased Unbundled RECs to fill all of its renewable energy needs for the Lean Power product and for 3% of its renewable energy needs for the Clean Power product. No Unbundled RECs were used for the 100% Green product. On a total portfolio basis, 15% of CPA’s renewable energy purchases for 2019 were fulfilled by Unbundled RECs. CPA has not purchased Unbundled RECs for 2020 or any subsequent years.

Beginning with the 2019 reporting year, Unbundled RECs are reported as a separate line item on the PCL, not part of the standard energy portfolio composition. As a result, CPA’s official 2019 PCL will appear as shown below.

<table>
<thead>
<tr>
<th>ENERGY RESOURCES</th>
<th>Lean Power</th>
<th>Clean Power</th>
<th>100% Green Power</th>
<th>2019 CA Power Mix</th>
</tr>
</thead>
<tbody>
<tr>
<td>Eligible Renewable 1</td>
<td>0.0%</td>
<td>47.5%</td>
<td>100.0%</td>
<td>31.7%</td>
</tr>
<tr>
<td>Biomass &amp; Biowaste</td>
<td>0.0%</td>
<td>4.8%</td>
<td>1.0%</td>
<td>2.4%</td>
</tr>
<tr>
<td>Geothermal</td>
<td>0.0%</td>
<td>8.9%</td>
<td>0.0%</td>
<td>4.8%</td>
</tr>
<tr>
<td>Eligible Hydroelectric</td>
<td>0.0%</td>
<td>0.3%</td>
<td>0.0%</td>
<td>2.0%</td>
</tr>
<tr>
<td>Solar</td>
<td>0.0%</td>
<td>7.4%</td>
<td>89.6%</td>
<td>12.3%</td>
</tr>
<tr>
<td>Wind</td>
<td>0.0%</td>
<td>26.0%</td>
<td>9.4%</td>
<td>10.2%</td>
</tr>
<tr>
<td>Coal</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>3.0%</td>
</tr>
<tr>
<td>Large Hydroelectric</td>
<td>1.4%</td>
<td>13.5%</td>
<td>0.0%</td>
<td>14.6%</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>0.0%</td>
<td>0.1%</td>
<td>0.0%</td>
<td>34.2%</td>
</tr>
<tr>
<td>Nuclear</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>9.0%</td>
</tr>
<tr>
<td>Other</td>
<td>0.0%</td>
<td>0.3%</td>
<td>0.0%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Unspecified sources of power</td>
<td>98.5%</td>
<td>38.5%</td>
<td>0.0%</td>
<td>7.3%</td>
</tr>
<tr>
<td>TOTAL</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
<td>100%</td>
</tr>
<tr>
<td>Percentage of Retail Sales Covered by Retired Unbundled RECs 2</td>
<td>36.0%</td>
<td>3.0%</td>
<td>0.0%</td>
<td></td>
</tr>
</tbody>
</table>

1The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology.

2Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source.

3Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.

The unbundled RECs retired for and associated with the Lean Power and Clean Power portfolios were created by eligible renewable energy generators, including biomass, wind, solar, and eligible hydroelectric.

For specific information about this electricity product, contact: Clean Power Alliance of Southern California (888) 585-3788

For general information about the Power Content Label, please visit: http://www.energy.ca.gov/pcl/

For additional questions, please contact the California Energy Commission at: Toll-free in California: 844-454-2906

Outside California: 916-653-0237
Other parts of the mailer will highlight CPA accomplishments, including reduction of greenhouse gas emissions, job creation, investment in local economies, and financial assistance for customers impacted by the pandemic. We will thank our customers and communities for their role in building a clean energy future and show a breakdown of how many customers are on each rate product.

Prior to the distribution of the PCL mailer to customers, CPA Board members will receive a copy as well as talking points for customers and other stakeholders.

In 2020, the PCL will once again undergo a formatting change, adding GHG emission intensities and changing the way GHG emissions are calculated for out-of-state renewables. Combined with CPA not purchasing Unbundled RECs in 2020 and subject to further regulatory modifications by the CEC, CPA expects that its 2020 PCL will look similar to the example below. This PCL will be distributed to customers in Q4 2021.

---

**EXAMPLE ONLY - 2020 Power Content Label**

**Clean Power of Southern California**

[https://cleanpoweralliance.org/power-sources/](https://cleanpoweralliance.org/power-sources/)

<table>
<thead>
<tr>
<th>Greenhouse Gas Emissions Intensity (in kg CO2e/MWh)***</th>
<th>Energy Resources</th>
<th>Lean Power**</th>
<th>Clean Power**</th>
<th>100% Green Power**</th>
</tr>
</thead>
<tbody>
<tr>
<td>CA State Average</td>
<td>Biomass &amp; biowaste</td>
<td>40.0%</td>
<td>50.0%</td>
<td>100.0%</td>
</tr>
<tr>
<td></td>
<td>Geothermal</td>
<td>3.7%</td>
<td>4.8%</td>
<td>1.0%</td>
</tr>
<tr>
<td></td>
<td>Eligible hydroelectric</td>
<td>3.0%</td>
<td>8.9%</td>
<td>0.0%</td>
</tr>
<tr>
<td></td>
<td>Solar</td>
<td>1.1%</td>
<td>0.3%</td>
<td>0.0%</td>
</tr>
<tr>
<td></td>
<td>Wind</td>
<td>22.3%</td>
<td>9.9%</td>
<td>89.6%</td>
</tr>
<tr>
<td></td>
<td>TOTAL</td>
<td>9.9%</td>
<td>26.0%</td>
<td>9.4%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Energy Resources</th>
<th>Lean Power</th>
<th>Clean Power</th>
<th>100% Green Power</th>
<th>CA State Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>Biomass &amp; biowaste</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>3.0%</td>
</tr>
<tr>
<td>Geothermal</td>
<td>0.0%</td>
<td>5.0%</td>
<td>0.0%</td>
<td>14.6%</td>
</tr>
<tr>
<td>Eligible hydroelectric</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>34.2%</td>
</tr>
<tr>
<td>Solar</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>9.0%</td>
</tr>
<tr>
<td>Wind</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.0%</td>
<td>0.2%</td>
</tr>
<tr>
<td>Natural Gas</td>
<td>0.0%</td>
<td>45.0%</td>
<td>0.0%</td>
<td>7.3%</td>
</tr>
<tr>
<td>Nuclear</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Percentage of Retail Sales Covered by Retired Unbundled RECs</th>
<th>CA State Average</th>
</tr>
</thead>
<tbody>
<tr>
<td>TOTAL</td>
<td>100.0%</td>
</tr>
</tbody>
</table>

Footnotes:

*CPA is using 2019 CA Power Mix as a proxy for 2020
**CPA estimates for 2020 Lean, Clean and 100% Green Power product mixes
***CPA estimates of each power product's 2020 GHG emissions intensities (new for 2020 reporting year)

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**Rotating Outages Root Cause Analysis**

On October 6, 2020, the California Public Utilities Commission (CPUC), California Energy Commission (CEC), and the California Independent System Operator (CAISO) (Joint Agencies) released their preliminary root cause analysis of the rotating outages and associated grid stress that occurred throughout the state in mid-August. On October 12,
2020, the Assembly Utilities and Energy Committee, chaired by Assemblymember Holden, held an oversight hearing with testimony from the heads of the Joint Agencies. While the majority of outages in Southern California in August were related to local distribution equipment failure and other infrastructure related issues brought on by high temperatures, the focus on the rotating outages has been intense because they highlight potential systemic weaknesses in the management of California’s electricity grid.

Three main causes and five suggested policy recommendations were contained in the Joint Agencies’ report, while legislators expressed frustration with the Joint Agencies’ lack of planning as a whole and clearly communicated a sense of urgency around near-term solutions in advance of next summer.

Attached to this Management Update is a copy of the staff report provided to the Executive Committee at its October 21, 2020 meeting (Attachment 1). The staff report summarizes the Joint Agencies’ root cause analysis and policy recommendations, discusses key items raised by legislators, and concludes with an analysis of challenges and leadership opportunities for CPA over the next year as the policy discussion evolves over the rest of the year and through 2021.

In addition to the negative financial impact grid emergencies and related market turmoil can have on CPA, as noted in the next section, the overall cost to customers to comprehensively address reliability issues could be significant. At the same time, with its early investments in energy storage and conservative risk management approach, CPA is well placed to address these additional costs and has an opportunity to improve its competitive position as additional reliability measures are taken statewide. CPA’s customer communications and demand response programs worked well during the August events, helping reduce stress on the grid and, perhaps, increasing customer acceptance of, and interest in, demand response programs.

**Financial Performance**

CPA recorded a loss of $11.86 million in August. The loss follows a $16.91 million gain in July 2020, and reduced year to date net income to $5.05m. August results were negatively impacted by an overestimation of July revenue that was reversed in the month along with the impact of the sustained heat wave in mid-August. The extreme heat event and related
CAISO grid emergency exposed CPA to high spot market prices and CAISO charges for grid management that were seven times greater than a typical month. Higher costs were offset by higher revenue from electricity sales.

CPA had $70.4 million in cash and cash equivalents and $36 million available on its line of credit as of August 31, 2020 and staff believes that CPA emerged from this summer’s extreme heat events in sound financial health.

This month’s financial dashboard is provided as Attachment 2. Financial statements for full Q1 FY 2020-21 will be presented to the board at its December meeting.

**COVID-19 Bill Credit Program Status**

CPA distributed approximately 6,000 additional bill credits during the month of October with a significant proportional increase in small business credits compared to other months since the program began in May 2020, with credits retroactive to March 16, 2020. Assistance is available in the form of credits on customer bills for customers that sign-up for the CARE/FERA/Medical Baseline (C/F/MB) programs and for existing CARE/FERA/Medical Baseline and small business customers who sign up for extended payment plans (PP-C/F/MB and PP-Small Com respectively). As of October 29, credits have been authorized in the following manner.

<table>
<thead>
<tr>
<th>Program Type</th>
<th>Bill Credit Amount</th>
<th>Number of Accounts</th>
</tr>
</thead>
<tbody>
<tr>
<td>C/F/MB</td>
<td>$1,147,024.82</td>
<td>46,021</td>
</tr>
<tr>
<td>PP - C/F/MB</td>
<td>$244,622.71</td>
<td>9,787</td>
</tr>
<tr>
<td>PP - Small Com</td>
<td>$78,223.74</td>
<td>1,593</td>
</tr>
<tr>
<td><strong>Grand Total</strong></td>
<td><strong>$1,469,871.27</strong></td>
<td><strong>57,401</strong></td>
</tr>
</tbody>
</table>

Outreach on the COVID-19 bill relief program continues via print, digital and bus ads along with targeted e-blasts to lower-income communities and to small business customers where credit uptake has been lowest.

**Customer Engagement & Community Based Outreach**

On October 28 the CPA Customer Programs team and our Power Response partner Olivine conducted a Battery Storage 101 webinar to provide commercial and municipal customers with insights on the uses and benefits of storage and how to maximize the...
value of storage and solar investments and incentives. Over 80 customers and stakeholders participated in the webinar, which featured a roundtable discussion with battery storage developers and manufacturers and enabled the CPA team to collect survey data on participants’ interests and plans regarding solar and storage investments. A follow-up webinar on November 10 will focus on the CPA Battery Rebate Program, taking customers through the application process and the resources available to help them plan a successful battery storage project.

The Malibu, Sierra Madre, and Rolling Hills Estates new default changes took effect October 1 and a second notice was mailed to customers in those communities at the end of October.

**Customer Opt-Actions**

As of October 27, CPA’s commercial (Phases 1, 2, 4, and 5) opt-out rate was 7.43% and residential (Phase 3, 5) opt-out rate was 6.26%. A summary of opt-action data by jurisdiction is attached (Attachments 3 and 4). Opt-out rates among Phase X customers (missing enrollments subject to the June legal settlement between CPA and SCE) is currently at 3.67%. Total active customers as of October 27 was 1,002,420.

Opt-Actions in the cities that changed default levels in October – Malibu, Sierra Madre, Rolling Hills Estates – have been minimal. Less than 0.3% of customers have opted-out, while 2.25% of customers have changed their rate levels to something other than the new default. These opt-action numbers are likely to increase when customers receive their second notice of a default change and a full billing cycle has been completed.

**Customer Service Center Performance**

Incoming calls to CPA’s Customer Service Center have returned to normal levels of just over 5,000 calls per month after trending upwards in September as new Phase X customers received their first CPA bills, other customers received higher bills than normal due to the summer heat waves, and three member jurisdictions changed their default levels. Recent staff increases at the call center have also reduced call wait times back to normal levels. As of October 27, 95.5% of calls were answered within 60 seconds, and

1 Commercial only
average wait time was 17 seconds, compared to 86.7% and 32 seconds respectively in September.

**Office Construction Update**

Construction of CPA’s new offices in Downtown Los Angeles is 30% complete, with framing, rough-in electrical, plumbing, HVAC, and low-voltage/AV almost finished. COVID-19 related permitting and inspection delays have pushed the scheduled date of completion of the project from Thanksgiving to approximately the third week of December. CPA does not pay rent on its new offices until construction is completed.

CPA staff continue to work remotely, with a temporary drop-in space available for those needing to take a break from home-based work. Management will be preparing protocols for returning to the new offices in the New Year in conformance with the developing public health situation and Los Angeles County reopening guidelines.

**Staffing Updates**

Joseph Cabral has been hired as CPA’s External Affairs Manager for Ventura County. Most recently working with the US Census Bureau and a former journalist with the VC Reporter, Joe spent more than a decade as Communications Manager for the City of Lancaster, where he gained familiarity with CCA issues. Joe will work with CPA member agencies and community stakeholders in Ventura County and assist the External Affairs team with CPA-wide communications activities. Joe is a resident of Oxnard.

Amrit Singh, CPA’s recently hired Manager of Market Risk, is departing CPA to become Chief Financial Officer of Silicon Valley Clean Energy, the CCA serving most of Santa Clara County.

**Contracts Executed in October Under Executive Director Authority**

A list of non-energy contracts executed under the Executive Director’s signing authority is attached (Attachment 5). The list includes all open contracts as well as all contracts, open or completed, executed in the past 12 months.

**ATTACHMENTS**

1) Executive Committee Staff Report on Rotating Outages

2) August 2020 Financial Dashboard
3) Residential Opt-Actions Report by Jurisdiction
4) Non-Residential Opt-Actions Report by Jurisdiction
5) Non-Energy Contracts Executed under Executive Director Authority
To: Clean Power Alliance (CPA) Executive Committee
From: Ted Bardacke, Executive Director
Subject: Rotating Outages Root Cause Analysis
Date: October 21, 2020

BACKGROUND/DISCUSSION
On October 6, 2020, the California Public Utilities Commission (CPUC), California Energy Commission (CEC), and the California Independent System Operator (CAISO) (Joint Agencies) released their preliminary root cause analysis of the rotating outages and associated grid stress that occurred throughout the state in mid-August. Three main causes and five suggested policy recommendations were contained in the Joint Agencies’ report. On October 12, 2020, the Assembly Utilities and Energy Committee, chaired by Assemblymember Holden, held an oversight hearing with testimony from the heads of the Joint Agencies. Legislators expressed frustration with the Joint Agencies’ lack of planning as a whole and clearly communicated a sense of urgency around near-term solutions in advance of next summer.

This staff report summarizes the Joint Agencies’ root cause analysis and policy recommendations, discusses key items raised by legislators, and concludes with an analysis of challenges and leadership opportunities for CPA over the next year as the policy discussion – which CPA has an opportunity to shape – evolves over the rest of the year and through 2021.

Throughout the root cause analysis and legislative hearing, with a few exceptions, California’s near and long-term clean energy future, powered mostly by renewably generated electricity, remains unquestioned. The focus has almost exclusively been on how to make the transition reliable, affordable, and swift.
Root Cause Analysis and Joint Agency Policy Recommendations

The root cause analysis began by maintaining, as the Joint Agencies have from the beginning, that all Load Serving Entities (LSEs) performed to their requirements and played by the rules they were given. Instead, they identified the main causes of the rotating outages as those rules no longer being adequate and appropriate for both a changing climate and resource mix. In particular, the root cause analysis identified the following:

1. **Demand for electricity during a climate-change induced extreme heat storm across the western United States significantly exceeded resource planning targets.** The CEC determined that the long duration and geographic breadth of the heat storm was a 1-in-35 year weather event, while resource planning targets a 1-in-2 weather event.\(^1\) One can quibble with whether 1-in-35 is the right number; nevertheless with climate change we can assume that events like these will become much more common. *It is clear that current resource planning targets are not appropriately calibrated for the full effects of changing weather patterns.*

\(^1\) Four of California’s five hottest August days in the last 35 years came this past August. Heat not only drives up electricity demand but sustained heat over several days stresses generation and transmission infrastructure, while associated fires puts key infrastructure at risk.
2. Resource planning targets, which have traditionally focused on the overall system peak, have failed to spur the development and availability of sufficient reliability resources being available to meet demand in the early evening hours – the “net peak.”\(^2\) As can be seen from the chart below, the rotating outages occurred after the system peak but coincided with the net peak.

![Figure ES.2: Demand and Net Demand for August 14 and 15](image)

In addition, all resources except for solar, delivered less energy in real time than they had capacity contracted for in the Resource Adequacy (RA) market. Due to outages and other deficiencies, natural gas missed its RA target the most. Sufficient imports were theoretically available, but transmission congestion prevented full delivery. And while demand response delivered significant resources, they were below what had been counted for in the RA capacity market. *It is clear that no one resource type was more responsible for resource deficiencies than others and that individual resource planning targets (called “qualifying capacity”) need to be revised; similarly, with the underperformance of the natural gas fleet, these resources should not be automatically deemed reliable.*

\(^2\) The “net peak” is the maximum demand on the system, less the contribution of solar and wind resources.
3. Some practices in CAISO's day-ahead energy market exacerbated the supply challenges under highly stressed conditions, including scheduling practices by LSEs, certain bidding practices, and mechanisms for committing the availability of particular resources. This is the most technically complicated of the three root causes, as it looks at a series of market design and industry practices that have developed over time but collectively caused problems in managing the grid in real time. The issue that has caught the most attention of media is load forecast error by LSEs, including CCAs, in the day-ahead market. Overall, at its worst, LSEs were collectively under-scheduled by 7% during the net peak on August 15. While we do not know at this time which LSEs performed better or worse than this average and with the understanding that load forecasts always deviate from actual load,\(^3\) it is clear that LSEs’ load forecasting tools and timeliness of the data driving those forecasts have not been designed to optimally perform in extreme conditions.

The Joint Agencies offered up five near-term actions they would be focusing on as a result of the August events and subsequent root cause analysis. These five are:

1. Update the resource and reliability planning targets to better account for:
   a. heat storms and other extreme events resulting from climate change;
   b. the changing electricity resource mix during critical hours of grid need
2. Ensure that the generation and storage projects that are currently under construction in California are completed by their targeted online dates
3. Expedite the regulatory and procurement processes to develop additional resources that can be online by 2021, most likely demand response and other flexible resources
4. Coordinate additional procurement by non-CPUC jurisdictional entities, e.g. Publicly Owned Utilities (POUs)

\(^3\) This issue is particularly acute during COVID-19 load conditions, which deviate significantly from historic norms.
5. Enhance CAISO market practices to ensure they accurately reflect the actual balance of supply and demand during stressed operating conditions

The challenges and opportunities for CPA presented by these five recommendations are discussed in a later section of this staff report.

**Legislative Oversight Hearing**

The overarching theme of the October 12 legislative oversight hearing was a perceived lack of urgency on the part of the Joint Agencies to act quickly in the face of a transition that has long been known was coming but not adequately planned for. Whether this frustration turns into more timely decisions and nimble cooperation among the Joint Agencies – particularly in advance of next summer and the planned retirement of Diablo Canyon in 2025⁴ – remains an open question.

Other recurring subjects raised were the potential need for a long duration storage legislative requirement and questions as to whether the 15% planning reserve margin needed to be increased. Both of these changes would require significant cost/benefit analysis and in the case of long duration storage, a legislative mandate would almost certainly focus on some of the highest cost resources with long lead times.

**Leadership Opportunities and Challenges for CPA**

Staff have identified challenges and opportunities linked to four of the five near-term recommendations made in the Joint Agencies report. These are summarized in the table below.

---

⁴ Diablo Canyon Nuclear Power Plant supplies approximately 10% of California’s energy needs on a 24/7 basis.
<table>
<thead>
<tr>
<th>Joint Agencies Recommendation</th>
<th>Opportunity</th>
<th>Challenge</th>
</tr>
</thead>
<tbody>
<tr>
<td>1) Update resource and reliability planning targets.</td>
<td>Fixing current issues with the RA Program and enhancing program design to improve system reliability would support CPA’s fast transition to a clean energy supply without significantly impacting competitiveness.</td>
<td>Poor RA Program design could lead to added complexity/costs to comply, thus increasing costs to customers.</td>
</tr>
<tr>
<td>2) Ensure current construction timelines are met.</td>
<td>Reduces project delivery risk.</td>
<td>None.</td>
</tr>
<tr>
<td>3) Procure additional demand response/flexible resources for 2021.</td>
<td>CPA has 2x the 2021 required resources already procured, so CPA could meet a significant new procurement mandate without taking any action, thus improving competitiveness. Lends more urgency to processes that could unlock more value for demand response.</td>
<td>CPUC could order additional procurement.</td>
</tr>
<tr>
<td>4) Coordinate procurement with POUs.</td>
<td>NA</td>
<td>NA</td>
</tr>
<tr>
<td>5) Enhance CAISO market practices.</td>
<td>Could improve timeliness of load data transfer from SCE as more timely data could lead to better load forecasting.</td>
<td>New practices could fail to address proven issues and instead unduly penalize good market actors like CPA.</td>
</tr>
</tbody>
</table>
CPA recorded a loss of $11.86 million in August 2020, reducing year to date net income to $5m.

The loss in August was driven by the following factors:

- A $2.4 million overestimation of prior month revenue was reversed in August. Absent this reversal, revenue and net income would have been $98.6m and -$9.5m respectively.
- A sustained heat wave in mid-August exposed CPA to high spot market prices. Day ahead load costs exceeded hedge revenues by $16.5m in August 2020 up from $1.6m in July 2020. CPA spent $8.4m serving the 10 most expensive hours in August as compared to $1.6m in July.
- The heat wave increased CAISO charges for grid operation more than seven-fold to $7.5m in August up from $1m in July. CPA’s share of CAISO charges for grid operation averaged $1.1m per month over the prior 12 months.
- Lower than expected commercial revenue.

CPA had $70.4 million in cash and cash equivalents and $36 million available on its line of credit as of August 31, 2020. Management believes the August results do not materially reduce CPA’s ability to meet it obligations as agreed.
## Clean Power Alliance - Residential Customer Status Report - As of October 27, 2020

<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>7,602</td>
<td>0.43%</td>
<td>0.24%</td>
<td>0.00%</td>
<td>7.55%</td>
</tr>
<tr>
<td>ALHAMBRA</td>
<td>Clean Power</td>
<td>31,506</td>
<td>0.16%</td>
<td>0.00%</td>
<td>1.42%</td>
<td>3.50%</td>
</tr>
<tr>
<td>ARCADIA</td>
<td>Lean Power</td>
<td>20,347</td>
<td>0.14%</td>
<td>0.09%</td>
<td>0.00%</td>
<td>3.59%</td>
</tr>
<tr>
<td>BEVERLY HILLS</td>
<td>Clean Power</td>
<td>15,447</td>
<td>0.23%</td>
<td>0.00%</td>
<td>1.73%</td>
<td>2.36%</td>
</tr>
<tr>
<td>CALABASAS</td>
<td>Lean Power</td>
<td>9,399</td>
<td>0.19%</td>
<td>0.16%</td>
<td>0.00%</td>
<td>3.99%</td>
</tr>
<tr>
<td>CAMARILLO</td>
<td>Lean Power</td>
<td>27,365</td>
<td>0.42%</td>
<td>0.29%</td>
<td>0.00%</td>
<td>9.28%</td>
</tr>
<tr>
<td>CARSON</td>
<td>Clean Power</td>
<td>26,202</td>
<td>0.09%</td>
<td>0.00%</td>
<td>1.27%</td>
<td>3.41%</td>
</tr>
<tr>
<td>CLAREMONT</td>
<td>Clean Power</td>
<td>12,436</td>
<td>0.60%</td>
<td>0.00%</td>
<td>2.27%</td>
<td>7.91%</td>
</tr>
<tr>
<td>CULVER CITY</td>
<td>100% Green Power</td>
<td>17,223</td>
<td>0.00%</td>
<td>1.37%</td>
<td>4.33%</td>
<td>4.49%</td>
</tr>
<tr>
<td>DOWNNEY</td>
<td>Clean Power</td>
<td>34,827</td>
<td>0.07%</td>
<td>0.00%</td>
<td>1.44%</td>
<td>4.17%</td>
</tr>
<tr>
<td>HAWAIIAN GARDENS</td>
<td>Clean Power</td>
<td>3,286</td>
<td>0.03%</td>
<td>0.00%</td>
<td>1.25%</td>
<td>2.74%</td>
</tr>
<tr>
<td>HAWTHORNE</td>
<td>Lean Power</td>
<td>25,863</td>
<td>0.14%</td>
<td>0.04%</td>
<td>0.00%</td>
<td>2.13%</td>
</tr>
<tr>
<td>LOS ANGELES COUNTY</td>
<td>Clean Power</td>
<td>293,696</td>
<td>0.16%</td>
<td>0.00%</td>
<td>1.68%</td>
<td>4.33%</td>
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<tr>
<td>MALIBU</td>
<td>Clean Power</td>
<td>6,063</td>
<td>0.28%</td>
<td>0.00%</td>
<td>2.80%</td>
<td>3.99%</td>
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<tr>
<td>MANHATTAN BEACH</td>
<td>Clean Power</td>
<td>14,542</td>
<td>0.69%</td>
<td>0.00%</td>
<td>2.44%</td>
<td>3.59%</td>
</tr>
<tr>
<td>MOORPARK</td>
<td>Clean Power</td>
<td>11,868</td>
<td>0.32%</td>
<td>0.00%</td>
<td>3.29%</td>
<td>14.82%</td>
</tr>
<tr>
<td>OJAI</td>
<td>100% Green Power</td>
<td>3,249</td>
<td>0.00%</td>
<td>1.23%</td>
<td>5.51%</td>
<td>9.88%</td>
</tr>
<tr>
<td>OXNARD</td>
<td>100% Green Power</td>
<td>52,887</td>
<td>0.00%</td>
<td>0.52%</td>
<td>2.99%</td>
<td>7.15%</td>
</tr>
<tr>
<td>PARAMOUNT</td>
<td>Lean Power</td>
<td>13,345</td>
<td>0.04%</td>
<td>0.02%</td>
<td>0.00%</td>
<td>2.30%</td>
</tr>
<tr>
<td>REDONDO BEACH</td>
<td>Clean Power</td>
<td>30,616</td>
<td>0.40%</td>
<td>0.00%</td>
<td>0.20%</td>
<td>2.12%</td>
</tr>
<tr>
<td>ROLLING HILLS ESTATES</td>
<td>100% Green Power</td>
<td>3,101</td>
<td>0.00%</td>
<td>2.06%</td>
<td>8.00%</td>
<td>6.84%</td>
</tr>
<tr>
<td>SANTA MONICA</td>
<td>100% Green Power</td>
<td>50,061</td>
<td>0.00%</td>
<td>0.76%</td>
<td>2.35%</td>
<td>3.62%</td>
</tr>
<tr>
<td>SIERRA MADRE</td>
<td>Clean Power</td>
<td>4,960</td>
<td>0.75%</td>
<td>0.00%</td>
<td>4.44%</td>
<td>5.75%</td>
</tr>
<tr>
<td>SIMI VALLEY</td>
<td>Lean Power</td>
<td>43,335</td>
<td>0.18%</td>
<td>0.15%</td>
<td>0.00%</td>
<td>10.41%</td>
</tr>
<tr>
<td>SOUTH PASADENA</td>
<td>100% Green Power</td>
<td>11,130</td>
<td>0.00%</td>
<td>0.72%</td>
<td>3.86%</td>
<td>4.49%</td>
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<tr>
<td>TEMPLE CITY</td>
<td>Lean Power</td>
<td>11,989</td>
<td>0.17%</td>
<td>0.07%</td>
<td>0.00%</td>
<td>3.58%</td>
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<tr>
<td>THOUSAND OAKS</td>
<td>100% Green Power</td>
<td>47,683</td>
<td>0.00%</td>
<td>1.80%</td>
<td>7.78%</td>
<td>17.78%</td>
</tr>
<tr>
<td>VENTURA</td>
<td>100% Green Power</td>
<td>42,238</td>
<td>0.00%</td>
<td>1.13%</td>
<td>4.43%</td>
<td>11.02%</td>
</tr>
<tr>
<td>VENTURA COUNTY</td>
<td>100% Green Power</td>
<td>32,471</td>
<td>0.00%</td>
<td>1.07%</td>
<td>4.32%</td>
<td>10.08%</td>
</tr>
<tr>
<td>WEST HOLLYWOOD</td>
<td>100% Green Power</td>
<td>24,127</td>
<td>0.00%</td>
<td>0.53%</td>
<td>2.50%</td>
<td>2.91%</td>
</tr>
<tr>
<td>WESTLAKE VILLAGE</td>
<td>Lean Power</td>
<td>3,257</td>
<td>0.34%</td>
<td>0.12%</td>
<td>0.00%</td>
<td>10.53%</td>
</tr>
<tr>
<td>WHITTIER</td>
<td>Clean Power</td>
<td>29,212</td>
<td>0.17%</td>
<td>0.00%</td>
<td>1.87%</td>
<td>5.46%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td>961,333</td>
<td>0.15%</td>
<td>0.34%</td>
<td>2.31%</td>
<td>6.26%</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
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<th>Opt Mid %</th>
<th>Opt Down %</th>
<th>Opt Out %</th>
</tr>
</thead>
<tbody>
<tr>
<td>100% Green Power</td>
<td>295,193</td>
<td>0.04%</td>
<td>1.00%</td>
<td>4.53%</td>
<td>9.25%</td>
</tr>
<tr>
<td>Clean Power Power</td>
<td>503,638</td>
<td>0.19%</td>
<td>0.01%</td>
<td>1.73%</td>
<td>4.47%</td>
</tr>
<tr>
<td>Lean Power</td>
<td>162,502</td>
<td>0.21%</td>
<td>0.13%</td>
<td>0.03%</td>
<td>6.37%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td>961,333</td>
<td>0.15%</td>
<td>0.34%</td>
<td>2.31%</td>
<td>6.26%</td>
</tr>
</tbody>
</table>
## Clean Power Alliance - Non-Residential Customer Status Report - As of October 27, 2020

<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>1,598</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>7.01%</td>
</tr>
<tr>
<td>ALHAMBRA</td>
<td>Clean Power</td>
<td>4,820</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.85%</td>
<td>7.74%</td>
</tr>
<tr>
<td>ARCADIA</td>
<td>Lean Power</td>
<td>3,582</td>
<td>0.00%</td>
<td>0.20%</td>
<td>0.00%</td>
<td>3.85%</td>
</tr>
<tr>
<td>BEVERLY HILLS</td>
<td>Clean Power</td>
<td>4,218</td>
<td>0.07%</td>
<td>0.00%</td>
<td>0.78%</td>
<td>2.87%</td>
</tr>
<tr>
<td>CALABASAS</td>
<td>Lean Power</td>
<td>1,267</td>
<td>0.00%</td>
<td>0.24%</td>
<td>0.00%</td>
<td>8.68%</td>
</tr>
<tr>
<td>CAMARILLO</td>
<td>Lean Power</td>
<td>4,846</td>
<td>1.36%</td>
<td>0.21%</td>
<td>0.00%</td>
<td>9.74%</td>
</tr>
<tr>
<td>CARSON</td>
<td>Clean Power</td>
<td>4,686</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.83%</td>
<td>7.15%</td>
</tr>
<tr>
<td>CLAREMONT</td>
<td>Clean Power</td>
<td>1,596</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.94%</td>
<td>6.14%</td>
</tr>
<tr>
<td>CULVER CITY</td>
<td>100% Green Power</td>
<td>3,468</td>
<td>0.00%</td>
<td>0.69%</td>
<td>2.05%</td>
<td>5.33%</td>
</tr>
<tr>
<td>DOWNEY</td>
<td>Clean Power</td>
<td>4,653</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.88%</td>
<td>6.13%</td>
</tr>
<tr>
<td>HAWAIIAN GARDENS</td>
<td>Clean Power</td>
<td>615</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.49%</td>
<td>1.30%</td>
</tr>
<tr>
<td>HAWTHORNE</td>
<td>Lean Power</td>
<td>3,946</td>
<td>0.00%</td>
<td>0.03%</td>
<td>0.00%</td>
<td>3.57%</td>
</tr>
<tr>
<td>LOS ANGELES COUNTY</td>
<td>Clean Power</td>
<td>29,319</td>
<td>0.03%</td>
<td>0.00%</td>
<td>1.06%</td>
<td>4.31%</td>
</tr>
<tr>
<td>MALIBU</td>
<td>Clean Power</td>
<td>1,452</td>
<td>3.86%</td>
<td>0.00%</td>
<td>0.69%</td>
<td>5.17%</td>
</tr>
<tr>
<td>MANHATTAN BEACH</td>
<td>Clean Power</td>
<td>1,922</td>
<td>5.10%</td>
<td>0.00%</td>
<td>1.14%</td>
<td>4.84%</td>
</tr>
<tr>
<td>MOORPARK</td>
<td>Clean Power</td>
<td>1,799</td>
<td>1.11%</td>
<td>0.00%</td>
<td>0.94%</td>
<td>8.50%</td>
</tr>
<tr>
<td>OJAI</td>
<td>100% Green Power</td>
<td>788</td>
<td>0.00%</td>
<td>1.78%</td>
<td>5.84%</td>
<td>8.63%</td>
</tr>
<tr>
<td>OXNARD</td>
<td>100% Green Power</td>
<td>8,044</td>
<td>0.00%</td>
<td>0.32%</td>
<td>10.59%</td>
<td>10.59%</td>
</tr>
<tr>
<td>PARAMOUNT</td>
<td>Lean Power</td>
<td>3,056</td>
<td>0.07%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>5.17%</td>
</tr>
<tr>
<td>REDONDO BEACH</td>
<td>Clean Power</td>
<td>4,765</td>
<td>0.00%</td>
<td>0.00%</td>
<td>1.24%</td>
<td>3.71%</td>
</tr>
<tr>
<td>ROLLING HILLS ESTATES</td>
<td>Lean Power</td>
<td>560</td>
<td>4.82%</td>
<td>0.18%</td>
<td>0.00%</td>
<td>8.04%</td>
</tr>
<tr>
<td>SANTA MONICA</td>
<td>100% Green Power</td>
<td>8,770</td>
<td>0.00%</td>
<td>0.92%</td>
<td>3.90%</td>
<td>7.33%</td>
</tr>
<tr>
<td>SIERRA MADRE</td>
<td>Clean Power</td>
<td>496</td>
<td>0.00%</td>
<td>0.00%</td>
<td>3.02%</td>
<td>3.43%</td>
</tr>
<tr>
<td>SIMI VALLEY</td>
<td>Lean Power</td>
<td>5,651</td>
<td>0.21%</td>
<td>0.04%</td>
<td>0.00%</td>
<td>7.40%</td>
</tr>
<tr>
<td>SOUTH PASADENA</td>
<td>Clean Power</td>
<td>1,429</td>
<td>7.35%</td>
<td>0.00%</td>
<td>1.40%</td>
<td>2.59%</td>
</tr>
<tr>
<td>TEMPLE CITY</td>
<td>Lean Power</td>
<td>1,363</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>1.47%</td>
</tr>
<tr>
<td>THOUSAND OAKS</td>
<td>100% Green Power</td>
<td>7,056</td>
<td>0.00%</td>
<td>0.21%</td>
<td>4.54%</td>
<td>16.21%</td>
</tr>
<tr>
<td>VENTURA</td>
<td>100% Green Power</td>
<td>8,063</td>
<td>0.00%</td>
<td>1.87%</td>
<td>5.79%</td>
<td>11.67%</td>
</tr>
<tr>
<td>VENTURA COUNTY</td>
<td>100% Green Power</td>
<td>7,054</td>
<td>0.00%</td>
<td>1.56%</td>
<td>5.44%</td>
<td>21.52%</td>
</tr>
<tr>
<td>WEST HOLLYWOOD</td>
<td>100% Green Power</td>
<td>4,004</td>
<td>0.00%</td>
<td>0.32%</td>
<td>2.05%</td>
<td>3.85%</td>
</tr>
<tr>
<td>WESTLAKE VILLAGE</td>
<td>Lean Power</td>
<td>1,089</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.00%</td>
<td>10.10%</td>
</tr>
<tr>
<td>WHITTIER</td>
<td>Clean Power</td>
<td>3,943</td>
<td>0.00%</td>
<td>0.00%</td>
<td>0.84%</td>
<td>3.40%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td></td>
<td><strong>139,918</strong></td>
<td><strong>0.29%</strong></td>
<td><strong>0.35%</strong></td>
<td><strong>2.31%</strong></td>
<td><strong>7.43%</strong></td>
</tr>
</tbody>
</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>49,195</td>
<td>0.12%</td>
<td>0.95%</td>
<td>5.26%</td>
<td>11.38%</td>
</tr>
<tr>
<td>Clean Power Power</td>
<td>64,325</td>
<td>0.41%</td>
<td>0.01%</td>
<td>0.99%</td>
<td>4.86%</td>
</tr>
<tr>
<td>Lean Power</td>
<td>26,398</td>
<td>0.30%</td>
<td>0.09%</td>
<td>0.03%</td>
<td>6.36%</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>139,918</strong></td>
<td><strong>0.29%</strong></td>
<td><strong>0.35%</strong></td>
<td><strong>2.31%</strong></td>
<td><strong>7.43%</strong></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>Sigma Computing, Inc.</td>
<td>Business intelligence &amp; analytics software tool</td>
<td>October 2020</td>
<td>$10,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>ProComply, Inc.</td>
<td>Energy regulation compliance training</td>
<td>October 2020</td>
<td>$5,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Langan Engineering and Environmental Services</td>
<td>GIS support services for CPA’s community solar programs and RFO procurement process</td>
<td>October 2020</td>
<td>$120,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Mercer (US) Inc.</td>
<td>Total remuneration benchmarking study with job architecture and salary structure design</td>
<td>October 2020</td>
<td>$105,500</td>
<td>Active</td>
<td>Joint project with three other CCAs</td>
</tr>
<tr>
<td>Gold Coast Transit District</td>
<td>On-bus advertising in Ventura County</td>
<td>October 2020</td>
<td>$2,970</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Cameron-Cole, LLC</td>
<td>Independent audit of Greenhouse Gas Emissions</td>
<td>September 2020</td>
<td>$7,080</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Crown Castle Fiber LLC</td>
<td>New Office Dedicated Internet Access Service</td>
<td>September 2020</td>
<td>$18,600</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>NextLevel Internet, Inc.</td>
<td>New Office High Speed Internet Service</td>
<td>September 2020</td>
<td>$6,936</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Windstream Services, LLC</td>
<td>New Office Telephone Service</td>
<td>September 2020</td>
<td>$14,095</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Zero Outages</td>
<td>New Office Security, Firewall, &amp; Wi-Fi Service</td>
<td>September 2020</td>
<td>$7,608</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Westfall Commercial Interiors</td>
<td>Furniture for New Office</td>
<td>September 2020</td>
<td>$296,558</td>
<td>Active</td>
<td>Signed under expanded authority of up to $500,000 for office relocation design, equipment and construction expenses granted by the Board of Directors on March 25, 2020</td>
</tr>
<tr>
<td>Abbot, Stringham and Lynch</td>
<td>2019 CEC Power Source Disclosure Audit</td>
<td>September 2020</td>
<td>$13,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Elite Edge Consulting</td>
<td>Accounting system support and implementation</td>
<td>September 2020</td>
<td>$112,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Gold Coast Transit District</td>
<td>On-Bus Advertising in Oxnard &amp; Ventura</td>
<td>August 2020</td>
<td>$600</td>
<td>Completed</td>
<td></td>
</tr>
<tr>
<td>Baker Tilly</td>
<td>FY 2019/20 Financial Audit</td>
<td>August 2020</td>
<td>$28,000</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>July 2020</td>
<td>$100,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Hall Energy Law PC</td>
<td>Energy Procurement Counsel</td>
<td>July 2020</td>
<td>$125,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>The Harmon Press</td>
<td>Professional Printing Services</td>
<td>July 2020</td>
<td>$40,000</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>July 2020</td>
<td>$10,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>West Coast Mailers</td>
<td>Bulk Mailing Services</td>
<td>July 2020</td>
<td>$20,000</td>
<td>Active</td>
<td></td>
</tr>
<tr>
<td>Sara Daleiden Consulting</td>
<td>CPA Staff Retreat and Strategic Planning Facilitation</td>
<td>July 2020</td>
<td>$14,500</td>
<td>Completed</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>
<th>Notes</th>
</tr>
</thead>
<tbody>
<tr>
<td>Snowflake Inc.</td>
<td>Engineering Support Services for Load Forecasting Analysis</td>
<td>July 2020</td>
<td>$15,000</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OUTFRONTmedia</td>
<td>Advertiser Agreement for Los Angeles transit shelter ads in San Gabriel Valley and unincorporated Los Angeles County re COVID-19 bill credit campaign</td>
<td>July 2020</td>
<td>$13,500</td>
<td>Completed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>OUTFRONTmedia</td>
<td>Advertising Non-Space Agreement related to production costs</td>
<td>July 2020</td>
<td>$990</td>
<td>Completed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Vector Medial Holding Corporation</td>
<td>Advertising &amp; Production Agreement for Santa Monica &amp; Culver City Transit Bus Ads re COVID-19 bill credit campaign</td>
<td>July 2020</td>
<td>$2,200</td>
<td>Completed</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CIM/Prime Construction/Pinnacle Communication Services</td>
<td>New Office Space Equipment and Installation: Audio Visual/Security Systems/Data and Communications Cabling</td>
<td>July 2020</td>
<td>$361,281</td>
<td>Active</td>
<td>Signed under expanded authority of up to $500,000 for office relocation design, equipment and construction expenses granted by the Board of Directors on March 25, 2020</td>
<td></td>
</tr>
<tr>
<td>801 South Grand Avenue (LA)</td>
<td>Storage Space Lease</td>
<td>July 2020</td>
<td>$1,980</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Adobe Inc.</td>
<td>AdobeSign Secure Electronic Signature Service</td>
<td>June 2020</td>
<td>$3,200</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<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>
<td></td>
<td></td>
</tr>
<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>
<td></td>
</tr>
<tr>
<td>Place and Page</td>
<td>Graphic Design Services</td>
<td>May 2020</td>
<td>$30,000</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<tr>
<td>KnowledgeCity</td>
<td>Employee Training</td>
<td>May 2020</td>
<td>$3,745</td>
<td>Active</td>
<td></td>
<td></td>
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<tr>
<td>SCS Engineers</td>
<td>CARB GHG Audit for 2019</td>
<td>May 2020</td>
<td>$4,500</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<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>
<td></td>
<td></td>
</tr>
<tr>
<td>Snowflake Inc.</td>
<td>Cloud-Native Elastic Data Warehouse Service</td>
<td>April 2020</td>
<td>$36,000</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Amazon Web Services</td>
<td>Cloud-based Database Hosting</td>
<td>April 2020</td>
<td>$36,000</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<tr>
<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>
<td></td>
<td></td>
</tr>
<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>
<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>
<td></td>
</tr>
<tr>
<td>ARUP</td>
<td>Local Programs Strategic Plan</td>
<td>March 2020</td>
<td>$12,500</td>
<td>Completed</td>
<td>10% NTE of original Board-approved contract amount of $125k</td>
<td></td>
</tr>
<tr>
<td>Vendor</td>
<td>Purpose</td>
<td>Month</td>
<td>NTE Amount</td>
<td>Status</td>
<td>Notes</td>
<td></td>
</tr>
<tr>
<td>-------------------------------</td>
<td>---------------------------------------------------</td>
<td>-------------</td>
<td>------------</td>
<td>----------</td>
<td>-----------------------------------------------------------------------</td>
<td></td>
</tr>
<tr>
<td>ICE Options Analytics LLC</td>
<td>Trading Platform Subscription Service</td>
<td>March 2020</td>
<td>$ 19,000</td>
<td>Active</td>
<td></td>
<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 $20,328 in May 2020</td>
<td></td>
</tr>
<tr>
<td>Greenberg Glusker</td>
<td>Legal Services Agreement (PPA Negotiations)</td>
<td>March 2020</td>
<td>$ 59,000</td>
<td>Active</td>
<td></td>
<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>Completed</td>
<td></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>Completed</td>
<td>Replaced by new FY 2020-21 Contract</td>
<td></td>
</tr>
<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>
<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>
<td></td>
</tr>
<tr>
<td>Surowski Design + Development</td>
<td>Web Development Services</td>
<td>October 2019</td>
<td>$ 12,000</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Inventure Recruitment</td>
<td>Ongoing Recruitment Services</td>
<td>October 2019</td>
<td>$ 120,000</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<tr>
<td>JLL</td>
<td>Real Estate Brokerage Services</td>
<td>October 2019</td>
<td>NA</td>
<td>Active</td>
<td></td>
<td></td>
</tr>
<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>
<td></td>
</tr>
</tbody>
</table>