



Redwood Coast Energy Authority

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MEETING AGENDA

NOTE MEETING LOCATION:

**Humboldt Bay Municipal Water District Office
828 7th St, Eureka, CA 95501**

**March 20, 2017
Monday, 3:15 p.m.**

Redwood Coast Energy Authority will accommodate those with special needs. Arrangements for people with disabilities who attend RCEA meetings can be made in advance by contacting Barbara Garcia at 269-1700 by noon the day of the meeting.

I. ROLL CALL

II. REPORTS FROM MEMBER ENTITIES

III. ORAL COMMUNICATIONS

This time is provided for people to address the Board or submit written communications on matters not on the agenda. At the conclusion of all oral & written communications, the Board may respond to statements. Any request that requires Board action will be set by the Board for a future agenda or referred to staff.

IV. CONSENT CALENDAR

All matters on the Consent Calendar are considered to be routine by the Board and are enacted on one motion. There is no separate discussion of any of these items. If discussion is required, that item is removed from the Consent Calendar and considered separately. At the end of the reading of the Consent Calendar, Board members or members of the public can request that an item be removed for separate discussion.

- A. Approve Minutes of February 27, 2017 Board Meeting.
- B. Approve attached Warrants.
- C. Accept attached Financial Reports.
- D. Approve attached recommendation for authorized check signers.

V. REMOVED FROM CONSENT CALENDAR ITEMS

Items removed from the Consent Calendar will be heard under this section.

VI. NEW BUSINESS

- A. Electric Vehicle Program

Approve CA Energy Commission Grant Agreement ARV-16-012 for \$109,651 for Electric Vehicle Readiness Plan Implementation.

VII. OLD BUSINESS

- A. Humboldt Redwood Company Power Purchase Agreement

Approve 9-month and 51-month Power Purchase Agreements with Humboldt Redwood Company.

VIII. COMMUNITY CHOICE ENERGY (CCE) BUSINESS (Confirm CCE Quorum)

Items under this section of the agenda relate to CCE-specific business matters that fall under RCEA's CCE voting provisions, with only CCE-participating jurisdictions voting on these matters with weighting voting as established in the RCEA joint powers agreement.

IX. OLD CCE BUSINESS

A. Additional Biomass Power Procurement

Provide direction to staff on next steps for additional biomass power procurement .

B. Outreach and Customer Notification Update

X. STAFF REPORTS

A. Executive Director

XI. ADJOURNMENT



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MEETING MINUTES

Humboldt Bay Municipal Water District Office
828 7th St, Eureka, CA 95501

February 27, 2017
Monday, 3:15 p.m.

I. ROLL CALL

Board Chair Woo called the meeting to order at 3:17 p.m.

Present: Bobbie Ricca, Michael Winkler, Sheri Woo, Dean Glaser, Dwight Miller. Estelle Fennell arrived at 3:20 p.m.

Absent: Tim Marks, Austin Allison, Michael Sweeney.

II. REPORTS FROM MEMBER ENTITIES

Director Glaser reported that the Fortuna City Council would like RCEA staff to present at a Council meeting to discuss the CCE program launch and the notices going out.

Director Winkler reported that the Building Decarbonization Group is compiling their comments to the CPUC regarding changes in regulations, with support from the City of Arcata.

III. ORAL COMMUNICATIONS

None.

IV. CONSENT CALENDAR

B. Approve attached Warrants.

C. Accept attached Financial Reports.

Estelle Fennell arrives to meeting.

M/S/C: Glaser, Miller: Approve consent calendar items B and C.

V. REMOVED FROM CONSENT CALENDAR ITEMS

A. Approve Minutes of January 23, 2017 Board Meeting.

Director Winkler asked Community Member Ellen Golla if her last name was correct in the minutes. Ellen Golla was present and confirmed that her last name was correct as written in the minutes.

Board Chair Woo pointed out a typo on Item VIII. A. third paragraph, noting that "roll" was supposed to be "role".

M/S/C: Miller, Glaser: Approve consent calendar item A.

VI. NEW BUSINESS

A. FY 2016-17 Budget

Executive Director Marshall provided justification for a proposed budget adjustment, noting the increase in legal fees due to needed contract review associated with the CCE program launch and HR consultant services.

M/S/C Miller, Fennell: Approve FY16-17 budget adjustments of a decrease to information technology expenses by \$30,000, an increase to legal expenses by \$57,000, and an increase to bank charges by \$7,800.

B. Records Retention

Executive Director Marshall introduced the Records Retention Policy to the Board.

General Counsel Diamond provided an updated version of the Records Retention Policy to the Board that included her suggested changes.

Director Fennell requested that any updated agenda documents include tracked edits so that the Directors can quickly identify the changes that were made.

M/S/C: Miller, Winkler: Adopt Resolution No. 2017-2 of the Redwood Coast Energy Authority Adopting a Records Retention Policy.

VII. COMMUNITY CHOICE ENERGY (CCE) BUSINESS (Confirm CCE Quorum)

CCE quorum confirmed.

VIII. NEW CCE BUSINESS

A. Power Procurement Update

- Update on market procurement activities – wind and solar

Executive Director Marshall provided a single page handout to the Board that elaborates upon the renewable energy supply that RCEA has procured to date for the CCE power mix. The handout also includes a comparison to the PG&E power mix. He explained that the amount of renewable energy purchased so far is only a portion of the amount we will ultimately need.

Director Fennell requested that this information be readily available to community members. Executive Director Marshall affirmed that the handout would be on the RCEA website.

Director Miller asked when RCEA would determine all of the renewable energy needed for the program, including information about the various sources of this portion.

Executive Director Marshall explained that RCEA must wait and monitor program opt out and REpower+ opt up numbers to determine the total amount of renewable energy needed for our program.

The Board discussed potential local renewable procurement opportunities and customer programs to consider in the future.

Director Glaser shared his support for pursuing the maximum amount of biomass that the local plants can output.

Board Chair Woo requested holding any conversation regarding biomass until the next section agenda.

No public comment.

- Update on biomass request for offers

Executive Director Marshall presented the status of energy procurement and explained the multiple options for including local biomass in the CCE energy portfolio, as outlined in the biomass staff report. He explained that the amount of biomass energy purchased is constrained by our budget and program goals, over short and long-term timelines.

RCEA staff recommends that the Board approve options 1-A and 1-B outlined in the staff report, and direct staff to proceed with final PPA negotiations under this approach.

Option 1-A: Award contract to Humboldt Redwood Company with modifications to its 12.5 MW 5-year offer. *Accept staff's recommendation to short-list HRC's offer, but accommodate RCEA constraints by directing staff to negotiate modifications to HRC's offer around the following parameters and by splitting the PPA into two successive power delivery obligations:*

- *An initial PPA of 9 months for 5 MW at HRC's \$83/MWh offer price, with additional flexibility for HRC to, at its discretion, provide additional power to RCEA but only at the unsubsidized pass-through market price that RCEA would otherwise be paying. RCEA would have no financial risk exposure to any power produced above the 5 MW.*
- *A second PPA for the remaining 51 months at HRC's \$83/MWh for 12.5 MW. However the PPA would include a "pressure relief" clause to ensure that the PPA commitment doesn't jeopardize the overall viability and long-term success of the CCE. This would entail evaluating (annually around the beginning of each year) the available headroom between RCEA's base cost of services (operations, reserve, market-priced power) and PG&E rates and fees.*

If the headroom is not sufficient to maintain competitive customer rates and meet other central program budget requirements at 12.5 MW and \$83/MWh, then RCEA would have the option to reduce the volume of power procured at the offer price to not exceed available headroom. Any generation over that reduced volume would be purchased at market-price terms and flexibility similar to the initial 9-month PPA terms.

Option 1-B: Explore 5-year contract options for one or both other facilities. *In addition to proceeding with Option 1-A, staff can develop for the Board's consideration additional options that would provide a 5-year contract option for one or both of the other local facilities. Any additional contracting option would at a minimum include similar conditions to the risk-protection provisions of the HRC PPA and could use HRC's offer price as a basis, and would also be in a secondary position/priority for funding after the HRC PPA.*

The Board discussed the various options presented in the staff report.

The Board discussed whether environmental compliance can be addressed within the facilities' PPAs

Public comment:

Community member Ellen Golla read aloud several Facebook comments from community members living near the biomass facility in Scotia. These comments include reports of black soot, ash, and health issues due to the operation of the Scotia biomass facility. She shared that these facilities push costs on to residents with increase medical bills to address their health conditions. She also shared the health risks of exposure to PM2.5.

Bob Marino, General Manager at the DG Fairhaven facility, shared that there is a need for biomass processing in our community and that he would like the opportunity to revisit the

negotiations with RCEA. He noted that health concerns are very important and that the DG Fairhaven facility has a very good air quality record.

Adam Steinback, employee at Humboldt Redwood Company, shared his support of the process to-date concerning negotiations with RCEA. He also expressed support of a plan to increase the amount of biomass in the CCE power portfolio and general support of the staff recommendation.

Yana Valachovich of the University of California Cooperative Extension Program shared that no form of energy is benign, and that the CCE program provides an opportunity to support our local values and standards when making our energy decisions. She expressed her appreciation that the Board is taking-on this issue and working to include local biomass in the power mix, and recommends thinking globally and acting locally.

Kit Mann, RCEA Community Advisory Committee member, shared that he sees this biomass discussion as a politically charged issue in which it is dangerous to make decisions too quickly. He warned that a scenario where the Board moves too quickly on maximum biomass could result in a community push back that could create a negative perception of the CCE program, thus permanently hurting the program. He says that while he does not support biomass, he recognizes that it will be a part of the CCE and that the Board should refrain from emphasizing biomass too much in the beginning of the CCE program.

Brian Wilson of the Air Quality Management District (AQMD) shared that their purpose as regulators is to keep the ambient air quality to local, federal, and state required standards. He suggested that the "high priority violator" status issued by the AQMD, which marks a facility's level of compliance, serves as the method of gauging a facility's overall compliance. He commented on the materials that Walt Paniak provided to the Board at the previous meeting, noting that some of the information was incorrect. The comparison between emissions of coal plant and biomass plants is not accurate, as many hazardous air pollutants from coal plants are not comparable and that the scale of local biomass plants are not comparable to the very large scale of the coal plants. He explained that the CA Air Pollution Control Officers Association supports biomass energy, and that the biomass waste burned at our local facilities is much cleaner than the facilities throughout the rest of the state.

Director Fennell asked Mr. Wilson if there are ways to fix the current emission issues at the Scotia facility.

Mr. Wilson explained that facilities might address emission issues by adding different adjustments and mechanisms.

Director Miller asked if there are standards to regulate PM2.5 emissions as facilities renew their permits.

Mr. Wilson explained that assessment occurs each time facilities apply to renew a permit, and the facility's permit indicates the regulation levels. The District monitors PM2.5 microns at several locations throughout the region but accurate assessment of regional compliance depends on additional years of data collection.

Ellen Golla pointed out that the permits issued to the biomass facilities allow for several tons of pollutants and that the air quality monitors mentioned by Mr. Wilson aren't necessarily near enough to the operational biomass facilities to gauge the effects of the facilities' emissions.

Public comment closed.

The Board discussed biomass pricing and discussed the addition of an environmental compliance component to the biomass power contracts.

Motion made by Director Glaser: Approve Options 1-A and 1-B outlined in the staff report, and direct staff to negotiate the terms of a modified PPA with HRC. The final HRC PPAs will be brought back to the Board for final review and approval, as well as one or more options for potentially contracting with one or more additional facility.

Motion seconded by Director Fennell with request to amend: PPAs subject to development and inclusion of language requiring environmental compliance. Amendment accepted by Director Glaser.

Motion Carries.

B. Outreach and Customer Notification Update

RCEA staff Richard Engel provided an update regarding the current round of customer notifications and the migration of the RCEA website. Special notices are being drafted and sent to Direct Access customers to notify them of the CCA program, as well as special notices to Net Energy Metering (NEM) customers explaining alternative enrollment periods that coincide with their PG&E “true up” period.

Director Fennell asked if Shelter Cove is a direct access customer.

Mr. Engel confirmed that Shelter Cove is not a PG&E customer and is not eligible for automatic enrollment to the CCE program.

Mr. Engel shared the ad campaign schedule, including radio, television, Times Standard, and The North Coast Journal ad campaigns. He also shared RCEA staff plans to host a NEM workshop at the Wharfinger Building on March 24th.

Mr. Engel shared that RCEA staff has created a list of CCE “key accounts” that are assigned to various staff members.

Public Comment:

Ellen Golla shared that she had trouble opting out of the program on the CCE website and has not yet received confirmation of her opt out.

IX. STAFF REPORTS

A. Executive Director

- California Community Choice Association (CalCCA) membership

RCEA has become a member of CalCCA, a nonprofit that represents CCAs across the state that will collaborate to monitor and respond to regulatory or legislation issues.

- California Forestry Association annual meeting presentation

Executive Director Marshall will attend this meeting to join a panel to present on the topic of biomass.

- RCEA/PG&E joint workshop for local energy efficiency trade pros

RCEA and PG&E hosted a workshop in early February that was successful.

- Policy/process for agenda development

Executive Director Marshall would like to create protocols for including items from Board Members and the public on agendas in development.

- Electric Vehicle Program funding

The California Energy Commission has awarded RCEA grant funding to conduct outreach to the community regarding electric vehicles.

- Staffing/hiring updates

The Director of Finance and HR will begin work for RCEA on March 1st. Cheryl Clayton is retiring; her last day in the office will be March 3rd.

X. ADJOURNMENT

Board Chair Woo adjourned the meeting at 6:07 p.m.

Redwood Coast Energy Authority

Warrants Report

As of March 10, 2017

Type	Date	Num	Name	Memo	Amount
Feb 23 - 28, 17					
Paycheck	02/23/2017		Payroll	February Net Payroll	-39,014.91
Paycheck	02/24/2017	7197	Jacobson, Lou N.	Payroll 2/1-2/15/17	-2,583.20
Bill Pmt -Check	02/24/2017	7198	ABC Office Equipment	Jan print charges/service contract.	-360.60
Bill Pmt -Check	02/24/2017	7199	Arcata Technology Center	Site Host Reimbursement 10/1/16 - 12/31/16 007-	-2.93
Bill Pmt -Check	02/24/2017	7200	AT&T	February Telephone Service	-415.18
Bill Pmt -Check	02/24/2017	7201	DelReka Distributing	Self-install rebates.	-1,855.46
Bill Pmt -Check	02/24/2017	7202	Eureka Broadcasting	CCA Radio Advertising	-537.50
Bill Pmt -Check	02/24/2017	7203	Eureka City Schools	Winship Campus self-install rebate / Audit 4154.	-7,762.00
Bill Pmt -Check	02/24/2017	7204	FedEx	EV Electric Equipment Shipping	-32.66
Bill Pmt -Check	02/24/2017	7205	Ichien, D.	February Mileage	-31.03
Bill Pmt -Check	02/24/2017	7206	Means, M.	February mileage	-22.04
Bill Pmt -Check	02/24/2017	7207	Myrtle town Body Shop	Myrtle town Body Shop Self Install Rebate / Audit 4	-465.92
Bill Pmt -Check	02/24/2017	7208	North Coast Journal	Recruitment Advertising.	-225.00
Bill Pmt -Check	02/24/2017	7209	PG&E EV Account	EV stations January	-108.09
Bill Pmt -Check	02/24/2017	7210	PG&E Utility Account	January utilities/lighting upgrade financing	-1,236.31
Bill Pmt -Check	02/24/2017	7211	Quill	Miscellaneous office supplies	-222.61
Bill Pmt -Check	02/24/2017	7212	RREDC	Headwaters Fund CIF Loan Fee	-7,000.00
Bill Pmt -Check	02/24/2017	7213	SDRMA Dental	February Premium	-1,098.00
Bill Pmt -Check	02/24/2017	7214	SDRMA Medical	February premium	-15,201.00
Bill Pmt -Check	02/24/2017	7215	Sonoma County Office of Education	December 2016 Professional Services	-1,396.50
Bill Pmt -Check	02/24/2017	7216	Valley Grocery	Valley Grocery self-install rebate/Audit 4394.	-1,228.07
Bill Pmt -Check	02/24/2017	7217	Winzler, John	Office Lease - March	-4,100.00
Liability Check	02/24/2017	7218	Calvert	February IRA Deposit.	-6,765.72
Liability Check	02/24/2017	7219	Umpqua Bank	February HSA Deposit.	-558.36
Check	02/24/2017	7220	Redwood Coast Energy Authority	March Direct Deposit Payroll Advance	-80,000.00
Check	02/24/2017	7220	Redwood Coast Energy Authority	March Direct Deposit Payroll Advance	80,000.00
Feb 23 - 28, 17					-92,223.09
Mar 1 - 10, 17					
Check	03/01/2017	EFT	CoPower	March Premium	-237.00
Paycheck	03/09/2017	7248	Jacobson, Lou N.	Payroll 2/16-2/28/17	-2,583.20
Paycheck	03/09/2017	7249	Garcia, Barbara C.	Pay rate difference 2/1/17-2/28/17.	-56.61
Paycheck	03/09/2017	7250	Tolley, Matthew A.	Final paycheck: 3/1/17-3/9/17	-1,098.20
Paycheck	03/09/2017		Payroll	March Net Payroll	-37,477.36
Liability Check	03/10/2017	E-pay	EDD	SDI/PIT QB Tracking # 346483072	-3,009.88
Liability Check	03/10/2017	E-pay	EDD	QB Tracking # 346497122	-374.29
Liability Check	03/10/2017	E-pay	Internal Revenue Service	Q1 QB Tracking # 346499122	-16,167.56
Bill Pmt -Check	03/10/2017	7221	ABC Office Equipment	February print charges/service contract.	-225.26
Bill Pmt -Check	03/10/2017	7222	AM Conservation	LED stock.	-2,337.94
Bill Pmt -Check	03/10/2017	7223	American Star Security	Security services provided.	-140.00
Bill Pmt -Check	03/10/2017	7224	Best Cleaners	Coverall laundering	-7.50
Bill Pmt -Check	03/10/2017	7225	Bishop, M.	February mileage	-72.55
Bill Pmt -Check	03/10/2017	7226	Burks, K.	February mileage	-64.47
Bill Pmt -Check	03/10/2017	7227	Central Office	CCA letters & envelopes	-797.08
Bill Pmt -Check	03/10/2017	7228	Clarke Historical Museum	Self-install rebate / Audit 4574	-35.40
Bill Pmt -Check	03/10/2017	7229	Coldwell Banker Seller's Realty	Self-install rebate / Audit 4473	-493.05
Bill Pmt -Check	03/10/2017	7230	Eureka Public Marina	Venue rental / Public meeting-NEM Workshop	-240.00

Redwood Coast Energy Authority

Warrants Report

As of March 10, 2017

Type	Date	Num	Name	Memo	Amount
Bill Pmt -Check	03/10/2017	7231	FedEx	Return shipping.	-12.02
Bill Pmt -Check	03/10/2017	7232	Greenway Partners	Strategic Planning February 2017	-5,375.00
Bill Pmt -Check	03/10/2017	7233	Martin, Des.	February mileage	-92.82
Bill Pmt -Check	03/10/2017	7234	Mission Uniform & Linen	February janitorial supplies.	-113.56
Bill Pmt -Check	03/10/2017	7235	North Coast Cleaning	Janitorial services.	-804.00
Bill Pmt -Check	03/10/2017	7236	North Coast Journal	Recruitment advertising.	-225.00
Bill Pmt -Check	03/10/2017	7237	Pierson's Home Ctr	Miscellaneous tool bank items.	-5.96
Bill Pmt -Check	03/10/2017	7238	Pitney Bowes-Rental	February postage meter rental	-21.69
Bill Pmt -Check	03/10/2017	7239	Recology	February garbage service	-82.30
Bill Pmt -Check	03/10/2017	7240	Renne Sloan Holtzman Sakai	2017 Human Resources Audit - January	-6,077.31
Bill Pmt -Check	03/10/2017	7241	Schwalb, P.	February purchase & mileage reimbursement.	-50.16
Bill Pmt -Check	03/10/2017	7242	SDRMA Dental	March Premium	-1,098.00
Bill Pmt -Check	03/10/2017	7243	SDRMA Medical	March premium	-15,201.00
Bill Pmt -Check	03/10/2017	7244	Sonoma County Office of Education	Public Contracting Workshop Registration.	-150.00
Bill Pmt -Check	03/10/2017	7245	Terry, P.	February mileage	-52.81
Bill Pmt -Check	03/10/2017	7246	Tolley, M.	February mileage	-53.98
Check	03/10/2017	7247	EUC Assessment:Litten, Bridget	EUC project refund.	-500.00
Mar 1 - 10, 17					-95,332.96
TOTAL					-187,556.05

Redwood Coast Energy Authority

Umpqua Visa Detail

As of February 21, 2017

Type	Date	Num	Name	Memo	Amount
2006 · VISA-3751					
Credit Card Charge	01/24/2017	6974	Pitney Bowes-Rental	January meter rental	21.69
Credit Card Charge	01/25/2017	January	Uberconference	Conference call subscription	10.98
Credit Card Charge	01/30/2017	33412	AlumiRamp, Inc.	Alumi Lite Handicap Ramp	256.06
Credit Card Charge	02/01/2017	February	Square	Card Reader Fee	45.00
Credit Card Charge	02/03/2017	6359	SnuggPro	Modeling report - #74210/74263/74264.	75.00
Credit Card Charge	02/06/2017	1972	Pitney Bowes-Rental	Postage - CCA Mailers.	805.00
Credit Card Charge	02/10/2017	49718	Autonomous, Inc.	SmartDesk	486.09
Credit Card Charge	02/16/2017	February	U-Verse	February DSL	95.86
Credit Card Charge	02/16/2017	644376	Interface Americas, Inc.	Carpet Tiles	1,365.79
Credit Card Charge	02/16/2017	Plus	Vimeo, Inc.	Vimeo Plus Membership	59.95
Credit Card Charge	02/17/2017	6454	SnuggPro	Modeling report - job #74755	25.00
Total 2006 · VISA-3751					3,246.42
TOTAL					3,246.42

Redwood Coast Energy Authority

CitiBank

As of February 25, 2017

Type	Date	Num	Name	Memo	Amount	Balance
2008 - CitiBank Travel Account						0.00
Credit Card Charge	02/24/2017	ZKYPJM	Travel Store	Booking fee: Fischer, CivicSpark Meeting 3/21-3/24/17, Lom	12.00	12.00
Total 2008 - CitiBank Travel Account					12.00	12.00
TOTAL					12.00	12.00

Redwood Coast Energy Authority
Profit & Loss Budget vs. Actual
July 2016 through January 2017

	<u>Jul '16 - Jan 17</u>	<u>Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense			
Income			
5 REVENUE EARNED			
Total 5000 · Revenue - government agencies	126,714.73	357,364.00	35.5%
Total 5100 · Revenue - program related sales	9,410.75	17,500.00	53.8%
5300 · Revenue - investments	0.00	200.00	0.0%
Total 5400 · Revenue-nongovernment agencies	777,947.63	1,553,570.00	50.1%
5 REVENUE EARNED - Other	679.65		
Total 5 REVENUE EARNED	<u>914,752.76</u>	<u>1,928,634.00</u>	<u>47.4%</u>
Total Income	<u>914,752.76</u>	<u>1,928,634.00</u>	<u>47.4%</u>
Gross Profit	914,752.76	1,928,634.00	47.4%
Expense			
7 EXPENSES - PERSONNEL			
7101 · Screening/Testing Services	218.12	600.00	36.4%
7102 · Safety	152.50	1,000.00	15.3%
7103 · Staff Training and Development	3,299.00	15,000.00	22.0%
7200 · Salaries, Wages & Benefits			
7210 · Salaries - staff	443,129.35	905,020.00	49.0%
7220 · Wages - interns	33,210.00	71,061.00	46.7%
7230 · Pension Plan Contributions	13,399.23	29,086.00	46.1%
7240 · Employee Benefits-Insurance	122,376.36	277,943.00	44.0%
7250 · Payroll Taxes Etc.	53,276.26	94,326.00	56.5%
7255 · Worker's Comp Insurance	5,099.15	7,400.00	68.9%
Total 7260 · Paid Time Off	84,554.51	142,331.00	59.4%
7265 · Jury Duty	249.41	500.00	49.9%
Total 7200 · Salaries, Wages & Benefits	<u>755,294.27</u>	<u>1,527,667.00</u>	<u>49.4%</u>
Total 7 EXPENSES - PERSONNEL	<u>758,963.89</u>	<u>1,544,267.00</u>	<u>49.1%</u>
8 NON-PERSONNEL RELATED EXP			
8100 · Non-Personnel Expenses			
8110 · Office Supplies	2,634.63	6,000.00	43.9%
8111 · Furniture & Equipment	1,784.31	2,800.00	63.7%
Total 8120 · Information Technology	4,947.95	25,000.00	19.8%
Total 8130 · Telephone & Telecommunications	3,970.72	6,500.00	61.1%
8140 · Postage & delivery	827.14	1,800.00	46.0%
Total 8170 · Printing & copying	4,548.77	7,500.00	60.7%
Total 8180 · Books, subscriptions, edu matls	775.72	1,000.00	77.6%
8190 · Exhibits & displays	0.00	1,800.00	0.0%
8195 · Tool bank	769.22	4,000.00	19.2%
Total 8100 · Non-Personnel Expenses	<u>20,258.46</u>	<u>56,400.00</u>	<u>35.9%</u>
8200 · Facility Expenses			
8210 · Office Lease	28,700.00	49,200.00	58.3%
Total 8220 · Utilities	7,839.85	11,500.00	68.2%
8230 · Janitorial	3,115.71	6,500.00	47.9%

Redwood Coast Energy Authority
Profit & Loss Budget vs. Actual
July 2016 through January 2017

	Jul '16 - Jan 17	Budget	% of Budget
8240 · Facility repairs & maintenance	2,504.08	3,500.00	71.5%
8250 · EV Station Repairs & Maintenan	2,227.55	5,000.00	44.6%
Total 8200 · Facility Expenses	44,387.19	75,700.00	58.6%
Total 8300 · Travel & Meeting Expense	9,193.81	17,000.00	54.1%
Total 8320 · Meetings, workshops & events	3,992.90	12,000.00	33.3%
8500 · Other Expenses			
8513 · Organizational Development	144.56	500.00	28.9%
Total 8510 · Interest Expense	-102.09		
8520 · Insurance P&L	11,415.86	9,500.00	120.2%
8530 · Dues & Memberships	2,746.00	3,500.00	78.5%
Total 8560 · Website Expenses	90.00	1,000.00	9.0%
Total 8570 · Advertising & Marketing Expense	8,568.38	22,000.00	38.9%
8591 · Use Tax	0.00	300.00	0.0%
8592 · Service Charge	1.00	200.00	0.5%
8593 · Bank Charges	574.92	8,000.00	7.2%
8595 · Credit Card Processing Fees	415.89	500.00	83.2%
8596 · Flex Billing Service Fee	340.98	300.00	113.7%
8597 · EV Site Host Pmts	2,404.64	5,000.00	48.1%
Total 8500 · Other Expenses	26,600.14	50,800.00	52.4%
8600 · Capital Development - Facility	0.00	1,000.00	0.0%
8700 · Professional Services			
8710 · Contracts - Program Related Ser	103,300.33	261,005.00	39.6%
8720 · Accounting	23,866.80	45,000.00	53.0%
8740 · Legal	67,058.32	105,000.00	63.9%
Total 8700 · Professional Services	194,225.45	411,005.00	47.3%
Total 8 NON-PERSONNEL RELATED EXP	298,657.95	623,905.00	47.9%
Total 9 INCENTIVES & REBATES	115,274.56	460,000.00	25.1%
Total Expense	1,172,896.40	2,628,172.00	44.6%
Net Ordinary Income	-258,143.64	-699,538.00	36.9%
Other Income/Expense			
Total Other Income	0.00	700,000.00	0.0% ***
Total Other Expense	1,272.32	19,008.00	6.7%
Net Other Income	-1,272.32	680,992.00	-0.2%
Net Income	-259,415.96	-18,546.00	1,398.8%

***NOTE: The \$700,00 Headwaters line of credit was finalized and initially drawn down by \$300,000 on 2/1/17, which will be reflected as "other income" on the P&L report as well as a liability on the Balance Sheet starting with the February Financial Reports next month.

Redwood Coast Energy Authority

Balance Sheet

As of January 31, 2017

	<u>Jan 31, 17</u>
ASSETS	
Current Assets	
Checking/Savings	
1062 · Chase DD Checking	70,330.48
1060 · Umpqua Checking-9271	48,731.33
1000 · COUNTY TREASURY 3839	3,911.55
1010 · Petty Cash	108.29
Total 1050 · GRANTS & DONATIONS 3840	<u>15,037.26</u>
Total Checking/Savings	138,118.91
Total Accounts Receivable	307,683.96
Other Current Assets	
1101 · Allowance for Doubtful Accounts	-7,260.54
1102 · Paypal Account Balance	19.87
1120 · Inventory Asset	71,592.60
1202 · Prepaid Expenses	30,124.68
1205 · Prepaid Insurance	21,540.26
Total 1210 · Retentions Receivable	48,550.21
1499 · Undeposited Funds	<u>553.38</u>
Total Other Current Assets	<u>165,120.46</u>
Total Current Assets	610,923.33
Total Fixed Assets	55,611.39
Other Assets	
1700 · Retained Deposits	<u>4,100.00</u>
Total Other Assets	<u>4,100.00</u>
TOTAL ASSETS	<u><u>670,634.72</u></u>
LIABILITIES & EQUITY	
Liabilities	
Current Liabilities	
Total Accounts Payable	86,363.85
Total Credit Cards	552.40
Other Current Liabilities	
2001 · Accounts Payable-Other	39,342.60
Total 2100 · Payroll Liabilities	65,549.18
Total 2210 · Retentions Payable	<u>6,828.13</u>
Total Other Current Liabilities	<u>111,719.91</u>
Total Current Liabilities	198,636.16
Total Long Term Liabilities	<u>6,520.63</u>
Total Liabilities	205,156.79
Equity	
2320 · Investment in Capital Assets	49,090.75
3900 · Fund Balance	675,803.14
Net Income	<u>-259,415.96</u>
Total Equity	<u>465,477.93</u>
TOTAL LIABILITIES & EQUITY	<u><u>670,634.72</u></u>

Redwood Coast Energy Authority

Profit & Loss

January 2017

	<u>TOTAL</u>
Ordinary Income/Expense	
Income	
5 REVENUE EARNED	
Total 5000 · Revenue - government agencies	3,941.13
Total 5100 · Revenue - program related sales	606.38
Total 5400 · Revenue-nongovernment agencies	81,377.55
5 REVENUE EARNED - Other	423.05
Total 5 REVENUE EARNED	86,348.11
Total Income	86,348.11
Gross Profit	86,348.11
Expense	
7 EXPENSES - PERSONNEL	
7102 · Safety	-770.00
7200 · Salaries, Wages & Benefits	
7210 · Salaries - staff	53,014.47
7220 · Wages - interns	5,228.12
7230 · Pension Plan Contributions	1,995.92
7240 · Employee Benefits-Insurance	18,370.10
7250 · Payroll Taxes Etc.	9,473.56
7255 · Worker's Comp Insurance	693.84
Total 7260 · Paid Time Off	20,628.60
7265 · Jury Duty	0.00
Total 7200 · Salaries, Wages & Benefits	109,404.61
Total 7 EXPENSES - PERSONNEL	108,634.61
8 NON-PERSONNEL RELATED EXP	
8100 · Non-Personnel Expenses	
8110 · Office Supplies	452.49
Total 8130 · Telephone & Telecommunications	485.25
8140 · Postage & delivery	98.76
Total 8170 · Printing & copying	775.74
Total 8180 · Books, subscriptions, edu matls	21.99
8195 · Tool bank	23.47
Total 8100 · Non-Personnel Expenses	1,857.70
8200 · Facility Expenses	
8210 · Office Lease	4,100.00
Total 8220 · Utilities	1,349.56
8230 · Janitorial	481.06
8240 · Facility repairs & maintenance	456.76
Total 8200 · Facility Expenses	6,387.38
Total 8300 · Travel & Meeting Expense	628.52
Total 8320 · Meetings, workshops & events	168.44

Redwood Coast Energy Authority**Profit & Loss**

January 2017

	<u>TOTAL</u>
8500 · Other Expenses	
8510 · Interest Expense	
8512 · Loan Interest	-102.09
Total 8510 · Interest Expense	-102.09
8530 · Dues & Memberships	1,771.00
Total 8560 · Website Expenses	45.00
Total 8570 · Advertising & Marketing Expense	1,158.75
8592 · Service Charge	1.00
8593 · Bank Charges	330.75
8595 · Credit Card Processing Fees	122.59
8596 · Flex Billing Service Fee	10.41
Total 8500 · Other Expenses	<u>3,337.41</u>
8700 · Professional Services	
8710 · Contracts - Program Related Ser	9,705.66
8720 · Accounting	750.00
8740 · Legal	8,880.31
Total 8700 · Professional Services	<u>19,335.97</u>
Total 8 NON-PERSONNEL RELATED EXP	<u>31,715.42</u>
Total 9 INCENTIVES & REBATES	<u>10,102.95</u>
Total Expense	<u>150,452.98</u>
Net Ordinary Income	-64,104.87
Other Income/Expense	
Other Expense	
9800 · Repayment of Debt	159.04
Total Other Expense	<u>159.04</u>
Net Other Income	<u>-159.04</u>
Net Income	<u><u>-64,263.91</u></u>



REDWOOD COAST Energy Authority

STAFF REPORT

AGENDA DATE:	March 20, 2017
TO:	Board of Directors
PREPARED BY:	Director of Finance and HR
SUBJECT:	Change in authorized signors for redwood coast energy authority bank and trust accounts

SUMMARY

Sound internal accounting controls dictate a segregation of duties such that no single person would have the ability or authorization to disburse or withdraw funds from the organization's cash accounts. This must be balanced with the necessities inherent in the need to transact business in an efficient manner. Present authorized signers are the Executive Director, the Operations Manager, and the Board Chair or Board Vice Chair. The Operations Manager has had to go on an extended period of personal leave, creating a situation where the Chair or Vice Chair must be the second signature on all checks. This has shown to be impractical from a logistical standpoint as neither the Board Chair nor the Vice Chair are regularly on the premises of Redwood Coast Energy Authority. This has caused delays and inefficiencies with payments to vendors and employees in the normal course of business. This proposes to remedy the situation by requiring two signatures on all checks from the list above.

RECOMMEND ACTION:

The Board of Directors authorize any two of the following to sign checks, initiate disbursements and transfer funds:

1. Matthew Marshall, Executive Director
2. Steven Edmiston, Director of Finance and Human Resources
3. Lori Biondini, Director of Business Development and Planning
4. Sheri Woo, Board Chair
5. Michael Winkler, Board Vice Chair

Such authorization shall pertain to all bank and treasury cash depository accounts of Redwood Coast Energy Authority. Presently, those accounts are:

1. Umpqua Bank Operating Account – #992360560
2. Umpqua Bank Reserve Account - #4863272300
3. Umpqua Bank Deposit Control Agreement Account - #4867281687
4. Chase Payroll Clearing Account - #795787550
5. County of Humboldt Trust #3839
6. County of Humboldt Trust #3840



REDWOOD COAST Energy Authority

STAFF REPORT

AGENDA DATE:	March 20, 2017
TO:	Board of Directors
PREPARED BY:	Executive Director
SUBJECT:	CA Energy Commission Grant for Electric Vehicle Readiness Plan Implementation

SUMMARY:

In 2011 RCEA was awarded funding by the CA Energy Commission (CEC) to develop a “North Coast Regional Electric Vehicle Readiness Plan” to guide EV charging infrastructure deployment and other supporting activities that facilitate the increased adoption of electric vehicles. In addition to guiding local EV program activities, the CEC also uses these regional readiness plans to inform state-level decisions and investments.

Following the completion of the EV Readiness Plan RCEA has received two related implementation grants that are currently active:

- 1) A grant for EV charging infrastructure deployment, which funded 9 of the 14 charging sites currently in local charging network managed by RCEA.
- 2) A grant for programmatic readiness activities, including community education and outreach, charging site planning and design, fleet-operator technical assistance, and wayfinding signage.

The proposed grant agreement (attached) would continue and expand the ongoing work related to the second, programmatic readiness grant listed above by funding additional community awareness activities and regional EV-related coordination and infrastructure planning.

FINANCIAL IMPACTS:

The grant will provide \$109,651 in funding to continue and expand current activities using current staff. The budget includes a small match amount of \$1,200 for the cost of insurance at “ride-and-drive” events where customers can test drive various EV models.

RECOMMEND ACTION:

Approve CA Energy Commission Grant Agreement ARV-16-012 for \$109,651 for Electric Vehicle Readiness Plan Implementation .



RECIPIENT Redwood Coast Energy Authority (RCEA)	AGREEMENT NUMBER ARV-16-012
ADDRESS 633 3 rd Street Eureka, CA 95501	AGREEMENT TERM May 1, 2017 to December 31, 2019 The effective date of this Agreement is either the start date or the approval date by the California Energy Commission, whichever is later. The California Energy Commission shall be the last party to sign. No work is authorized, nor shall any work begin, until on or after the effective date.

PROJECT DESCRIPTION

The parties agree to comply with the terms and conditions of the following Exhibits which are by this reference made a part of the agreement.

Exhibit A – Scope of Work	Page(s): 12
Exhibit A – Attachments	Page(s): 2
Exhibit B – Budget	Page(s): 8
Exhibit B – Attachments	Page(s): 0
Exhibit C – General Terms and Conditions	Page(s): 25
Exhibit C – Attachments	Page(s): 0
Exhibit D – Contacts	Page(s): 1

REIMBURSABLE AMOUNT \$ 109,651.
MATCH SHARE \$ 1,200.
TOTAL \$ 110,851.

The undersigned parties have read the attachments to this agreement and will comply with the standards and requirements contained therein.

CALIFORNIA ENERGY COMMISSION		RECIPIENT	
AUTHORIZED SIGNATURE	DATE	AUTHORIZED SIGNATURE	DATE
NAME Rachel L. Grant Kiley		NAME	
TITLE Contracts, Grants and Loans Office Manager		TITLE	
CALIFORNIA ENERGY COMMISSION ADDRESS 1516 9th Street, MS 1, Sacramento, CA 95814			

**EXHIBIT A
SCOPE OF WORK**

TECHNICAL TASK LIST

Task #	CPR	Task Name
1		Administration
2	X	ZEV Readiness Plan Implementation

KEY NAME LIST

Task #	Key Subcontractor(s)	Key Partner(s)
	N/A	N/A

GLOSSARY

Specific terms and acronyms used throughout this scope of work are defined as follows:

Term/ Acronym	Definition
ARFVTP	Alternative and Renewable Vehicle and Technology Program
CAM	Commission Agreement Manager
CAO	Commission Agreement Officer
CPR	Critical Project Review
Energy Commission	California Energy Commission
EVCS	Electric Vehicle Charging Station
FTD	Fuels and Transportation Division
PEVCC	Plug-in Electric Vehicle Coordination Council
PEV FleET	Plug-In Electric Vehicle Fleet Evaluation Tool
OPR	Office of Planning and Research
PEV	Plug-in Electric Vehicle
RCEA	Redwood Coast Energy Authority
SERC	Schatz Energy Research Center
ZEV	Zero Emission Vehicle

Background:

Assembly Bill (AB) 118 (Núñez, Chapter 750, Statutes of 2007), created the Alternative and Renewable Fuel and Vehicle Technology Program (ARFVTP). The statute authorizes the California Energy Commission (Energy Commission) to develop and deploy alternative and renewable fuels and advanced transportation technologies to help attain the state's climate change policies. AB 8 (Perea, Chapter 401, Statutes of 2013) re-authorizes the ARFVTP through January 1, 2024, and specifies that the Energy Commission allocate up to \$20 million

per year (or up to 20 percent of each fiscal year's funds) in funding for hydrogen station development until at least 100 stations are operational.

The ARFVTP has an annual budget of approximately \$100 million and provides financial support for projects that:

- Reduce California's use and dependence on petroleum transportation fuels and increase the use of alternative and renewable fuels and advanced vehicle technologies.
- Produce sustainable alternative and renewable low-carbon fuels in California.
- Expand alternative fueling infrastructure and fueling stations.
- Improve the efficiency, performance and market viability of alternative light-, medium-, and heavy-duty vehicle technologies.
- Retrofit medium- and heavy-duty on-road and non-road vehicle fleets to alternative technologies or fuel use.
- Expand the alternative fueling infrastructure available to existing fleets, public transit, and transportation corridors.
- Establish workforce training programs and conduct public outreach on the benefits of alternative transportation fuels and vehicle technologies.

On October 17, 2016, the California Energy Commission (Energy Commission) released a Grant Solicitation and Application Package entitled "Zero Emission Vehicle (ZEV) Regional Readiness and Planning Solicitation" under the ARFVTP. This first-come, first-served grant solicitation was an offer to fund projects that support new and existing planning efforts for zero-emission vehicles (battery-electric vehicles and hydrogen fuel cell electric vehicles, and including plug-in hybrid electric vehicles). In response to GFO-16-601, the Recipient submitted application #1 which was proposed for funding in the Energy Commission's Notice of Proposed Awards on January 12, 2017. GFO-16-601 and Recipient's application are hereby incorporated by reference into this Agreement in their entirety.

In the event of any conflict or inconsistency between the terms of the Solicitation and the terms of the Recipient's Application, the Solicitation shall control. In the event of any conflict or inconsistency between the Recipient's Application and the terms of Commission's Award, the Commission's Award shall control. Similarly, in the event of any conflict or inconsistency between the terms of this Agreement and the Recipient's Application, the terms of this Agreement shall control.

Problem Statement:

In July 2014 the North Coast Plug-in Electric Vehicle Coordinating Council's North Coast PEV Readiness Plan was completed, developed by Redwood Coast Energy Authority (RCEA) in partnership with Schatz Energy Research Center (SERC) and other regional stakeholders. The plan calls for a variety of implementation measures to encourage uptake of PEVs including streamlining permitting and inspection processes for Electric Vehicle Charging Station (EVCS), siting and installing EVCS, and conducting public outreach and education campaigns. Through ARV-14-046, the California Energy Commission (Energy Commission) provided RCEA with funding to implement measures identified in the Plug-in Electric Vehicle (PEV) Readiness Plan. In order to maintain current momentum, bridge funding is needed to support Zero Emission Vehicle (ZEV) adoption efforts until RCEA's Community Choice Aggregation program provides sustained financial support.

Goals of the Agreement:

The goal of this Agreement is to continue ZEV outreach and assistance implemented through ARV-14-046 in the counties of Humboldt, Del Norte, and Trinity. As the lead agency for the North Coast PEVCC, RCEA is ideally positioned to support ZEV adoption.

Objectives of the Agreement:

The objectives of this Agreement are listed in the following table along with quantitative and measurable outcomes against which the success of the proposed project can be measured.

Objective	Anticipated Action and Potential Outcome
Promote ZEV adoption through profile raising campaigns.	<ul style="list-style-type: none">▪ Conduct at least 5 ride and drive and ZEV expo events to promote the latest ZEVs on the market.▪ Develop and deliver at least 4 seminars on ZEV topics.▪ Participate in 6 or more public events.▪ Publish at least 6 newsletter editions.▪ Achieve at least 4 media spots highlighting regional ZEV activities.▪ Make at least 6 presentations to community organizations and/or fleet operators.
Create an Ombudsman position to support assistance and liaison activities.	<ul style="list-style-type: none">▪ Organize a "group buy" of ZEVs to provide significant price discounts.▪ Provide consultation for at least 6 fleet managers and public officials.▪ Provide consultation for at least 6 ZEV fuel station site hosts.▪ Coordinate and host at least 4 meetings of a "ZEV enthusiasts" group.▪ Update the current version of the EVCS guide.▪ Develop at least 2 dealer sales resources toolkits for area dealerships.

TASK 1 ADMINISTRATION**Task 1.1 Attend Kick-off Meeting**

The goal of this task is to establish the lines of communication and procedures for implementing this Agreement. The CAM shall designate the date and location of this meeting and provide an agenda to the Recipient prior to the meeting.

The Recipient shall:

- Attend a "Kick-Off" meeting with the Commission Agreement Manager (CAM), the Commission Agreement Officer (CAO), and a representative of the Accounting Office. The Recipient shall bring its Project Manager, Agreement Administrator, Accounting Officer, and others designated by the CAM to this meeting.
- Discuss the following administrative and technical aspects of this Agreement:

- Agreement Terms and Conditions
- Critical Project Review (Task 1.2)
- Match fund documentation (Task 1.6) No reimbursable work may be done until this documentation is in place.
- Permit documentation (Task 1.7)
- Subcontracts needed to carry out project (Task 1.8)
- The CAM's expectations for accomplishing tasks described in the Scope of Work
- An updated Schedule of Products and Due Dates
- Monthly Progress Reports (Task 1.4)
- Technical Products (Product Guidelines located in Section 5 of the Terms and Conditions)
- Final Report (Task 1.5).

Recipient Products:

- Updated Schedule of Products
- Updated List of Match Funds
- Updated List of Permits

CAM Product:

- Kick-Off Meeting Agenda

Task 1.2 Critical Project Review (CPR) Meetings

CPRs provide the opportunity for frank discussions between the Energy Commission and the Recipient. The goal of this task is to determine if the project should continue to receive Energy Commission funding to complete this Agreement and to identify any needed modifications to the tasks, products, schedule or budget.

The CAM may schedule CPR meetings as necessary, and meeting costs will be borne by the Recipient.

Meeting participants include the CAM and the Recipient and may include the CAO, the Fuels and Transportation Division (FTD) lead, other Energy Commission staff and Management as well as other individuals selected by the CAM to provide support to the Energy Commission.

The CAM shall:

- Determine the location, date, and time of each CPR meeting with the Recipient. These meetings generally take place at the Energy Commission, but they may take place at another location.
- Send the Recipient the agenda and a list of expected participants in advance of each CPR. If applicable, the agenda shall include a discussion on both match funding and permits.
- Conduct and make a record of each CPR meeting. Prepare a schedule for providing the written determination described below.

- Determine whether to continue the project, and if continuing, whether or not modifications are needed to the tasks, schedule, products, and/or budget for the remainder of the Agreement. Modifications to the Agreement may require a formal amendment (please see section 8 of the Terms and Conditions). If the CAM concludes that satisfactory progress is not being made, this conclusion will be referred to the Lead Commissioner for Transportation for his or her concurrence.
- Provide the Recipient with a written determination in accordance with the schedule. The written response may include a requirement for the Recipient to revise one or more product(s) that were included in the CPR.

The Recipient shall:

- Prepare a CPR Report for each CPR that discusses the progress of the Agreement toward achieving its goals and objectives. This report shall include recommendations and conclusions regarding continued work of the projects. This report shall be submitted along with any other products identified in this scope of work. The Recipient shall submit these documents to the CAM and any other designated reviewers at least 15 working days in advance of each CPR meeting.
- Present the required information at each CPR meeting and participate in a discussion about the Agreement.

CAM Products:

- Agenda and a list of expected participants
- Schedule for written determination
- Written determination

Recipient Product:

- CPR Report(s)

Task 1.3 Final Meeting

The goal of this task is to closeout this Agreement.

The Recipient shall:

- Meet with Energy Commission staff to present the findings, conclusions, and recommendations. The final meeting must be completed during the closeout of this Agreement.

This meeting will be attended by, at a minimum, the Recipient, the CAO, and the CAM. The technical and administrative aspects of Agreement closeout will be discussed at the meeting, which may be two separate meetings at the discretion of the CAM.

The technical portion of the meeting shall present an assessment of the degree to which project and task goals and objectives were achieved, findings, conclusions, recommended next steps (if any) for the Agreement, and recommendations for improvements. The CAM will determine the appropriate meeting participants.

The administrative portion of the meeting shall be a discussion with the CAM and the Grants Officer about the following Agreement closeout items:

- What to do with any equipment purchased with Energy Commission funds (Options)
 - Energy Commission's request for specific "generated" data (not already provided in Agreement products)
 - Need to document Recipient's disclosure of "subject inventions" developed under the Agreement
 - "Surviving" Agreement provisions
 - Final invoicing and release of retention.
- Prepare a schedule for completing the closeout activities for this Agreement.

Products:

- Written documentation of meeting agreements
- Schedule for completing closeout activities

Task 1.4 Monthly Progress Reports

The goal of this task is to periodically verify that satisfactory and continued progress is made towards achieving the objectives of this Agreement on time and within budget.

The objectives of this task are to summarize activities performed during the reporting period, to identify activities planned for the next reporting period, to identify issues that may affect performance and expenditures, and to form the basis for determining whether invoices are consistent with work performed.

The Recipient shall:

- Prepare a Monthly Progress Report which summarizes all Agreement activities conducted by the Recipient for the reporting period, including an assessment of the ability to complete the Agreement within the current budget and any anticipated cost overruns. Each progress report is due to the CAM within 10 days of the end of the reporting period. The recommended specifications for each progress report are contained in Section 6 of the Terms and Conditions of this Agreement.
- In the first Monthly Progress Report and first invoice, document and verify match expenditures and provide a synopsis of project progress, if match funds have been expended or if work funded with match share has occurred after the notice of proposed award but before execution of the grant agreement. If no match funds have been expended or if no work funded with match share has occurred before execution, then state this in the report. All pre-execution match expenditures must conform to the requirements in the Terms and Conditions of this Agreement.

Product:

- Monthly Progress Reports

Task 1.5 Final Report

The goal of the Final Report is to assess the project's success in achieving the Agreement's goals and objectives, advancing science and technology, and providing energy-related and other benefits to California.

The objectives of the Final Report are to clearly and completely describe the project's purpose, approach, activities performed, results, and advancements in science and technology; to present a public assessment of the success of the project as measured by the degree to which goals and objectives were achieved; to make insightful observations based on results obtained; to draw conclusions; and to make recommendations for further projects and improvements to the FTD project management processes.

The Final Report shall be a public document. If the Recipient has obtained confidential status from the Energy Commission and will be preparing a confidential version of the Final Report as well, the Recipient shall perform the following activities for both the public and confidential versions of the Final Report.

The Recipient shall:

- Prepare an Outline of the Final Report, if requested by the CAM.
- Prepare a Final Report following the latest version of the Final Report guidelines which will be provided by the CAM. The CAM shall provide written comments on the Draft Final Report within fifteen (15) working days of receipt. The Final Report must be completed at least 60 days before the end of the Agreement Term.
- Submit one bound copy of the Final Report with the final invoice.

Products:

- Outline of the Final Report, if requested
- Draft Final Report
- Final Report

Task 1.6 Identify and Obtain Matching Funds

The goal of this task is to ensure that the match funds planned for this Agreement are obtained for and applied to this Agreement during the term of this Agreement.

The costs to obtain and document match fund commitments are not reimbursable through this Agreement. Although the Energy Commission budget for this task will be zero dollars, the Recipient may utilize match funds for this task. Match funds shall be spent concurrently or in advance of Energy Commission funds for each task during the term of this Agreement. Match funds must be identified in writing and the associated commitments obtained before the Recipient can incur any costs for which the Recipient will request reimbursement.

The Recipient shall:

- Prepare a letter documenting the match funding committed to this Agreement and submit it to the CAM at least 2 working days prior to the kick-off meeting. If no match funds were part of the proposal that led to the Energy Commission awarding this Agreement and none have been identified at the time this Agreement starts, then state such in the letter. If match funds were a part of the proposal that led to the Energy Commission awarding this Agreement, then provide in the letter a list of the match funds that identifies the:
 - Amount of each cash match fund, its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied.

- Amount of each in-kind contribution, a description, documented market or book value, and its source, including a contact name, address and telephone number and the task(s) to which the match funds will be applied. If the in-kind contribution is equipment or other tangible or real property, the Recipient shall identify its owner and provide a contact name, address and telephone number, and the address where the property is located.
- Provide a copy of the letter of commitment from an authorized representative of each source of cash match funding or in-kind contributions that these funds or contributions have been secured. For match funds provided by a grant a copy of the executed grant shall be submitted in place of a letter of commitment.
- Discuss match funds and the implications to the Agreement if they are reduced or not obtained as committed, at the kick-off meeting. If applicable, match funds will be included as a line item in the progress reports and will be a topic at CPR meetings.
- Provide the appropriate information to the CAM if during the course of the Agreement additional match funds are received.
- Notify the CAM within 10 days if during the course of the Agreement existing match funds are reduced. Reduction in match funds must be approved through a formal amendment to the Agreement and may trigger an additional CPR meeting.

Products:

- A letter regarding match funds or stating that no match funds are provided
- Copy(ies) of each match fund commitment letter(s) (if applicable)
- Letter(s) for new match funds (if applicable)
- Letter that match funds were reduced (if applicable)

Task 1.7 Identify and Obtain Required Permits

The goal of this task is to obtain all permits required for work completed under this Agreement in advance of the date they are needed to keep the Agreement schedule on track.

Permit costs and the expenses associated with obtaining permits are not reimbursable under this Agreement. Although the Energy Commission budget for this task will be zero dollars, the Recipient shall budget match funds for any expected expenditures associated with obtaining permits. Permits must be identified in writing and obtained before the Recipient can make any expenditure for which a permit is required.

The Recipient shall:

- Prepare a letter documenting the permits required to conduct this Agreement and submit it to the CAM at least 2 working days prior to the kick-off meeting. If there are no permits required at the start of this Agreement, then state such in the letter. If it is known at the beginning of the Agreement that permits will be required during the course of the Agreement, provide in the letter:
 - A list of the permits that identifies the:
 - Type of permit
 - Name, address and telephone number of the permitting jurisdictions or lead agencies

- The schedule the Recipient will follow in applying for and obtaining these permits.
- Discuss the list of permits and the schedule for obtaining them at the kick-off meeting and develop a timetable for submitting the updated list, schedule and the copies of the permits. The implications to the Agreement if the permits are not obtained in a timely fashion or are denied will also be discussed. If applicable, permits will be included as a line item in the Progress Reports and will be a topic at CPR meetings.
- If during the course of the Agreement additional permits become necessary, provide the appropriate information on each permit and an updated schedule to the CAM.
- As permits are obtained, send a copy of each approved permit to the CAM.
- If during the course of the Agreement permits are not obtained on time or are denied, notify the CAM within 5 working days. Either of these events may trigger an additional CPR.

Products:

- Letter documenting the permits or stating that no permits are required
- A copy of each approved permit (if applicable)
- Updated list of permits as they change during the term of the Agreement (if applicable)
- Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)

Task 1.8 Obtain and Execute Subcontracts

The goal of this task is to ensure quality products and to procure subcontractors required to carry out the tasks under this Agreement consistent with the Agreement Terms and Conditions and the Recipient's own procurement policies and procedures. It will also provide the Energy Commission an opportunity to review the subcontracts to ensure that the tasks are consistent with this Agreement, and that the budgeted expenditures are reasonable and consistent with applicable cost principles.

The Recipient shall:

- Manage and coordinate subcontractor activities.
- Submit a draft of each subcontract required to conduct the work under this Agreement to the CAM for review.
- Submit a final copy of the executed subcontract.
- If Recipient decides to add new subcontractors, then the Recipient shall notify the CAM.

Products:

- Draft subcontracts
- Final subcontracts

TECHNICAL TASKS

TASK 2 ZEV Readiness Plan Implementation

The goal of this task is to implement core elements of the existing North Coast PEV Readiness Plan.

Task 2.1 ZEV Awareness

The goal of this task is to promote ZEV adoption through public and fleet operator outreach and education campaigns.

The Recipient shall:

- Conduct at least five public ride and drive and ZEV expo events.
- Conduct ZEV education and outreach through tabling at at least six public events and festivals.
- Deliver and promote a series of seminars on ZEVs, including topics on emerging technology, available incentives and testimonials from current owners.
- Publish at least six periodic newsletters that include ZEV consumer information, local ZEV owner testimonials, local successes such as fleet adoption or new EVCS, and other updates.
- Leverage established media relationships to garner TV, radio, print, and on-line earned-media coverage to achieve at least four media spots highlighting regional ZEV activities.
- Maintain an online presence through the RCEA webpage and social media including, but not limited to, the following examples:
 - Media section with press releases, photos of events and activities, links to radio spots, past and current newsletters.
 - Information about locally available ZEVs, existing infrastructure and local resources.
 - Links to other organizations and resources such as vehicle buyer guides.
- Provide at least six presentations to fleet operators and/or community organizations such as Chambers of Commerce, service clubs, and large employers.
- Make presentations to elected officials and city staff.
- Provide technical assistance to municipal and commercial fleet operators to evaluate vehicle options using the Plug-In Electric Vehicle Fleet Evaluation Tool (PEV FleET) developed by the North Coast PEV Project.
- Work with municipalities to adopt green fleet policies and include green fleet activities in their climate action plans.

- Provide scholarships for two regional fleet managers to attend NAFA's Sustainable Fleet Training or equivalent training.
- Publicize and promote local green fleet activities.

Products:

- Summary documentation of all task activities including, but not limited to, a listing of all events, publications, media coverage, presentations, and consulting services achieved
- Inclusion of all activities and documentation in the Final Report

[CPR WILL BE HELD IN THIS TASK. See Task 1.2 for details]

Task 2.2 Ombudsman

The goal of this task is to support ZEV drivers and ongoing ZEV projects, as well as promote increased ZEV adoption, by dedicating a portion of the current Transportation Program Coordinator's time to Ombudsman activities.

The Recipient shall:

- Help the general public and fleet owners to learn about and use ZEVs and associated infrastructure.
- Build on established relationships outside of the tri-county region, coordinating with the upstate region on ZEV projects.
- Organize the offering of a community-wide "group buy" of ZEVs partner with local dealerships to provide significant price discounts, and promote the opportunity to community members.
- Facilitate access to currently available ZEV maps, guidelines, and FAQs, and develop additional relevant resources.
- Promote and facilitate a group of "ZEV enthusiasts", coordinating and hosting at least four regular meetings at RCEA.
- Act as a resource for at least six site hosts evaluating charging stations or other ZEV infrastructure. Beyond routine questions, consult on specific challenges such as ADA compliance, site selection, and rebates and incentives.
- Walk interested site hosts through the EVCS guide developed through ARV-14-046, helping with station selection and feature comparison.
- Respond to interest in alternative fuel vehicles from the general public with relevant, up-to-date information. Solicit interest through messaging on current charging infrastructure, collateral, and at outreach events.

- Provide technical assistance to at least six fleet managers and public officials considering alternative fuels; continue providing fleet analysis and outreach. Improve fleet outreach by compiling testimonials and developing more promotional materials.
- Build on relationships with local government agencies developed through ARV-14-046, continuing to provide assistance with permitting, fleet development, and training.
- Update the current version of the EVCS guide.
- Complement manufacturer training on alternative fuel vehicles for local dealerships by developing dealer sales resources toolkits.
- Enhance and expand transportation activities arising out of Clean Cities Coalition participation (submission pending at time of this application).

Products:

- Summary of documentation of all task activities including, but not limited to, a listing of all events, assistance statistics, results from group buy, and consulting services achieved
- Inclusion of all activities and documentation in the Final Report

EXHIBIT A
Attachment A-1

Schedule of Products and Due Dates

Task Number	Task Name	Product(s)	Due Date
1.1	Attend Kick-off Meeting	Updated Schedule of Products	6/2/2017
		Updated List of Match Funds	6/2/2017
		Updated List of Permits	6/2/2017
		Kick-Off Meeting Agenda (CEC)	6/23/2017
1.2	Critical Project Review Meetings	1st CPR CPR Report	TBD by Commission
		Meeting Written determination (CEC)	TBD by Commission
1.3	Final Meeting	Written documentation of meeting agreements	12/13/2019
		Schedule for completing closeout activities	12/13/2019
1.4	Monthly Progress Reports		The 10th calendar day of each month during the approved term of this Agreement
		Monthly Progress Reports	
1.5	Final Report	Final Outline of the Final Report	9/6/2019
		Draft Final Report (no less than 60 days before the end term of the agreement)	10/4/2019
		Final Report	11/1/2019
1.6	Identify and Obtain Match Funds	A letter regarding match funds or stating that no match funds are provided	7/7/2017
		Copy(ies) of each match fund commitment letter(s) (if applicable)	7/17/2017
		Letter(s) for new match funds (if applicable)	Within 10 days of identifying new match funds
		Letter that match funds were reduced (if applicable)	Within 10 days of identifying reduced funds

EXHIBIT A
Attachment A-1

1.7 Identify and Obtain Required Permits	Letter documenting the permits or stating that no permits are required	8/4/2017
	A copy of each approved permit (if applicable)	Within 10 days of receiving each permit
	Updated list of permits as they change during the term of the Agreement (if applicable)	Within 10 days of change in list of permits
	Updated schedule for acquiring permits as changes occur during the term of the Agreement (if applicable)	Within 10 days of change in schedule for obtaining permits
1.8 Obtain and Execute Subcontracts	Letter describing the subcontracts needed, or stating that no subcontracts are required	9/1/2017
	Draft subcontracts	15 days prior to the scheduled execution date
	Final subcontracts	Within 10 days of execution
2.1 ZEV Awareness	Summary documentation of all task activities including, but not limited to, a listing of all events, publications, media coverage, presentations, and consulting services achieved	12/28/2018
	Inclusion of all activities and documentation in the Final Report	8/2/2019
2.2 Ombudsman	Summary of documentation of all task activities including, but not limited to, a listing of all events, assistance statistics, results from group buy, and consulting services achieved	3/28/2018
	Inclusion of all activities and documentation in the Final Report	8/2/2019

EXHIBIT B

Category Budget

**Redwood Coast Energy
Authority**

Redwood Coast Energy Authority

- ☒ Contractor/Recipient
 ☐ Subcontractor
☐ Small Business
 ☐ Micro Business
 ☐ Disabled Veteran Business Enterprise (DVBE)

Cost Category	Energy Commission Reimbursable Share	Match Share	Total
Direct Labor	\$45,014	\$0	\$45,014
Fringe Benefits	\$29,319	\$0	\$29,319
Total Labor	\$74,333	\$0	\$74,333
Travel	\$2,400	\$0	\$2,400
Equipment	\$0	\$0	\$0
Materials/Miscellaneous	\$3,184	\$1,200	\$4,384
Subcontractors	\$0	\$0	\$0
Total Other Direct Costs	\$5,584	\$1,200	\$6,784
Indirect Costs	\$29,734	\$0	\$29,734
Profit (not allowed for grant recipients)	\$0	\$0	\$0
Total Indirect and Profit	\$29,734	\$0	\$29,734
Grand Totals	\$109,651	\$1,200	\$110,851

EXHIBIT B

Direct Labor (Unloaded)

Redwood Coast Energy Authority

Hourly Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per hour)	# of Hours	Energy Commission Funds	Match Share	Total
Matthew Marshall	Executive Director	\$65.29	30	\$1,959	\$0	\$1,959
Dana Boudreau	Manager	\$46.63	90	\$4,197	\$0	\$4,197
Andrea Alstone	Specialist	\$31.92	72	\$2,298	\$0	\$2,298
Patrick Owen	Technician	\$27.67	30	\$830	\$0	\$830
Lexie Fischer	Program Coordinator	\$26.92	60	\$1,615	\$0	\$1,615
Pierce Schwalb	Program Coordinator	\$23.41	1,300	\$30,433	\$0	\$30,433
AJ Petrella	Program Assistant	\$23.41	60	\$1,405	\$0	\$1,405
Barbara Garcia	Program Assistant	\$16.32	30	\$490	\$0	\$490
TBD	Intern	\$14.90	120	\$1,788	\$0	\$1,788
Hourly Direct Labor Totals				\$45,014	\$0	\$45,014

Monthly Salary Rates

Employee Name	Job Classification / Title	Maximum Labor Rate (\$ per month)	# of Months	Energy Commission Funds	Match Share	Total
N/A		\$ -		\$0	\$0	\$0
Monthly Direct Labor Totals				\$0	\$0	\$0

				Energy Commission Funds	Match Share	Total
Direct Labor Grand Totals				\$45,014	\$0	\$45,014

EXHIBIT B

Fringe Benefits

Redwood Coast Energy Authority

Fringe Benefit Base Description (Employee or Job Classification/Title)	Max. Fringe Benefit Rate (%)	Direct Labor Costs (\$)	Energy Commission Funds	Match Share	Total
All full-time staff classifications	67.00%	\$43,226	\$28,962	\$0	\$28,962
Interns	20.00%	\$1,788	\$358	\$0	\$358
Fringe Benefit Totals		\$45,014	\$29,319	\$0	\$29,319

EXHIBIT B

Travel

Redwood Coast Energy Authority

Task No.	Traveler's Name and/or Classification	Departure and Destination	Trip Purpose	Energy Commission Funds	Match Share	Total
1	Coordinator, Manager	Eureka to Sacramento	Kick-off Meeting	\$360	\$0	\$360
1	Coordinator, Manager	Eureka to Sacramento	CPR Meeting	\$360	\$0	\$360
1	Coordinator, Manager	Eureka to Sacramento	Final Meeting	\$360	\$0	\$360
2	Coordinator, Assistant	Local mileage within the region	Travel for education and outreach events	\$240	\$0	\$240
2	Coordinator, 2 area fleet managers	Eureka to Sacramento	Attend NAFA Sustainable Fleet training	\$1,080	\$0	\$1,080
				\$0	\$0	\$0
Total:				\$2,400	\$0	\$2,400

EXHIBIT B

Equipment

Redwood Coast Energy Authority

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
N/A				\$ -	\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -	\$ -
Total:					\$ -	\$ -	\$ -

EXHIBIT B

Materials & Miscellaneous

Redwood Coast Energy Authority

Task No.	Description	Purpose	# Units	Unit Cost	Energy Commission Funds	Match Share	Total
2	Education and outreach materials	Print media for events, workshops, and meetings	600	\$1	\$600		\$600
2	Education and outreach materials	Stickers for current charging stations	32	\$3	\$96		\$96
2	Education and outreach materials	Sandwich board sign for Ride and Drives	2	\$140	\$280		\$280
2	Education and outreach materials	Stand-up Banner	1	\$400	\$400	\$0	\$400
2	Additional insurance rider for ride and drives	Will cover RCEA and dealer liability for vehicles	6	\$200	\$0	\$1,200	\$0
2	Scholarships for 2 fleet managers and 1 RCEA staff member to attend NAFA sustainable fleet training, or equivalent.	To encourage participation by regional fleet managers	3	\$200	\$600		\$600
2	Traffic safety cones	Provide direction at Ride and Drive events	8	\$51	\$408		\$408
2	Event registration fees	Cover the cost of registration at events like fairs and trade shows	8	\$100	\$800		\$800
Total:					\$ 3,184	\$ 1,200	\$ 3,184

EXHIBIT B

Subcontracts

Redwood Coast Energy Authority

Task No.	Subcontractor Name	Purpose	CA Business Certifications DVBE/ SB/MB/None	Energy Commission Funds	Match Share	Total
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
				\$ -	\$ -	\$ -
Total:				\$ -	\$ -	\$ -

EXHIBIT B

Indirect Costs and Profit

Redwood Coast Energy Authority

Indirect Cost(s)

Name of Indirect Cost	Maximum Rate	Indirect Cost Base Description	Indirect Cost Base Amount	Energy Commission Funds	Match Share	Total
General & Administrative Overhead	40.00%	Direct Labor and Fringe Benefits	\$ 74,333	\$ 29,734	\$ -	\$ 29,734
Total:				\$ 29,734	\$ -	\$ 29,734

Profit

(Profit is not allowed for Grant Recipients)

Profit Rate	Profit Base Description	Profit Base Amount	Energy Commission Funds	Match Share	Total
0.00%		\$ -	\$ -	\$ -	\$ -
Total:			\$ -	\$ -	\$ -

EXHIBIT C

ALTERNATIVE AND RENEWABLE FUEL AND VEHICLE TECHNOLOGY PROGRAM (ARFVTP) TERMS AND CONDITIONS

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TERMS AND CONDITIONS

1. **Grant Agreement**

This project is being funded with a grant from the California Energy Commission's (Energy Commission) Alternative and Renewable Fuel and Vehicle Technology Program.

This Agreement is comprised of the grant funding award, the Terms and Conditions, and all attachments. These Terms and Conditions are standard requirements for grant awards. The Energy Commission may impose additional special conditions in this grant Agreement that address the unique circumstances of this project. Special conditions that conflict with these standard provisions take precedence.

The Recipient's authorized representative shall sign all copies of this Agreement and return all signed packages to the Energy Commission's Grants and Loans Office within 30 days. Failure to meet this requirement may result in the forfeiture of this award. When all required signatures are obtained, an executed copy will be returned to the Recipient.

The term of this Agreement or the Agreement Period is the length of this Agreement between the Energy Commission and the Recipient. Project means Recipient's specific project that is funded in whole or in part by this Agreement. The Recipient's project may coincide with or extend outside the Agreement Period.

All reimbursable work and/or the expenditure of funds must occur within the approved term of this Agreement. The Energy Commission cannot authorize any payments until all parties sign this Agreement.

2. **Documents Incorporated by Reference**

The documents below are incorporated by reference into this Agreement. These terms and conditions will govern in the event of a conflict with the documents below, with the exception of the documents in subsection (f). Where this Agreement or California laws and regulations are silent or do not apply, the Energy Commission will use the federal cost principles and acquisition regulations listed below as guidance in determining whether reimbursement of claimed costs is allowable. Documents incorporated by reference include:

Solicitation Documents (if applicable)

- a. The funding solicitation under which this Agreement was awarded.
- b. The Recipient's proposal submitted in response to the solicitation

Federal Cost Principles (applicable to state and local governments, Indian tribes, institutions of higher education, and nonprofit organizations)

- c. 2 Code of Federal Regulations (CFR) Part 200, Subpart E (Sections 200.400 et seq.)

Federal Acquisition Regulations (applicable to commercial organizations)

- d. 48 CFR, Ch.1, Subchapter E, Part 31, Subpart 31.2: Contracts with Commercial Organizations (supplemented by 48 CFR, Ch. 9, Subchapter E, Part 931, Subpart 931.2 for Department of Energy grants)

Nondiscrimination

- e. 2 California Code of Regulations, Section 8101 et seq.: Contractor Nondiscrimination and Compliance

General Laws

- f. Any federal, state, or local laws or regulations applicable to the project that are not expressly listed in this Agreement

3. *Funding Limitations*

Any federal, State, and local laws and regulations applicable to your project not expressly listed in this Agreement are incorporated herein as part of this Agreement.

4. *Due Diligence*

The Recipient is required to take timely actions which, taken collectively, move this project to completion. The Energy Commission Agreement Manager (CAM) will periodically evaluate the Schedule of Products and Due Dates for completion of the Statement of Work tasks. If the CAM determines (1) the Recipient is not being diligent in completing the tasks in the Statement of Work or (2) the time remaining in this Agreement is insufficient to complete all project work tasks by the approved Agreement end term date, the CAM may recommend that this Agreement be terminated, and the Agreement may, without prejudice to any of the Energy Commission's remedies, be terminated.

5. *Products*

Products are defined as any tangible item specified in the Statement of Work. Unless otherwise directed, draft copies of all products identified in the Work Statement shall be submitted to the CAM for review and comment. The Recipient will submit an original and two copies of the final version of all products to the CAM.

6. *Reports*

- a. Progress Reports

The Recipient shall submit progress reports to the CAM as indicated in the Special Conditions or Work Statement. At a minimum, each progress report shall include the following:

Work Statement: This section should include a brief restatement of the approved tasks in the Work Statement and a report on the status of each, including a discussion of any products due and whether or not the project is progressing according to schedule. This section also should include a discussion of any problems encountered, proposed changes to the tasks in the Work Statement, and anticipated accomplishments in the upcoming quarter.

Financial Status: This section should include a narrative report comparing costs incurred to date with the approved Budget. The report should state whether or not the project is progressing within the approved Budget and discuss any proposed changes.

Additional Information: Additional information may be required in the progress reports as specified in the Work Statement or Special Conditions.

b. Final Reports

A draft final report shall be submitted to the CAM no later than 60 days prior to the end of the Agreement term. At a minimum, the report shall include:

- Table of Contents.
- Abstract.
- A brief summary of the objectives of the project and how these objectives were accomplished.
- Any findings, conclusions, or recommendations for follow-up or ongoing activities that might result from the successful completion of the project.
- A statement of future intent of the grant Recipient to maintain or further develop the project.
- A Payment Request form for the final payment (including any retention).
- A consolidated list of subcontractors funded in whole or in part by the grant Recipient. Include the name, address, concise statement of work done, period, and value of each.
- Additional information specified in the Work Statement or Special Conditions.

The CAM will review the draft report. The Recipient will incorporate applicable comments and submit the final report (the original and two copies) to the CAM.

Upon receipt of the final report, the CAM shall ensure that all work has been satisfactorily completed.

c. Rights in Reports

The Energy Commission reserves the right to use and reproduce all reports and data produced and delivered pursuant to this Agreement, and reserves the right to authorize others to use or reproduce such materials. Each report becomes the property of the Energy Commission.

d. **Failure to Comply with Reporting Requirements**

Failure to comply with the reporting requirements contained in this Agreement will be considered a material noncompliance with the terms of this Agreement. Noncompliance may result in withholding of future payments, suspension or termination of the current award, and withholding of future awards. A willful failure to perform, a history of failure to perform, or unsatisfactory performance of this and/or other financial assistance awards, may also result in a debarment action to preclude future awards.

7. Publications - Legal Statement on Reports and Products

You are encouraged to publish or otherwise make publicly available the results of the work conducted under the award.

No product or report produced as a result of work funded by this program shall be represented to be endorsed by the Energy Commission, and all such products or reports shall include the following statement:

LEGAL NOTICE

This document was prepared as a result of work sponsored by the California Energy Commission. It does not necessarily represent the views of the Energy Commission, its employees, or the State of California. The Energy Commission, the State of California, its employees, contractors, and subcontractors make no warranty, express or implied, and assume no legal liability for the information in this document; nor does any party represent that the use of this information will not infringe upon privately owned rights.

8. Changes to the Agreement

a. **Significant Changes**

Significant changes to this Agreement must be approved by the Energy Commission through a formal amendment. Significant changes include, but are not limited to:

- Change of Recipient's legal name,
- Change of Recipient,
- Changes in order to disencumber funds,
- Changes to the Work Statement that reasonably modify the purpose of the Agreement,
- Changes to the Schedule of Products that extend the due dates beyond the term of the Agreement,
- Changes to the Budget that increase the amount of the Agreement,

- Changes to the Budget that increase rates or fees.

The Recipient shall submit a request in writing to the CAM with a copy to the Energy Commission Grants and Loans Officer for any significant change. The CAM will notify the Recipient Project Manager of the appropriate Energy Commission action within ten (10) working days.

b. Nonsignificant Changes

Changes that are not significant to the Agreement do not need to be approved at a Energy Commission business meeting through a formal amendment. These changes shall be documented in a Letter of Agreement, signed by both parties.

c. Schedule of Products and Due Dates

If the Schedule of Products and Due Dates needs to be revised after the execution of the Agreement, the revised dates cannot extend beyond the term end date of the Agreement without a formal amendment. Recipient shall work with the CAM to agree on the new product due dates. The CAM will issue the revised Schedule of Products and Due Dates to the Recipient and the Grants and Loans Office.

d. Budget Reallocations

- (1) The Energy Commission, through its CAM and Grants and Loans Officer, and the Recipient can agree upon and make certain budget reallocations without a formal amendment to this Agreement as long as ALL of the following conditions are met:

- (a) The total of all budget reallocations cannot exceed ten percent (10%) with a cap amount of \$150,000 of the Agreement Amount. For purposes of this provision, "Agreement Amount" means the total amount of Energy Commission funds being paid to the Recipient under this Agreement. It does not include any match funds provided by the Recipient.

For example, if under an agreement the Energy Commission agrees to pay a recipient \$100,000 and the recipient is supplying \$500,000 in match funding, the ten percent (10%) limitation applies to the \$100,000. Only up to \$10,000 of Energy Commission funds could be reallocated without a formal amendment. If under an agreement the Energy Commission agrees to pay a recipient \$2,000,000, ten percent would be \$200,000, but the cap is \$150,000, so the most that could be reallocated without a formal amendment is \$150,000.

(b) The budget reallocation cannot substantially change the scope of work. Examples of budget reallocations that do not substantially change the scope of work include, but are not limited to, the following:

- Increasing or decreasing the overall travel budget. This does not mean an increase to the allowed per diem rates under this Agreement.
- Increasing or decreasing the equipment budget.
- Increasing or decreasing the number of personnel assigned to complete tasks. This does not include increasing the hourly rates of the personnel and classifications listed in the budget. Increasing hourly rates requires a formal amendment. The addition of personnel also requires a formal amendment unless there is already an identified classification of rates in the budget that the new personnel will be filling.

(c) The budget reallocation only involves moving funds between tasks. The total Agreement Amount must remain unchanged. Increasing the total amount of the Agreement requires a formal amendment.

(d) The budget reallocation does not increase the percentage rate of Indirect Overhead, Fringe Benefits, General and Administrative Costs, or any other rates listed in the budget. For example, if an agreement budget lists the Indirect Overhead percentage rate as 25% of Direct Labor, the 25% cannot be changed without a formal amendment.

(2) To effectuate a budget reallocation under this section, the Recipient must make a request in writing to both the CAM and the Grants and Loans Officer. Both the CAM and the Grants and Loans Officer will then approve or disapprove the request in writing; the approval or disapproval is not effective or binding unless signed by both the CAM and the Grants and Loans Officer. Oral communications cannot be used or relied upon. If the request is approved, the CAM shall revise the Budget Attachments to reflect the changes and send them to the Grants and Loans Officer and the Recipient.

(3) Any desired budget reallocations that do not meet the four criteria in this section must be made through a formal amendment.

(4) Attempted budget reallocations that do not meet the requirements of this section are not legally binding upon the parties.

e. Amendments

This Agreement may be amended to make changes, including without limitation, additional funds, additional time, additional or modified tasks, and additional or modified terms.

9. Contracting and Procurement Procedures

This section provides general requirements for an agreement between the Recipient and a third party ("subcontractor").

All subcontracts must be submitted to the CAM for review prior to execution, pursuant to the administrative task. For subcontracts that are listed as "to be determined" in the budget, the Recipient must submit the subcontractor's budget information to the CAM, using the budget forms provided, and have an executed subcontract, before the subcontractor can incur any costs for which the Recipient will seek reimbursement.

The Recipient is required, where feasible, to employ contracting and procurement practices that promote open competition for all goods and services needed to complete this project. Recipient shall obtain price quotes from an adequate number of sources for all subcontracts.

The Energy Commission will defer to the Recipient's own regulations and procedures as long as they reflect applicable state and local laws and regulations and are not in conflict with the minimum standards specified in this Agreement.

Upon request, the Recipient must submit to the CAM a copy of all solicitations for services or products required to carry out the terms of this Agreement and copies of the proposals or bids received. If a specific subcontractor was identified in the original grant application and the grant was evaluated based in part on this subcontractor's qualifications, then prior written approval from the CAM is required before substituting a new subcontractor.

The Recipient is responsible for handling all contractual and administrative issues arising out of or related to any subcontracts it enters into under this Agreement.

All subcontracts must incorporate all of the following:

- A clear and accurate description of the material, products, or services to be procured as well as a detailed budget and timeline.
- Provisions that allow for administrative, contractual, or legal remedies in instances where subcontractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate.
- Provisions for termination by the Recipient, including termination procedures and the basis for settlement.
- Language conforming to the "Nondiscrimination" provision in this Agreement.
- The Standard of Performance provisions specified in this Agreement.

- Retention of Records provisions specified in this Agreement.
- Audits provisions specified in this Agreement.
- Language conforming to the "Indemnification" provision in this Agreement.
- Public Work – Payment of Prevailing Wages Generally Required by Law provisions in this Agreement

Recipients who are subcontracting with University of California (UC) may use the terms and conditions negotiated by the Energy Commission with UC for their subcontracts. Recipients who are subcontracting with the Department of Energy (DOE) national laboratories may use the terms and conditions negotiated with DOE.

Failure to comply with the above requirements may result in the termination of this Agreement.

10. *Bonding and Insurance*

The Recipient will follow its own bonding and insurance requirements relating to bid guarantees, performance bonds, and payment bonds without regard to the dollar value of the subcontract(s) as long as they reflect applicable state and local laws and regulations.

11. *Permits and Clearances*

The Recipient is responsible for ensuring all necessary permits and environmental documents are prepared and clearances are obtained from the appropriate agencies.

12. *Equipment*

Equipment is defined as having a useful life of at least one year, having an acquisition unit cost of at least \$5,000, and purchased with Energy Commission funds. Equipment means any products, objects, machinery, apparatus, implements or tools purchased, used or constructed within the Project, including those products, objects, machinery, apparatus, implements or tools from which over thirty percent (30%) of the equipment is composed of materials purchased for the Project. For purposes of determining depreciated value of equipment used in the Agreement, the Project shall terminate at the end of the normal useful life of the equipment purchased, funded and/or developed with Energy Commission funds. The Energy Commission may determine the normal useful life of such equipment.

Title to equipment acquired by the Recipient with grant funds shall vest in the Recipient. The Recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by grant funds, and the Recipient shall not encumber the property without CAM approval. When no longer needed for the original project or program, the Recipient shall contact the CAM for disposition instructions.

13. Termination

This project may be terminated for any reason set forth below.

a. With Cause

In the event of any breach by the Recipient of the conditions set forth in this Agreement, this Agreement may be terminated for cause upon five (5) days written notice to the Recipient, without prejudice to any of the Energy Commission's legal remedies.

b. Without Cause

This Agreement may, at the Energy Commission's option, be terminated without cause in whole or in part, upon giving thirty (30) days advance notice in writing to the Recipient by certified mail, return receipt requested. In such event, the Recipient agrees to use all reasonable efforts to mitigate the Recipient's expenses and obligations hereunder. Also in such event, the Energy Commission shall pay the Recipient for all satisfactory work performed and expenses incurred within 30 days after such notice of termination which could not by reasonable efforts of the Recipient have been avoided, but not in excess of the maximum payable under this Agreement.

14. Stop Work

The Energy Commission Grants Officer may, at any time, by written notice to Recipient, require Recipient to stop all or any part of the work tasks in this Agreement. Stop work orders may be issued for reasons such as a project exceeding budget, standard of performance, out of scope work, delay in Project schedule, misrepresentations and the like.

- a. **Compliance.** Upon receipt of such stop work order, Recipient shall immediately take all necessary steps to comply therewith and to minimize the incurrence of costs allocable to work stopped.
- b. **Equitable Adjustment.** An equitable adjustment shall be made by Energy Commission based upon a written request by Recipient. Such adjustment request must be made by Recipient within thirty (30) days from the date of the stop work order.
- c. **Canceling a Stop Work Order.** Recipient shall resume the work only upon receipt of written instructions from the Energy Commission Grants Officer.

15. Travel and Per Diem

- a. The Recipient shall be reimbursed for travel and per diem expenses using the same rates provided to non-represented State employees. The Recipient must pay for travel in excess of these rates. The Recipient may obtain current rates from the Energy Commission's Web Site at: http://www.energy.ca.gov/contracts/TRAVEL_PER_DIEM.PDF.

- b. For purposes of payment, Recipient's headquarters shall be considered the location of the Recipient's office where the employees' assigned responsibilities for this award are permanently assigned. Travel expenditures not listed in this section cannot be reimbursed.
- c. Travel identified in the Budget section of this Agreement is approved and does not require further authorization.
- d. Travel that is not included in the Budget section of this Agreement shall require written authorization from the CAM and Grants and Loans Officer prior to travel departure. The Energy Commission will reimburse travel expenses from the Recipient's office location.
- e. The Recipient must retain documentation of travel expenses in its financial records. The documentation must be listed by trip and include dates and times of departure and return, departure and destination cities. Travel receipts, including for travel meals and incidentals, shall be submitted with invoices requesting reimbursement from the Energy Commission.

16. Standard of Performance

Recipient, its subcontractors and their employees, in the performance of Recipient's work under this Agreement shall be responsible for exercising the degree of skill and care required by customarily accepted good professional practices and procedures used in the Recipient's field.

Any costs for failure to meet the foregoing standard or to correct otherwise defective work that requires re-performance of the work, as directed by CAM, shall be borne in total by Recipient and not the Energy Commission. The failure of a project to achieve the performance goals and objectives stated in the Work Statement is not a basis for requesting re-performance unless the work conducted by Recipient and/or its subcontractors is deemed by the Energy Commission to have failed the foregoing standard of performance.

In the event Recipient/subcontractor fails to perform in accordance with the above standard:

- Recipient/subcontractor will re-perform, at its own expense, any task which was not performed to the reasonable satisfaction of the CAM. Any work re-performed pursuant to this paragraph shall be completed within the time limitations originally set forth for the specific task involved. Recipient/subcontractor shall work any overtime required to meet the deadline for the task at no additional cost to the Energy Commission;
- The Energy Commission shall provide a new schedule for the re-performance of any task pursuant to this paragraph in the event that re-performance of a task within the original time limitations is not feasible; and

- The Energy Commission shall have the option to direct Recipient/subcontractor not to re-perform any task which was not performed to the reasonable satisfaction of the CAM pursuant to application of (1) and (2) above. In the event the Energy Commission directs Recipient/subcontractor not to re-perform a task, the Energy Commission and Recipient shall negotiate a reasonable settlement for satisfactory work performed. No previous payment shall be considered a waiver of the Energy Commission's right to reimbursement.

Nothing contained in this section is intended to limit any of the rights or remedies which the Energy Commission may have under law.

17. Payment of Funds

The Energy Commission agrees to reimburse the Recipient for actual allowable expenditures incurred in accordance with the Budget. The rates in the Budget are rate caps, or the maximum amount allowed to be billed. The Recipient can only bill for actual expenses incurred at the Recipient's actual direct labor rate(s), fringe benefit rate(s), and indirect rate(s), not to exceed the rates specified in the Budget.

a. Payment Requests

The Recipient may request payment from the Energy Commission at any time during the term of this Agreement although it is preferred that payment requests be submitted with the progress reports. The final payment request must be received by the Energy Commission along with the draft Final Report 60 days prior to the end of the Agreement term.

Payments will generally be made on a reimbursement basis for Recipient expenditures, i.e., after the Recipient has incurred the cost for a service, product, supplies, or other approved budget item. No reimbursement for food or beverages shall be made other than allowable per diem charges.

Funds in this Agreement have a limited period in which they must be expended. All Recipient expenditures must occur within the approved term of this Agreement.

b. Documentation

All payment requests must be submitted using a completed Payment Request form. This form must be accompanied by an itemized list of all charges and copies of all receipts or invoices necessary to document these charges for both Energy Commission and match share, including backup documentation for actual expenditures, such as time cards, vendor invoices, and proof of payment. Any payment request that is submitted without the itemization will not be authorized. If the itemization or documentation is incomplete, inadequate, or inaccurate, the CAM will inform the Recipient and hold the invoice until all required information is received or corrected. Any penalties imposed on the Recipient by a subcontractor because of delays in payment will be paid by the Recipient.

Any documentation in foreign currency must be converted to dollars, and the conversion rate must be included in your itemization.

c. Certification

The following certification shall be included on each Payment Request form and signed by the Recipient's authorized officer:

I certify that this invoice is correct and proper for payment, and reimbursement for these costs has not and will not be received from any other sources, including but not limited to a government entity contract, subcontract or other procurement method.

Additional certification required related to the payment of prevailing wages. Refer to section 27 of these terms and conditions for more information.

d. Government Entity

Government Entity is defined as a governmental agency from California or any state or a state college or state university from California or any state; a local government entity or agency, including those created as a Joint Powers Authority; an auxiliary organization of the California State University or a California community college; the Federal Government; a foundation organized to support the Board of Governors of the California Community Colleges or an auxiliary organization of the Student Aid Commission established under Education Code 69522.

e. Release of Funds

The CAM will not process any payment request during the Agreement term until the following conditions have been met:

- All required reports have been submitted and are satisfactory to the CAM.
- All applicable special conditions have been met.
- All appropriate permits or permit waivers from governmental agencies have been issued to the Recipient and copies have been received by the CAM.
- All products due have been submitted and are satisfactory to the CAM.
- Other prepayment conditions as may be required by the CAM have been met. Such conditions will be specified in writing ahead of time, if possible.

- f. Fringe Benefits, Indirect Overhead, and General and Administrative (G&A), Indirect cost rates must be developed in accordance with generally accepted accounting principles. If the Recipient has an approved fringe benefits or indirect cost rate (indirect overhead or G&A) from their cognizant Federal Agency, the Recipient may bill at the federal rate up to the Budget rate caps if the following conditions are met:

- The Recipient may bill at the federal provisional rate but must adjust annually to reflect their actual final rates for the year in accordance with the Labor, Fringe, and Indirect Invoicing Instructions which can be accessed in this agreement.
- The cost pools used to develop the federal rates must be allocable to the Energy Commission Agreement, and the rates must be representative of the portion of costs benefiting the Energy Commission Agreement. For example, if the federal rate is for manufacturing overhead at the Recipient's manufacturing facility and the Energy Commission Agreement is for research and development at their research facility, the federal indirect overhead rate would not be applicable to the Energy Commission Agreement.
- The federal rate must be adjusted to exclude any costs that are specifically prohibited in the Energy Commission Agreement.
- The Recipient may only bill up to the Agreement Budget rate caps unless and until an amendment to the Agreement Budget is approved.

g. Retention

It is the Energy Commission's policy to retain 10 percent of any payment request or 10 percent of the total Energy Commission award at the end of the project. After the project is complete the Recipient must submit a completed payment request form requesting release of the retention. The CAM will review the project file and, when satisfied that the terms of the funding Agreement have been fulfilled, will authorize release of the retention.

h. State Controller's Office

Payments are made by the State Controller's Office.

18. Fiscal Accounting Requirements

a. Accounting and Financial Methods

The Recipient shall establish a separate ledger account or fund for receipt and disbursement of Energy Commission funds for each project funded by the Energy Commission. Expenditure details must be maintained in accordance with the approved budget details using appropriate accounting practices.

b. Retention of Records

The Recipient shall retain all project records (including financial records, progress reports, and payment requests) for a minimum of three (3) years after the final payment has been received or three years after the federal grant term, whichever is later, unless otherwise specified in the funding Agreement.

Records for nonexpendable personal property acquired with grant funds shall be retained for three years after its final disposition or three years after the federal grant term, whichever is later.

c. Audits

Upon written request from the Energy Commission, the Recipient shall provide detailed documentation of all expenses at any time throughout the project. In addition, the Recipient agrees to allow the Energy Commission or any other agency of the State, or their designated representative, upon written request, to have reasonable access to and the right of inspection of all records that pertain to the project during the term of this Agreement and for a period of three (3) years thereafter or three years after the federal grant term, whichever is later, unless the Energy Commission notifies the Recipient, prior to the expiration of such three-year period, that a longer period of record retention is necessary. Further, the Recipient agrees to incorporate an audit of this project within any scheduled audits, when specifically requested by the State. Recipient agrees to include a similar right to audit in any subcontract.

Recipients are strongly encouraged to conduct annual audits in accordance with the single audit concept. The Recipient should provide two copies of the independent audit report and any resulting comments and correspondence to the CAM within 30 days of the completion of such audits.

d. Cost or Match Share

Cost or Match Share means cash or in-kind (non-cash) contributions provided by Recipient, subcontractors or other parties that will be used in performance of this Agreement.

If the grant Budget includes cost or match share under this Agreement, the Recipient agrees to be liable for the percentage of cost or match share identified in this Agreement of the total allowable project costs incurred even if the project is terminated early or is not funded to its completion.

Total allowable project cost is the sum of the Agreement share and Recipient share of the project costs. *Cost share* percentage is calculated by dividing Recipient cost share amount by the total allowable project cost. *Match share* percentage is calculated by dividing Recipient match share by the Agreement share of the project costs.

Failure to provide the minimum required cost or match share may result in the subsequent recovery of some or all of the funds provided under this Agreement.

The Recipient must maintain accounting records detailing the expenditure of the match (actual cash and in-kind services) and provide complete documentation of expenditures as described under "Payment of Funds."

19. Indemnification

The Recipient agrees to indemnify, defend, and save harmless the State, its officers, agents, and employees from any and all claims and losses accruing or resulting to Recipient and to any and all contractors, subcontractors, materialmen, laborers, and any other person, firm, or corporation furnishing or supplying work, services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm, or corporation who may be injured or damaged by the Recipient in the performance of this Agreement.

20. Disputes

In the event of a dispute or grievance between Recipient and the Energy Commission regarding this Agreement, the following two-step procedure shall be followed by both parties. Recipient shall continue with responsibilities under this Agreement during any dispute.

a. Energy Commission Dispute Resolution Level 1

The Recipient shall first discuss the problem informally with the CAM. If the problem cannot be resolved at this stage, the Recipient must direct the grievance together with any evidence, in writing, to the Energy Commission Grants and Loans Officer. The grievance must state the issues in the dispute, the legal authority or other basis for the Recipient's position and the remedy sought. The Energy Commission Grants and Loans Officer and the Program Office Manager must make a determination on the problem within ten (10) working days after receipt of the written communication from the Recipient. The Grants and Loans Officer shall respond in writing to the Recipient, indicating a decision supported by reasons. Should the Recipient disagree with the Grants and Loans Officer decision, the Recipient may appeal to the second level.

b. **Energy Commission Dispute Resolution Level 2**

The Recipient must prepare a letter indicating why the Grants and Loans Officer's decision is unacceptable, attaching to it the Recipient's original statement of the dispute with supporting documents, along with a copy of the Grants and Loans Officer's response. This letter shall be sent to the Executive Director at the Energy Commission within ten (10) working days from receipt of the Grants and Loans Officer's decision. The Executive Director or designee shall meet with the Recipient to review the issues raised. A written decision signed by the Executive Director or designee shall be returned to the Recipient within twenty (20) working days of receipt of the Recipient's letter. The Executive Director may exercise the option of presenting the decision to the Energy Commission at a business meeting. Should the Recipient disagree with the Executive Director's decision, the Recipient may appeal to the Energy Commission at a regularly scheduled business meeting. Recipient will be provided with the current procedures for placing the appeal on a Energy Commission Business Meeting Agenda.

21. Workers' Compensation Insurance

- a. Recipient hereby warrants that it carries Worker's Compensation Insurance for all of its employees who will be engaged in the performance of this Agreement, and agrees to furnish to the CAM satisfactory evidence of this insurance at any time the CAM may request.
- b. If Recipient is self-insured for worker's compensation, it hereby warrants such self-insurance is permissible under the laws of the State of California and agrees to furnish to the CAM satisfactory evidence of this insurance at any time the CAM may request.

22. General Provisions

a. **Governing Law**

It is hereby understood and agreed that this Agreement shall be governed by the laws of the State of California as to interpretation and performance.

b. **Independent Capacity**

The Recipient, and the agents and employees of the Recipient, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the Energy Commission.

c. **Assignment**

Without the written consent of the Energy Commission in the form of a formal written amendment, this Agreement is not assignable or transferable by Recipient either in whole or in part.

d. **Timeliness**

Time is of the essence in this Agreement.

e. Unenforceable Provision

In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

f. Waiver

No waiver of any breach of this Agreement shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Agreement shall be taken and construed as cumulative, that is, in addition to every other remedy provided therein or by law.

g. Assurances

The Energy Commission reserves the right to seek further written assurances from the Recipient and its team that the work of the project under this Agreement will be performed consistent with the terms of the Agreement.

h. Change in Business

(1) Recipient shall promptly notify the Energy Commission of the occurrence of each of the following:

- (a) A change of address.
- (b) A change in the business name or ownership.
- (c) The existence of any litigation or other legal proceeding affecting the project.
- (d) The occurrence of any casualty or other loss to project personnel, equipment or third parties of a type commonly covered by insurance.
- (e) Receipt of notice of any claim or potential claim against Recipient for patent, copyright, trademark, service mark and/or trade secret infringement that could affect the Energy Commission's rights.

(2) Recipient shall not change or reorganize the type of business entity under which it does business except upon prior written notification to the Energy Commission. A change of business entity or name change requires an amendment assigning or novating the Agreement to the changed entity. In the event the Energy Commission is not satisfied that the new entity can perform as the original Recipient, the Energy Commission may terminate this Agreement as provided in the termination paragraph.

i. **Survival of Terms**

It is understood and agreed that certain provisions shall survive the completion or termination date of this Agreement for any reason. The provisions include, but are not limited to:

- "Payments of Funds"
- "Equipment"
- "Change in Business"
- "Disputes"
- "Termination"
- "Audit"
- "Indemnification"
- "Fiscal Accounting Requirements"

23. Certifications and Compliance

a. **Federal, State and Municipal Requirements**

Recipient must obtain any required permits and shall comply with all applicable federal, State, and municipal laws, rules, codes, and regulations for work performed under this Agreement.

b. **Nondiscrimination Statement of Compliance**

During the performance of this Agreement, Recipient and its subcontractors shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religious creed, national origin, disability (including HIV and AIDS), medical condition (cancer), age, marital status, and denial of family care leave. Recipient and its subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination and harassment. Recipient and its subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Government Code Sections 12990 et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285.0 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part of it as if set forth in full. Recipient and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

The Recipient shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under this Agreement.

c. Drug-Free Workplace Certification

By signing this Agreement, the Recipient hereby certifies under penalty of perjury under the laws of the State of California that the Recipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by taking the following actions:

- (1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations as required by Government Code Section 8355(a)(1).
- (2) Establish a Drug-Free Awareness Program as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - The dangers of drug abuse in the workplace;
 - The person's or organization's policy of maintaining a drug-free workplace;
 - Any available counseling, rehabilitation, and employee assistance programs; and
 - Penalties that may be imposed upon employees for drug abuse violations.
- (3) Provide, as required by Government Code Section 8355(a)(3), that every employee who works on the proposed project:
 - Will receive a copy of the company's drug-free policy statement;
 - Will agree to abide by the terms of the company's statement as a condition of employment on the project.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both, and the Recipient may be ineligible for any future State awards if the Energy Commission determines that any of the following has occurred: (1) the Recipient has made false certification, or (2) violates the certification by failing to carry out the requirements as noted above.

d. Child Support Compliance Act (Applicable to California Employers)

For any Agreement in excess of \$100,000, the Recipient acknowledges that:

- It recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and
- To the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

e. Americans with Disabilities Act

By signing this Agreement, Recipient assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. 12101, et seq.), which prohibits discrimination on the basis of disability, as well as applicable regulations and guidelines issued pursuant to the ADA.

24. Site Visits

The Energy Commission and/or its designees have the right to make site visits at reasonable times to review project accomplishments and management control systems and to provide technical assistance, if required. Recipient must provide and must require subawardees to provide reasonable facilities and assistance for the safety and convenience of the government representatives in the performance of their duties. All site visits and evaluations must be performed in a manner that does not unduly interfere with or delay the work.

25. Confidentiality

A. Information Considered Confidential

Confidential information is information designated confidential pursuant to the procedures specified in 20 CCR 2505. If applicable, all Recipient information considered confidential at the commencement of this Agreement is designated in the Attachment to this Exhibit.

B. Confidential Deliverables: Labeling and Submitting Confidential Information

Prior to the commencement of this Agreement, if applicable, the parties have identified in the Attachment to this Exhibit, specific Confidential Information to be provided as a deliverable. All such confidential deliverables shall be marked, by the Recipient, as "Confidential" on each page of the document containing the Confidential Information and presented in a sealed package to the Energy Commission Grants Officer. (Non-confidential deliverables are submitted to the Accounting Office.) All Confidential Information will be contained in the "confidential" volume: no Confidential Information will be in the "public" volume.

C. Submittal of Unanticipated Confidential Information as a Deliverable

The Recipient and the Energy Commission agree that during this Agreement, it is possible that the Recipient may develop additional data or information not originally anticipated as a confidential deliverable. In this case, Recipient shall follow the procedures for a request for designation of Confidential Information specified in 20 CCR 2505. The Energy Commission's Executive Director makes the determination of confidentiality. Such subsequent determinations may be added to the list of confidential deliverables in the Attachment to this Exhibit.

D. Disclosure of Confidential Information

Disclosure of Confidential Information by the Energy Commission may only be made pursuant to 20 CCR 2506 and 2507. All confidential data, records or deliverables that are legally disclosed by the Recipient or any other entity become public records and are no longer subject to the above confidentiality designation.

26. Budget Contingency Clause

It is mutually agreed that this Agreement shall be of no further force and effect if the Budget Act of the current year and/or any subsequent years covered under this Agreement does not appropriate sufficient funds for the work identified in Exhibit A. In this event, the Energy Commission shall have no liability to pay any funds whatsoever to the Recipient or to furnish any other consideration under this Agreement, and the Recipient shall not be obligated to perform any provisions of this Agreement.

If funding for any fiscal year is reduced or deleted by the Budget Act for purposes of this program, the Energy Commission shall have the option to either: 1) cancel this Agreement with no liability occurring to the Energy Commission; or 2) offer an Agreement Amendment to the Recipient to reflect the reduced amount.

27. Public Works -- Payment of Prevailing Wages

Generally Required by Law

Projects that receive an award of public funds from the Energy Commission often involve construction, alteration, demolition, installation, repair or maintenance work over \$1,000.

NOTE: Projects that receive an award of public funds from the Energy Commission are likely to be considered public works under the California Labor Code. See Chapter 1 of Part 7 of Division 2 of the California Labor Code, commencing with Section 1720 and Title 8, California Code of Regulations, Chapter 8, Subchapter 3, commencing with Section 16000.

Accordingly, the Energy Commission assumes that all projects it funds are public works. Projects deemed to be public works require among other things the payment of prevailing wages.

NOTE: Prevailing wage rates can be significantly higher than non-prevailing wage rates.

By accepting this grant, Recipient as a material term of this agreement shall be fully responsible for complying with all California public works requirements including but not limited to payment of prevailing wage. Therefore, as a material term of this grant, Recipient must either:

(a) Proceed on the assumption that the project is a public work and ensure that:

- (i) prevailing wages are paid; and
- (ii) the project budget for labor reflects these prevailing wage requirements; and
- (iii) the project complies with all other requirements of prevailing wage law including but not limited to keeping accurate payroll records, and complying with all working hour requirements and apprenticeship obligations;

or,

(b) Timely obtain a legally binding determination from DIR or a court of competent jurisdiction before work begins on the project that the proposed project is not a public work.

NOTE: Only the California Department of Industrial Relations (DIR) and courts of competent jurisdiction have jurisdiction to issue legally binding determinations that a particular project is or is not a public work.

If the Recipient is unsure whether the project receiving this award is a "public work" as defined in the California Labor Code, it may wish to seek a timely determination from the California Department of Industrial Relations (DIR) or an appropriate court.

NOTE: Such processes can be time consuming and therefore it may not be possible to obtain a timely determination before the date for performance of the award commences.

If the Recipient does not timely obtain a binding determination from DIR or a court of competent jurisdiction that the project is not a public work, before the grant agreement from the Energy Commission is executed, the Recipient shall assume that the project is a public work and that payment of prevailing wages is required and shall pay prevailing wages unless and until such time as the project is subsequently determined to not be a public work by DIR or a court of competent jurisdiction.

NOTE: California Prevailing Wage law provides for substantial damages and financial penalties for failure to pay prevailing wages when payment of prevailing wages is required.

Subcontractors and Flow-down Requirements. Recipient shall ensure that its subcontractors, if any, also comply with above requirements with respect to public works/prevaling wage. Recipient shall ensure that all agreements with its contractors/subcontractors to perform work related to this Project contain the above terms regarding payment of prevailing wages on public works projects. Recipient shall be responsible for any failure of Recipient's subcontractors to comply with California prevailing wage and public works laws.

Indemnification and breach. Any failure of Recipient or its subcontractors to comply with the above requirements shall constitute a breach of this agreement that excuses the Energy Commission's performance of this grant agreement at the Energy Commission's option, and shall be at Recipient's sole risk. In such a case, Energy Commission may refuse payment to Recipient of any amount under this award and Energy Commission shall be released, at its option, from any further performance of this award or any portion thereof. By accepting this grant award, as a material term of this agreement, Recipient agrees to indemnify the Energy Commission and hold the Energy Commission harmless for any and all financial consequences arising out of or resulting from the failure of Recipient and/or any of Recipient's subcontractors to pay prevailing wages or to otherwise comply with the requirements of prevailing wage law.

Budget. Recipient's budget on public works projects must indicate which job classifications are subject to prevailing wage. For detailed information about prevailing wage and the process to determine if the proposed project is a public work, Recipient may wish to contact the California Department of Industrial Relations (DIR) or a qualified labor attorney of their choice for guidance.

Covered Trades. For public works projects, Recipient may contact DIR for a list of covered trades and the applicable prevailing wage.

Questions. If Recipient has any questions about this contractual requirement or the wage, record keeping, apprenticeship or other significant requirements of California prevailing wage law, it is recommended that Recipient consult DIR and/or a qualified labor attorney of its choice before accepting the award for this grant.

Certification. Recipient shall certify to the Energy Commission on each Payment Request Form, either that (a) prevailing wages were paid to eligible workers who provided labor for work covered by the payment request and that the Recipient and all contractors and subcontractors otherwise complied with all California prevailing wage laws, or (b) that the project is not a public work requiring the payment of prevailing wages. In the latter case, Recipient shall provide competent proof of a DIR or court determination that the project is not a public work requiring the payment of prevailing wages.

Prior to the release of any retained funds under this Agreement, the Recipient shall submit to the Energy Commission the above-described certificate signed by the Recipient and all contractors and subcontractors performing public works activities on the project. Absent such certificate, Recipient shall have no right to any funds under this grant, and Energy Commission shall be relieved of any obligation to pay said funds.

28. *Intellectual Property*

The Energy Commission makes no claim to intellectual property developed under this Agreement that is not specified for delivery, except as expressly provided herein.

EXHIBIT D
Contacts List

<p>Commission Agreement Manager: Lindsee Tanimoto California Energy Commission 1516 Ninth Street, MS - 6 Sacramento, CA 95814 Phone: (916) 654-4566 Fax: (916) 654-4676 e-mail: Lindsee.Tanimoto@energy.ca.gov</p>	<p>Grantee Project Manager: Pierce Schwalb Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 Phone: (707) 269-1700 Fax: (707) 269-1777 e-mail: pschwalb@redwoodenergy.org</p>
<p>Commission Agreement Officer: Diana Parmley California Energy Commission 1516 Ninth Street, MS - 18 Sacramento, CA 95814 Phone: (916) 651-9409 Fax: (916) 654-4423 e-mail: Diana.Parmley@energy.ca.gov</p>	<p>Grantee Administrator: Matthew Marshall Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 Phone: (707) 269-1700 Fax: (707) 269-1777 e-mail: mmarshall@redwoodenergy.org</p>
<p>Commission Accounting Officer: Kathy Jones California Energy Commission 1516 Ninth Street, MS - 2 Sacramento, CA 95814 Phone: (916) 654-4377 Fax: (916) 653-1435 e-mail: kathy.jones@energy.ca.gov</p>	<p>Grantee Accounting/Budget Officer: Cheryl Clayton Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 Phone: (707) 269-1700 Fax: (707) 269-1777 e-mail: cclayton@redwoodenergy.org</p>
<p>Commission Legal Notice: Tatyana Yakshina Grants Manager 1516 Ninth Street, MS-18 Sacramento, CA 95814-5512 Phone: (916) 654-4204 Fax: (916) 654-4423 e-mail: Tatyana.Yakshina@energy.ca.gov</p>	<p>Grantee Legal Notice: Matthew Marshall Redwood Coast Energy Authority 633 3rd Street Eureka, CA 95501 Phone: (707) 269-1700 Fax: (707) 269-1777 e-mail: mmarshall@redwoodenergy.org</p>



STAFF REPORT

AGENDA DATE:	March 20, 2017
TO:	Board of Directors
PREPARED BY:	Executive Director
SUBJECT:	Humboldt Redwood Company Power Purchase Agreement

BACKGROUND

Following the technical analysis and community input meetings completed over the summer and fall, in September 2016 the Board adopted CCE Program Guidelines for the first 5 years of operation, which include the target of contracting with 1-2 local biomass facilities for approximately 20 MW of energy. In September the Board also discussed and adopted *Process Guidelines for Development of a Request for Offers (RFO) for Local Biomass Power*, and then approved issuing the RFO at the October meeting. Local biomass facilities could submit offers for 1-, 3-, and 5-year terms, and RCEA received a range of 1-, 3-, and 5-year offers from three local biomass plants.

The evaluation committee selected by the Board reviewed, evaluated, and scored the offers according to the criteria described in the RFO. Based on the resulting scores, the evaluation committee recommended short-listing a single offer, Humboldt Redwood Company's offer of 12.5 MW of contract capacity for a 5-year period.

At the February 2017 RCEA Board Meeting, the Board voted to award a contract to Humboldt Redwood Company (HRC) with modifications to its 12.5 MW 5-year offer; attached are the proposed Power Purchase Agreements (PPAs) to implement that decision. The Board further requested that staff and legal counsel develop an environmental compliance clause for inclusion in the PPAs.

As detailed during the February Board meeting, there are several constraints to CCE operations in the first year of operations, including RCEA's year-one financial commitment to establish a \$1,000,000 minimum operating account balance and place \$5,000,000 into a reserve account to be used as collateral if requested by CAISO, for reimbursement in the event of third-party default, in the event the Lock Box Account is not sufficiently funded to pay monthly transactions, as collateral for TEA in the event of adverse change to RCEA's financial condition, or for any other purpose agreed to by RCEA and TEA; and current uncertainty around customer opt-outs. Due to these constraints and other program cost factors, RCEA can only afford to initially contract for approximately 5 MW of biomass at \$83/MWh.

To accommodate this initial constraint, the proposed agreement with HRC has been split into two separate but successive PPAs:

- An initial PPA term of 9 months for 5 MW at \$83/MWh, with additional flexibility for HRC to, at its discretion, provide additional power above 5 MW to RCEA but at an un-subsidized pass-through market price comparable to what RCEA would otherwise pay for that power..
- A second PPA term of 51 months for 12.5 MW at \$83/MWh.

Under the initial 9-month PPA with a Contract Capacity of 5 MW, whenever HRC is generating it will receive an energy payment of \$83/MWh for the first 5 MWh generated each hour. Any energy production exceeding 5 MWh will receive the Market Price that coincides with the time period the energy is delivered as well as a Green Attribute Price of \$14.50/MWh. For example, if HRC produces 7 MWh during an hour when the Market Price is \$35.50/MWh, HRC's payment would be $5 \text{ MWh} * \$83/\text{MWh} + 2 \text{ MWh} * (\$35.50/\text{MWh} + \$14.50/\text{MWh}) = \$415 + \$100 = \515 .

For the 51-month PPA, HRC's offer provided a generation profile averaging 13.25 MW with a maximum production in any hour of 17 MWh. For this PPA, the Contract Capacity is 17 MW and the Contract Quantity for a Contract Year is 116,070 MWh based on an average hourly production of 13.25 MWh. In this case, HRC can receive \$83/MWh for up to 17 MWh in any particular hour until the Contract Quantity is reached. After that, HRC will only receive the Market Price for the Excess Energy until the Contract Year concludes. The Contract Quantity is a safeguard against HRC producing more on average than RCEA planned to purchase.

The 51-month PPA has additional terms to balance the goals of providing the certainty of longer-term procurement agreement with the risks associated with making a multi-year commitment to buy power at above market price. We are calling these additional terms the "Material Change clause". The Material Change clause is structured to ensure that the PPA commitment doesn't jeopardize the overall viability and long-term success of the CCE. The elements of the Material Change clause include program triggers that would allow RCEA to renegotiate PPA terms with HRC. The elements of the Material Change clause are:

- 1) Each year, RCEA will determine its electricity procurement and set rates during October to January. During that annual procurement and rate setting process, RCEA will develop forecasts for the coming year based on 1) PG&E rates and fees, and 2) minimum CCE program operating costs. Using those forecasts, RCEA will then project its available budget "headroom." (The headroom is the difference between PG&E's rates and RCEA's minimum cost to provide service.) A Material Change is triggered if the forecasts indicate that RCEA will not be able to:
 - a. Maintain CCE net customer rates (inclusive of PG&E's Non-Bypassable Charges¹) at least 3% below PG&E's rates and
 - b. Contribute at least \$2 million per year toward RCEA's CCE reserve fund.
- 2) A Material Change is also triggered if the total number of customer opt-outs exceeds 20% of the initial eligible customer base, or if 10% or more of customers opt out in any calendar year after 2017.

¹ These Non-Bypassable Charges include PG&E's Power Charge Indifference Adjustment and Franchise Fees.

- 3) If a Material Change is triggered, then RCEA and HRC may renegotiate PPA terms so that RCEA's rates remain less than PG&E's while still meeting RCEA's other financial needs.

Additionally, per the Board's direction, both the 9-month and 51-month PPAs have provisions included to address environmental compliance. This language gives RCEA the right to terminate the PPAs if HRC fails to operate its facility in compliance with all applicable laws, rules, regulations, orders, decisions, regulatory determinations, etc. as determined by the appropriate governmental authority with oversight for the specific law at issue.

FINANCIAL IMPACTS

The cost of power procured through the two PPAs totals approximately \$45 million over 5 years. The \$83/MWh price results in an above market expenditure of approximately \$3-4 million/year during the 51-month PPA term. The market value of energy is likely in the range of \$50/MWh, totaling \$20-30 million over 5 years, and is a cost that RCEA would incur as the result of procuring power from other sources outside the community, if not procured locally.

The Material Change clause of the PPA limits RCEA's risk exposure to this above market pricing as described above, to ensure that a baseline of financial solvency and customer rate-savings can be maintained by adjusting the PPA terms if needed due to future financial conditions.

STAFF RECOMMENDATION:

Approve the attached 9-month and 51-month Power Purchase Agreements with Humboldt Redwood Company.

ATTACHMENTS

1. February 2017 RCEA Board Meeting Biomass Procurement Staff Report (for reference)
2. Humboldt Redwood Company 9-month Power Purchase Agreement
3. Humboldt Redwood Company 51-month Power Purchase Agreement



STAFF REPORT

Prior Staff Report from
February 27, 2017 Board Meeting --
provided for reference.

AGENDA DATE:	February 27, 2017
TO:	Board of Directors
PREPARED BY:	Executive Director
SUBJECT:	Local Biomass Request for Offers

BACKGROUND

Following the technical analysis and community input meetings completed over the summer and fall, in September 2016 the Board adopted CCE Program Guidelines for the first 5 years of operation, which include the target of contracting with 1-2 local biomass facilities for around 20 MW of energy (which is equal to about 15% of RCEA's projected customer load). The Guidelines also include the targets of offering competitive rates equal to or lower than PG&E's, and building a minimum financial reserve of \$10 million by year 5; both of these targets are important to the long-term viability and stability of the program.

In September the Board also discussed and adopted *Process Guidelines for Development of a Request for Offers (RFO) for Local Biomass Power*, and then approved issuing the RFO at the October meeting. Local biomass facilities could submit offers for 1, 3, and 5 year terms, with offers being scored on the following criteria:

- **Net Market Value:** The net market value of the offers were calculated by TEA based on the price that was bid versus the market value of the quantifiable components of the offers, including factor such as the base value of the energy that the facility produces and the renewable attributes for that energy (Renewable Energy Credits).
- **Offeror's Viability:** Qualitative factors related to the viability of the biomass generator include, but are not limited to, the track record of meeting all permitting, reporting and compliance requirements; the experience of the offeror's team to successfully and sustainably operate the facility; offeror's history of investment in maintaining and improving the facility; worker safety record; the offeror's historical and projected financial position; and any other factors that may influence its ability to deliver energy products under an executed agreement with RCEA.
- **Portfolio Fit:** Preference for offers that have lower volume requirements, contract lengths and/or provide generation in hours that reduce RCEA's wholesale market risk.
- **Acceptance of Power Purchase Agreement (PPA):** Preference for responses that accepted the terms and conditions of the PPA as provided in the RFO.

RCEA received a range of 1, 3, and 5 year offers from the three local biomass plants, with bid prices ranging from the low \$80s to over \$100 per MWh (RCEA's technical analysis and planning used an estimated price of \$85).

The offers were reviewed, evaluated and scored according to the criteria described in the RFO by the evaluation committee selected by the Board. Based on the resulting scores, the evaluation committee recommends short-listing a single offer, Humboldt Redwood Company's

offer of 12.5 MW of contract capacity for a 5-year period. The offer prices, terms and scoring are summarized below:

Project	Average Price per MWh	Duration (years)	Quantitative Net Market Value Score (50%)	Qualitative Factors Score (50%)	Total Score
Blue Lake	\$83.10	5	45.7	34.3	80.0
Blue Lake	\$81.50	3	50.0	29.3	79.3
Blue Lake	\$83.10	1	42.4	24.3	66.8
Fairhaven	\$102.50	5	5.0	41.8	46.8
Fairhaven	\$99.70	3	11.7	37.8	49.5
Fairhaven	\$95.00	1	26.2	34.8	61.0
HRC - 12.5 MW	\$83.00	5	44.7	45.3	90.0
HRC - 12.5 MW	\$100.00	1	2.9	26.3	29.2
HRC - 15 MW	\$85.00	5	40.1	41.3	81.4

In January 2017, PG&E rates and customer PCIA (exit) fees were set for 2017 and TEA completed an initial round of power procurement for RCEA's 2017 market-based power portfolio needs. Based on the cost factors and RCEA's reserve requirements, RCEA can only afford to contract for approximately 5 MW of biomass (based on HRC's \$83/MWh price) in 2017. HRC has indicated its willingness to negotiate a lower capacity contract for an initial period.

KEY DECISION FACTORS

There are a number of key decision factors for the Board to consider when weighing options related to biomass power procurement and their associated benefits, costs, and risks:

- Local biomass facilities are important to the local forest products sector, which depends on the facilities to locally and economically process mill waste and other material that would otherwise have to be trucked out of the area for disposal elsewhere or open burned. No single biomass plant currently operates at a capacity that can handle all of the local mill waste. This led to the Board's preference of contracting with more than one local biomass plant.
- Local biomass power production is more expensive than other renewable energy sources; the offers at the low end of the prices that RCEA received are around \$30/MWh more than the current market prices for power from utility scale solar from elsewhere in California.
- When considering RCEA's minimum cost to provide service and meet state renewable energy requirements, we have a limited amount of discretionary budget "headroom" to allocate, while still maintaining competitive rates compared to PG&E. As noted above, in 2017 the available budget headroom can only accommodate ~5 MW of biomass at an above-market price premium.

Particularly relevant factors to RCEA's year-one constraints are:

- **Uncertainty on opt-outs:** Until the enrollment and customer notification period has been completed early this summer, RCEA must still tolerate significant uncertainty about what % of customers will choose to opt-out of RCEA service. Based on other recent CCE program

launches, it is hoped that RCEA's estimate of 10% opt-outs is conservative. Once the opt-out rate is known later in the year (and predicted to remain fairly stable after that—assuming a continuation of competitive rates) RCEA will have greater certainty on overall budget headroom.

- **PG&E Rates and PCIA fees:** This is an ongoing risk that RCEA will manage every year, but our near-term power procurement strategy is structured to minimize this risk by timing the bulk of annual procurement on a schedule that allows RCEA to adaptively respond to PG&E pricing. Longer-term commitments (particularly at above-market prices) increase our exposure to this risk, although building up a reserve quickly will additionally offset that risk exposure in future years.
- **Year-1 Reserve Requirements:** RCEA has a requirement to build \$6 million in financial reserves by the end of the first 12 months of operation. Once the initial reserve level is met by April 2018, RCEA will have more discretion on how to allocate overall budget headroom. For example: after April 2018, reserve accumulation could be reduced to \$2 million per year, which would allow us to be on track to achieve the \$10 million reserve target in 2020. At current market prices and PG&E rates, reducing the speed of accumulating our reserve would add \$4 million per year of discretionary headroom. This could then allow procurement of a biomass power around the targeted 20 MW.

CURRENT OPTIONS

Based on all of the above factors, the Board has several options, and staff has been working with TEA to develop some power purchase agreement (PPA) terms and structures that will work toward the CCE's local power procurement goals while still addressing the associated constraints and risks. Since staff does not believe that RCEA may accept any of the offers as-is, and based on the year-one constraints for 2017, these options include:

Option 1-A: Award contract to Humboldt Redwood Company with modifications to its 12.5 MW 5-year offer. Accept staff's recommendation to short-list HRC's offer, but accommodate RCEA constraints by directing staff to negotiate modifications to HRC's offer around the following parameters and by splitting the PPA into two successive power delivery obligations:

- An initial PPA term of 9 months for 5 MW at HRC's \$83/MWh offer price, with additional flexibility for HRC to, at its discretion, provide additional power to RCEA but only at the unsubsidized pass-through market price that RCEA would otherwise be paying. RCEA would have no financial risk exposure to any power produced above the 5 MW.
- A second PPA term for the remaining 51 months of the offer at HRC's full offer price and full volume. However the PPA would include a "pressure relief" clause to ensure that the PPA commitment doesn't jeopardize the overall viability and long-term success of the CCE. This would entail evaluating (likely annually around the beginning of each year) the available headroom between RCEA's base cost of services (operations, reserve, market-priced power) and PG&E rates and fees.

If the headroom is not sufficient to maintain competitive customer rates and meet other central program budget requirement at the full volume and offer price, then RCEA would

have the option to reduce the volume of power procured at the offer price to not exceed available headroom. Any generation over that reduced volume would be purchased at market-price terms and flexibility similar to the initial 9 month PPA terms.

Option 1-B: Explore 5-year contract options for one or both other facilities. In addition to proceeding with Option 1-A, staff can develop for the Board's consideration additional options that would provide a 5-year contract option for one or both of the other local facilities. Any additional contracting option would at a minimum include similar conditions to the risk-protection provisions of the HRC PPA and could use HRC's offer price as a basis, and would also be in a secondary position/priority for funding after the HRC PPA.

Option 1-C: Bridge agreements for one or both other facilities and/or second RFO round. Rather than developing a longer-term contract option for one or both other facilities they could be offered a short-term bridge agreement for 2017 that would be on a pass-through market cost basis. This could be followed by RCEA issuing a second RFO (which could be made open to only the two non-shortlisted facilities) or other procurement mechanism such as a feed-in-tariff for any additional procurement, potentially beginning mid-2018 with a structure and terms to be determined based on identified needs and analysis available at that time.

Option 2: Reject all offers and engage in direct negotiations. The Board could reject all offers and direct staff to directly negotiate with one or more facilities for different pricing and terms that align with RCEA objectives and constraints (which could include shorter time frames).

Option 3: Reject all offers and rebid. The Board could reject all offers and direct staff to develop a new RFO to rebid using current information to refine and adjust the terms around RCEA's objectives and constraints.

Some pros and cons of these options are summarized below.

Option	Pros	Cons
1-A	Moves forward with procurement with highest scoring offer, provides longer-term commitment to HRC while still managing RCEA risk.	Only supports agreement with one facility, which could impact other local mills not operated by HRC.
1-B	Would expedite the potential for a contract with a second facility with a more-stable/longer-term structure.	Increases near-term complexity and potentially longer-term financial commitments/risk.
1-C	Keeps open option for a second contract but with less near-term complexity and commitment.	More uncertainty for biomass plants, and longer period of uncertainty, than option 1-B.
2	Could pursue different approach than what was envisioned as the outcome of the RFO process, potentially benefiting from more current information. Could be faster than option 3.	Would delay biomass procurement without necessarily providing any benefits in the final outcome.
3	Could pursue different approach than what was envisioned as the outcome of the RFO process, potentially benefiting from more current information. Would maintain more competitive process than option 2.	Would delay biomass procurement without necessarily providing any benefits in the final outcome.

STAFF RECOMMENDATION:

Staff recommends that the Board approve options 1-A and 1-B outlined in the staff report, and direct staff to negotiate the terms of a modified PPA with HRC. The final HRC PPA would be brought back to the Board for final review and approval, as well as one or more options for potentially contracting with one or more additional facility.

This approach most expeditiously moves RCEA forward with local power procurement, and balances RCEA's financial risk exposure with the goals of using local power. Additionally, this approach allows for the possibility of purchasing power from more than one local biomass facility. It should be noted that technical projections suggest that the total volume of biomass power procured at above-market prices would likely be limited to approximately 20 MW as included in the Program Guidelines.

POWER PURCHASE AGREEMENT

Between

Redwood Coast Energy Authority
(as “Buyer”)

and

Humboldt Redwood Company, LLC
(as “Seller”)

POWER PURCHASE AGREEMENT

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APPENDICES

The following Appendices constitute a part of this Agreement and are incorporated into this Agreement by reference:

- Appendix I Form of Letter of Credit
- Appendix II Notification Requirements for Available Capacity and Project Outages
- Appendix III Form of Consent to Assignment

Appendix IV	Seller Documentation Condition Precedent
Appendix V	Form of Actual Availability Report
Attachment A	Form of Actual Availability Report
Appendix VI	Form of Letter of Concurrence
Appendix VI	Project Specifications and Contract Capacity Calculation
Appendix VIII	Section 3.3(e) Liquidated Damages Calculation

POWER PURCHASE AGREEMENT

COVER SHEET

This Power Purchase Agreement (“Agreement”) is entered into between Redwood Coast Energy Authority, a California joint powers authority (“Buyer” or “RCEA”), and Humboldt Redwood Company, LLC, a Delaware limited liability company (“Seller”), as of _____ the Execution Date. The information contained in this Cover Sheet shall be completed by Seller and incorporated into the Agreement.

A. Transaction Type

Seller may not modify the Transaction Type designated in this Part A of the Cover Sheet at any time after the Execution Date.

Product:

- ☒ As-Available, woody biomass facilities only
- ☐ Baseload, woody biomass facilities only

Deliverability:

- ☐ Energy Only Status
- ☐ Partial Capacity Deliverability Status (“PCDS”)
 - a) If PCDS is selected, provide the Expected PCDS Date, or the date the Project received a PCDS finding if already received: _____ (mm/dd/yyyy);
 - b) The Partial Capacity Deliverability Status Amount the Project will obtain is _____ MW.
- ☒ Full Capacity Deliverability Status (“FCDS”)
 - a) If FCDS is selected, provide the Expected FCDS Date, or the date the Project received a FCDS finding if already received: 04/30/2004

Seller shall elect one of the following types of transactions pursuant to Section 3.1(b) of the Agreement:

- ☐ Full Buy/Sell
- ☒ Excess Sale

Seller shall elect one of the following Delivery Terms:

- ☒ Nine Months

B. Contract Capacity

Contract Capacity: 5 MW

C. Contract Price

The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year and the price for Deemed Delivered Energy in each Contract Year shall be as follows:

Delivery Month	Contract Price (\$/MWh)	Surplus Delivered Energy Contract Price
June 2017	83	Energy Price + Green Attribute Price
July 2017	83	Energy Price + Green Attribute Price
August 2017	83	Energy Price + Green Attribute Price
September 2017	83	Energy Price + Green Attribute Price
October 2017	83	Energy Price + Green Attribute Price
November 2017	83	Energy Price + Green Attribute Price
December 2017	83	Energy Price + Green Attribute Price
January 2018	83	Energy Price + Green Attribute Price
February 2018	83	Energy Price + Green Attribute Price

“Energy Price” means the weighted average CAISO price associated with Surplus Delivered Energy for each Delivery Month

“Green Attribute Price” means the \$14.50 per MWh payment for Green Attributes associated with Surplus Delivered Energy conveyed to Buyer in accordance with the terms of this Agreement.

D. Delivery Term Contract Quantity Schedule

Quantity of energy to be delivered by contract year:

Delivery Month	Contract Quantity (MWh)	Surplus Delivered Energy Quantity (MWh)
June 2017	3600	3600
July 2017	3720	3720
August 2017	3720	3720
September 2017	3600	3600
October 2017	3720	3720
November 2017	3605	3600
December 2017	3720	3720
January 2018	3720	3720
February 2018	3360	3360

E. Collateral

- Pre-Development Term Security (provide dollar amount)

Dollar Amount: \$ 450,000

- Cash, or
- Letter of Credit

- Delivery Term Security (provide dollar amount)

Dollar Amount: \$ 278,880

- Cash, or
- Letter of Credit

F. Buyer Bid Curtailment and Buyer Curtailment Orders.

Operational characteristics of the Project for Buyer Bid Curtailment and Buyer Curtailment Orders are listed below. Buyer, as the Scheduling Coordinator or through its Third-Party Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project. In addition, Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are based on the true physical characteristics of the resource.

- PMax of the Project: 28.8 MW
- Minimum operating capacity: 0 MW
- Ramp Rate: .17 MW/Minute
- Maximum number of Start-ups per calendar day, month, year (if any such operational limitations exist): 1/month
- Advance notification required for Buyer Bid Curtailment and Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff).

Other Requirements:

- Maximum number of hours annually for Buyer Curtailment Periods: zero hours
- The Project will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 3.1(q).
- Start-Up Time (if applicable): NA*
- Minimum Run Time after Start-Up (if applicable): NA*
- Minimum Down Time after Shut-Down (if applicable): NA*
- *Generator: Continuously Operating biomass Unit

Note: Sellers should enter the maximum flexibility the Project can offer given the operational constraints of the technology.

G. Damage Payment (as described under Damage Payment definition in Section 1.44)

☒ Nine month Delivery Term. Dollar amount: \$278,880

H. Notices List

Name: Humboldt Redwood Company, LLC, a Delaware limited liability company ("Seller")
All Notices:

Name: Redwood Coast Energy Authority, ("Buyer" or "RCEA")
All Notices:

Delivery Address:

Delivery Address:

PAGE REDACTED – CONTAINS SENSITIVE FINANCIAL INFORMATION

Email: jpelkey@mendoco.com

Email: accounting@redwoodenergy.org

**With additional Notices of an Event of
Default to:**

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Phone: 707.620.2974

RCEA General Counsel
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Phone: (707) 826-8540
Facsimile: (707) 826-8541

PREAMBLE

This Power Purchase Agreement, together with the Cover Sheet, appendices and any other attachments referenced herein, is made and entered into between RCEA and Seller, as of the Execution Date set forth in the Cover Sheet. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(i).

1.2 “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Cover Sheet, Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.10, the word “agreement” shall have the meaning set forth in this definition. For purposes of Section 3.1(k)(viii), the word “contract” shall have the meaning set forth in this definition.

1.4 “Ancillary Services” has the meaning set forth in the CAISO Tariff.

1.5 “As-Available Product” means an Energy Product with a Capacity Factor of eighty percent (80%) or less.

1.6 “Availability Workbook” has the meaning set forth in Appendix V.

1.7 “Available Capacity” means the capacity from the Project, expressed in whole megawatts, that is available to generate Product.

1.8 “Balancing Authority” has the meaning set forth in the CAISO Tariff.

1.9 “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, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.

1.10 “Baseload” means an Energy Product with a Capacity Factor greater than or equal to eighty percent (80%).

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

1.12 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

1.13 “Buyer” has the meaning set forth in the Cover Sheet.

1.14 “Buyer Bid Curtailment” means Buyer as SC or through its Third-Party SC communicates a curtailment instruction to the Seller, requiring Seller to produce less Energy from the Project than the CAISO final market forecast amount to be produced from the Project for a period of time, and Buyer as the SC or through its Third-Party SC either (a) submitted a CAISO final market Energy Supply Bid and such curtailment is solely a result of the CAISO implementing the Energy Supply Bid; or (b) submitted a CAISO final market Self-Schedule for less than the amount of the final-market Energy forecasted to be produced from the Project. However, if the Project is subject to a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same period of time, then Buyer Bid Curtailment shall not include any Energy that is subject to such Planned Outage, Forced Outage, Force Majeure or Curtailment Period.

1.15 “Buyer Curtailment Order” means the instruction from Buyer or through its Third-Party SC to Seller to reduce generation from the Project by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order.

1.16 “Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Project pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order. The Buyer Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.17 “Buyer’s Notice of First Offer Acceptance” has the meaning set forth Section 11.1(b)(ii), as applicable.

1.18 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

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

1.20 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the Project.

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

1.22 “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case, “CAISO Penalties” do not include the costs and charges related to scheduling and Imbalance Energy as addressed in Section 4.4(b) of this Agreement.

1.23 “CAISO Tariff” means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.24 “California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078 as amended by Senate Bill 1X-2 and Senate Bill 350, and codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.25 “Capacity Attributes” means any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce any and all Product, including any accounting construct so that the maximum amount of Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

1.26 “Capacity Factor” has the meaning set forth in Section 4.3.

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

1.28 “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has commenced commercial operation (as such term is defined by and according to the CEC), that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.29 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

1.30 “Commercial Operation” means the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

1.31 “Compliance Costs” means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under Sections 3.1(j) (Greenhouse Gas Emissions Reporting), 3.1(k) (WREGIS), 3.1(n) (Obtaining and Maintaining CEC Certification and Verification), 3.3 (Resource Adequacy), and 10.1(b) (ERR), including registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller’s internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date. Compliance Costs do not include any amounts designated in the Project’s full capacity deliverability study to obtain FCDS nor any costs and expenses incurred by Seller for FCDS studies.

1.32 “Condition Precedent” means each of, or one of, the conditions set forth in Section 2.4(a)(i) through (ii) and “Conditions Precedent” shall refer to all of the conditions set forth in Section 2.4(a)(i) through (ii).

1.33 “Confidential Information” has the meaning set forth in Section 10.6(a)

1.34 “Contract Capacity” has the meaning set forth in Section 3.1(f).

1.35 “Contract Capacity Commitment” means the amount of the Contract Capacity that may be constructed pursuant to the Governmental Approvals received or obtained by Seller as of the Expected Initial Energy Delivery Date specified on the Cover Sheet.

1.36 “Contract Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Cover Sheet.

1.37 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Delivery Month as set forth in Section 3.1(e) and Cover Sheet Section D .

1.38 “Costs” means, with respect to the Non-Defaulting Party, (a) 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 in entering into new arrangements which replace the Terminated Transaction; and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.

1.39 “Cover Sheet” means the cover sheet to this Agreement, completed by Seller and incorporated into the Agreement.

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

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

1.42 “Curtailement Order” means any of the following:

(a) the CAISO, Reliability Coordinator, Balancing Authority or any other entity having similar authority or performing similar functions during the Delivery Term, orders, directs, alerts, or communicates via any means, to a Party to curtail Energy deliveries, which may come in the form of a request to return to Schedule consistent with the CAISO Tariff, for reasons including, (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected, or (iii) any warning, forecast, or anticipated over-generation conditions, including a request from CAISO to manage over-generation conditions, provided that this subsection (a) (iii) shall not include Buyer Bid Curtailement;

(b) a curtailment ordered by the Participating Transmission Owner, distribution operator (if interconnected to distribution or sub-transmission system), or any other entity having similar authority or performing similar functions during the Delivery Term, for reasons including (i) any situation that affects normal function of the electric system including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's or distribution operator's transmission or distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or

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

For the avoidance of doubt, if Buyer or Third-Party SC submitted a Self-Schedule and/or an Energy Supply Bid that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Project for any time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

1.43 "Curtailment Period" means the period of time during which Seller reduces generation from the Project, pursuant to a Curtailment Order. The Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.44 "Damage Payment" means the amount specified in Section G of the Cover Sheet.

1.45 "DA Price" means the resource specific locational marginal price ("LMP") applied to the PNode applicable to the Project in the CAISO Day-Ahead Market.

1.46 "DA Scheduled Energy" means the Day-Ahead Scheduled Energy as defined in the CAISO Tariff.

1.47 "Day-Ahead Availability Notice" has the meaning set forth in Section 3.4(b)(iii)(C).

1.48 "Day-Ahead Market" has the meaning set forth in the CAISO Tariff.

1.49 "Deemed Delivered Energy" means the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be determined by reference to the most recent Day-Ahead Availability Notice that Buyer has received from Seller at the time Buyer issues a Buyer Curtailment Order.

1.50 "Defaulting Party" means the Party that is subject to an Event of Default.

1.51 "Deficient Month" has the meaning set forth in Section 3.1(k)(v).

1.52 "Deliverability Assessment" has the meaning set forth in the CAISO Tariff.

1.53 “Delivered Energy” means the lesser of either (i) the Contract Quantity multiplied by the duration of the Settlement Interval or (ii) the Energy produced from the Project during the Settlement Interval as measured in MWh at the CAISO revenue meter of the Project and in accordance with the CAISO Tariff, which shall include any applicable adjustments for power factor and Electrical Losses.

1.54 “Delivery Month” means a period of one month

1.55 “Delivery Network Upgrade” has the meaning set forth in the CAISO Tariff.

1.56 “Delivery Point” means the point at which Buyer receives Seller’s Product, as identified in Section 3.1(d).

1.57 “Delivery Term” has the meaning set forth in Section 3.1(c)(i) and shall be of the length specified in the Cover Sheet.

1.58 “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.

1.59 “Dispatch Instruction” has the meaning set forth in the CAISO Tariff.

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

1.61 “Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of interconnection, where the Participating Transmission Owner’s meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.

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

1.63 “DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun & Bradstreet, Inc.

1.64 “Early Termination Date” has the meaning set forth in Section 5.2.

1.65 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 2.4(a) have been satisfied or waived in writing by both Parties.

1.66 “Effective FCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Full Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Full Capacity Deliverability Status.

1.67 “Effective PCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Partial Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Partial Capacity Deliverability Status.

1.68 “Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter(s) and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

1.69 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if connecting to a part of the Participating TO’s electric system that is not part of the CAISO Grid.

1.70 “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

1.71 “Eligible LC Bank” means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

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

1.73 “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified).

1.74 “Energy Deviation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Project; and (b) Delivered Energy.

1.75 “Energy Only Status Seller” or “EOS Seller” means a Seller that has selected Energy Only Status in the Cover Sheet. For avoidance of doubt, an EOS Seller does not have an obligation to have or obtain a Full Capacity Deliverability Status Finding.

1.76 “Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

1.77 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

1.78 “EPC Contractor” means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller’s; provided, however, that the Seller or the Seller’s Affiliate(s) may serve as the EPC Contractor.

1.79 “Equitable Defenses” means any bankruptcy, insolvency, reorganization or other Laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

1.80 “Energy Price” means the weighted average CAISO price associated with Surplus Delivered Energy for each Delivery Month

1.81 “Event of Default” has the meaning set forth in Section 5.1.

1.82 “Excess Sale” means the type of transaction described in Section 3.1(b)(ii).

1.83 “Exclusivity Period” has the meaning set forth in Section 11.1(b)(i), as applicable.

1.84 “Execution Date” means the latest signature date found on the signature page of this Agreement.

1.85 “Exempt Wholesale Generator” has the meaning provided in 18 C.F.R. Section 366.1.

1.86 “Existing Project” is a Project that has achieved Commercial Operation on or prior to the Execution Date.

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

1.88 “Expected PCDS Date” means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Partial Capacity Deliverability Status.

1.89 “Expected Initial Energy Delivery Date” is the date specified on the Cover Sheet for an Existing Project.

1.90 “Expected Net Qualifying Capacity” means an estimate of the amount of Net Qualifying Capacity the Project would have received had it obtained deliverability according to the deliverability type selected in Section A of the Cover Sheet, as determined in accordance with Appendix VII.

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

1.92 “Final True-Up” means the final payment made pursuant to this Agreement settling all invoices by the Party with an outstanding net amount due to the other Party for Product delivered prior to the end of the Delivery Term or other amounts due pursuant to this Agreement incurred prior to the end of the Delivery Term.

1.93 “First Offer” has the meaning set forth in Section 11.1(b)(i).

1.94 “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include the following:

(i) flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcanic eruption, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) except as set forth in subsection (b)(viii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or

(iv) emergencies declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement; provided that, if a curtailment of the Project pursuant to this subsection (a)(iv) would also meet the definition of a Curtailment Period, then it shall be treated as a Curtailment Period for purposes of Section 3.1(p).

(b) Force Majeure shall not be based on:

(i) Buyer's inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project, including a delay that could constitute a Permitting Delay unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(v) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vi) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(vii) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project;

(ix) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; or

(x) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

1.95 "Force Majeure Failure" has the meaning set forth in Section 11.1(a).

1.96 "Forced Outage" means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Product in whole or in part from a Unit in response to any control system trip or operator-initiated trip in response to an alarm or equipment malfunction; or any other unavailability of the Project or a Unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

1.97 "Forecasting Penalty" has the meaning set forth in Section 4.4(c)(iii), and "Forecasting Penalties" means more than one Forecasting Penalty.

1.98 "Full Buy/Sell" is the type of transaction described in Section 3.1(b)(i).

1.99 "Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the CAISO Tariff except that it applies to any Generating Facility (as defined in the CAISO Tariff).

1.100 "Full Capacity Deliverability Status Finding" or "FCDS Finding" means a written confirmation from the CAISO that the Project is eligible for FCDS.

1.101 "Full Capacity Deliverability Status Seller" or "FCDS Seller" means a Seller that selected Full Capacity Deliverability Status in the Cover Sheet and either has previously obtained, or is obligated to obtain per the terms of the Agreement, a Full Capacity Deliverability Status Finding.

1.102 "Future Environmental Attributes" shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility.

1.103 "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 the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.104 “Generally Accepted Accounting Principles” means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

1.105 “Generator Interconnection Agreement” or “GIA” means, for Projects interconnecting at the transmission level, the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and the CAISO governing the terms and conditions of Seller’s interconnection with the CAISO Grid, including any description of the plan for interconnecting to the CAISO Grid. For Projects interconnecting at the distribution level, it means the agreement and associated documents (or any successor agreement and associated documentation) by and between Seller and the Participating Transmission Owner governing the terms and conditions of Seller’s interconnection with the Participating TO’s distribution system, including any description of the plan for interconnecting to Participating TO’s distribution system.

1.106 “Generator Interconnection Process” or “GIP” means the Generator Interconnection Procedures set forth in the CAISO Tariff or Participating TO’s tariff, as applicable, and associated documents; provided that if the GIP is replaced by such other successor procedures governing interconnection (a) to the CAISO Grid or Participating TO’s distribution system, as applicable, or (b) of generating facilities with an expected net capacity equal to or greater than the Project’s Contract Capacity, the term “GIP” shall then apply to such successor procedure.

1.107 “Good Utility Practice” has the meaning provided in the CAISO Tariff.

1.108 “Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use and operation of the Project.

1.109 “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

1.110 “Governmental Charges” has the meaning set forth in Section 9.2.

1.111 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) 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;¹ (c) the reporting rights to these avoided emissions, such as

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.112 "Green Attribute Price" means the per MWh payment for Green Attributes associated with Surplus Delivered Energy conveyed to Buyer in accordance with the terms of this Agreement.

1.113 "Guaranty" means a guaranty issued by an entity and in a form acceptable to Buyer in Buyer's sole discretion.

1.114 "Imbalance Energy" has the meaning set forth in the CAISO Tariff.

1.115 "Initial Energy Delivery Date" has the meaning set forth in Section 3.1(c)(i).

1.116 "Initial Extension" has the meaning set forth in Section 3.1(c)(ii).

1.117 "Interconnection Customer's Interconnection Facilities" has the meaning set forth in the CAISO Tariff or Participating TO's tariff, as applicable.

1.118 "Interconnection Facilities" has the meaning set forth in the CAISO Tariff.

1.119 "Interconnection Point" means the physical interconnection point of the Project as identified by Seller in the Cover Sheet.

1.120 "Interconnection Study" means any of the studies defined in the CAISO Tariff or, if applicable, any distribution provider's tariff that reflect the methodology and costs to interconnect the Project to the Participating Transmission Owner's electric grid.

1.121 "Integrated Forward Market" has the meaning set forth in the CAISO Tariff.

1.122 "Interest Amount" means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.

1.123 “Interest Payment Date” means the date of returning unused Performance Assurance held in the form of cash.

1.124 “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.

1.125 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15(519), or its successor publication.

1.126 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

1.127 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of 10.1(b), “Seller Representations and Warranties” and 10.9 “Governing Law”, the term “law” shall have the meaning set forth in this definition.

1.128 “Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix I to this Agreement; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of Credit amount may not be greater than the Maximum Issuing Amount if the total amount of collateral posted by the Seller in the form of Letter of Credit exceeds ten million dollars (\$10,000,000.00) on the date of Transfer.

1.129 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

1.130 “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 the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

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

1.132 “Maximum Issuing Amount” means the amount of a Letter of Credit to be issued by an Eligible LC Bank, which cannot exceed the lesser of (a) sixty percent (60%) of the total collateral posted

by Seller in the form of Letter of Credit including the Letter of Credit to be issued or (b) twenty-five million dollars (\$25,000,000.00), without Buyer's prior written consent.

1.133 "Minimum Load" has the meaning set forth in the CAISO Tariff.

1.134 "Minimum Down Time" has the meaning set forth in the CAISO Tariff.

1.135 "Monthly Period" has the meaning set forth in Section 4.2.

1.136 "Moody's" means Moody's Investors Service, Inc., or its successor.

1.137 "MW" means megawatt in alternating current or AC.

1.138 "MWh" means megawatt-hour.

1.139 "NERC" means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.

1.140 "Net Qualifying Capacity" has the meaning set forth in the CAISO Tariff.

1.141 "Network Upgrades" has the meaning set forth in the CAISO Tariff or the Participating TO's tariff, as applicable.

1.142 "Non-Defaulting Party" has the meaning set forth in Section 5.2.

1.143 "Notice," unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). The Cover Sheet contains the names and addresses to be used for Notices.

1.144 "Operational Deliverability Assessment" has the meaning set forth in the CAISO Tariff.

1.145 "Outage Notification Procedures" means the procedures specified in Appendix II, attached hereto. RCEA reserves the right to revise or change the procedures upon written Notice to Seller.

1.146 "Partial Capacity Deliverability Status" or "PCDS" has the meaning set forth in the CAISO Tariff.

1.147 "Partial Capacity Deliverability Status Amount" means the number of MW that the Project will obtain, as stated in the Deliverability type selected in Section A of the Cover Sheet.

1.148 "Partial Capacity Deliverability Status Finding" or "PCDS Finding" means a written confirmation from the CAISO that the Project is eligible for PCDS.

1.149 "Participating Transmission Owner" or "Participating TO" means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.

1.150 "Party" means the Buyer or Seller individually, and "Parties" means both collectively. For purposes of Section 10.9, Governing Law, the word "party" or "parties" shall have the meaning set forth in this definition.

1.151 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Pre-Delivery Term Security and Delivery Term Security, as applicable. Acceptable forms of collateral are cash or a Letter of Credit as designated in Section E of the Cover Sheet. The required form of Letter of Credit is attached hereto in Appendix I.

1.152 “Performance Tolerance Band” shall be calculated as set forth in Section 4.4(c)(ii).

1.153 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.

1.154 “PMax” has the meaning set forth in the CAISO Tariff.

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

1.156 “Preamble” means the paragraph that precedes Article One: General Definitions to this Agreement.

1.157 “Preschedule Day” has the meaning set forth in Section 3.4(b)(iii)(C).

1.158 “Product” means the Energy, capacity, Ancillary Services, and all products, services and/or attributes similar to the foregoing which are or can be produced by or associated with the Project and which is specified by Seller in the Cover Sheet and thereby committed to Seller by this Agreement, including renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.

1.159 “Production Tax Credit” or “PTC” means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.

1.160 “Project” means all of the Unit(s) and the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in the Cover Sheet.

1.161 “Pre-Delivery Term Security” is the collateral required of Seller, as specified and referred to in Section 8.3(a).

1.162 “Project Specifications” has the meaning set forth in Appendix VII.

1.163 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Project is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Contract Capacity.

1.164 “Qualifying Facility” has the meaning provided in the Public Utility Regulatory Policies Act (“PURPA”) and in regulations of the FERC at 18 C.F.R. §§ 292.201 through 292.207.

1.165 “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 3.3(e)(ii).

1.166 “RA Shortfall Period” means the period of consecutive calendar months that starts with the calendar month in which the RA Start Date occurs and concludes with the second calendar month following the calendar month in which the Effective FCDS Date or Effective PCDS Date occurs. The RA Shortfall Period shall not exceed twenty-six (26) months.

1.167 “RA Shortfall Month” means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.3(e)(ii).

1.168 “RA Start Date” shall be the later of the Initial Energy Delivery Date or the Expected PCDS Date or FCDS Date according to the deliverability type selected in Section A of the Cover Sheet.

1.169 “RA Value” means the value in U.S. dollars per MW of Expected Net Qualifying Capacity for each RA Shortfall Month, as set forth in Appendix VIII.

1.170 “Ramp Rate” has the meaning set forth in the CAISO Tariff.

1.171 “Real-Time Market” means any existing or future intra-day market conducted by the CAISO occurring after the Day-Ahead Market.

1.172 “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.

1.173 “Reductions” has the meaning set forth in Section 4.6(b).

1.174 “Reliability Coordinator” has the meaning set forth in the CAISO Tariff.

1.175 “Reliability Must-Run Contract” has the meaning set forth in the CAISO Tariff. “Reliability Network Upgrade” has the meaning set forth in the CAISO Tariff.

1.176 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

1.177 “Replacement Capacity Rules” means the replacement requirement for Resource Adequacy Capacity (as defined in the CAISO Tariff) associated with a Planned Outage as set forth in the CAISO Tariff or successor replacement requirements as prescribed by the CPUC, CAISO and/or other regional entity.

1.178 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-01-050, 04-10-035 and 05-10-042, 06-04-040, 06-06-064, 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 decisions, resolutions or rulings addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

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

1.180 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.

1.181 “Resource Adequacy Standards” means (a) the Program set forth in Section 40.9 of the CAISO Tariff and (b) any future program or provision under the CAISO Tariff providing for availability standards or similar standards with respect to any flexible Resource Adequacy resource, product, or procurement obligation; in the case of (a) or (b), as any such program or provision may be amended, supplemented, or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible changes and incentive payments for performance thereunder.

1.182 “Resource-Specific Settlement Interval LMP” has the meaning set forth in the CAISO Tariff.

1.183 “Retained Revenues” has the meaning set forth in Section 4.6(c).

1.184 “Revised Offer” has the meaning set forth in Section 11.1(b)(iii), as applicable.

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

1.186 “Satisfaction Date” has the meaning set forth in Section 2.5.

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

1.188 “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.

1.189 “SEC” means the U.S. Securities and Exchange Commission.

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

1.191 “Seller” has the meaning set forth in the Cover Sheet.

1.192 “Seller Excuse Hours” means those hours during which Seller is unable to deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, or (c) Curtailment Period.

1.193 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

1.194 “Settlement Amount” means the amount in US dollars equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.

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

1.196 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.

1.197 “Site” means the location of the Project as described in Appendix VII.

1.198 “Start-up” means the action of bringing a Unit from non-operation to operation at or above the Unit’s Minimum Load, or with positive generation output if Minimum Load is zero.

1.199 “Station Use” means all energy consumption necessary for the generation of electricity that can be supplied by the Project itself while it is generating electricity, and any loads not separately metered from any station use load. For a biomass facility, the energy demand to transport the biomass material that has undergone all processing necessary for consumption in the biomass boiler into the boiler, using stationary equipment (or at least stationary while operating) is considered station use.

1.200 “Surplus Delivered Energy” means, in any Settlement Interval, the Energy produced from the Project as measured in MWh at the CAISO revenue meter of the Project and in accordance with the CAISO Tariff, including any applicable adjustments for power factor and Electrical Losses, that exceeds the product of one hundred percent (100%) of Contract Capacity multiplied by the duration of the Settlement Interval.

1.201 “Surplus Delivered Energy Quantity” means the quantity of Surplus Delivered Energy expected to be delivered by Seller during each Delivery Month as set forth in Section 3.1(e) and Cover Sheet Section D.

1.202 “Supply Plan” has the meaning set forth in the CAISO Tariff.

1.203 “System Emergency” has the meaning set forth in the CAISO Tariff.

1.204 “Term” has the meaning provided in Section 2.5.

1.205 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.

1.206 “Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

1.207 “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement. For purposes of this Agreement, and subject to replacement as provided in Section 3(4)(i)(B), Buyer has designated The Energy Authority (“TEA”) to act as its Third-Party SC. All references and provisions in this Agreement to Buyer acting in its capacity as Scheduling Coordinator shall mean and include the designated Third-Party SC regardless of whether the reference or provision in this Agreement expressly states “Third-Party SC.”

1.208 “Transaction” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.

1.209 “Transfer” with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder, if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

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

1.211 “Uninstructed Imbalance Energy” shall have the meaning set forth in the CAISO Tariff.

1.212 “Unit” means the technology used to produce the Products, which are identified in the Cover Sheet for the Transaction entered into under this Agreement.

1.213 “Variation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) DA Scheduled Energy; and (b) Delivered Energy for the Settlement Interval. “WECC” means the Western Electricity Coordinating Council or successor agency.

1.214 “Work” means (a) work or operations performed by a Party or on a Party’s behalf, and (b) materials, parts or equipment furnished in connection with such work or operations, including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”, and (ii) the providing of or failure to provide warnings or instructions.

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

1.216 “WREGIS Certificate Deficit” has the meaning set forth in Section 3.1(k)(v).

1.217 “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.

1.218 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Cover Sheet, Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties.

2.2 Interpretation. The following rules of interpretation shall apply in addition to those set forth in Section 10.10:

(a) The term “month” or “Month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends.

(b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then existing at the applicable time to which such construction applies.

(c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article One, unless otherwise specified.

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(e) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(f) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.

(g) All references to dollars are to U.S. dollars.

(h) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.

2.3 Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or dispatch order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

2.4 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.4 hereof, the Term shall not commence until the occurrence of all of the following:

(i) this Agreement has been duly executed by the authorized representatives of each of Buyer and Seller; and

(ii) Buyer receives from Seller the documentation listed in Appendix IV (Seller Documentation Condition Precedent).

(b) Failure to Meet All Conditions Precedent. If the Condition Precedent set forth in Section 2.4(a)(ii) is waived by Buyer prior to or at execution of this Agreement but is not satisfied or further waived in writing by Buyer on or before one hundred and eighty (180) days from the execution date of this Agreement, then either Party may terminate this Agreement effective upon receipt of Notice by Seller. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

2.5 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.4(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.4(b), Section 5.2 or Section 11.1 of this Agreement (the “Term”); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due pursuant to the Final True-Up, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Pre-Delivery Term Security or Delivery Term Security, is released and/or returned as applicable (the “Satisfaction Date”) or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.4 (“Indemnities”) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (ii) all rights and obligations under Section 10.6 (“Confidentiality”) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and (iii) the right of first offer in Section 11.1(b) shall survive the Satisfaction Date for three (3) years.

2.6 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

(i) Sections 5.1(a)(iv)-(v), 5.1(b)(ii), and 5.1(b)(vi);

(ii) Section 5.1(a)(ii) only with respect to Section 10.1, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.6;

(iii) Sections 5.2 through 5.7;

(iv) Sections 8.2, 8.3(a)(i), 8.3(b), and 8.4;

(v) Sections 10.1, 10.5 through 10.6, and Sections 10.10 through 10.13; and

(vi) Articles One, Two, Seven, Twelve and Thirteen.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is set forth in the Cover Sheet.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, pursuant to Seller's election in the Cover Sheet of a Full Buy/Sell or Excess Sale arrangement as described in paragraphs 3.1(b)(i) and 3.1(b)(ii) below. Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right (1) to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Energy delivered to Buyer in connection with Energy Deviations or Variations, as applicable, or (2) sell Product from the Project to a third party other than in connection with Energy Deviations or Variations, as applicable. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt at and from the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(i) Full Buy/Sell. If "Full Buy/Sell" is elected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product measured in kilowatt-hours, net of station use and transformation and transmission losses to and at the Delivery Point. Seller shall purchase all Energy required to serve the Project's on-site load, net of station use, from Buyer or applicable retail service provider pursuant to its applicable retail rate schedule.

(ii) Excess Sale. If "Excess Sale" is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product as measured in kilowatt-hours, net of Station Use, any on-site load and transformation and transmission losses to the Delivery Point. Seller agrees to convey to Buyer all elements of Product associated with the Energy sold to Buyer.

(c) Delivery Term.

(i) Delivery Term and Initial Energy Delivery Date. As used herein, "Delivery Term" shall mean the Delivery Months specified on the Cover Sheet, Unless an alternative date is mutually agreed upon by the the parties, the Initial Delivery Date shall be June 1, 2017.

(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project.

(e) Contract Quantity and Surplus Delivered Energy Quantity

(i) Contract Quantity and Surplus Delivered Energy Quantity. The Contract Quantity and Surplus Delivered Energy Quantity during each Delivery Month is the amount set forth in

the applicable Delivery Month in Section D of the Cover Sheet (“Delivery Term Contract Quantity Schedule”), which amount is inclusive of outages.

(f) Contract Capacity.

(i) Contract Capacity. The capacity of the Project at any time shall be the lower of the following: (A) the contract capacity in MW designated in the Cover Sheet or (B) the Net Rated Output Capacity of the Project (the “Contract Capacity”), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of Appendix VII.

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity or the anticipated output of the Project without Buyer’s prior written consent. The Project is further described in Appendix VII.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.5.

(h) Interconnection Facilities.

(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any Generator Interconnection Agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer’s Interconnection Facilities, including metering facilities, to be maintained; and (C) comply with the procedures set forth in the GIP and applicable agreements or procedures provided under the GIP in order to obtain the applicable Electric System Upgrades and (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.

(ii) Coordination with Buyer.

(A) Seller shall (I) provide to Buyer copies of all material correspondence related thereto; and (II) provide Buyer with written reports of the status of the GIA on a monthly basis. The foregoing shall not preclude Seller from executing a GIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law.

(i) Performance Excuses.

(ii) Buyer Excuses. Buyer shall be excused from (A) receiving and paying for the Product only (I) during periods of Force Majeure, (II) by Seller’s failure to perform, (III) during Curtailment Periods and (B) receiving Product during Buyer Curtailment Periods.

(iii) Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project during any Curtailment Period or Buyer Curtailment Period.

(j) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including reporting, registering, tracking, allocating for

or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any, subject to the Compliance Cost Cap. Nothing in this Section 3.1(j) shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

(k) WREGIS. Seller shall, at its sole expense, but subject to the Compliance Cost Cap, 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 Delivered Energy and Surplus Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.1(k)(viii), provided that Seller fulfills its obligations under Sections 3.1(k)(i) through (vii) below. In addition:

(i) Prior to the Initial Energy Delivery Date, Seller shall register the Project 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 Project 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.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an invoice payment for a given month in accordance with Article 6 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(k). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6.

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 6. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance

with Article 6, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller's obligations under this Section 3.1(k), 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.

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) 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 Delivered Energy in the same calendar month.

(viii) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(l) Access to Data

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Term, which changes Buyer determines are necessary to forecast output from the Project, and/or comply with Law:

(A) read-only access to meteorological measurements, and transformer availability, any other facility availability information;

(B) read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project;

(C) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site;

(D) full, real-time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application, or its successor system;

(E) net plant electrical output at the CAISO revenue meter;

For any month in which the above information and access is not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix V ("Actual Availability Report"). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(l)(i); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

(ii) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(l)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(iv) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third-Party SC (as applicable) to enable Buyer or the Third-Party SC to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(D) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least ninety (90) days prior to the Initial Energy Delivery Date.

(n) Obtaining and Maintaining CEC Certification and Verification. Subject to the Compliance Cost Cap, Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(p) Curtailment Requirements.

(i) Order. Seller shall reduce generation from the Project as required pursuant to a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, provided that (A) a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order shall be consistent with the operational characteristics set forth in Section F of the Cover Sheet; (B) the Buyer Curtailment Period shall be for unlimited hours cumulatively per Delivery Month (which may or may not be consecutive); and (C) Buyer shall pay Seller for Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Article 4. Seller agrees to reduce the Project's generation by the amount and for the period set forth in the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(ii) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order provided in compliance with Section 3.1(p)(i), then, for each MWh of Delivered Energy that the Project generated in contradiction to 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 MWh (for example, the Contract Price) and, (B) is the absolute value of the Real-Time Price for the applicable PNode, if such price is negative, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(q) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Units as directed by the Buyer and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 3.1(p)(ii) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

3.2 Green Attributes.

(a) Seller hereby provides and conveys all Green Attributes associated with all Delivered Energy and Surplus Delivered Energy from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Project.

(b) Future Environmental Attributes.

(i) 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. 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 such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(ii) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.2, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss

mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.3 Resource Adequacy.

(a) During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Project, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a Supply Plan or Resource Adequacy Plan (“Resource Adequacy Requirements”). From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the capacity of the Project, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer’s Resource Adequacy Requirements during the Delivery Term.

(b) Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Resource Adequacy Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Resource Adequacy Standards, if applicable.

(c) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of the outages subject to the Replacement Capacity Rules by the earlier of ninety (90) days before the first day of the month for which the outage will occur or forty-five (45) days before Buyer’s monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC. If Seller fails to provide such Notice, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(d) To the extent Seller has an exemption from the Resource Adequacy Standards or the Replacement Capacity Rules under the CAISO Tariff, Sections 3.3(b) and 3.3(c) above shall not apply. If Seller would like to request an exemption for this Agreement from the CAISO, Seller shall provide to Buyer, as Seller’s Scheduling Coordinator, Notice specifically requesting that Buyer seek certification or approval of this Agreement as an exempt contract pursuant to the CAISO Tariff; provided that Buyer’s failure to obtain such exemption shall not be an Event of Default and Buyer shall not have any liability to Seller for such failure.

(e) Resource Adequacy Failure.

(i) RA Deficiency Determination. Notwithstanding Seller’s obligations set forth in Section 3.4(a)(i)(A) or anything to the contrary herein, the Parties acknowledge and agree that:

(A) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the RA Start Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer; and

(B) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the Deliverability Finding Deadline, then Seller shall be in breach of this Agreement and subject to an Event of Default under Sections 5.1(b)(iv) - (v), regardless of Seller’s payment of any RA Deficiency Amount hereunder.

(ii) RA Deficiency Amount Calculation.

(A) Buyer shall calculate the RA Deficiency Amount for each RA Shortfall Month using the formula set forth in Section 3.3(e)(ii)(B). Buyer shall notify Seller of the RA Deficiency Amount for a given RA Shortfall Month no later than the last day of that RA Shortfall Month. The Parties agree that these liquidated damages shall be paid to Buyer for each RA Shortfall Month and constitute a reasonable approximation of the harm or loss suffered by Buyer. The Parties further agree that Buyer may use such liquidated damages for any purpose in its sole discretion. Seller shall pay the RA Deficiency Amount for a given RA Shortfall Month in the form of a deduction from the amount invoiced by Seller in such month pursuant to Section 6.1. In the event that the RA Deficiency Amount for a given RA Shortfall Month exceeds the amount invoiced pursuant to Section 6.1, Buyer shall make no payment to Seller for that month, and the difference between the invoiced amount and the RA Deficiency Amount shall be deducted from the amount(s) invoiced in the succeeding month(s) until all of the RA Deficiency Amount for such RA Shortfall Month has been deducted. Any dispute regarding Buyer's calculation of any RA Deficiency Amount shall be resolved in accordance with Article Twelve.

(B) The RA Deficiency Amount for a given RA Shortfall Month shall be equal to the product of the RA Value and the Expected Net Qualifying Capacity, as calculated in accordance with Appendix VIII. The RA Deficiency Amount is represented by the following equation:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

To the extent the Project obtains Net Qualifying Capacity that Seller applies towards its obligations under Section 3.3(a) before the Project obtains the deliverability type selected in Section A of the Cover Page (e.g., through the CAISO's Operational Deliverability Assessment), then the RA Deficiency Amount calculated above for a given RA Shortfall Month shall be reduced accordingly (e.g. the RA Deficiency Amount would equal the product of (x) the RA Value and (y) the difference between the Expected Net Qualifying Capacity and the actual Net Qualifying Capacity):

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times [\text{Expected Net Qualifying Capacity (MW)} - \text{actual Net Qualifying Capacity (MW)}].$$

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller's Transmission Service Obligations. Throughout the Term, and consistent with the terms of this Agreement, Seller shall:

(A) arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Seller's interconnection, distribution and/or transmission arrangements shall provide for the deliverability type selected in Section A of the Cover Sheet as of the RA Start Date and throughout the Delivery Term.

(B) If Seller has elected Energy Only Status on the Cover Sheet, this Section 3.4(a)(i)(B) is not applicable. An FCDS or PCDS Seller shall have either previously obtained, or is obligated to obtain per the terms of the Agreement, a FCDS or PCDS Finding. If Seller's Project has not attained Full Capacity Deliverability Status or Partial Capacity Deliverability Status prior to the Execution Date, Seller shall take all actions necessary or appropriate to cause the Delivery Network Upgrades necessary for it to obtain Full Capacity Deliverability Status or Partial Capacity Deliverability

Status to be constructed and placed into service. The cost of each Deliverability Assessment and any necessary Delivery Network Upgrades to ensure Full Capacity Deliverability Status or Partial Capacity Deliverability Status shall be borne solely by Seller and shall not be subject to the Compliance Cost Cap. When the CAISO advises Seller that the Project has Full Capacity Deliverability Status or Partial Capacity Deliverability Status, Seller shall Notify Buyer of such status within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. The Effective FCDS Date or Effective PCDS Date must occur on or before the Deliverability Finding Deadline; a failure to do so shall constitute an Event of Default under Section 5.1(a)(iii). The Termination Payment for an Event of Default caused by Seller's failure to achieve the Effective FCDS Date or Effective PCDS Date on or before the Deliverability Finding Deadline shall be capped at the amount of Seller's Delivery Term Security or Term Security obligation under Section 8.3(a)(ii) or (iii), as applicable.

(C) if the Project has or obtains FCDS, Seller shall Notify Buyer of such status as of the Execution Date, if applicable, or within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO.

(D) bear all risks and costs associated with such transmission service, including any transmission outages or curtailment to the Delivery Point.

(E) fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver Energy from the Project according to the terms of this Agreement.

(ii) Buyer's Transmission Service Obligations. During the Delivery Term,

(A) Buyer shall arrange and be responsible for transmission service at and from the Delivery Point.

(B) Buyer shall bear all risks and costs associated with such transmission service, including any transmission outages or curtailment from the Delivery Point.

(C) Buyer shall schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point.

(D) Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(b) Scheduling Coordinator. Buyer, or Buyer's designated Third-Party SC, shall act as the Scheduling Coordinator for the Project. In that regard, Buyer and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Delivery Term, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer's Third-Party SC as Seller's Scheduling Coordinator, and the Third-Party SC will take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator. If Buyer replaces its designated Third-Party SC, then Buyer shall give Seller Notice of such designation at least ninety (90) Business Days before the successor Third-Party SC

assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator. Buyer or Third-Party SC shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all scheduling in full compliance with the terms and conditions of this Agreement, the CAISO Tariff, and all requirements of EIRP (if applicable).

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. To avoid Forecasting Penalties set forth in Section 4.6(c)(iii), Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term ("First Annual Forecast Date"), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if applicable) a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Seller shall provide to Buyer and Third-Party SC (if applicable), pursuant to subsections (I) and (II) below, a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer:

(I) by forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC, and

(II) throughout the Delivery Term, by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC.

(C) Daily Forecast of Available Capacity. During the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) at Group-Corp-TradingCaiso@teainc.org, as provided in Appendix II, for each day no later than fourteen (14) hours

before the beginning of the “Preschedule Day” (as defined by the WECC) for such day. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (1) Monday – Preschedule Day for Tuesday
- (2) Tuesday – Preschedule Day for Wednesday
- (3) Wednesday – Preschedule Day for Thursday
- (4) Thursday – Preschedule Day for Friday and Saturday
- (5) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, “Preschedule Calendar.” Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller’s forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for submittal of Schedules into the Day-Ahead Market then Seller must notify Buyer of such change by telephone and shall send a revised notice to Group-Corp-TradingCaiso@teainc.org as set forth in Appendix II. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

If Seller fails to provide the Third-Party SC with a Day-Ahead Availability Notice as required herein, then, until Seller provides a Day-Ahead Availability Notice, the Third-Party SC may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Third-Party SC to the extent Seller’s failure contributes to Imbalance Energy, Seller shall be subject to the Forecasting Penalties set forth in Section 4.6(c).

(D) Real-Time Available Capacity. During the Delivery Term, Seller shall notify Third-Party SC of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the CAISO rules for participation in the Real-Time Market. If the Available Capacity 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 likewise notify Third-Party SC. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Third-Party SC. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Third-Party SC of such outage within ten (10) minutes of the commencement of the Forced Outage. Seller shall inform Third-Party SC of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. These notices and changes to Available Capacity shall be communicated in a method acceptable to Third-Party SC; provided that Third-Party SC specifies the method no later than 60 days prior to the effective date of such requirement. In the event Third-Party SC fails to provide Notice of an acceptable method for communications under this Section 3.4(b)(iii)(D), then Seller shall send such communications by telephone to Third-Party SC’s Real-Time Desk and via email to Group-Corp-TradingCaiso@teainc.org as set forth in Appendix II.

(E) To the extent that Seller obtains, in the normal course of business, other forecasts of energy production at the Project not otherwise specified in this Section 3.4, then Seller shall grant Buyer read-only access to such forecasts.

(iv) Replacement of Scheduling Coordinator.

(A) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller's SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(B) Buyer shall submit, or if applicable cause the Third-Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (I) thirty (30) days prior to the end of the Delivery Term or (II) the date of any early termination of this Agreement.

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, safety, ownership and/or operation of the Project). In the event Seller requires any data or information from Buyer in order to comply with any applicable requirements of Law, including the requirements of CAISO, NERC and WECC, relating to the Project (including those related to construction, safety, ownership and/or operation of the Project), then Seller shall request in writing such data from Buyer no less than forty-five (45) calendar days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Utility Practices.

(c) Reliability Standard. Seller agrees to abide by (i) CPUC General Order No. 167, "Enforcement of Maintenance and Operation Standards for Electric Generating Facilities", and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering. All output from the Project must be delivered through a single CAISO revenue meter located on the high-voltage side of the Project's final step-up transformer (which must be dedicated solely to the Project) nearest to the Interconnection Point that exclusively measures output for the Project described herein. All Delivered Energy purchased under this Agreement must be measured by the Project's CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right 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 Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period,

Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

(a) CAISO Approval of Outage(s). Buyer, acting through its Third-Party SC, is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Buyer's schedules or cancels previously approved outages and for entering Project outages in the Scheduling and Logging system for the CAISO ("SLIC") or successor system. Through its Third-Party SC, Buyer shall put forth commercially reasonable efforts to secure and communicate CAISO approvals for Project outages in a timely manner to Seller.

(b) Planned Outages. During the Delivery Term, Seller shall notify Buyer and the Third-Party SC of its proposed Planned Outage schedule for the Project for the following calendar year by complying with Section 3.4(b)(iii)(A), ("Annual Forecast of Available Capacity") and Section 3.4(b)(iii)(B), (Monthly Forecast of Available Capacity") and implementing the notification procedures set forth in Appendix II no later than July 1st of each year during the Delivery Term. Seller shall also notify Buyer and the Third-Party SC of the proposed Planned Outage schedule for the Project by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC. The Planned Outage schedule is subject to Buyer's approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer and the Third-Party SC regarding the Planned Outage by the earlier of fourteen (14) days prior to each Planned Outage or two (2) Business Days prior to the CAISO deadline for submitting Planned Outages. Seller shall not conduct Planned Outages during the months of January, May through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer and the Third-Party SC with any requested changes to the Planned Outage schedule if Seller believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Subject to Section 3.7(a), after any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may direct that Seller change its outage schedule as ordered by CAISO. For non-CAISO ordered changes to a Planned Outage schedule requested by Buyer, Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

(c) Forced Outages. Seller shall notify Buyer and the Third-Party SC of a Forced Outage as promptly as possible, but no later than ten (10) minutes after the commencement of the Forced Outage and in accordance with the notification procedures set forth in Appendix II. Buyer shall put forth commercially reasonable efforts to submit such outages to CAISO.

(d) Prolonged Outages. Seller shall notify Buyer and the Third-Party SC of a Prolonged Outage as soon as practicable in accordance with the notification provisions in Appendix II. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis also in accordance with the notification provisions in Appendix II.

(e) Force Majeure. Within two (2) Business Days of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(f) Communications with CAISO. Buyer, through its Third-Party SC, shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications.

(g) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7, 3.8, or 10.13, or Appendix II, and consistent with Section 3.5, Seller understands and acknowledges that the specified access to data and installation and maintenance of weather stations, transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and scheduling, forecast, bidding, notification and operating procedures described in the above-referenced sections are subject to change. If such changes are provided by (i) Notice from Buyer, then Seller shall implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increased cost of performance to Seller hereunder other than *de minimis* amounts, or (ii) Law, then the Parties shall implement such changes as necessary for Seller and Buyer to perform their respective rights and obligations in accordance with the Law.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include information on power production, fuel consumption, efficiency, availability, maintenance performed, outages, results of inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice (which no case shall be less than three (3) Business Days) visit the Project during normal business hours for purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. In connection with the foregoing, Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; (ii) not interfere with the operation of the Project; and (iii) unless waived in writing by Seller, be escorted by a representative of Seller. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Price.

(a) Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Delivery Month is set forth in Section C of the Cover Sheet.

(b) Applicability of Full Capacity Deliverability Status to Contract Price. This Section 4.1(b) only applies to Sellers that elected to be FCDS Sellers in the Cover Sheet. If Seller has not achieved FCDS on or prior to the expected full capacity delivery date of _____, the Contract Price shall be reduced by \$4.00/MWh between the period beginning on such date until the first day of the calendar month immediately following the date that is forty-five (45) calendar days from the Effective FCDS Date.

(c) Surplus Delivered Energy Contract Price. The Surplus Delivered Energy Contract Price for each MWh of Product as measured by Surplus Delivered Energy in each Delivery Month is set forth in Section C of the Cover Sheet.

4.2 Monthly Payment. Except as otherwise provided in this Article 4, for each Delivery Month, Buyer shall pay Seller, or cause to be paid to Seller, for all Delivered Energy, Deemed Delivered Energy and Surplus Delivered Energy (“Monthly Payment”) in an amount equal to (A) the Contract Price multiplied by (B) the sum of (i) for each hour in the month, the Delivered Energy (exclusive of Surplus Delivered Energy) during the hour plus (ii) for each hour in the month, the amount of Deemed Delivered Energy during the hour and (A) the Surplus Delivered Energy Contract Price multiplied by (B) the Surplus Delivered Energy during the hour:

$$\text{Monthly Payment} = \{\text{sum over all hours}\} [\text{Contract Price } \$ \times (\text{Delivered Energy } MWh_{\text{hour}} + \text{Deemed Delivered Energy } MWh_{\text{hour}}) + \text{Surplus Delivered Energy Contract Price } \$ \times \text{Surplus Delivered Energy } MWh_{\text{hour}}]$$

For the avoidance of doubt, “Delivered Energy” as used in the formula above excludes Surplus Delivered Energy, for which Seller will receive the Surplus Delivered Energy Contract Price equal to the sum of the Energy Price as calculated below and the Green Attribute Price as set forth in Section C of the Cover Sheet.

The Energy Price for each Delivery Month will be calculated as the weighted average CAISO price for Surplus Delivered Energy defined by summing for all Settlement Intervals:

(1) If the day-ahead forecast of Available Capacity is less than the Contract Capacity, the Real-Time Price multiplied by the Surplus Delivered Energy

(2) If the day-ahead forecast of Available Capacity is greater than the Contract Capacity and there is Surplus Delivered Energy for the Settlement Interval, Seller will receive the DA Price multiplied by the difference of (a) the day-ahead forecast of Available Capacity and (b) the Contract Capacity; plus the Real-Time Price multiplied by the difference between (a) the sum of the Delivered Energy and Surplus Delivered Energy and (b) the day-ahead forecast of Available Capacity

then dividing by:

the total Surplus Delivered Energy for the applicable Delivery Month.

4.3 Capacity Factor. The Capacity Factor shall be calculated and defined as the percentage amount resulting from Delivered Energy plus Deemed Delivered Energy, if any, per Contract Year divided by the product resulting from multiplying the Contract Capacity times the number of hours in the applicable Contract Year minus Seller Excuse Hours ("Capacity Factor"):

Capacity Factor = (Delivered Energy + Deemed Delivered Energy) / (Contract Capacity × (Hours in Contract Year minus Seller Excuse Hours)).

4.4 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller's failure to perform any covenant or obligation set forth in this Agreement. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer's actions, including those resulting in a Buyer Curtailment Period.

(b) Buyer, acting through its Third-Party SC, shall (i) be responsible for all costs and charges assessed by the CAISO with respect to scheduling and Imbalance Energy, subject to Sections 4.4(a) and (c) and (ii) retain the credits and other payments received as a result of Energy from the Project delivered to the Integrated Forward Market or Real-Time Market, including revenues associated with CAISO dispatches. Seller and Buyer shall cooperate to minimize such charges and Uninstructed Imbalance Energy to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller's and Buyer's respective responsibilities for payment for Imbalance Energy and costs and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

(i) Subject to Force Majeure, in the event Seller does not in a given hour either (A) provide the access and information required in Section 3.1(l)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(l)(iv); or (C) provide the forecast of Available Capacity required in Section 3.4(b)(iii), and the sum of Energy Deviations for each of the Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

(ii) The Performance Tolerance Band is three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to the greater of (A) one hundred fifty percent (150%) of the Contract Price or (B) the absolute value of the Real-Time Price, in each case for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.4(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

4.5 Additional Compensation.

(a) To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project, including compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer;

provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to Electric System Upgrades contemplated in Section 3.1(h)(i).

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as “Reductions”), then, at Buyer’s option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer less any costs incurred by Seller in connection with such Reductions; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions less any costs incurred by Seller in connection with such Reduction and Seller shall retain the Reductions.

(c) Reliability Must-Run (RMR) Contract and Capacity Procurement Mechanism Obligations. Seller with an existing RMR Contract will assign a proportion of the proceeds of any RMR Contract affecting the Project to Buyer based on the ratio of the Contract Capacity and the RMR Contract award, except as provided below. Buyer shall retain all revenues from said RMR Contract, except for Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch (“Retained Revenues”), as each is defined in the applicable RMR Contract, all of which shall be remitted to Seller. If the CAISO and/or Seller wish to negotiate or renegotiate an RMR Contract or contract related to the Capacity Procurement Mechanism (as defined in the CAISO Tariff) or similar capacity commitment under the CAISO Tariff that pertains to Unit(s) under this Agreement as of the Execution Date of this Agreement, Seller shall include Buyer in any such negotiations. If Seller enters into any new RMR Contract or contract related to the Capacity Procurement Mechanism or similar capacity commitment affecting the Project, Seller shall assign the revenues from such contract, except for Retained Revenues, Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch to Buyer.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean,

(a) with respect to a Party that is subject to the Event of Default, the occurrence of any of the following:

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

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.1(b), becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.1(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.1(b) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied

within forty-five (45) days after Notice from the Non-Defaulting Party, which time period shall be extended if the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period shall not exceed forty-five (45) additional days;

(iv) such Party becomes Bankrupt; or

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

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

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

(ii) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.2, 8.3, or 8.4 of this Agreement and such failure is not cured within any applicable cure period;

(iii) if Seller has provided and Buyer has accepted, a Guaranty to satisfy the collateral obligations under this Agreement, then with respect to such guarantor or the Guaranty, if Seller had not replaced the Guaranty in accordance with Section 8.5 within five (5) Business Days following Buyer's Notice of a request for replacement;

(iv) Seller has not obtained the deliverability type selected in Section A (FCDS or PCDS) of the Cover Sheet by the Deliverability Finding Deadline;

(v) Seller has not obtained the Partial Capacity Deliverability Status Amount identified in Section A of the Cover Sheet by the Deliverability Finding Deadline.

(vi) Seller's failure to operate the Project in compliance with all applicable Laws as determined by the Governmental Authority charged with implementation and/or enforcement of the specific Law at issue.

5.2 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) 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") on which to (i) collect the Damage Payment (in the case of any Event of Default of Seller that arose at any time prior to the commencement of the Delivery Term, including an Event of Default of Seller pursuant to Section 5.1(b)(ii)), or (ii) collect the Termination Payment (in the case of any Event of Default of Seller that arose during the Delivery Term or in the case of any Event of Default of Buyer at any time);

(b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;

- (c) collect the Termination Payment;
- (d) withhold any payments due to the Defaulting Party under this Agreement;
- (e) suspend performance;
- (f) exercise its rights pursuant to Section 8.2 to draw upon and retain Performance Assurance;
- (g) demand payment for damages due to Buyer's unexcused failure to take delivery or pay for Product; and
- (h) exercise any other rights or remedies available at Law or in equity (including the collection of monetary damages) to the extent otherwise permitted under this Agreement.

Notwithstanding anything to the contrary contained herein, Seller may exercise the rights or remedies set forth in Sections 5.2(e), (g), and (h) without terminating this Agreement.

5.3 Calculation of Termination Payment.

(a) In the case where the Non-Defaulting Party is entitled to collect the Termination Payment pursuant to Section 5.2(a), 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 dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes shall be obtained in a commercially reasonable manner and shall be: (i) for a like amount, (ii) of the same Product, (iii) at the same Delivery Point, and (iv) for the remaining Delivery Term. Regardless of the method chosen by the Non-Defaulting Party to calculate the Settlement Amount, the Settlement Amount must still be reasonable under the circumstances.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.6 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer: (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of Article Four. Seller shall continue to provide to Buyer an invoice of CAISO charges, net any sums Buyer owes Seller under this Agreement, on or about the tenth (10th) day of each month until the date of the Final True-Up. Buyer shall pay the undisputed amount of such invoices less the amount of any RA Deficiency Amount and the amount of any Forecasting Penalties, as applicable on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. 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, with Notice of the objection given to the other Party. 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. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from

and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made; provided that, such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR Contract; and provided further that, any disputes with respect to a statement of CAISO Revenues is waived unless Seller notifies Buyer in accordance with this Section 6.2 within one (1) month after the last statement of CAISO Revenues is provided. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.4 ("INDEMNITIES"), 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 CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each of Seller's fiscal years, a copy of Seller's or Seller's guarantor's, if applicable, annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

8.2 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Pre-Delivery Term Security, Delivery Term Security, or Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Pre-Delivery Term Security, Delivery Term Security, or Term Security, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Pre-Delivery Term Security, Delivery Term Security, or Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Pre-Delivery Term Security, Delivery Term Security, or Term 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 the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.3 Performance Assurance.

(a) Security. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Pre-Delivery Term Security pursuant to this Section 8.3(a)(i) in the amount of \$90/kW multiplied by the capacity of the Project as reflected in Section B of the Cover Sheet, within five (5) Business Days following the Effective Date of this Agreement until Seller posts Delivery Term Security pursuant to Section 8.3(a)(ii) below with Buyer.

(ii) Delivery Term Security pursuant to this Section 8.3(a)(ii) in the amount equal to the Damage Payment from the date required pursuant to Section 3.1(c)(i) as a condition precedent to the Initial Energy Delivery Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Pre-Delivery Term Security posted pursuant to Section 8.3(a)(i) toward the Delivery Term Security posted pursuant to this Section 8.3(a)(ii).

The amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. Except as specifically provided for in this Section 8.3(a), Buyer acknowledges that Seller shall not be required to post any additional security.

(b) Use of Pre-Delivery Term Security or Term Security. Buyer shall be entitled to draw upon the Pre-Delivery Term Security or Term Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Pre-Delivery Term Security. If after the Initial Energy Delivery Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be

required to maintain the Pre-Delivery Term Security, and Buyer shall return to Seller the Pre-Delivery Term Security, less the amounts drawn in accordance with Section 8.3(b). The Pre-Delivery Term Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security, as applicable unless, with Buyer's consent, Seller elects to apply the Pre-Delivery Term Security posted pursuant to Section 8.3(a)(i) toward the Delivery Term Security posted pursuant to Section 8.3(a)(ii), as applicable.

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Pre-Delivery Term Security, Delivery Term Security or Term Security, as applicable, at the Interest Rate; provided that, the interest on Pre-Delivery Term Security shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.3(a)(ii). Upon Seller's posting of the Delivery Term Security, all accrued interest on the unused portion of Pre-Delivery Term Security shall be transferred from Buyer to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in the Cover Sheet (Notices List). After Seller posts the Delivery Term Security or Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security or Term Security.

(e) Return of Performance Assurance. Buyer shall return the unused portion of Pre-Delivery Term Security, Delivery Term Security or Term Security, as applicable, including the payment of any interest due thereon, pursuant to Section 8.3(d) above, to Seller promptly after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 8.2, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including payments pursuant to Section 4.4 ("CAISO Charges"), Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

8.4 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (A) or (B) below is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's Notice to Seller in Section 8.5(b) above; or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Article Eight.

(c) Notwithstanding the foregoing in Section 8.4(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on “credit watch” negative or developing by S&P, or is on Moody’s “watch list” under review for downgrade or uncertain ratings action (either a “Watch”), then Buyer may make a demand to Seller by Notice (“LC Notice”) to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch (“Substitute Letter of Credit”). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit (“Substitute Bank Period”).

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period (“Ineligible LC Bank Notice Period”) that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank (“Ineligible LC Bank”) and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer’s Notice to Cure pursuant to Section 8.5(b) and, if Seller fails to Cure, then the last paragraph in Section 8.4(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

(d) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

8.5 Guaranty. If at any time Seller’s guarantor or Guaranty is no longer acceptable to Buyer in its sole discretion, Seller shall replace the Guaranty with Performance Assurance as provided herein. Within five (5) Business Days following Buyer’s written request for replacement of the Guaranty, Seller shall deliver to Buyer replacement Performance Assurance in the form of a replacement Guaranty, Letter of Credit or cash in an amount equal to the applicable amount of the Guaranty issued pursuant to this Agreement. In the event Seller shall fail to provide replacement Performance Assurance to Buyer as required in the preceding sentence, then Buyer may declare an Event of Default pursuant to Section 5.1(b)(iii) by providing Notice thereof to Seller in accordance with Section 5.2.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority (“Governmental Charges”) on or with respect to the Product or the Transaction arising at the Delivery Point, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer’s responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required

by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: MISCELLANEOUS

10.1 Representations and Warranties.

(a) General Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to perform its obligations under this Agreement;

(iii) it is a "forward contract merchant" within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

(iv) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Laws applicable to it;

(v) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(vi) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vii) there is not pending or, to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(viii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(ix) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(x) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

(b) Seller Representations and Warranties.

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

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

(iii) Seller, and, if applicable, its successors, represents and warrants that beginning with the Execution Date and throughout the Delivery Term of this Agreement, the Project is operated in compliance with all applicable Laws as determined by the Governmental Authority charged with implementation and/or enforcement of the specific Law at issue.

10.2 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and the Transaction; and

(iii) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it.

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer’s ability to rely on the Project in order to satisfy its Resource Adequacy Requirements; and

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements and/or Participating TO tariff requirements, as applicable, that are applicable to an Interconnection Customer (as defined in the CAISO Tariff or Participating TO's tariff, as applicable) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the RA Start Date.

(iii) Seller covenants that the Initial Energy Delivery Date shall occur no later than the Expected Initial Energy Delivery Date specified in Section B of the Cover Sheet.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person or entity arising prior to or at the Delivery Point.

10.4 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, or (ii) Seller's operation and/or maintenance of the Project, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.5 Assignment.

(a) General Assignment. Except as provided in Sections 10.5 (b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and

financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and except as provided in Section 10.5(b), consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent shall not be unreasonably withheld. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix III provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix III, including extension of any cure periods or additional remedies for financing providers, and (ii) Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, attorneys' fees.

(c) Notice of Change in Control. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates', Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.5 is void.

10.6 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by Law, including without limitation the California Public Records Act (Government Code §§ 6250 et seq, "CPRA"), all documents, data (including operating data provided in connection with the scheduling of energy or otherwise pursuant to this Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, any Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("Confidential Information"). The provisions of this Section 10.6 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Subject to the CPRA, either Party may, without violating this Section 10.6, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, co-owners, investors, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries or Affiliates;

(ii) to governmental officials and parties involved in any proceeding in which a Party is seeking a Permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) If a Party is requested or required, pursuant to any applicable Law, regulation, order, rule, or ruling, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by CPRA. Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA; *provided that* Seller shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 10.6(c) endeavor, in good faith, not to disclose any of Seller's "trade secrets" as consistent with the CPRA and (iii) support, to the extent in compliance with Buyer's rights and obligations under applicable laws, Seller in its efforts to obtain a protective order or other appropriate remedy with respect to the disclosure of operating data from the Project or any engineering drawings, project plans, technical specifications or other similar information regarding the Project.

(e) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement, and the rights, Liens and priorities of Buyer with respect to such credit support.

(f) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify the other Buyer and Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against Buyer or any Indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include,

but are not limited to, all actual costs incurred by Buyer and any Indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all Indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all Indemnitees, as well as all damages or liability of any nature.

(g) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Section 7.1.

10.7 Audit. Each Party has the right, at its sole expense and during normal working hours, after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.8 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage. The obligations of the Seller in this Section 10.10 constitute material obligations of the Agreement.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers' Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no alterations to the coverage form.

(ii) The limit shall not be less than three million dollars (\$3,000,000.00) each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

(A) by “Additional Insured” endorsement add as insureds RCEA, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller. In the event the Commercial General Liability policy includes a “blanket endorsement by contract,” the following language added to the certificate of insurance will satisfy Buyer’s requirement: “RCEA, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;”

(B) be endorsed (blanket or otherwise) to specify that the Seller’s insurance is primary and that any insurance or self-insurance maintained by RCEA shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 “any auto”.

(ii) The limit shall not be less than one million dollars (\$1,000,000.00) each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) Additional Insurance Requirements.

(i) Before commencing performance of the Work, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller.

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to Buyer.

(iii) Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to issue certificates of insurance and endorsements on its behalf, and shall be Noticed and delivered to Buyer’s authorized representative.

(iv) Reviews of such insurance may be conducted by Buyer on an annual basis.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(e) Form And Content.

All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against Buyer, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any

other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

10.9 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.

10.10 General. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. The Parties acknowledge and agree that this Agreement is a “forward contract” (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.12. This Agreement shall be binding on each Party’s successors and permitted assigns.

10.11 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

10.12 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. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.13 Mobile Sierra. Notwithstanding any 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 the FERC pursuant to the 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, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States 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).

10.14. Public Announcements. Seller shall make no public announcement regarding any aspect of this Agreement or the role of Seller in regards to the development or operation of the Project without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any public announcement by Seller must comply with California Business and Professions Code § 17580.5 and with the *Guides for the Use of Environmental Marketing Claims*, published by the FTC, as it may be updated from time to time.

ARTICLE ELEVEN: TERMINATION EVENT

11.1 Force Majeure Termination Event.

(a) Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of any of the following: (each constituting a “Force Majeure Failure”):

(i) If during the Delivery Term:

(A) the Project fails to deliver at least forty percent (40%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project and Buyer has provided Notice to Seller of such failure; provided that, if Seller within forty-five (45) days of receipt of Notice from Buyer, presents Buyer with a plan for mitigation of the effect of the Force Majeure within a period not to exceed six (6) months from the above-mentioned Notice date, which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer’s written acknowledgement of such plan, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the mitigation period deemed necessary by Seller to repair the Project (which shall not exceed six (6) months); provided that Seller diligently pursues such mitigation plan throughout the mitigation period, and after which time Buyer may terminate this Agreement unless the Project has been repaired, and the Seller has resumed and is satisfying all of its obligations under this Agreement; or

(B) the Project is destroyed or rendered inoperable by a Force Majeure event caused by a catastrophic natural disaster; provided that Seller shall have up to ninety (90) days following such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced no later than twenty-four (24) months from the date of the report and Seller shall provide Buyer with a copy of the engineer’s report, at no cost to Buyer; provided further that if such engineer’s report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the period deemed necessary by the engineer’s report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying all of its obligations under this Agreement.

(b) Termination and Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer’s Notice of termination, subject to each Party’s satisfaction of all of the final payment and survival obligations set forth in Sections 2.5(a) and (b). The Parties agree that for a period of three (3) years from the date on which Buyer Notifies Seller of termination due to the Force Majeure Failure (“Exclusivity Period”), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the “First Offer”) and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer's governing board approval ("Buyer's Notice of First Offer Acceptance"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice of First Offer Acceptance to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, if necessary; provided that the Contract Price may only be increased to reflect Seller's documented incremental costs in overcoming the Force Majeure event.

(iii) If Buyer rejects or fails to accept Seller's First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the "Revised Offer") in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller's Revised Offer the Buyer rejects, or fails to accept by Notice to Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE TWELVE: DISPUTE RESOLUTION

In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE THIRTEEN: NOTICES

Whenever this Agreement requires or permits delivery of a "Notice" (or requires a Party to "notify"), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix II, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Notices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, website, or contact, including such information in Appendix II and the "Notices List" in the Cover Sheet, to which Notice is to be given by providing Notice of such change to the other Party.

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

HUMBOLDT REDWOOD COMPANY, LLC,
a Delaware limited liability company

REDWOOD COAST ENERGY AUTHORITY,
a California joint powers authority

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Redwood Coast Energy Authority
633 3rd St,
Eureka, CA 95501

Applicant: [Insert name and address of Applicant]

Attention:

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Redwood Coast Energy Authority (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “Pursuant to the terms of that certain **[insert name of the agreement]** (the “Agreement”), dated **[insert date of the Agreement]**, between Beneficiary and **[insert name of Seller under the Agreement]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the Agreement]** under the Agreement; or

B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the Agreement]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of California shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: **[print or type name]**

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF REDWOOD COAST ENERGY
AUTHORITY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

APPENDIX II

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify the applicable Participating Transmission Owner's (PTO) switching center

- Call the applicable Participating Transmission Owner's (PTO) switching center and TEA's Real-Time Desk to advise of the intent to parallel before any Start-up.
- Call the applicable Participating Transmission Owner's (PTO) switching center and TEA's Real-Time Desk after the unit has been paralleled and report the parallel time and intended unit output.
- Call the applicable Participating Transmission Owner's (PTO) switching center and TEA's Real-Time Desk after any routine separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PLANNED OUTAGES

1. Implement the procedures set forth below:

- a. For all email correspondence, enter the following in the email subject field: Delivery Date Range, Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity,")
- b. For Annual Forecasts of Available Capacity, email to For Monthly and Daily Forecasts of Available Capacity, email to Group-Corp-TradingCaiso@teainc.org.
- c. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Schedules into the Day-Ahead Market, call primary phone 425-460-1118 or backup phone 425-460-1126. Also send email to Group-Corp-TradingCaiso@teainc.org.
- d. For Hourly Forecasts of Available Capacity, call TEA's Real Time Desk at 425-460-1118 and email to Group-Corp-TradingCaiso@teainc.org.
- e. For Planned Outages and Prolonged Outages, complete the specifics below and submit by email to Group-Corp-TradingCaiso@teainc.org.
 - i. *Email subject field:* Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity")

ii. Email body:

1. Type of Outage: Planned Outage or Prolonged Outage
2. Start Date and Start Time
3. Estimated or Actual End Date and End Time for Outage
4. Date and time when reported to TEA and name(s) of TEA representative(s) contacted
5. Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage.
6. Contact name: first and last name of the individual at the Unit to contact regarding the outage(s) at issue in the email.

C. FORCED OUTAGE REPORTING

1. Forced Outages – Seller shall notify TEA’s Real Time Desk verbally at 425-460-1118 within ten (10) minutes of event or as soon as reasonably possible, after the safety of all personnel and securing of all facility equipment.
 - a. Verbal notification shall include time of forced outage, cause, current availability and estimated return date and time.
 - b. After verbally notifying TEA’s Real Time Desk of the forced outage, Seller shall also submit the following information via email to Group-Corp-TradingCaiso@teainc.org.
 - i. *Email subject field:* Company Name, Contract Name, Email Purpose, Date Range (For example: “dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity”)

ii. Email body:

1. Type of Outage: Forced Outage
2. Start Date and Start Time
3. Estimated or Actual End Date and End Time
4. Date and time when reported to TEA and name(s) of TEA representative(s) contacted.
5. Text description of additional information as needed.
6. Primary and secondary causes of Forced Outage, including a detailed description of specific equipment involved and the nature of the problem or condition.
7. Equipment description and nature of work being performed. For generation outages, include NERC Generation Availability Data System

(GADS) numbers (as available) that identify the specific equipment and type of work that affect restrictions. Include additional equipment designations as available.

8. Text description of additional information as needed, including, but not limited to, changes to a previously scheduled Outage, links/cross-references to related outage cards and log entries, outage classifications per the CAISO Tariff, etc.
9. Associated events, e.g. operation of Special Protection Schemes.
10. Impact on CAISO-controlled Grid.

APPENDIX III

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“Consent and Agreement”) is entered into as of [_____, 2____], between REDWOOD COAST ENERGY AUTHORITY (“RCEA”), and [_____] , as collateral agent (in such capacity, “Financing Provider”), for the benefit of various financial institutions (collectively, the “Secured Parties”) providing financing to [_____] (“Seller”). RCEA, Seller, and the Financing Provider shall each individually be referred to as a “Party” and collectively as the “Parties”.

Recitals

A. Pursuant to that certain Power Purchase Agreement dated as of _____, 2____ (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “Assigned Agreement”) between RCEA and Seller, RCEA has agreed to purchase energy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “Financing Documents”), and require that Financing Provider be provided certain rights with respect to the “Assigned Agreement” and the “Assigned Agreement Accounts,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, RCEA has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. Consent. Subject to the terms and conditions below, RCEA consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Loan Agreement and/or Security Agreement of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “Assigned Agreement Accounts”).

3. Limitations on Assignment. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to RCEA a written assumption of all of Seller’s rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to RCEA, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as RCEA may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no

rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

“Permitted Transferee” means any person or entity who is reasonably acceptable to RCEA. Financing Provider may from time to time, following the occurrence of a Financing Default, notify RCEA in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider’s rights under the Financing Documents, and RCEA shall, within thirty (30) business days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a “Permitted Transferee” (together with a written statement of the reason(s) for any negative determination) it being understood that if RCEA shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a “Permitted Transferee”.

4. Cure Rights.

(a) Notice to Financing Provider by RCEA. RCEA shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an “Event of Default”) to Seller (a “Default Notice”), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from RCEA, independent of any agreement of RCEA to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by RCEA. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, RCEA shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement “Additional Cure Period” means (i) with respect to a monetary default, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by RCEA to Deliver Default Notice. If neither RCEA nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider’s applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either RCEA or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in RCEA’s ability to terminate the Assigned Agreement (in each case only if both RCEA and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of RCEA to deliver any Default Notice shall not waive RCEA’s right to take any action under the Assigned Agreement and will not subject RCEA to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from RCEA or Seller, whichever is received first, Financing Provider shall be

allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; provided, however, that Financing Provider shall provide a written notice to RCEA that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from RCEA or Seller, whichever is received first. In the event Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that RCEA shall have the right to set off or deduct from payments due to Seller each and every amount due RCEA from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action RCEA may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that RCEA makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider releases RCEA from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that RCEA may agree with Seller to modify or amend the Assigned Agreement, and that RCEA is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases RCEA from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. RCEA shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [____], as depositary agent, to ABA No. [____], Account No. [____], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, RCEA and Financing Provider agrees that each such payment by RCEA to such depositary agent of amounts due to Seller from RCEA under the Assigned Agreement shall satisfy RCEA's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

If to Financing Provider:	
Name:	
Address:	
Attn:	
Telephone:	
Facsimile:	
Email:	

If to RCEA:	
Name:	
Address:	
Attn:	
Telephone:	
Facsimile:	
Email:	

(b) No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of RCEA, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the loan agreement and/or security agreement.

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

(e) No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

(h) Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

(i) Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

IN WITNESS WHEREOF, each of RCEA and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

Redwood Coast Energy Authority (RCEA)

By: _____
Name: _____
Title: _____

[_____]
(Financing Provider), as collateral agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from RCEA to Financing Provider the next business day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned.

[_____] [name of Seller]

By: _____
Name: _____
Title: _____

APPENDIX IV

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer all of the following documentation prior to the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, “Charter Documents”) as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate signed by an authorized officer of Seller (who must be a different person than the officers listed in clause (C) below), dated no earlier than ten (10) Business Days prior to the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller’s incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
5. Evidence of CEC Certification and Verification (pre-certification) satisfactory to Buyer.
6. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated no earlier than ten (10) Business Days prior to the Execution Date, to the effect that, to the best of such officer’s knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.
7. An executed Letter of Concurrence substantially in the form specified in Appendix VI.

APPENDIX V

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(l)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix V.

- (a) Availability Workbook. Seller shall (i) collect the measurement data, listed in (b) below, in one (1) or more Microsoft Excel Workbooks (the “Availability Workbook”) provided in a form and naming convention approved by Buyer and (ii) electronically send the Availability Workbook to an address provided by Buyer. The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all generators as measured by such generator’s internal turbine controller.
- (b) Log of Availability. The Availability Workbook shall be created on a single, dedicated Excel worksheet and shall be in the form of Attachment A to this Appendix V.

APPENDIX V

Attachment A

Form of Actual Availability Report

Seller's Actual Availability Report

All amounts are in MWs

<u>Settlement Interval No.</u>	<u>Date</u>	<u>HE1</u>	<u>HE2</u>	<u>HE3</u>	<u>HE4</u>	<u>HE5</u>	<u>HE6</u>	<u>HE7</u>	<u>HE8</u>	<u>HE9</u>	<u>HE10</u>	<u>HE11</u>	<u>HE12</u>	<u>HE13</u>	<u>HE14</u>	<u>HE15</u>	<u>HE16</u>	<u>HE17</u>	<u>HE18</u>	<u>HE19</u>	<u>HE20</u>	<u>HE21</u>	<u>HE22</u>	<u>HE23</u>	<u>HE24</u>
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2	mm/dd/yyyy																								
3	mm/dd/yyyy																								
4	mm/dd/yyyy																								
5	mm/dd/yyyy																								
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5	mm/dd/yyyy																								
6	mm/dd/yyyy																								

Date/Time of Submittal

APPENDIX VI

FORM OF LETTER OF CONCURRENCE

[Date]

[Name]

[Position]

[Company]

[Address]

Re: Letter of Concurrence Regarding Control of [Name] Facility

This letter sets forth the understanding of the degree of control exercised by Redwood Coast Energy Authority (“RCEA”) and [Company Name] with respect to [Facility Name (the “Facility”)] for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission’s (“Commission”) Order No. 697.¹ Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.² The Commission further requires that “a seller making such an affirmative statement seek a ‘letter of concurrence’ from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing.”³

RCEA and [Company Name] have executed a [power purchase and sale agreement (the “Agreement”)] with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] maintains sole control of the Facility. [Company Name] agrees to provide subsequent Letters of Concurrence as may be necessary should any of the information provided herein change after the execution date of this letter.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

[Author]

[Position]

Redwood Coast Energy Authority

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

² Order No. 697 at P 186.

³ Order No. 697 at P 187.

Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

By: _____

[Name]

[Company Position]

[Company Name]

APPENDIX VII PROJECT SPECIFICATIONS AND CONTRACT CAPACITY CALCULATION

I. PROJECT SPECIFICATIONS

“MVA” means megavolt ampere, the unit of apparent power.

“Nameplate Rated Output” means, with respect to an inverter or electric generator, the MVA that the manufacturer of the inverter or generator has designed such equipment to produce under normal operating conditions as specified by such manufacturer.

“Designated Power Factor” means, with respect to an inverter or electric generator, the power factor required to satisfy the portion of the Project’s reactive power requirements that are specified in *[please identify the applicable source, such as the PTO’s Interconnection Handbook, the CAISO’s Phase II Study, or the Generator Interconnection Agreement for the Project]* and are not being satisfied by other sources of reactive power within the Project.

“Nameplate Rated Power” means, with respect to an inverter or electric generator, the multiplication product of the Nameplate Rated Output and the Designated Power Factor for such inverter or generator, in MWs.

The project specifications shall consist of the following eleven (11) items (each item of which shall be a “Project Specification”). As provided in Section 3.1(g), Seller shall not make any change or modification to any Project Specification without Buyer’s prior written consent.

1. Project name:
2. Project Site name:
3. Project physical address:
4. Total number of Units at the Project:
5. Technology Type:
6. Interconnection Point of Project:
7. Service Territory of Project:
8. Substation:
- 9. Description of Units: **For a Biomass Project**
 - a. For each steam turbine, specify the rated conditions (MW rating, steam inlet temperature, steam inlet pressure, condensing temperature, mass flow rate):
 - b. For each electric generator, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power:
10. Description of Land:

The Site contains the following Assessor Parcel Numbers upon which the Project is located and as identified on the topographical map included in this Appendix IX: [Insert Map]

11. Description of Interconnection Facilities and metering:

The Project will use the following Interconnection Facilities and metering configuration as identified in this one-line diagram included in this Appendix IX:

[Insert One-Line Diagram for Interconnection Facilities and Metering]

12. Maps: The Site is identified in the following topographical map:

[INSERT MAP]

II. CONTRACT CAPACITY CALCULATION

The Contract Capacity specified in Section B of the Cover Sheet shall be the factor (A) minus each of the factors (B) through (E) provided below:

A	Sum of the Nameplate Rated Power of all inverters/generators	_____ MW
B	Calculated electrical losses from inverter/generator output terminals to Delivery Point (with all inverters/generators operating at Nameplate Rated Outputs)	_____ MW
C	Electrical Losses	_____ MW
D	Auxiliary and station loads coincident with inverters/generators operating at Nameplate Rated Outputs	_____ MW
E	Other factors (explain below)	_____ MW
F	Contract Capacity at the Delivery Point ($F = A - B - C - D - E$), which shall be the same as the MW amount specified for the Contract Capacity in Section B of the Cover Sheet	_____ MW

Inputs for the Nameplate Rated Power calculation:

Designated Power Factor:

	Leading	Lagging
Project power factor requirements	_____	_____
Seller's Designated Power Factor for inverters/generators	_____	_____

Power factor requirement is measured at (check one):

☐ inverter/generator terminals; ☐ Point of Interconnection; ☐ Other: _____

APPENDIX VIII

SECTION 3.3(e) LIQUIDATED DAMAGES CALCULATION

I. Equation and Formulas for Calculating RA Deficiency Amount

As provided in Section 3.3(e)(ii)(B), the formula for calculating the RA Deficiency Amount in a given RA Shortfall Month is:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

Where the:

- A. RA Value shall be \$4,010/MW/Month in calendar year 2016 and shall escalate at 2.5% per year for each succeeding calendar year; and
- B. Expected Net Qualifying Capacity for projects that selected Full Capacity Deliverability Status shall be the product of the Contract Capacity and the applicable monthly Qualifying Capacity factor in the table below; or
- C. Expected Net Qualifying Capacity for Projects seeking Partial Capacity Deliverability Status shall be the minimum of (a) the Expected Net Qualifying Capacity values as calculated in Section B above; or, (b) the product of the Contract Capacity and the Partial Capacity Deliverability Status Amount.

Table XIV-1 Monthly Qualifying Capacity Factor

Month	Biomass	Geothermal	Solar	Wind
Jan	70.61%	84.92%	0.79%	4.43%
Feb	72.50%	85.34%	6.62%	8.25%
March	70.79%	82.42%	15.12%	21.36%
April	62.13%	80.44%	60.43%	23.90%
May	65.57%	81.99%	64.13%	31.04%
June	73.55%	78.59%	80.03%	27.31%
July	76.32%	78.74%	80.39%	17.04%
Aug	75.31%	78.37%	74.86%	15.31%
Sept	74.67%	78.78%	73.05%	9.20%
Oct	71.80%	79.05%	48.29%	7.22%
Nov	70.86%	81.08%	2.49%	4.43%
Dec	74.25%	83.15%	1.33%	4.50%

II. Example of Calculation of the RA Deficiency Amount (for illustrative purposes only) if:

- RA Shortfall Month is June 2019
- Project is a solar system
- Contract Capacity is 20 MW
- RA Start Date is based on the Expected FCDS Date, which is January 1, 2019
- FCDS is achieved on August 14, 2019

RA Value (\$/MW/Month) = \$4,010.00, escalated at 2.5% per year for 3 years, from 2016 to 2019

$$\$4,010 \times (1.025)^3 = \$4,318/\text{MW/Month}.$$

Monthly Qualifying Capacity factor for a solar project in June is 86.74% (from table above).

Expected Net Qualifying Capacity =

$$\text{Contract Capacity (MW)} \times \text{monthly Qualifying Capacity factor} =$$

$$20 \text{ MW} \times 86.74\% = 17.35 \text{ MW}$$

RA Deficiency Amount (\$/Month) =

$$\text{RA Value ($/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)} =$$

$$\$4,318/\text{MW/Month} \times 17.35 \text{ MW} = \$74,917.30$$

In this example, the RA Shortfall Period is from January through October 2019. The calculations above would be performed and the result applied for each month in this RA Shortfall Period.

POWER PURCHASE AGREEMENT

Between

Redwood Coast Energy Authority
(as “Buyer”)

and

Humboldt Redwood Company, LLC
(as “Seller”)

POWER PURCHASE AGREEMENT

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APPENDICES

The following Appendices constitute a part of this Agreement and are incorporated into this Agreement by reference:

Appendix I	Form of Letter of Credit
Appendix II	GEP Damages Calculation
Appendix III	Notification Requirements for Available Capacity and Project Outages
Appendix IV	Form of Consent to Assignment
Appendix V	Seller Documentation Condition Precedent
Appendix VI	Form of Actual Availability Report
Attachment A	Form of Actual Availability Report
Appendix VII	Form of Letter of Concurrence
Appendix VIII	Project Specifications and Contract Capacity Calculation
Appendix IX	Section 3.3(e) Liquidated Damages Calculation

POWER PURCHASE AGREEMENT

COVER SHEET

This Power Purchase Agreement (“Agreement”) is entered into between Redwood Coast Energy Authority, a California joint powers authority (“Buyer” or “RCEA”), and Humboldt Redwood Company, LLC, a Delaware limited liability company (“Seller”), as of _____ the Execution Date. The information contained in this Cover Sheet shall be completed by Seller and incorporated into the Agreement.

A. Transaction Type

Seller may not modify the Transaction Type designated in this Part A of the Cover Sheet at any time after the Execution Date.

Product:

- ☒ As-Available, woody biomass facilities only
- ☐ Baseload, woody biomass facilities only

Deliverability:

- ☐ Energy Only Status
- ☐ Partial Capacity Deliverability Status (“PCDS”)
 - a) If PCDS is selected, provide the Expected PCDS Date, or the date the Project received a PCDS finding if already received:
_____ (mm/dd/yyyy);
 - b) The Partial Capacity Deliverability Status Amount the Project will obtain is _____MW.
- ☒ Full Capacity Deliverability Status (“FCDS”)
 - a) If FCDS is selected, provide the Expected FCDS Date, or the date the Project received a FCDS finding if already received:
_____ (mm/dd/yyyy).

Seller shall elect one of the following types of transactions pursuant to Section 3.1(b) of the Agreement:

- ☐ Full Buy/Sell
- ☒ Excess Sale

Seller shall elect one of the following Delivery Terms:

- ☒ Four Years and Three Months

B. Contract Capacity

Contract Capacity: 17 MW

C. Contract Price

The Contract Price for each MWh of Product as measured by Delivered Energy in each Contract Year and the price for Deemed Delivered Energy in each Contract Year shall be as follows:

Delivery Period	Contract Price (\$/MWh)	Surplus Delivered Energy Contract Price
Contract Year 1	83	Energy Price + Green Attribute Price
Contract Year 2	83	Energy Price + Green Attribute Price
Contract Year 3	83	Energy Price + Green Attribute Price
Contract Year 4	83	Energy Price + Green Attribute Price
March 2022	83	Energy Price + Green Attribute Price
April 2022	83	Energy Price + Green Attribute Price
May 2022	83	Energy Price + Green Attribute Price

“Energy Price” means the weighted average CAISO price associated with Surplus Delivered Energy for each Delivery Month.

“Green Attribute Price” means the [X] \$ per MWh payment for Green Attributes associated with Surplus Delivered Energy conveyed to Buyer in accordance with the terms of this Agreement.

D. Delivery Term Contract Quantity Schedule

Quantity of energy to be delivered by contract year:

Delivery Month	Contract Quantity (MWh)	Surplus Delivered Energy Quantity (MWh)
Contract Year 1	116,070	0
Contract Year 2	116,070	0
Contract Year 3	116,070	0
Contract Year 4	116,070	0
March 2022	9858	0
April 2022	9540	0
May 2022	9858	0

E. Collateral

- Pre-Development Term Security

Dollar Amount: \$1,530,000

- Cash, or
- Letter of Credit

- Delivery Term Security

Dollar Amount: \$2,400,000

- Cash, or
- Letter of Credit

F. Buyer Bid Curtailment and Buyer Curtailment Orders.

Operational characteristics of the Project for Buyer Bid Curtailment and Buyer Curtailment Orders are listed below. Buyer, as the Scheduling Coordinator or through its Third-Party Scheduling Coordinator, may request that CAISO modify the Master File for the Project to reflect the findings of a CAISO audit of the Project. In addition, Seller agrees to coordinate with Buyer or Third-Party SC, as applicable, to ensure all information provided to the CAISO regarding the operational and technical constraints in the Master File for the Project are accurate and are based on the true physical characteristics of the resource.

- PMax of the Project: 28.8 MW
- Minimum operating capacity: 0 MW
- Ramp Rate: 0.17 MW/Minute
- Maximum number of Start-ups per calendar day, month, year (if any such operational limitations exist): 1/month
- Advance notification required for Buyer Bid Curtailment and Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff).

Other Requirements:

- Maximum number of hours annually for Buyer Curtailment Periods: zero hours
- The Project will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 3.1(q).
- Start-Up Time (if applicable): NA*
- Minimum Run Time after Start-Up (if applicable): NA*
- Minimum Down Time after Shut-Down (if applicable): NA*
- *Generator: Continuously Operating biomass Unit

Note: *Sellers should enter the maximum flexibility the Project can offer given the operational constraints of the technology.*

G. Damage Payment (as described under Damage Payment definition in Section 1.48)

X Four Years and Three Months Delivery Term. Dollar amount: \$2,400,000

H. Notices List

Name: Humboldt Redwood Company, LLC, a
Delaware limited liability company ("Seller")
All Notices:

Name: Redwood Coast Energy Authority,
("Buyer" or "RCEA")
All Notices:

Delivery Address:

Delivery Address:

Street: 3700 Old Redwood Highway
Suite 200

633 3rd St, Eureka, CA 95501

PAGE REDACTED – CONTAINS SENSITIVE FINANCIAL INFORMATION

**With additional Notices of an Event of
Default to:**

Bob Mertz
Chief Executive Officer
3700 Old Redwood Highway, Suite 200
Santa Rosa, CA 95403
Phone: 707.620.2974

RCEA General Counsel
Nancy Diamond, Law Offices of Nancy Diamonds
822 G. Street, Suite 3
Arcata, CA 95521
Phone: (707) 826-8540
Facsimile: (707) 826-8541

PREAMBLE

This Power Purchase Agreement, together with the Cover Sheet, appendices and any other attachments referenced herein, is made and entered into between RCEA and Seller, as of the Execution Date set forth in the Cover Sheet. Buyer and Seller hereby agree to the following:

GENERAL TERMS AND CONDITIONS

ARTICLE ONE: GENERAL DEFINITIONS

1.1 “Actual Availability Report” has the meaning set forth in Section 3.1(l)(i).

1.2 “Affiliate” means, with respect to any person or entity, any other person or entity (other than an individual) that (a) directly or indirectly, through one or more intermediaries, controls, or is controlled by such person or entity or (b) is under common control with such person or entity. For this purpose, “control” means the direct or indirect ownership of fifty percent (50%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

1.3 “Agreement” means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Cover Sheet, Preamble, these General Terms and Conditions, and all appendices, schedules and any written supplements attached hereto and incorporated herein by references, as well as all written and signed amendments and modifications thereto. For purposes of Section 10.10, the word “agreement” shall have the meaning set forth in this definition. For purposes of Section 3.1(k)(viii), the word “contract” shall have the meaning set forth in this definition.

1.4 “Ancillary Services” has the meaning set forth in the CAISO Tariff.

1.5 “As-Available Product” means an Energy Product with a Capacity Factor of eighty percent (80%) or less.

1.6 “Availability Workbook” has the meaning set forth in Appendix VI.

1.7 “Available Capacity” means the capacity from the Project, expressed in whole megawatts, that is available to generate Product.

1.8 “Balancing Authority” has the meaning set forth in the CAISO Tariff.

1.9 “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, or has any such petition filed or commenced against it and such case filed against it is not dismissed in ninety (90) days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) 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 (e) is generally unable to pay its debts as they fall due.

1.10 “Baseload” means an Energy Product with a Capacity Factor greater than or equal to eighty percent (80%).

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

1.12 “Business Day” means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party’s principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the Notice, payment or delivery is being sent and by whom the Notice or payment or delivery is to be received.

1.13 “Buyer” has the meaning set forth in the Cover Sheet.

1.14 “Buyer Bid Curtailment” means Buyer as SC or through its Third-Party SC communicates a curtailment instruction to the Seller, requiring Seller to produce less Energy from the Project than the CAISO final market forecast amount to be produced from the Project for a period of time, and Buyer as the SC or through its Third-Party SC either (a) submitted a CAISO final market Energy Supply Bid and such curtailment is solely a result of the CAISO implementing the Energy Supply Bid; or (b) submitted a CAISO final market Self-Schedule for less than the amount of the final-market Energy forecasted to be produced from the Project. However, if the Project is subject to a Planned Outage, Forced Outage, Force Majeure and/or a Curtailment Period during the same period of time, then Buyer Bid Curtailment shall not include any Energy that is subject to such Planned Outage, Forced Outage, Force Majeure or Curtailment Period.

1.15 “Buyer Curtailment Order” means the instruction from Buyer or through its Third-Party SC to Seller to reduce generation from the Project by the amount, and for the period of time set forth in such order, for reasons unrelated to a Planned Outage, Forced Outage, Force Majeure and/or Curtailment Order.

1.16 “Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Project pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order. The Buyer Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.17 “Buyer’s Notice of First Offer Acceptance” has the meaning set forth Section 11.1(b)(ii), as applicable.

1.18 “Buyer’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

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

1.20 “CAISO Global Resource ID” means the number or name assigned by the CAISO to the Project.

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

1.22 “CAISO Penalties” means any fees, liabilities, assessments, or similar charges assessed by the CAISO for (a) violation of the CAISO Tariff and all applicable protocols, WECC rules or CAISO operating instructions or orders or (b) as a result of a Party’s failure to follow Good Utility Practices. In either case, “CAISO Penalties” do not include the costs and charges related to scheduling and Imbalance Energy as addressed in Section 4.5(b) of this Agreement.

1.23 “CAISO Tariff” means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

1.24 “California Renewables Portfolio Standard” or “RPS” means the renewable energy program and policies established by California State Senate Bills 1038 and 1078 as amended by Senate Bill 1X-2 and Senate Bill 350, and codified in California Public Utilities Code Sections 399.11 through 399.32 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

1.25 “Capacity Attributes” means any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability attribute, whether general in nature or specific as to the location or any other attribute of the Project, intended to value any aspect of the capacity of the Project to produce any and all Product, including any accounting construct so that the maximum amount of Contract Capacity of the Project may be counted toward a Resource Adequacy Requirement or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer’s expense, Resource Adequacy or other such products.

1.26 “Capacity Factor” has the meaning set forth in Section 4.3. “CEC” means the California Energy Commission or its successor agency.

1.27 “CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the Project has commenced commercial operation (as such term is defined by and according to the CEC), that the CEC has pre-certified) that the Project is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Project qualifies as generation from an ERR for purposes of the Project.

1.28 “Claims” means all third party claims or actions, threatened or filed and, whether groundless, false, fraudulent or otherwise, that directly or indirectly relate to the subject matter of an indemnity, and the resulting losses, damages, expenses, attorneys’ fees and court costs, whether incurred by settlement or otherwise, and whether such claims or actions are threatened or filed prior to or after the termination or expiration of this Agreement.

1.29 “Commercial Operation” means the Project is operating and able to produce and deliver the Product to Buyer pursuant to the terms of this Agreement.

1.30 “Compliance Costs” means all reasonable out-of-pocket costs and expenses incurred by Seller and paid directly to third parties in connection with any of the obligations under Sections 3.1(j) (Greenhouse Gas Emissions Reporting), 3.1(k) (WREGIS), 3.1(n) (Obtaining and Maintaining CEC Certification and Verification), 3.3 (Resource Adequacy), and 10.1(b) (ERR), including registration fees, volumetric fees, license renewal fees, external consultant fees and capital costs necessary for compliance, but excluding Seller’s internal administrative and staffing costs, due to a change, amendment, enactment or repeal of Law after the Execution Date which requires Seller to incur additional costs and expenses in connection with any of such obligations, in excess of the costs and expenses incurred for such obligations under the Law in effect as of the Execution Date. Compliance Costs do not include any amounts designated in the Project’s full capacity deliverability study to obtain FCDS nor any costs and expenses incurred by Seller for FCDS studies.

1.31 “Condition Precedent” means each of, or one of, the conditions set forth in Section 2.4(a)(i) through (ii) and “Conditions Precedent” shall refer to all of the conditions set forth in Section 2.4(a)(i) through (ii).

1.32 “Confidential Information” has the meaning set forth in Section 10.6(a)

1.33 “Contract Capacity” has the meaning set forth in Section 3.1(f).

1.34 “Contract Capacity Commitment” means the amount of the Contract Capacity that may be constructed pursuant to the Governmental Approvals received or obtained by Seller as of the Expected Initial Energy Delivery Date specified on the Cover Sheet.

1.35 “Contract Price” means the price in United States dollars (\$U.S.) (unless otherwise provided for) to be paid by Buyer to Seller for the purchase of the Product, as specified in the Cover Sheet.

1.36 “Contract Quantity” means the quantity of Delivered Energy expected to be delivered by Seller during each Delivery Period as set forth in Section 3.1(e) and Cover Sheet Section D .

1.37 “Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Initial Energy Delivery Date and each subsequent Contract Year shall commence on the anniversary of the Initial Energy Delivery Date.

1.38 “Cost Responsibility Surcharge” means the charges identified in PG&E Electric Rate Schedule CCA-CRS, and further set forth in each PG&E rate schedule, as may be amended, supplemented, or replaced (in whole or in part) from time to time.

1.39 “Costs” means, with respect to the Non-Defaulting Party, (a) 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 in entering into new arrangements which replace the Terminated Transaction; and (b) all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with the termination of the Transaction.

1.40 “Cover Sheet” means the cover sheet to this Agreement, completed by Seller and incorporated into the Agreement.

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

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

1.43 “Cure” has the meaning set forth in Section 8.5(b).

1.44 “Cured Performance Measurement Period” has the meaning set forth in Section 3.1(e)(ii)(C).

1.45 “Cure Payment Period” has the meaning set forth in Section 3.1(e)(ii)(C)(III).

1.46 “Curtailed Order” means any of the following:

(a) the CAISO, Reliability Coordinator, Balancing Authority or any other entity having similar authority or performing similar functions during the Delivery Term, orders, directs, alerts, or communicates via any means, to a Party to curtail Energy deliveries, which may come in the form of a request to return to Schedule consistent with the CAISO Tariff, for reasons including, (i) any System Emergency, (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes the CAISO’s electric system integrity or the integrity of other systems to which the CAISO is connected, or (iii) any warning, forecast, or anticipated over-generation conditions, including a request from CAISO to manage over-generation conditions, provided that this subsection (a) (iii) shall not include Buyer Bid Curtailment;

(b) a curtailment ordered by the Participating Transmission Owner, distribution operator (if interconnected to distribution or sub-transmission system), or any other entity having similar authority or performing similar functions during the Delivery Term, for reasons including (i) any situation that affects normal function of the electric system including any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Participating Transmission Owner’s electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) scheduled or unscheduled maintenance or construction on the Participating Transmission Owner’s or distribution operator’s transmission or distribution facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Delivered Energy at the Delivery Point; or

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

For the avoidance of doubt, if Buyer or Third-Party SC submitted a Self-Schedule and/or an Energy Supply Bid that clears, in full, the applicable CAISO market for the full amount of Energy forecasted to be produced from the Project for any time period, any notice from the CAISO having the effect of requiring a reduction during the same time period is a Curtailment Order, not a Buyer Bid Curtailment.

1.47 “Curtailed Period” means the period of time during which Seller reduces generation from the Project, pursuant to a Curtailment Order. The Curtailment Period shall be inclusive of the time required for the Project to ramp down and ramp up; provided that such time periods to ramp down and ramp up shall be consistent with the Ramp Rate designated in the Cover Sheet.

1.48 “Damage Payment” means the amount specified in Section G of the Cover Sheet.

1.49 “DA Price” means the resource specific locational marginal price (“LMP”) applied to the PNode applicable to the Project in the CAISO Day-Ahead Market.

1.50 “DA Scheduled Energy” means the Day-Ahead Scheduled Energy as defined in the CAISO Tariff.

1.51 “Day-Ahead Availability Notice” has the meaning set forth in Section 3.4(b)(iii)(C).

- 1.52 “Day-Ahead Market” has the meaning set forth in the CAISO Tariff.
- 1.53 “Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Project would have produced and delivered to the Delivery Point, but that is not produced by the Project and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be determined by reference to the most recent Day-Ahead Availability Notice that Buyer has received from Seller at the time Buyer issues a Buyer Curtailment Order.
- 1.54 “Defaulting Party” means the Party that is subject to an Event of Default.
- 1.55 “Deficient Month” has the meaning set forth in Section 3.1(k)(v).
- 1.56 “Deliverability Assessment” has the meaning set forth in the CAISO Tariff.
- 1.57 “Delivered Energy” means the lesser of either (i) the Contract Quantity multiplied by the duration of the Settlement Interval or (ii) the Energy produced from the Project during the Settlement Interval as measured in MWh at the CAISO revenue meter of the Project and in accordance with the CAISO Tariff, which shall include any applicable adjustments for power factor and Electrical Losses.
- 1.58 “Delivery Month” means a period of one month
- 1.59 “Delivery Network Upgrade” has the meaning set forth in the CAISO Tariff.
- 1.60 “Delivery Point” means the point at which Buyer receives Seller’s Product, as identified in Section 3.1(d).
- 1.61 “Delivery Term” has the meaning set forth in Section 3.1(c)(i) and shall be of the length specified in the Cover Sheet.
- 1.62 “Delivery Term Security” means the Performance Assurance that Seller is required to maintain, as specified in Article Eight, to secure performance of its obligations during the Delivery Term.
- 1.63 “Dispatch Instruction” has the meaning set forth in the CAISO Tariff.
- 1.64 “Dispatch Interval” has the meaning set forth in the CAISO Tariff.
- 1.65 “Distribution Loss Factor” is a multiplier factor that reduces the amount of Delivered Energy produced by a Project connecting to a distribution system to account for the electrical distribution losses, including those related to distribution and transformation, occurring between the point of interconnection, where the Participating Transmission Owner’s meter is physically located, and the first Point of Interconnection, as defined in the CAISO Tariff, with the CAISO Grid.
- 1.66 “Distribution Upgrades” has the meaning set forth in the CAISO Tariff.
- 1.67 “DUNS” means the Data Universal Numbering System, which is a unique nine character identification number provided by Dun & Bradstreet, Inc.
- 1.68 “Early Termination Date” has the meaning set forth in Section 5.2.
- 1.69 “Effective Date” means the date on which all of the Conditions Precedent set forth in Section 2.4(a) have been satisfied or waived in writing by both Parties.

1.70 “Effective FCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Full Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Full Capacity Deliverability Status.

1.71 “Effective PCDS Date” means the date on which Seller provides Buyer Notice and documentation from CAISO that the Project has attained Partial Capacity Deliverability Status, which Buyer subsequently finds, in its reasonable discretion, to be adequate evidence that the Project has attained Partial Capacity Deliverability Status.

1.72 “Electrical Losses” means all applicable losses, including the following: (a) any transmission or transformation losses between the CAISO revenue meter(s) and the Delivery Point; and (b) the Distribution Loss Factor, if applicable.

1.73 “Electric System Upgrades” means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Project to the Participating Transmission Owner’s electric system for receipt of Energy at the Point of Interconnection (as defined in the CAISO Tariff) if connecting to the CAISO Grid, or the Interconnection Point, if connecting to a part of the Participating TO’s electric system that is not part of the CAISO Grid.

1.74 “Electrician” means any person responsible for placing, installing, erecting, or connecting any electrical wires, fixtures, appliances, apparatus, raceways, conduits, solar photovoltaic cells or any part thereof, which generate, transmit, transform or utilize energy in any form or for any purpose.

1.75 “Eligible LC Bank” means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) “A-, with a stable designation” from S&P and “A3, with a stable designation” from Moody’s, if such bank is rated by both S&P and Moody’s; or (b) “A-, with a stable designation” from S&P or “A3, with a stable designation” from Moody’s, if such bank is rated by either S&P or Moody’s, but not both, even if such bank was rated by both S&P and Moody’s as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

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

1.77 “Energy” means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified).

1.78 “Energy Deviation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) the final accepted Bid submitted for the Project; and (b) Delivered Energy.

1.79 “Energy Only Status Seller” or “EOS Seller” means a Seller that has selected Energy Only Status in the Cover Sheet. For avoidance of doubt, an EOS Seller does not have an obligation to have or obtain a Full Capacity Deliverability Status Finding.

1.80 “Energy Supply Bid” has the meaning set forth in the CAISO Tariff.

1.81 “EPC Contract” means the Seller’s engineering, procurement and construction contract with the EPC Contractor.

1.82 “EPC Contractor” means an engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of power plants of the same type of facility as the Seller’s; provided, however, that the Seller or the Seller’s Affiliate(s) may serve as the EPC Contractor.

1.83 “Equitable Defenses” means any bankruptcy, insolvency, reorganization or other Laws affecting creditors’ rights generally and, with regard to equitable remedies, the discretion of the court before which proceedings may be pending to obtain same.

1.84 “Energy Price” means the weighted average CAISO price associated with Surplus Delivered Energy for each Delivery Month

1.85 “Event of Default” has the meaning set forth in Section 5.1.

1.86 “Excess Deemed Delivered Energy” has the meaning set forth in Section 4.4(a)(i).

1.87 “Excess Deemed Delivered Energy Price” has the meaning set forth in Section 4.3(a)(ii)(B).

1.88 “Excess Delivered Energy” has the meaning set forth in Section 4.4(a)(i).

1.89 “Excess Delivered Energy Price” has the meaning set forth in Section 4.4(a)(ii)(A).

1.90 “Excess Energy” has the meaning set forth in Section 4.4(a)(i).

1.91 “Excess Sale” means the type of transaction described in Section 3.1(b)(ii).

1.92 “Exclusivity Period” has the meaning set forth in Section 11.1(b)(i), as applicable.

1.93 “Execution Date” means the latest signature date found on the signature page of this Agreement.

1.94 “Exempt Wholesale Generator” has the meaning provided in 18 C.F.R. Section 366.1.

1.95 “Existing Project” is a Project that has achieved Commercial Operation on or prior to the Execution Date.

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

1.97 “Expected PCDS Date” means the date set forth in Section A of the Cover Sheet which is the date the Project is expected to achieve Partial Capacity Deliverability Status.

1.98 “Expected Initial Energy Delivery Date” is the date specified on the Cover Sheet for an Existing Project.

1.99 “Expected Net Qualifying Capacity” means an estimate of the amount of Net Qualifying Capacity the Project would have received had it obtained deliverability according to the deliverability type selected in Section A of the Cover Sheet, as determined in accordance with Appendix VIII.

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

1.101 “Final True-Up” means the final payment made pursuant to this Agreement settling all invoices by the Party with an outstanding net amount due to the other Party for Product delivered prior to the end of the Delivery Term or other amounts due pursuant to this Agreement incurred prior to the end of the Delivery Term.

1.102 “First Offer” has the meaning set forth in Section 11.1(b)(i).

1.103 “Force Majeure” means any event or circumstance which wholly or partly prevents or delays the performance of any material obligation arising under this Agreement, but only if and to the extent (i) such event is not within the reasonable control, directly or indirectly, of the Party seeking to have its performance obligation(s) excused thereby, (ii) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and which by the exercise of due diligence it has been unable to overcome, and (iii) such event is not the direct or indirect result of the negligence or the failure of, or caused by, the Party seeking to have its performance obligations excused thereby.

(a) Subject to the foregoing, events that could qualify as Force Majeure include the following:

(i) flooding, lightning, landslide, earthquake, fire, drought, explosion, epidemic, quarantine, storm, hurricane, tornado, volcanic eruption, other natural disaster or unusual or extreme adverse weather-related events;

(ii) war (declared or undeclared), riot or similar civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, blockade, insurrection, revolution, expropriation or confiscation;

(iii) except as set forth in subsection (b)(viii) below, strikes, work stoppage or other labor disputes (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable); or

(iv) emergencies declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Project or making it impossible for the Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement; provided that, if a curtailment of the Project pursuant to this subsection (a)(iv) would also meet the definition of a Curtailment Period, then it shall be treated as a Curtailment Period for purposes of Section 3.1(p).

(b) Force Majeure shall not be based on:

(i) Buyer’s inability economically to use or resell the Product purchased hereunder;

(ii) Seller's ability to sell the Product at a price greater than the price set forth in this Agreement;

(iii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Project, including a delay that could constitute a Permitting Delay unless caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(v) Seller's inability to obtain sufficient fuel, power or materials to operate the Project, except if Seller's inability to obtain sufficient fuel, power or materials is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(vi) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;

(vii) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above;

(viii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Project;

(ix) any equipment failure except if such equipment failure is caused solely by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(iv) above; or

(x) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party.

1.104 "Force Majeure Failure" has the meaning set forth in Section 11.1(a).

1.105 "Forced Outage" means any unplanned reduction or suspension of the electrical output from the Project or unavailability of the Product in whole or in part from a Unit in response to any control system trip or operator-initiated trip in response to an alarm or equipment malfunction; or any other unavailability of the Project or a Unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

1.106 "Forecasting Penalty" has the meaning set forth in Section 4.4(c)(iii), and "Forecasting Penalties" means more than one Forecasting Penalty.

1.107 "Full Buy/Sell" is the type of transaction described in Section 3.1(b)(i).

1.108 "Full Capacity Deliverability Status" or "FCDS" has the meaning set forth in the CAISO Tariff except that it applies to any Generating Facility (as defined in the CAISO Tariff).

1.109 "Full Capacity Deliverability Status Finding" or "FCDS Finding" means a written confirmation from the CAISO that the Project is eligible for FCDS.

1.110 “Full Capacity Deliverability Status Seller” or “FCDS Seller” means a Seller that selected Full Capacity Deliverability Status in the Cover Sheet and either has previously obtained, or is obligated to obtain per the terms of the Agreement, a Full Capacity Deliverability Status Finding.

1.111 “Future Environmental Attributes” shall mean any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the Facility.

1.112 “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 the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g., NYMEX), all of which should be calculated for the remaining Delivery Term to determine the value of the Product.

1.113 “Generally Accepted Accounting Principles” means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant SEC rule.

1.114 “Generator Interconnection Agreement” or “GIA” means, for Projects interconnecting at the transmission level, the agreement and associated documents (or any successor agreement and associated documentation approved by FERC) by and among Seller, the Participating Transmission Owner, and the CAISO governing the terms and conditions of Seller’s interconnection with the CAISO Grid, including any description of the plan for interconnecting to the CAISO Grid. For Projects interconnecting at the distribution level, it means the agreement and associated documents (or any successor agreement and associated documentation) by and between Seller and the Participating Transmission Owner governing the terms and conditions of Seller’s interconnection with the Participating TO’s distribution system, including any description of the plan for interconnecting to Participating TO’s distribution system.

1.115 “Generator Interconnection Process” or “GIP” means the Generator Interconnection Procedures set forth in the CAISO Tariff or Participating TO’s tariff, as applicable, and associated documents; provided that if the GIP is replaced by such other successor procedures governing interconnection (a) to the CAISO Grid or Participating TO’s distribution system, as applicable, or (b) of generating facilities with an expected net capacity equal to or greater than the Project’s Contract Capacity, the term “GIP” shall then apply to such successor procedure.

1.116 “GEP Cure” has the meaning set forth in Section 3.1(e)(ii)(C).

1.117 “GEP Damages” has the meaning set forth in Appendix II.

1.118 “GEP Failure” means Seller’s failure to produce Delivered Energy plus Deemed Delivered Energy in an amount equal to or greater than the Guaranteed Energy Production amount for the applicable Performance Measurement Period.

1.119 “GEP Shortfall” means the amount in MWh by which Seller failed to achieve the Guaranteed Energy Production in the applicable Performance Measurement Period.

1.120 “Good Utility Practice” has the meaning provided in the CAISO Tariff.

1.121 “Governmental Approval” means all authorizations, consents, approvals, waivers, exceptions, variances, filings, permits, orders, licenses, exemptions and declarations of or with any governmental entity and shall include those siting and operating permits and licenses, and any of the foregoing under any applicable environmental Law, that are required for the construction, use and operation of the Project.

1.122 “Governmental Authority” means any federal, state, local or municipal government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the matter in question.

1.123 “Governmental Charges” has the meaning set forth in Section 9.2.

1.124 “Green Attributes” means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Project, and its avoided emission of pollutants. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (a) any avoided emission of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) 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;¹ (c) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state Law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser’s discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local Law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Energy. Green Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Project, (ii) production tax credits associated with the construction or operation of the Project and other financial incentives in the form of credits, reductions, or allowances associated with the Project that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Project for compliance with local, state, or federal operating and/or air quality permits. If the Project is a biomass or biogas facility and Seller receives any tradable Green Attributes

¹ Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Project.

1.125 “Green Attribute Price” means the per MWh payment for Green Attributes associated with Surplus Delivered Energy conveyed to Buyer in accordance with the terms of this Agreement.

1.126 “Guaranteed Energy Production” or “GEP” has the meaning set forth in Section 3.1(e)(ii).

1.127 “Guaranty” means a guaranty issued by an entity and in a form acceptable to Buyer in Buyer’s sole discretion.

1.128 “Imbalance Energy” has the meaning set forth in the CAISO Tariff.

1.129 “Initial Energy Delivery Date” has the meaning set forth in Section 3.1(c)(i).

1.130 “Initial Extension” has the meaning set forth in Section 3.1(c)(ii).

1.131 “Interconnection Customer’s Interconnection Facilities” has the meaning set forth in the CAISO Tariff or Participating TO’s tariff, as applicable.

1.132 “Interconnection Facilities” has the meaning set forth in the CAISO Tariff.

1.133 “Interconnection Point” means the physical interconnection point of the Project as identified by Seller in the Cover Sheet.

1.134 “Interconnection Study” means any of the studies defined in the CAISO Tariff or, if applicable, any distribution provider’s tariff that reflect the methodology and costs to interconnect the Project to the Participating Transmission Owner’s electric grid.

1.135 “Integrated Forward Market” has the meaning set forth in the CAISO Tariff.

1.136 “Interest Amount” means, with respect to an Interest Period, the amount of interest calculated as follows: (a) the sum of (i) the principal amount of Performance Assurance in the form of cash held by Buyer during that Interest Period, and (ii) the sum of all accrued and unpaid Interest Amounts accumulated prior to such Interest Period; (b) multiplied by the Interest Rate in effect for that Interest Period; (c) multiplied by the number of days in that Interest Period; (d) divided by 360.

1.137 “Interest Payment Date” means the date of returning unused Performance Assurance held in the form of cash.

1.138 “Interest Period” means the monthly period beginning on the first day of each month and ending on the last day of each month.

1.139 “Interest Rate” means the rate per annum equal to the “Monthly” Federal Funds Rate (as reset on a monthly basis based on the latest month for which such rate is available) as reported in Federal Reserve Bank Publication H.15(519), or its successor publication.

1.140 “JAMS” means JAMS, Inc. or its successor entity, a judicial arbitration and mediation service.

1.141 “Law” means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing. For purposes of 10.1(b), “Seller Representations and Warranties” and 10.9 “Governing Law”, the term “law” shall have the meaning set forth in this definition.

1.142 “Letter of Credit” means an irrevocable, non-transferable standby letter of credit, the form of which must be substantially as contained in Appendix I to this Agreement; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form; the issuer must be an Eligible LC Bank on the date of Transfer; and the issuing Letter of Credit amount may not be greater than the Maximum Issuing Amount if the total amount of collateral posted by the Seller in the form of Letter of Credit exceeds ten million dollars (\$10,000,000.00) on the date of Transfer.

1.143 “Licensed Professional Engineer” means a person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Project, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Project or of a manufacturer or supplier of any equipment installed at the Project, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

1.144 “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 the termination of the Transaction, determined in a commercially reasonable manner, subject to Section 5.3 hereof. Factors used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading platforms (e.g. NYMEX), all of which should be calculated for the remaining term of the Transaction to determine the value of the Product.

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

1.146 “Maximum Issuing Amount” means the amount of a Letter of Credit to be issued by an Eligible LC Bank, which cannot exceed the lesser of (a) sixty percent (60%) of the total collateral posted by Seller in the form of Letter of Credit including the Letter of Credit to be issued or (b) twenty-five million dollars (\$25,000,000.00), without Buyer’s prior written consent.

1.147 “Minimum Load” has the meaning set forth in the CAISO Tariff.

1.148 “Minimum Down Time” has the meaning set forth in the CAISO Tariff.

1.149 “Monthly Period” has the meaning set forth in Section 4.2.

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

1.151 “MW” means megawatt in alternating current or AC.

- 1.152 “MWh” means megawatt-hour.
- 1.153 “NERC” means the North American Electric Reliability Corporation or a successor organization that is responsible for establishing reliability criteria and protocols.
- 1.154 “Net Qualifying Capacity” has the meaning set forth in the CAISO Tariff.
- 1.155 “Network Upgrades” has the meaning set forth in the CAISO Tariff or the Participating TO’s tariff, as applicable.
- 1.156 “Non-Bypassable Charges” means all charges that are collected by PG&E from the customers of Buyer, including all applicable charges for transmission, transmission rate adjustments, reliability services, distribution, conservation incentive adjustment, public purpose programs, nuclear decommissioning, the franchise fee surcharge, new system generation charges, and the Cost Responsibility Surcharge.
- 1.157 “Non-Defaulting Party” has the meaning set forth in Section 5.2.
- 1.158 “Notice,” unless otherwise specified in the Agreement, means written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile or electronic messaging (e-mail). The Cover Sheet contains the names and addresses to be used for Notices.
- 1.159 “Operational Deliverability Assessment” has the meaning set forth in the CAISO Tariff.
- 1.160 “Outage Notification Procedures” means the procedures specified in Appendix III, attached hereto. RCEA reserves the right to revise or change the procedures upon written Notice to Seller.
- 1.161 “Partial Capacity Deliverability Status” or “PCDS” has the meaning set forth in the CAISO Tariff.
- 1.162 “Partial Capacity Deliverability Status Amount” means the number of MW that the Project will obtain, as stated in the Deliverability type selected in Section A of the Cover Sheet.
- 1.163 “Partial Capacity Deliverability Status Finding” or “PCDS Finding” means a written confirmation from the CAISO that the Project is eligible for PCDS.
- 1.164 “Participating Transmission Owner” or “Participating TO” means an entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made part of the CAISO Grid.
- 1.165 “Party” means the Buyer or Seller individually, and “Parties” means both collectively. For purposes of Section 10.9, Governing Law, the word “party” or “parties” shall have the meaning set forth in this definition.
- 1.166 “Performance Assurance” means collateral provided by Seller to Buyer to secure Seller’s obligations hereunder and includes Pre-Delivery Term Security and Delivery Term Security, as applicable. Acceptable forms of collateral are cash or a Letter of Credit as designated in Section E of the Cover Sheet. The required form of Letter of Credit is attached hereto in Appendix I.

- 1.167 “Performance Measurement Period” has the meaning set forth in Section 3.1(e)(ii).
- 1.168 “Performance Tolerance Band” shall be calculated as set forth in Section 4.4(c)(ii).
- 1.169 “Planned Outage” means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller’s sole discretion must be of the type that is necessary to reliably maintain the Project, (b) cannot be reasonably conducted during Project operations, and (c) causes the generation level of the Project to be reduced by at least ten percent (10%) of the Contract Capacity.
- 1.170 “PMax” has the meaning set forth in the CAISO Tariff.
- 1.171 “PNode” has the meaning set forth in the CAISO Tariff.
- 1.172 “Preamble” means the paragraph that precedes Article One: General Definitions to this Agreement.
- 1.173 “Preschedule Day” has the meaning set forth in Section 3.4(b)(iii)(C).
- 1.174 “Product” means the Energy, capacity, Ancillary Services, and all products, services and/or attributes similar to the foregoing which are or can be produced by or associated with the Project and which is specified by Seller in the Cover Sheet and thereby committed to Seller by this Agreement, including renewable attributes, Renewable Energy Credits, Capacity Attributes and Green Attributes.
- 1.175 “Production Tax Credit” or “PTC” means the tax credit for electricity produced from certain renewable generation resources described in Section 45 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time.
- 1.176 “Project” means all of the Unit(s) and the Site at which the generating facility is located and the other assets, tangible and intangible, that compose the generation facility, including the assets used to connect the Unit(s) to the Interconnection Point, as more particularly described in the Cover Sheet.
- 1.177 “Pre-Delivery Term Security” is the collateral required of Seller, as specified and referred to in Section 8.3(a).
- 1.178 “Project Specifications” has the meaning set forth in Appendix VIII.
- 1.179 “Prolonged Outage” is any period of more than thirty (30) consecutive days during which the Project is or will be unable, for whatever reason, to provide at least sixty percent (60%) of the Contract Capacity.
- 1.180 “Qualifying Facility” has the meaning provided in the Public Utility Regulatory Policies Act (“PURPA”) and in regulations of the FERC at 18 C.F.R. §§ 292.201 through 292.207.
- 1.181 “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 3.3(e)(ii).
- 1.182 “RA Shortfall Period” means the period of consecutive calendar months that starts with the calendar month in which the RA Start Date occurs and concludes with the second calendar month

following the calendar month in which the Effective FCDS Date or Effective PCDS Date occurs. The RA Shortfall Period shall not exceed twenty-six (26) months.

1.183 “RA Shortfall Month” means the applicable calendar month within the RA Shortfall Period for purposes of calculating an RA Deficiency Amount under Section 3.3(e)(ii).

1.184 “RA Start Date” shall be the later of the Initial Energy Delivery Date or the Expected PCDS Date or FCDS Date according to the deliverability type selected in Section A of the Cover Sheet.

1.185 “RA Value” means the value in U.S. dollars per MW of Expected Net Qualifying Capacity for each RA Shortfall Month, as set forth in Appendix VIII.

1.186 “Ramp Rate” has the meaning set forth in the CAISO Tariff.

1.187 “Real-Time Market” means any existing or future intra-day market conducted by the CAISO occurring after the Day-Ahead Market.

1.188 “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.

1.189 “Reductions” has the meaning set forth in Section 4.6(b).

1.190 “Reliability Coordinator” has the meaning set forth in the CAISO Tariff.

1.191 “Reliability Must-Run Contract” has the meaning set forth in the CAISO Tariff. “Reliability Network Upgrade” has the meaning set forth in the CAISO Tariff.

1.192 “Renewable Energy Credit” has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by Law.

1.193 “Replacement Capacity Rules” means the replacement requirement for Resource Adequacy Capacity (as defined in the CAISO Tariff) associated with a Planned Outage as set forth in the CAISO Tariff or successor replacement requirements as prescribed by the CPUC, CAISO and/or other regional entity.

1.194 “Resource Adequacy” means the procurement obligation of load serving entities, including Buyer, as such obligations are described in CPUC Decisions D.04-01-050, 04-10-035 and 05-10-042, 06-04-040, 06-06-064, 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 decisions, resolutions or rulings addressing Resource Adequacy issues, as those obligations may be altered from time to time in the CPUC Resource Adequacy Rulemakings (R.) 04-04-003 and 05-12-013 or by any successor proceeding, and all other Resource Adequacy obligations established by any other entity, including the CAISO.

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

1.196 “Resource Adequacy Requirements” has the meaning set forth in Section 3.3.

1.197 “Resource Adequacy Standards” means (a) the Program set forth in Section 40.9 of the CAISO Tariff and (b) any future program or provision under the CAISO Tariff providing for availability

standards or similar standards with respect to any flexible Resource Adequacy resource, product, or procurement obligation; in the case of (a) or (b), as any such program or provision may be amended, supplemented, or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible changes and incentive payments for performance thereunder.

1.198 “Resource-Specific Settlement Interval LMP” has the meaning set forth in the CAISO Tariff.

1.199 “Retained Revenues” has the meaning set forth in Section 4.6(c).

1.200 “Revised Offer” has the meaning set forth in Section 11.1(b)(iii), as applicable.

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

1.202 “Satisfaction Date” has the meaning set forth in Section 2.5.

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

1.204 “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.

1.205 “SEC” means the U.S. Securities and Exchange Commission.

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

1.207 “Seller” has the meaning set forth in the Cover Sheet.

1.208 “Seller Excuse Hours” means those hours during which Seller is unable to deliver Delivered Energy to Buyer as a result of (a) a Force Majeure event, (b) Buyer’s failure to perform, or (c) Curtailment Period.

1.209 “Seller’s WREGIS Account” has the meaning set forth in Section 3.1(k)(i).

1.210 “Settlement Amount” means the amount in US dollars equal to the sum of Losses, Gains, and Costs, which the Non-Defaulting Party incurs as a result of the termination of this Agreement.

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

1.212 “Settlement Interval Actual Available Capacity” means the sum of the capacity, in MWs, of all generating units of the Project that were available as of the end of such Settlement Interval, as indicated by the Actual Availability Report.

1.213 “Site” means the location of the Project as described in Appendix VIII.

1.214 “Start-up” means the action of bringing a Unit from non-operation to operation at or above the Unit’s Minimum Load, or with positive generation output if Minimum Load is zero.

1.215 “Station Use” means all energy consumption necessary for the generation of electricity that can be supplied by the Project itself while it is generating electricity, and any loads not separately metered from any station use load. For a biomass facility, the energy demand to transport the biomass material that has undergone all processing necessary for consumption in the biomass boiler into the boiler, using stationary equipment (or at least stationary while operating) is considered station use.

1.216 “Surplus Delivered Energy” means, in any Settlement Interval, the Energy produced from the Project as measured in MWh at the CAISO revenue meter of the Project and in accordance with the CAISO Tariff, including any applicable adjustments for power factor and Electrical Losses, that exceeds the product of one hundred percent (100%) of Contract Capacity multiplied by the duration of the Settlement Interval.

1.217 “Surplus Delivered Energy Quantity” means the quantity of Surplus Delivered Energy expected to be delivered by Seller during each Delivery Month as set forth in Section 3.1(e) and Cover Sheet Section D.

1.218 “Supply Plan” has the meaning set forth in the CAISO Tariff.

1.219 “System Emergency” has the meaning set forth in the CAISO Tariff.

1.220 “Term” has the meaning provided in Section 2.5.

1.221 “Terminated Transaction” means the Transaction terminated in accordance with Section 5.2 of this Agreement.

1.222 “Termination Payment” means the payment amount equal to the sum of (a) and (b), where (a) is the Settlement Amount and (b) is the sum of all amounts owed by the Defaulting Party to the Non-Defaulting Party under this Agreement, less any amounts owed by the Non-Defaulting Party to the Defaulting Party determined as of the Early Termination Date.

1.223 “Third-Party SC” means a qualified third party designated by Buyer to provide the Scheduling Coordinator functions for the Project pursuant to this Agreement. For purposes of this Agreement, and subject to replacement as provided in Section 3(4)(i)(B), Buyer has designated The Energy Authority (“TEA”) to act as its Third-Party SC. All references and provisions in this Agreement to Buyer acting in its capacity as Scheduling Coordinator shall mean and include the designated Third-Party SC regardless of whether the reference or provision in this Agreement expressly states “Third-Party SC.”

1.224 “Transaction” means the particular transaction described in its entirety in Section 3.1(b) of this Agreement.

1.225 “Transfer” with respect to Letters of Credit means the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder, if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

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

1.227 “Uninstructed Imbalance Energy” shall have the meaning set forth in the CAISO Tariff.

1.228 “Unit” means the technology used to produce the Products, which are identified in the Cover Sheet for the Transaction entered into under this Agreement.

1.229 “Variation(s)” means the absolute value of the difference, in MWh, in any Settlement Interval between (a) DA Scheduled Energy; and (b) Delivered Energy for the Settlement Interval. “WECC” means the Western Electricity Coordinating Council or successor agency.

1.230 “Work” means (a) work or operations performed by a Party or on a Party’s behalf, and (b) materials, parts or equipment furnished in connection with such work or operations, including (i) warranties or representations made at any time with respect to the fitness, quality, durability, performance or use of “a Party’s work”, and (ii) the providing of or failure to provide warnings or instructions.

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

1.232 “WREGIS Certificate Deficit” has the meaning set forth in Section 3.1(k)(v).

1.233 “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.

1.234 “WREGIS Operating Rules” means those operating rules and requirements adopted by WREGIS as of December 2010, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

ARTICLE TWO: GOVERNING TERMS AND TERM

2.1 Entire Agreement. This Agreement, together with the Cover Sheet, Preamble and each and every appendix, attachment, amendment, schedule and any written supplements hereto, if any, between the Parties constitutes the entire, integrated agreement between the Parties.

2.2 Interpretation. The following rules of interpretation shall apply in addition to those set forth in Section 10.10:

(a) The term “month” or “Month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends.

(b) Unless otherwise specified herein, all references herein to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then existing at the applicable time to which such construction applies.

(c) Capitalized terms used in this Agreement, including the appendices hereto, shall have the meaning set forth in Article One, unless otherwise specified.

(d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender will be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.

(e) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.

(f) Any reference in this Agreement to any natural person, Governmental Authority, corporation, partnership or other legal entity includes its permitted successors and assigns or any natural person, Governmental Authority, corporation, partnership or other legal entity succeeding to its functions.

(g) All references to dollars are to U.S. dollars.

(h) The term “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation.

2.3 Authorized Representatives. Each Party shall provide Notice to the other Party of the persons authorized to nominate and/or agree to a Schedule or dispatch order for the delivery or acceptance of the Product or make other Notices on behalf of such Party and specify the scope of their individual authority and responsibilities, and may change its designation of such persons from time to time in its sole discretion by providing Notice.

2.4 Conditions Precedent.

(a) Conditions Precedent. Subject to Section 2.4 hereof, the Term shall not commence until the occurrence of all of the following:

(i) this Agreement has been duly executed by the authorized representatives of each of Buyer and Seller; and

(ii) Buyer receives from Seller the documentation listed in Appendix V (Seller Documentation Condition Precedent).

(b) Failure to Meet All Conditions Precedent. If the Condition Precedent set forth in Section 2.4(a)(ii) is waived by Buyer prior to or at execution of this Agreement but is not satisfied or further waived in writing by Buyer on or before one hundred and eighty (180) days from the execution date of this Agreement, then either Party may terminate this Agreement effective upon receipt of Notice by Seller. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

2.5 Term.

(a) The term shall commence upon the satisfaction of the Conditions Precedent set forth in Section 2.4(a) of this Agreement and shall remain in effect until the conclusion of the Delivery Term unless terminated sooner pursuant to Section 2.4(b), Section 5.2 or Section 11.1 of this Agreement (the “Term”); provided that this Agreement shall thereafter remain in effect (i) until the Parties have fulfilled all obligations with respect to the Transaction, including payment in full of amounts due pursuant to the Final True-Up, the Settlement Amount, or other damages (whether directly or indirectly such as through set-off or netting) and the undrawn portion of the Pre-Delivery Term Security or Delivery Term Security, is released and/or returned as applicable (the “Satisfaction Date”) or (ii) in accordance with the survival provisions set forth in subpart (b) below.

(b) Notwithstanding anything to the contrary in this Agreement, (i) all rights under Section 10.4 (“Indemnities”) and any other indemnity rights shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional twelve (12) months; (ii) all rights and obligations under Section 10.6 (“Confidentiality”) shall survive the Satisfaction Date or the end of the Term (whichever is later) for an additional two (2) years; and (iii) the right of first offer in Section 11.1(b) shall survive the Satisfaction Date for three (3) years.

2.6 Material Change.

(a) A “Material Change” means any of the following:

(i) Buyer forecasts for the upcoming year that it is unable to meet both of the following program objectives:

(A) Offer competitive generation rates at least 3% lower than PG&E’s, including adjustment for Non-Bypassable Charges, as filed in the first week of January each calendar year; and

(B) Achieve a forecasted community choice energy program reserve accumulation of \$2 million per year;

(I) The forecasted reserve accumulation calculation for any year will assume Buyer offers generation rates that are: (1) 3% lower than PG&E’s after adjustments for

Non-Bypassable Charges, and (2) are based on a portfolio that meets the minimum applicable federal, state, and local requirements, including the California Renewables Portfolio Standard and the requirements of California Public Utilities Code § 454.52. For avoidance of doubt, the forecasted reserve accumulation calculation for any year will not include new RCEA discretionary spending commitments for above-market procurement of energy products beyond what is necessary to meet the applicable minimum federal, state, and local requirements. For purposes of this Section 2.6, the individual year procurement requirement of resources meeting the requirements of California Public Utilities Code § 399.16(b)(1) for the California Renewables Portfolio Standard shall be equal to RCEA's annual retail sales for the applicable year multiplied by the percentages specified in the following table:

Delivery Year	Renewable Portfolio Standard
2018	29%
2019	31%
2020	33%
2021	34.8%
2022	36.5%

(ii) Buyer experiences either of the following:

(A) cumulative opt-out exceeding 20% from program launch;

(B) incremental opt-out exceeding 10% for a calendar year

beginning in 2018;

Opt-out will be measured on the basis of enrolled customer accounts vs. a baseline year of 2016. The opt-out calculation will use as a baseline the number of accounts that existed as of December 31, 2016, and will not include any Direct Access accounts.

(b) If a Material Change occurs, Buyer may provide notice to Seller and describe proposed terms and conditions for an amendment to this Agreement that would preserve or restore Buyer's ability to achieve the program objectives described in Section 2.6(a)(i) and (a)(ii) above. Within thirty (30) days of Buyer's notice, or such other time mutually agreed upon by the Parties, the Parties shall meet and attempt in good faith to negotiate such amendment. If the Parties are unable to agree upon such amendment within a reasonable period of time, as determined in good faith by Buyer, Buyer shall have the right to terminate this Agreement without further liability except with respect to payment of amounts accrued prior to termination. For avoidance of doubt, if Buyer terminates this Agreement pursuant to this Section 2.6, such termination shall not be an Event of Default and Buyer shall not be required to pay any Termination Payment.

2.7 Binding Nature.

(a) Upon Execution Date. This Agreement shall be effective and binding as of the Execution Date only to the extent required to give full effect to, and enforce, the rights and obligations of the Parties under:

(i) Sections 5.1(a)(iv)-(vi), 5.1(b)(ii), and 5.1(b)(vii);

(ii) Section 5.1(a)(ii) only with respect to Section 10.1, and Section 5.1(a)(iii) only with respect to the Sections identified in this Section 2.7;

(iii) Sections 5.2 through 5.7;

- (iv) Sections 8.2, 8.3(a)(i), 8.3(b), and 8.4;
- (v) Sections 10.1, 10.5 through 10.6, and Sections 10.10 through 10.13; and
- (vi) Articles One, Two, Seven, Twelve and Thirteen.

(b) Upon Effective Date. This Agreement shall be in full force and effect, enforceable and binding in all respects, upon occurrence of the Effective Date.

ARTICLE THREE: OBLIGATIONS AND DELIVERIES

3.1 Seller's and Buyer's Obligations.

(a) Product. The Product to be delivered and sold by Seller and received and purchased by Buyer under this Agreement is set forth in the Cover Sheet.

(b) Transaction. Unless specifically excused by the terms of this Agreement during the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Product at the Delivery Point, pursuant to Seller's election in the Cover Sheet of a Full Buy/Sell or Excess Sale arrangement as described in paragraphs 3.1(b)(i) and 3.1(b)(ii) below. Buyer shall pay Seller the Contract Price in accordance with the terms of this Agreement. In no event shall Seller have the right to procure any element of the Product from sources other than the Project for sale or delivery to Buyer under this Agreement except with respect to Energy delivered to Buyer in connection with Energy Deviations or Variations, as applicable. Buyer shall have no obligation to receive or purchase Product from Seller prior to or after the Delivery Term. Seller shall be responsible for any costs or charges imposed on or associated with the Product or its delivery of the Product up to the Delivery Point. Buyer shall be responsible for any costs or charges imposed on or associated with the Product after its receipt at and from the Delivery Point. Each Party agrees to act in good faith in the performance of its obligations under this Agreement.

(i) Full Buy/Sell. If "Full Buy/Sell" is elected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product measured in kilowatt-hours, net of Station Use and transformation and transmission losses to and at the Delivery Point. Seller shall purchase all Energy required to serve the Project's on-site load, net of station use, from Buyer or applicable retail service provider pursuant to its applicable retail rate schedule.

(ii) Excess Sale. If "Excess Sale" is selected on the Cover Sheet, Seller agrees to sell to Buyer the Project's gross output of Product as measured in kilowatt-hours, net of station Use, any on-site load and transformation and transmission losses to the Delivery Point. Seller agrees to convey to Buyer all elements of Product associated with the Energy sold to Buyer.

(c) Delivery Term.

(i) Delivery Term and Initial Energy Delivery Date. As used herein, "Delivery Term" shall mean the period of Contract Years and Delivery Months specified on the Cover Sheet. Unless an alternative date is mutually agreed upon by the the parties, the Initial Delivery Date shall be March 1, 2018.

(d) Delivery Point. The Delivery Point shall be the PNode designated by the CAISO for the Project.

(e) Contract Quantity and Surplus Delivered Energy Quantity

(i) Contract Quantity and Surplus Delivered Energy Quantity. The Contract Quantity and Surplus Delivered Energy Quantity during each Delivery Month is the amount set forth in the applicable Delivery Period in Section D of the Cover Sheet (“Delivery Term Contract Quantity Schedule”), which amount is inclusive of outages.

(ii) Guaranteed Energy Production.

(A) Throughout the Delivery Term, Seller shall be required to provide to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, no less than the Guaranteed Energy Production in each Contract Year during the Delivery Term (“Performance Measurement Period”). “Guaranteed Energy Production” is equal to the product of (x) and (y), where (x) is ninety percent (90%) of the Contract Quantity, and (y) is the difference between (I) and (II), with the resulting difference divided by (I), where (I) is the number of hours in the applicable Performance Measurement Period and (II) is the aggregate number of Seller Excuse Hours in the applicable Performance Measurement Period. Guaranteed Energy Production is described by the following formula:

Guaranteed Energy Production = $(90\% \times \text{Contract Quantity in MWh}) \times [(\text{Hrs in Performance Measurement Period} - \text{Seller Excuse Hrs in Performance Measurement Period}) / \text{Hrs in Performance Measurement Period}]$

(B) In no event shall any amount of Delivered Energy plus Deemed Delivered Energy in any Settlement Interval that exceeds the Contract Capacity be credited toward or added to Seller’s Guaranteed Energy Production requirement.

(C) GEP Failure, Cure, Damages.

(I) If Seller has a GEP Failure, then within forty-five (45) days after the last day of the last month of such Performance Measurement Period, Buyer shall promptly provide Notice to Seller of such failure, provided that Buyer’s failure to provide Notice shall not constitute as a waiver of Buyer’s rights to collect GEP damages. Seller may cure the GEP Failure by providing to Buyer an amount of Delivered Energy plus Deemed Delivered Energy, if any, that is no less than ninety percent (90%) of the Contract Quantity, subject to adjustment for Seller Excuse Hours over the next following Contract Year, as set forth in the formula below (“GEP Cure”).

GEP Cure = $(90\% \times \text{Contract Quantity in MWh}) \times [(\text{Hrs in next following Contract Year} - \text{Seller Excuse Hrs in next following Contract Year}) / \text{Hrs in next following Contract Year}]$

If Seller fails to provide sufficient Delivered Energy plus Deemed Delivered Energy, if any, as adjusted by Seller Excuse Hours, to qualify for the GEP Cure for a given Performance Measurement Period, Seller shall pay GEP Damages, calculated pursuant to Appendix II (“GEP Damages Calculation”).

(II) The Parties agree that the damages sustained by Buyer associated with Seller’s failure to achieve the Guaranteed Energy Production requirement would be difficult or impossible to determine, or that obtaining an adequate remedy would be unreasonably time consuming or expensive and therefore agree that Seller shall pay the GEP Damages to Buyer as liquidated damages. In no event shall Buyer be obligated to pay GEP Damages.

(III) After the GEP Cure period has run, if Seller has not achieved the GEP Cure, Buyer shall have forty-five (45) days to notify Seller of such failure. Within forty-five (45) days of the end of the GEP Cure period, Buyer shall provide Notice to Seller in writing of

the amount of the GEP Damages, if any, which Seller shall pay within sixty (60) days of receipt of the Notice (the “Cure Payment Period”). If Seller does not pay the GEP Damages within the Cure Payment Period, then Buyer may, at its option, declare an Event of Default pursuant to Section 5.1(b)(iv)(A) within ninety (90) days following the Cure Payment Period. If Seller has failed to pay the GEP Damages, and Buyer does not (1) notify Seller of the GEP Failure or (2) declare an Event of Default pursuant to Section 5.1(b)(iv) within the ninety (90) day period, then Buyer shall be deemed to have waived its right to declare an Event of Default based on Seller’s failure with respect to the Performance Measurement Period which served as the basis for the notice of GEP Failure, GEP Damages, or default, subject to the limitations set forth in Section 5.1(b)(iv)(B).

(D) For avoidance of doubt, the Guaranteed Energy Production requirements specified in this Section 3.1(c)(ii) do not apply to the three Delivery Months that do not fall within a full Contract Year, more specifically March 2022, April 2022, and May 2022.

(f) Contract Capacity.

(i) Contract Capacity. The capacity of the Project at any time shall be the lower of the following: (A) the contract capacity in MW designated in the Cover Sheet or (B) the Net Rated Output Capacity of the Project (the “Contract Capacity”), which shall be equal to the result of the Contract Capacity calculation performed in accordance with Section II of Appendix VIII.

(g) Project.

(i) All Product provided by Seller pursuant to this Agreement shall be supplied from the Project only. Seller shall not make any alteration or modification to the Project which results in a change to the Contract Capacity or the anticipated output of the Project without Buyer’s prior written consent. The Project is further described in Appendix VIII.

(ii) Seller shall not relinquish its possession or demonstrable exclusive right to control the Project without the prior written consent of Buyer, except under circumstances provided in Section 10.5.

(h) Interconnection Facilities.

(i) Seller Obligations. Seller shall (A) arrange and pay independently for any and all necessary costs under any Generator Interconnection Agreement with the Participating Transmission Owner; (B) cause the Interconnection Customer’s Interconnection Facilities, including metering facilities, to be maintained; and (C) comply with the procedures set forth in the GIP and applicable agreements or procedures provided under the GIP in order to obtain the applicable Electric System Upgrades and (D) obtain Electric System Upgrades, as needed, in order to ensure the safe and reliable delivery of Energy from the Project up to and including quantities that can be produced utilizing all of the Contract Capacity of the Project.

(ii) Coordination with Buyer.

(A) Seller shall (I) provide to Buyer copies of all material correspondence related thereto; and (II) provide Buyer with written reports of the status of the GIA on a monthly basis. The foregoing shall not preclude Seller from executing a GIA that it reasonably determines allows it to comply with its obligations under this Agreement and applicable Law.

(i) Performance Excuses.

(i) Seller Excuse. For Seller selling As-Available Product, Seller shall be excused from achieving the Guaranteed Energy Production only for the applicable time period during Seller Excuse Hours.

(ii) Buyer Excuses. Buyer shall be excused from (A) receiving and paying for the Product only (I) during periods of Force Majeure, (II) by Seller's failure to perform, (III) during Curtailment Periods and (B) receiving Product during Buyer Curtailment Periods.

(iii) Curtailment. Notwithstanding Section 3.1(b) and this Section 3.1(i), Seller shall reduce output from the Project during any Curtailment Period or Buyer Curtailment Period.

(j) Greenhouse Gas Emissions Reporting. During the Term, Seller acknowledges that a Governmental Authority may require Buyer to take certain actions with respect to greenhouse gas emissions attributable to the generation of Energy, including reporting, registering, tracking, allocating for or accounting for such emissions. Promptly following Buyer's written request, Seller agrees to take all commercially reasonable actions and execute or provide any and all documents, information or instruments with respect to generation by the Project reasonably necessary to permit Buyer to comply with such requirements, if any, subject to the Compliance Cost Cap. Nothing in this Section 3.1(j) shall cause Buyer to assume any liability or obligation with respect to Seller's compliance obligations with respect to the Project under any new or existing Laws, rules, or regulations.

(k) WREGIS. Seller shall, at its sole expense, but subject to the Compliance Cost Cap, 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 Delivered Energy and Surplus Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 3.1(k)(viii), provided that Seller fulfills its obligations under Sections 3.1(k)(i) through (vii) below. In addition:

(i) Prior to the Initial Energy Delivery Date, Seller shall register the Project 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 Project 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.

(ii) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

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

(iv) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Article 6, Buyer shall make an invoice payment for a given month in accordance with Article 6 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 3.1(k). Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Article 6.

(v) A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("Deficient Month"). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for the purposes of calculating Buyer's payment(s) to Seller under Article 6 and the Guaranteed Energy Production for the applicable Performance Measurement Period. Any amount owed by Seller to Buyer because of a WREGIS Certificate Deficit shall be made as an adjustment to Seller's next monthly invoice to Buyer in accordance with Article 6, and Buyer shall net such amount against Buyer's subsequent payment(s) to Seller pursuant to Article 6.

(vi) Without limiting Seller's obligations under this Section 3.1(k), 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.

(vii) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 3.1(k) after the Execution Date, the Parties promptly shall modify this Section 3.1(k) 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 Delivered Energy in the same calendar month.

(viii) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract.

(l) Access to Data

(i) Commencing on the first date on which the Project generates Product to be delivered to the CAISO Grid or the Delivery Point, if different, and continuing throughout the Term, Seller shall provide to Buyer, in a form reasonably acceptable to Buyer, the data set forth below on a real-time basis; provided that Seller shall agree to make and bear the cost of changes to any of the data delivery provisions below, as requested by Buyer, throughout the Term, which changes Buyer determines are necessary to forecast output from the Project, and/or comply with Law:

(A) read-only access to meteorological measurements, and transformer availability, any other facility availability information;

(B) read-only access to energy output information collected by the supervisory control and data acquisition (SCADA) system for the Project;

(C) read-only access to the Project's CAISO revenue meter and all Project meter data at the Site;

(D) full, real-time access to the Project's Scheduling and Logging for the CAISO (SLIC) client application, or its successor system;

(E) net plant electrical output at the CAISO revenue meter;

For any month in which the above information and access is not available to Buyer for longer than twenty-four (24) continuous hours, Seller shall prepare and provide to Buyer upon Buyer's request a report with the Project's monthly Settlement Interval Actual Available Capacity in the form set forth in Appendix VI ("Actual Availability Report"). Upon Buyer's request, Seller shall promptly provide to Buyer any additional and supporting documentation necessary for Buyer to audit and verify any matters set forth in the Actual Availability Report. Buyer shall exercise commercially reasonable efforts to notify Seller of any deficiency by Seller in meeting the requirements of this Section 3.1(l)(i); provided that any failure by Buyer to provide such deficiency notice shall not result in any additional liability to Buyer under this Agreement.

(ii) Seller shall maintain at least a minimum of one hundred twenty (120) days' historical data for all data required pursuant to Section 3.1(l)(i), which shall be available on a minimum time interval of one hour basis or an hourly average basis, except with respect to the meteorological measurements which shall be available on a minimum time interval of ten (10) minute basis. Seller shall provide such data to Buyer within five (5) Business Days of Buyer's request.

(iv) Installation, Maintenance and Repair.

(A) Seller, at its own expense, shall install and maintain a secure communication link in order to provide Buyer with access to the data required in Section 3.1(l)(i) of this Agreement.

(B) Seller shall maintain the meteorological stations, telecommunications path, hardware, and software necessary to provide accurate data to Buyer or Third-Party SC (as applicable) to enable Buyer or the Third-Party SC to meet current CAISO scheduling requirements. Seller shall promptly repair and replace as necessary such meteorological stations, telecommunications path, hardware and software and shall notify Buyer as soon as Seller learns that any such telecommunications paths, hardware and software are providing faulty or incorrect data.

(C) If Buyer notifies Seller of the need for maintenance, repair or replacement of the meteorological stations, telecommunications path, hardware or software, Seller shall maintain, repair or replace such equipment as necessary within five (5) days of receipt of such Notice.

(D) For any occurrence in which Seller's telecommunications system is not available or does not provide quality data and Buyer notifies Seller of the deficiency or Seller becomes aware of the occurrence, Seller shall transmit data to Buyer through any alternate means of verbal or written communication, including cellular communications from onsite personnel, facsimile, blackberry or equivalent mobile e-mail, or other method mutually agreed upon by the Parties, until the telecommunications link is re-established.

(v) Seller agrees and acknowledges that Buyer may seek from third parties any information relevant to its duties as SC for Seller, including from the Participating Transmission Operator. Seller hereby voluntarily consents to allow the Participating Transmission Operator to share

Seller's information with Buyer in furtherance of Buyer's duties as SC for Seller, and agrees to provide the Participating Transmission Owner with written confirmation of such voluntary consent at least ninety (90) days prior to the Initial Energy Delivery Date.

(n) Obtaining and Maintaining CEC Certification and Verification. Subject to the Compliance Cost Cap, Seller shall take all necessary steps including making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Term.

(p) Curtailment Requirements.

(i) Order. Seller shall reduce generation from the Project as required pursuant to a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, provided that (A) a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order shall be consistent with the operational characteristics set forth in Section F of the Cover Sheet; (B) the Buyer Curtailment Period shall be for zero hours during the Delivery Term and (C) Buyer shall pay Seller for Deemed Delivered Energy associated with a Buyer Curtailment Period pursuant to Article 4. Seller agrees to reduce the Project's generation by the amount and for the period set forth in the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(ii) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order provided in compliance with Section 3.1(p)(i), then, for each MWh of Delivered Energy that the Project generated in contradiction to 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 MWh (for example, the Contract Price) and, (B) is the absolute value of the Real-Time Price for the applicable PNode, if such price is negative, for the Buyer Curtailment Period or Curtailment Period and, (C) is any penalties or other charges resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(q) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Units as directed by the Buyer and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 3.1(p)(ii) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

3.2 Green Attributes.

(a) Seller hereby provides and conveys all Green Attributes associated with all Delivered Energy and Surplus Delivered Energy from the Project to Buyer as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Project, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in

the delivery of the Product from the Project. Notwithstanding the foregoing, Seller shall not be obligated to convey to Buyer any Green Attributes associated with Excess Energy, and may convey any Green Attributes Associated with Excess Energy to a third party.

(b) Future Environmental Attributes.

(i) 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. 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 such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(ii) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.2, the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.3 Resource Adequacy.

(a) During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Project, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a Supply Plan or Resource Adequacy Plan ("Resource Adequacy Requirements"). From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the capacity of the Project, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements during the Delivery Term.

(b) Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Resource Adequacy Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Resource Adequacy Standards, if applicable.

(c) Buyer shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules, if applicable, provided that Seller has given Buyer Notice of the outages subject to the Replacement Capacity Rules by the earlier of ninety (90) days before the first day of the month for which the outage will occur or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC. If Seller fails to provide such Notice, then Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from the Replacement Capacity Rules for such outage.

(d) To the extent Seller has an exemption from the Resource Adequacy Standards or the Replacement Capacity Rules under the CAISO Tariff, Sections 3.3(b) and 3.3(c) above shall not apply. If Seller would like to request an exemption for this Agreement from the CAISO, Seller shall provide to Buyer, as Seller's Scheduling Coordinator, Notice specifically requesting that Buyer seek certification or approval of this Agreement as an exempt contract pursuant to the CAISO Tariff; provided that Buyer's failure to obtain such exemption shall not be an Event of Default and Buyer shall not have any liability to Seller for such failure.

(e) Resource Adequacy Failure.

(i) RA Deficiency Determination. Notwithstanding Seller's obligations set forth in Section 3.4(a)(i)(A) or anything to the contrary herein, the Parties acknowledge and agree that:

(A) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the RA Start Date, then Seller shall pay to Buyer the RA Deficiency Amount for each RA Shortfall Month as liquidated damages due to Buyer for the Capacity Attributes that Seller failed to convey to Buyer; and

(B) if Seller is unable to obtain the deliverability type selected in Section A of the Cover Page by the Deliverability Finding Deadline, then Seller shall be in breach of this Agreement and subject to an Event of Default under Sections 5.1(b)(v) - (vi), regardless of Seller's payment of any RA Deficiency Amount hereunder.

(ii) RA Deficiency Amount Calculation.

(A) Buyer shall calculate the RA Deficiency Amount for each RA Shortfall Month using the formula set forth in Section 3.3(e)(ii)(B). Buyer shall notify Seller of the RA Deficiency Amount for a given RA Shortfall Month no later than the last day of that RA Shortfall Month. The Parties agree that these liquidated damages shall be paid to Buyer for each RA Shortfall Month and constitute a reasonable approximation of the harm or loss suffered by Buyer. The Parties further agree that Buyer may use such liquidated damages for any purpose in its sole discretion. Seller shall pay the RA Deficiency Amount for a given RA Shortfall Month in the form of a deduction from the amount invoiced by Seller in such month pursuant to Section 6.1. In the event that the RA Deficiency Amount for a given RA Shortfall Month exceeds the amount invoiced pursuant to Section 6.1, Buyer shall make no payment to Seller for that month, and the difference between the invoiced amount and the RA Deficiency Amount shall be deducted from the amount(s) invoiced in the succeeding month(s) until all of the RA Deficiency Amount for such RA Shortfall Month has been deducted. Any dispute regarding Buyer's calculation of any RA Deficiency Amount shall be resolved in accordance with Article Twelve.

(B) The RA Deficiency Amount for a given RA Shortfall Month shall be equal to the product of the RA Value and the Expected Net Qualifying Capacity, as calculated in accordance with Appendix IX. The RA Deficiency Amount is represented by the following equation:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

To the extent the Project obtains Net Qualifying Capacity that Seller applies towards its obligations under Section 3.3(a) before the Project obtains the deliverability type selected in Section A of the Cover Page (e.g., through the CAISO's Operational Deliverability Assessment), then the RA Deficiency Amount calculated above for a given RA Shortfall Month shall be reduced accordingly (e.g. the RA Deficiency Amount would equal the product of (x) the RA Value and (y) the difference between the Expected Net Qualifying Capacity and the actual Net Qualifying Capacity):

RA Deficiency Amount (\$/Month) = RA Value (\$/MW/Month) × [Expected Net Qualifying Capacity (MW) – actual Net Qualifying Capacity (MW)].

3.4 Transmission and Scheduling.

(a) Transmission.

(i) Seller's Transmission Service Obligations. Throughout the Term, and consistent with the terms of this Agreement, Seller shall:

(A) arrange and pay independently for any and all necessary electrical interconnection, distribution and/or transmission (and any regulatory approvals required for the foregoing), sufficient to allow Seller to deliver the Product to the Delivery Point for sale pursuant to the terms of this Agreement. Seller's interconnection, distribution and/or transmission arrangements shall provide for the deliverability type selected in Section A of the Cover Sheet as of the RA Start Date and throughout the Delivery Term.

(B) If Seller has elected Energy Only Status on the Cover Sheet, this Section 3.4(a)(i)(B) is not applicable. An FCDS or PCDS Seller shall have either previously obtained, or is obligated to obtain per the terms of the Agreement, a FCDS or PCDS Finding. If Seller's Project has not attained Full Capacity Deliverability Status or Partial Capacity Deliverability Status prior to the Execution Date, Seller shall take all actions necessary or appropriate to cause the Delivery Network Upgrades necessary for it to obtain Full Capacity Deliverability Status or Partial Capacity Deliverability Status to be constructed and placed into service. The cost of each Deliverability Assessment and any necessary Delivery Network Upgrades to ensure Full Capacity Deliverability Status or Partial Capacity Deliverability Status shall be borne solely by Seller and shall not be subject to the Compliance Cost Cap. When the CAISO advises Seller that the Project has Full Capacity Deliverability Status or Partial Capacity Deliverability Status, Seller shall Notify Buyer of such status within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO. The Effective FCDS Date or Effective PCDS Date must occur on or before the Deliverability Finding Deadline; a failure to do so shall constitute an Event of Default under Section 5.1(a)(iii). The Termination Payment for an Event of Default caused by Seller's failure to achieve the Effective FCDS Date or Effective PCDS Date on or before the Deliverability Finding Deadline shall be capped at the amount of Seller's Delivery Term Security or Term Security obligation under Section 8.3(a)(ii) or (iii), as applicable.

(C) if the Project has or obtains FCDS, Seller shall Notify Buyer of such status as of the Execution Date, if applicable, or within five (5) Business Days of the date it receives notification from the CAISO of such status by providing Buyer documentation from the CAISO.

(D) bear all risks and costs associated with such transmission service, including any transmission outages or curtailment to the Delivery Point.

(E) fulfill all contractual, metering and applicable interconnection requirements, including those set forth in the Participating Transmission Owner's applicable tariffs, the CAISO Tariff and implementing CAISO standards and requirements, so as to be able to deliver Energy from the Project according to the terms of this Agreement.

(ii) Buyer's Transmission Service Obligations. During the Delivery Term,

(A) Buyer shall arrange and be responsible for transmission service at and from the Delivery Point.

(B) Buyer shall bear all risks and costs associated with such transmission service, including any transmission outages or curtailment from the Delivery Point.

(C) Buyer shall schedule or arrange for Scheduling Coordinator services with its Transmission Providers to receive the Product at the Delivery Point.

(D) Buyer shall be responsible for all CAISO costs and charges, electric transmission losses and congestion at and from the Delivery Point.

(b) Scheduling Coordinator. Buyer, or Buyer's designated Third-Party SC, shall act as the Scheduling Coordinator for the Project. In that regard, Buyer and Seller shall agree to the following:

(i) Designation as Scheduling Coordinator.

(A) At least ninety (90) days before the beginning of the Delivery Term, Seller shall take all actions and execute and deliver to Buyer all documents necessary to authorize or designate Buyer's Third-Party SC as Seller's Scheduling Coordinator, and the Third-Party SC will take all actions and execute and deliver to Seller or CAISO all documents necessary to become and act as Seller's Scheduling Coordinator. If Buyer replaces its designated Third-Party SC, then Buyer shall give Seller Notice of such designation at least ninety (90) Business Days before the successor Third-Party SC assumes Scheduling Coordinator duties hereunder, and Seller shall be entitled to rely on such designation until it is revoked or a new Third-Party SC is appointed by Buyer upon similar Notice. Buyer shall be fully responsible for all acts and omissions of Third-Party SC and for all cost, charges and liabilities incurred by Third-Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly.

(B) Seller shall not authorize or designate any other party to act as Scheduling Coordinator, nor shall Seller perform, for its own benefit, the duties of Scheduling Coordinator during the Delivery Term.

(ii) Buyer's Responsibilities as Scheduling Coordinator. Buyer or Third-Party SC shall comply with all obligations as Seller's Scheduling Coordinator under the CAISO Tariff and shall conduct all scheduling in full compliance with the terms and conditions of this Agreement, the CAISO Tariff, and all requirements of EIRP (if applicable).

(iii) Available Capacity Forecasting. Seller shall provide the Available Capacity forecasts described below. To avoid Forecasting Penalties set forth in Section 4.6(c)(iii), Seller shall use commercially reasonable efforts to forecast the Available Capacity of the Project accurately and to transmit such information in a format reasonably acceptable to Buyer. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff changes, accommodate changes to their respective generation technology and organizational structure and address changes in the operating and Scheduling procedures of Buyer, Third-Party SC (if applicable) and the CAISO, including automated forecast and outage submissions.

(A) Annual Forecast of Available Capacity. No later than (I) the earlier of July 1 of the first calendar year following the Execution Date or one hundred and eighty (180) days before the first day of the first Contract Year of the Delivery Term ("First Annual Forecast Date"), and (II) on or before July 1 for each calendar year from the First Annual Forecast Date for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and Third-Party SC (if

applicable) a non-binding forecast of the hourly Available Capacity for each day in each month of the following calendar year in a form reasonably acceptable to Buyer.

(B) Monthly Forecast of Available Capacity. Seller shall provide to Buyer and Third-Party SC (if applicable), pursuant to subsections (I) and (II) below, a non-binding forecast of the hourly Available Capacity for each day of the following month in a form reasonably acceptable to Buyer:

(I) by forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing in accordance with the CAISO Tariff or decision of the CPUC, and

(II) throughout the Delivery Term, by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer's monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC.

(C) Daily Forecast of Available Capacity. During the Delivery Term, Seller or Seller's agent shall provide a binding day ahead forecast of Available Capacity (the "Day-Ahead Availability Notice") to Buyer or Third-Party SC (as applicable) at Group-Corp-TradingCaiso@teainc.org, as provided in Appendix III, for each day no later than fourteen (14) hours before the beginning of the "Preschedule Day" (as defined by the WECC) for such day. The current industry standard Preschedule Day timetable in the WECC is as follows:

- (1) Monday – Preschedule Day for Tuesday
- (2) Tuesday – Preschedule Day for Wednesday
- (3) Wednesday – Preschedule Day for Thursday
- (4) Thursday – Preschedule Day for Friday and Saturday
- (5) Friday – Preschedule Day for Sunday and Monday

Exceptions to this standard Monday through Friday Preschedule Day timetable are presently set forth by the WECC in order to accommodate holidays, monthly transitions and other events. Exceptions are posted on the WECC website (www.wecc.biz) under the document title, "Preschedule Calendar." Each Day-Ahead Availability Notice shall clearly identify, for each hour, Seller's forecast of all amounts of Available Capacity pursuant to this Agreement. If the Available Capacity changes by at least one (1) MW as of a time that is less than fourteen (14) hours prior to the Preschedule Day but prior to the CAISO deadline for submittal of Schedules into the Day-Ahead Market then Seller must notify Buyer of such change by telephone and shall send a revised notice to Group-Corp-TradingCaiso@teainc.org as set forth in Appendix III. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other necessary information.

If Seller fails to provide the Third-Party SC with a Day-Ahead Availability Notice as required herein, then, until Seller provides a Day-Ahead Availability Notice, the Third-Party SC may rely on the most recent Day-Ahead Forecast of Available Capacity submitted by Seller to Third-Party SC to the extent Seller's failure contributes to Imbalance Energy, Seller shall be subject to the Forecasting Penalties set forth in Section 4.5(c).

(D) Real-Time Available Capacity. During the Delivery Term, Seller shall notify Third-Party SC of any changes in Available Capacity of one (1) MW or more, whether due to Forced Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the CAISO rules

for participation in the Real-Time Market. If the Available Capacity 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 likewise notify Third-Party SC. Such Notices shall contain information regarding the beginning date and time of the event resulting in the change in Available Capacity, the expected end date and time of such event, the expected Available Capacity in MW, and any other information required by the CAISO or reasonably requested by Third-Party SC. With respect to any Forced Outage, Seller shall use commercially reasonable efforts to notify Third-Party SC of such outage within ten (10) minutes of the commencement of the Forced Outage. Seller shall inform Third-Party SC of any developments that will affect either the duration of such event or the availability of the Project during or after the end of such event. These notices and changes to Available Capacity shall be communicated in a method acceptable to Third-Party SC; provided that Third-Party SC specifies the method no later than 60 days prior to the effective date of such requirement. In the event Third-Party SC fails to provide Notice of an acceptable method for communications under this Section 3.4(b)(iii)(D), then Seller shall send such communications by telephone to Third-Party SC's Real-Time Desk and via email to Group-Corp-TradingCaiso@teainc.org as set forth in Appendix III.

(E) To the extent that Seller obtains, in the normal course of business, other forecasts of energy production at the Project not otherwise specified in this Section 3.4, then Seller shall grant Buyer read-only access to such forecasts.

(iv) Replacement of Scheduling Coordinator.

(A) At least ninety (90) days prior to the end of the Delivery Term, or as soon as practicable before the date of any termination of this Agreement prior to the end of the Delivery Term, Seller shall take all actions necessary to terminate the designation of Buyer or the Third-Party SC, as applicable, as Seller's SC. These actions include (I) submitting to the CAISO a designation of a new SC for Seller to replace Buyer or the Third-Party SC (as applicable); (II) causing the newly-designated SC to submit a letter to the CAISO accepting the designation; and (III) informing Buyer and the Third-Party SC (if applicable) of the last date on which Buyer or the Third-Party SC (as applicable) will be Seller's SC.

(B) Buyer shall submit, or if applicable cause the Third-Party SC to submit, a letter to the CAISO identifying the date on which Buyer (or Third-Party SC, as applicable) resigns as Seller's SC on the first to occur of either (I) thirty (30) days prior to the end of the Delivery Term or (II) the date of any early termination of this Agreement.

3.5 Standards of Care.

(a) General Operation. Seller shall comply with all applicable requirements of Law, the CAISO, NERC and WECC relating to the Project (including those related to construction, safety, ownership and/or operation of the Project). In the event Seller requires any data or information from Buyer in order to comply with any applicable requirements of Law, including the requirements of CAISO, NERC and WECC, relating to the Project (including those related to construction, safety, ownership and/or operation of the Project), then Seller shall request in writing such data from Buyer no less than forty-five (45) calendar days prior to Seller's requested date of Buyer's response; provided that if Seller has less than forty-five (45) calendar days prior notice of the need for such data, Seller shall request in writing such data from Buyer as soon as reasonably practicable. Buyer shall make a good faith effort to provide such data and/or information within the timeframe specified in writing by Seller or as soon thereafter as reasonably practicable.

(b) CAISO and WECC Standards. Each Party shall perform all generation, scheduling and transmission services in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the CAISO, (ii) WECC scheduling practices and (iii) Good Utility Practices.

(c) Reliability Standard. Seller agrees to abide by (i) CPUC General Order No. 167, “Enforcement of Maintenance and Operation Standards for Electric Generating Facilities”, and (ii) all applicable requirements regarding interconnection of the Project, including the requirements of the interconnected Participating Transmission Owner.

3.6 Metering. All output from the Project must be delivered through a single CAISO revenue meter located on the high-voltage side of the Project’s final step-up transformer (which must be dedicated solely to the Project) nearest to the Interconnection Point that exclusively measures output for the Project described herein. All Delivered Energy purchased under this Agreement must be measured by the Project’s CAISO revenue meter to be eligible for payment under this Agreement. Seller shall bear all costs relating to all metering equipment installed to accommodate the Project. In addition, Seller hereby agrees to provide all meter data to Buyer in a form acceptable to Buyer, and consents to Buyer obtaining from the CAISO the CAISO meter data applicable to the Project and all inspection, testing and calibration data and reports. Seller shall grant Buyer the right 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 Project site. If the CAISO makes any adjustment to any CAISO meter data for a given time period, Seller agrees that it shall submit revised monthly invoices, pursuant to Section 6.2, covering the entire applicable time period in order to conform fully such adjustments to the meter data. Seller shall submit any such revised invoice no later than thirty (30) days from the date on which the CAISO provides to Seller such binding adjustment to the meter data.

3.7 Outage Notification.

(a) CAISO Approval of Outage(s). Buyer, acting through its Third-Party SC, is responsible for securing CAISO approvals for Project outages, including securing changes in its outage schedules when CAISO disapproves Buyer’s schedules or cancels previously approved outages and for entering Project outages in the Scheduling and Logging system for the CAISO (“SLIC”) or successor system. Through its Third-Party SC, Buyer shall put forth commercially reasonable efforts to secure and communicate CAISO approvals for Project outages in a timely manner to Seller.

(b) Planned Outages. During the Delivery Term, Seller shall notify Buyer and the Third-Party SC of its proposed Planned Outage schedule for the Project for the following calendar year by complying with Section 3.4(b)(iii)(A), (“Annual Forecast of Available Capacity”) and Section 3.4(b)(iii)(B), (Monthly Forecast of Available Capacity”) and implementing the notification procedures set forth in Appendix III no later than July 1st of each year during the Delivery Term. Seller shall also notify Buyer and the Third-Party SC of the proposed Planned Outage schedule for the Project by the earlier of ninety (90) days before the beginning of each month or forty-five (45) days before Buyer’s monthly Resource Adequacy capacity showing must be completed in accordance with the CAISO Tariff or decision of the CPUC. The Planned Outage schedule is subject to Buyer’s approval, which approval may not be unreasonably withheld or conditioned. Seller shall also confirm or provide updates to Buyer and the Third-Party SC regarding the Planned Outage by the earlier of fourteen (14) days prior to each Planned Outage or two (2) Business Days prior to the CAISO deadline for submitting Planned Outages. Seller shall not conduct Planned Outages during the months of January, May through September, and December. During all other months, Seller shall not schedule Planned Outages without the prior written consent of Buyer, which consent may not be unreasonably withheld or conditioned. Seller shall contact Buyer and the Third-Party SC with any requested changes to the Planned Outage schedule if Seller

believes the Project must be shut down to conduct maintenance that cannot be delayed until the next scheduled Planned Outage consistent with Good Utility Practices. Seller shall not change its Planned Outage schedule without Buyer's approval, not to be unreasonably withheld or conditioned. Subject to Section 3.7(a), after any Planned Outage has been scheduled, at any time up to the commencement of work for the Planned Outage, Buyer may direct that Seller change its outage schedule as ordered by CAISO. For non-CAISO ordered changes to a Planned Outage schedule requested by Buyer, Seller shall notify Buyer of any incremental costs associated with such schedule change and an alternative schedule change, if any, that would entail lower incremental costs. If Buyer agrees to pay the incremental costs, Seller shall use commercially reasonable efforts to accommodate Buyer's request.

(c) Forced Outages. Seller shall notify Buyer and the Third-Party SC of a Forced Outage as promptly as possible, but no later than ten (10) minutes after the commencement of the Forced Outage and in accordance with the notification procedures set forth in Appendix III. Buyer shall put forth commercially reasonable efforts to submit such outages to CAISO.

(d) Prolonged Outages. Seller shall notify Buyer and the Third-Party SC of a Prolonged Outage as soon as practicable in accordance with the notification provisions in Appendix III. Seller shall notify Buyer in writing when the Project is again capable of meeting its Contract Quantity on a *pro rata* basis also in accordance with the notification provisions in Appendix III.

(e) Force Majeure. Within two (2) Business Days of commencement of an event of Force Majeure, the non-performing Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of the commencement of an event of Force Majeure the non-performing Party shall provide the other Party with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim. Failure to provide timely Notice constitutes a waiver of a Force Majeure claim. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure. Buyer shall not be required to make any payments for any Products that Seller fails to deliver or provide as a result of Force Majeure during the term of a Force Majeure.

(f) Communications with CAISO. Buyer, through its Third-Party SC, shall be responsible for all outage coordination communications with CAISO outage coordination personnel and CAISO operations management, including submission to CAISO of updates of outage plans, submission of clearance requests, and all other outage-related communications.

(g) Changes to Operating Procedures. Notwithstanding any language to the contrary contained in Sections 3.4, 3.6, 3.7, 3.8, or 10.13, or Appendix III, and consistent with Section 3.5, Seller understands and acknowledges that the specified access to data and installation and maintenance of weather stations, transmission and scheduling mechanisms, metering requirements, Outage Notification Procedures and scheduling, forecast, bidding, notification and operating procedures described in the above-referenced sections are subject to change. If such changes are provided by (i) Notice from Buyer, then Seller shall implement any such changes as reasonably deemed necessary by Buyer; provided that such change does not result in an increased cost of performance to Seller hereunder other than *de minimis* amounts, or (ii) Law, then the Parties shall implement such changes as necessary for Seller and Buyer to perform their respective rights and obligations in accordance with the Law.

3.8 Operations Logs and Access Rights.

(a) Operations Logs. Seller shall maintain a complete and accurate log of all material operations and maintenance information on a daily basis. Such log shall include information on power production, fuel consumption, efficiency, availability, maintenance performed, outages, results of

inspections, manufacturer recommended services, replacements, electrical characteristics of the generators, control settings or adjustments of equipment and protective devices. Seller shall provide this information electronically to Buyer within thirty (30) days of Buyer's request.

(b) Access Rights. Buyer, its authorized agents, employees and inspectors may, on reasonable advance notice (which no case shall be less than three (3) Business Days) visit the Project during normal business hours for purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Buyer by Law, or its tariff schedules, PG&E Interconnection Handbook, Electric Rule 21, and rules on file with the CPUC. In connection with the foregoing, Buyer, its authorized agents, employees and inspectors must (i) at all times adhere to all safety and security procedures as may be required by Seller; (ii) not interfere with the operation of the Project; and (iii) unless waived in writing by Seller, be escorted by a representative of Seller. Buyer shall make reasonable efforts to coordinate its emergency activities with the Safety and Security Departments, if any, of the Project operator. Seller shall keep Buyer advised of current procedures for contacting the Project operator's Safety and Security Departments.

ARTICLE FOUR: COMPENSATION; MONTHLY PAYMENTS

4.1 Price.

(a) Contract Price. The Contract Price for each MWh of Product as measured by Delivered Energy in each Delivery Period is set forth in Section C of the Cover Sheet.

(b) Applicability of Full Capacity Deliverability Status to Contract Price. This Section 4.1(b) only applies to Sellers that elected to be FCDS Sellers in the Cover Sheet. If Seller has not achieved FCDS on or prior to the expected full capacity delivery date of _____, the Contract Price shall be reduced by \$4.00/MWh between the period beginning on such date until the first day of the calendar month immediately following the date that is forty-five (45) calendar days from the Effective FCDS Date.

(c) Surplus Delivered Energy Contract Price. The Surplus Delivered Energy Contract Price for each MWh of Product as measured by Surplus Delivered Energy in each Delivery Period is set forth in Section C of the Cover Sheet.

4.2 Monthly Payment. Except as otherwise provided in this Article 4, for each Delivery Month, Buyer shall pay Seller, or cause to be paid to Seller, for all Delivered Energy, Deemed Delivered Energy, and Surplus Delivered Energy ("Monthly Payment") in an amount equal to (A) the Contract Price multiplied by (B) the sum of (i) for each hour in the month, the Delivered Energy (exclusive of Surplus Delivered Energy) during the hour plus (ii) for each hour in the month, the amount of Deemed Delivered Energy during the hour and (A) the Surplus Delivered Energy Contract Price multiplied by (B) the Surplus Delivered Energy during the hour:

Monthly Payment = {sum over all hours} [Contract Price \$ × (Delivered Energy MWh_{hour} + Deemed Delivered Energy MWh_{hour}) + Surplus Delivered Energy Contract Price \$ × Surplus Delivered Energy MWh_{hour}]

For the avoidance of doubt, Excess Energy shall be compensated as set forth in Section 4.4 and shall not be included in the determination of payment set forth above; and “Delivered Energy” as used in the formula above excludes Surplus Delivered Energy, for which Seller will receive the Surplus Delivered Energy Contract Price equal to the sum of the Energy Price as calculated below and the Green Attribute Price as set forth in Section C of the Cover Sheet.

The Energy Price for each Delivery Month will be calculated as the weighted average CAISO price for Surplus Delivered Energy defined by summing for all Settlement Intervals:

(1) If the day-ahead forecast of Available Capacity is less than the Contract Capacity, the Real-Time Price multiplied by the Surplus Delivered Energy

(2) If the day-ahead forecast of Available Capacity is greater than the Contract Capacity and there is Surplus Delivered Energy for the Settlement Interval, Seller will receive the DA Price multiplied by the difference of (a) the day-ahead forecast of Available Capacity and (b) the Contract Capacity; plus the Real-Time Price multiplied by the difference between (a) the sum of the Delivered Energy and Surplus Delivered Energy and (b) the day-ahead forecast of Available Capacity

then dividing by:

the total Surplus Delivered Energy for the applicable Delivery Month.

4.3 Capacity Factor. The Capacity Factor shall be calculated and defined as the percentage amount resulting from Delivered Energy plus Deemed Delivered Energy, if any, per Contract Year divided by the product resulting from multiplying the Contract Capacity times the number of hours in the applicable Contract Year minus Seller Excuse Hours (“Capacity Factor”):

Capacity Factor = (Delivered Energy + Deemed Delivered Energy) / (Contract Capacity × (Hours in Contract Year minus Seller Excuse Hours)).

4.4 Excess Delivered and Deemed Delivered Energy.

(a) Excess Energy Price. If, at any point in any Contract Year, the amount of Delivered Energy (exclusive of Surplus Delivered Energy) plus the amount of Deemed Delivered Energy exceeds one hundred percent (100%) of the annual Contract Quantity amount, then:

(i) each MWh of additional Delivered Energy during such Contract Year shall be deemed “Excess Delivered Energy” and each MWh of additional Deemed Delivered Energy during such Contract Year shall be deemed “Excess Deemed Delivered Energy” (Excess Delivered Energy and Excess Deemed Delivered Energy, cumulatively, “Excess Energy”); and

(ii) for the remainder of such Contract Year:

(A) for every MWh of Excess Delivered Energy, the price paid to Seller shall be the hourly DA Price at the Delivery Point (the “Excess Delivered Energy Price”); and

(B) for every MWh of Excess Deemed Delivered Energy the price paid to Seller shall be the hourly DA Price at the Delivery Point (the “Excess Deemed Delivered Energy Price”).

Excess Delivered Energy Price_{hour} = (DA Price_{hour})

Excess Deemed Delivered Energy Price_{hour} = (DA Price_{hour})

For the avoidance of doubt, Excess Energy shall not include any Surplus Delivered Energy.

(b) Monthly Payment for Excess Energy. Buyer shall pay Seller for Excess Energy in each hour (“Monthly Payment for Excess Energy”) the amount resulting from (i) multiplying the Excess Delivered Energy Price applicable to that hour times the Excess Delivered Energy for such hour plus (ii) the Excess Deemed Delivered Energy Price applicable to that hour times the amount of Excess Deemed Delivered Energy for such hour:

Monthly Payment for Excess Energy = {sum over all hours} (Excess Delivered Energy Price_{hour} × Excess Delivered Energy MWh_{hour}) + (Excess Deemed Delivered Energy Price_{hour} × Excess Deemed Delivered Energy MWh_{hour})

4.5 CAISO Charges.

(a) Seller shall assume all liability and reimburse Buyer for any and all CAISO Penalties incurred by Buyer because of Seller’s failure to perform any covenant or obligation set forth in this Agreement. Buyer shall assume all liability and reimburse Seller for any and all CAISO Penalties incurred by Seller as a result of Buyer’s actions, including those resulting in a Buyer Curtailment Period.

(b) Buyer, acting through its Third-Party SC, shall (i) be responsible for all costs and charges assessed by the CAISO with respect to scheduling and Imbalance Energy, subject to Sections 4.5(a) and (c) and (ii) retain the credits and other payments received as a result of Energy from the Project delivered to the Integrated Forward Market or Real-Time Market, including revenues associated with CAISO dispatches. Seller and Buyer shall cooperate to minimize such charges and Uninstructed Imbalance Energy to the extent possible. Seller shall use commercially reasonable efforts to monitor imbalances and shall promptly notify Buyer as soon as possible after it becomes aware of any material imbalance that is occurring or has occurred. Such notification shall not alter Seller’s and Buyer’s respective responsibilities for payment for Imbalance Energy and costs and CAISO Penalties under this Agreement. Throughout the Delivery Term, Buyer shall be entitled to all Integrated Forward Market Load Uplift Obligation credits (as defined or required for MRTU under the CAISO Tariff) associated with the Energy generated from the Project.

(c) Forecasting Penalties.

(i) Subject to Force Majeure, in the event Seller does not in a given hour either (A) provide the access and information required in Section 3.1(l)(i); (B) comply with the installation, maintenance and repair requirements of Section 3.1(l)(iv); or (C) provide the forecast of Available Capacity required in Section 3.4(b)(iii), and the sum of Energy Deviations for each of the Settlement Intervals in the given hour exceeded the Performance Tolerance Band defined below, then Seller will be responsible for Forecasting Penalties as set forth below.

(ii) The Performance Tolerance Band is three percent (3%) multiplied by Contract Capacity multiplied by one (1) hour.

(iii) Forecasting Penalties. The Forecasting Penalty shall be equal to the greater of (A) one hundred fifty percent (150%) of the Contract Price or (B) the absolute value of the Real-Time Price, in each case for each MWh of Energy Deviation outside the Performance Tolerance Band, or any portion thereof, in every hour for which Seller fails to meet the requirements in Section 4.5(c)(i). Settlement of Forecasting Penalties shall occur as set forth in Section 6.1 of this Agreement.

4.6 Additional Compensation.

(a) To the extent not otherwise provided for in this Agreement, in the event that Seller is compensated by a third party for any Products produced by the Project, including compensation for Resource Adequacy or Green Attributes, Seller shall remit all such compensation directly to Buyer; provided that for avoidance of doubt, nothing herein precludes Seller from retaining credits related to Electric System Upgrades contemplated in Section 3.1(h)(i).

(b) To the extent that during the Delivery Term Seller (at a nominal or no cost to Seller) is exempt from, reimbursed for or receives any refunds, credits or benefits from CAISO for congestion charges or Congestion Revenue Rights (as defined in the CAISO Tariff), whether due to any adjustments in Congestion Revenue Rights or any Locational Marginal Price (as defined in the CAISO Tariff), market adjustments, invoice adjustments, or any other hedging instruments associated with the Product (collectively, any such refunds, credits or benefits are referred to as “Reductions”), then, at Buyer’s option, either (i) Seller shall transfer any such Reductions and their related rights to Buyer less any costs incurred by Seller in connection with such Reductions; or (ii) Buyer shall reduce payments due to Seller under this Agreement in amounts equal to the Reductions less any costs incurred by Seller in connection with such Reduction and Seller shall retain the Reductions.

(c) Reliability Must-Run Contract and Capacity Procurement Mechanism Obligations. Seller with an existing RMR Contract will assign a proportion of the proceeds of any RMR Contract affecting the Project to Buyer based on the ratio of the Contract Capacity and the RMR Contract award, except as provided below. Buyer shall retain all revenues from said RMR Contract, except for Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch (“Retained Revenues”), as each is defined in the applicable RMR Contract, all of which shall be remitted to Seller. If the CAISO and/or Seller wish to negotiate or renegotiate an RMR Contract or contract related to the Capacity Procurement Mechanism (as defined in the CAISO Tariff) or similar capacity commitment under the CAISO Tariff that pertains to Unit(s) under this Agreement as of the Execution Date of this Agreement, Seller shall include Buyer in any such negotiations. If Seller enters into any new RMR Contract or contract related to the Capacity Procurement Mechanism or similar capacity commitment affecting the Project, Seller shall assign the revenues from such contract, except for Retained Revenues, Monthly Surcharge Payments, the CAISO Repair Share, and Motoring Charges for Ancillary Services Dispatch to Buyer.

ARTICLE FIVE: EVENTS OF DEFAULT; PERFORMANCE REQUIREMENT; REMEDIES

5.1 Events of Default. An “Event of Default” shall mean,

(a) with respect to a Party that is subject to the Event of Default, the occurrence of any of the following:

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

(ii) any representation or warranty made by such Party herein (A) is false or misleading in any material respect when made or (B) with respect to Section 10.1(b), becomes false or misleading in any material respect during the Delivery Term; provided that, if a change in Law occurs after the Execution Date that causes the representation and warranty made by Seller in Section 10.1(b) to be materially false or misleading, such breach of the representation or warranty in Section 10.1(b) shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change

in Law during the Delivery Term in order to make the representation and warranty no longer false or misleading;

(iii) the failure to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default), if such failure is not remedied within forty-five (45) days after Notice from the Non-Defaulting Party, which time period shall be extended if the Defaulting Party is making diligent efforts to cure such failure to perform, provided that such extended period shall not exceed forty-five (45) additional days;

(iv) such Party becomes Bankrupt; or

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

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

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

(ii) failure by Seller to satisfy the creditworthiness/collateral requirements agreed to pursuant to Sections 8.2, 8.3, or 8.4 of this Agreement and such failure is not cured within any applicable cure period;

(iii) if Seller has provided and Buyer has accepted, a Guaranty to satisfy the collateral obligations under this Agreement, then with respect to such guarantor or the Guaranty, if Seller had not replaced the Guaranty in accordance with Section 8.6 within five (5) Business Days following Buyer's Notice of a request for replacement;

(iv) failure by Seller to achieve the Guaranteed Energy Production requirement as set forth in Section 3.1(e)(ii) of this Agreement as follows:

(A) after the one (1) year GEP Cure period Seller has failed to cure the GEP Failure and has failed to pay GEP Damages in the time period set forth in Section 3.1(e)(ii); or

(B) if, after any Performance Measurement Period the cumulative GEP Shortfall for all preceding Performance Measurement Periods occurring during the Delivery Term equals or exceeds two times the Contract Quantity (as may be adjusted pursuant to Section 3.1(e)(ii)); provided, however, that if all or a portion of the GEP Shortfall during an applicable Performance Measurement Period is principally caused by a non-Force Majeure major equipment malfunction, breakdown, or failure resulting in a reduction of Energy production of the Project by at least fifty percent (50%) of the Contract Quantity in one or both years of the Performance Measurement Period, as applicable, and such malfunction, breakdown, or failure was not caused by Seller and could not have been avoided through the exercise of Good Utility Practice, such failure shall be excluded from the calculation of the cumulative GEP Shortfall for purposes of this subsection;

(v) Seller has not obtained the deliverability type selected in Section A (FCDS or PCDS) of the Cover Sheet by the Deliverability Finding Deadline; or

(vi) Seller has not obtained the Partial Capacity Deliverability Status Amount identified in Section A of the Cover Sheet by the Deliverability Finding Deadline.

(vii) Seller's failure to operate the Project in compliance with all applicable Laws as determined by the Governmental Authority charged with implementation and/or enforcement of the specific Law at issue.

5.2 Remedies. If an Event of Default with respect to a Defaulting Party shall have occurred and is continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) 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") on which to (i) collect the Damage Payment (in the case of any Event of Default of Seller that arose at any time prior to the commencement of the Delivery Term), or (ii) collect the Termination Payment (in the case of any Event of Default of Seller that arose during the Delivery Term or in the case of any Event of Default of Buyer at any time);

(b) accelerate all amounts owing between the Parties, terminate the Transaction and end the Delivery Term effective as of the Early Termination Date;

(c) collect the Termination Payment;

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

(e) suspend performance;

(f) exercise its rights pursuant to Section 8.2 to draw upon and retain Performance Assurance;

(g) demand payment for damages due to Buyer's unexcused failure to take delivery or pay for Product; and

(h) exercise any other rights or remedies available at Law or in equity (including the collection of monetary damages) to the extent otherwise permitted under this Agreement.

Notwithstanding anything to the contrary contained herein, Seller may exercise the rights or remedies set forth in Sections 5.2(e), (g), and (h) without terminating this Agreement.

5.3 Calculation of Termination Payment.

(a) In the case where the Non-Defaulting Party is entitled to collect the Termination Payment pursuant to Section 5.2(a), 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 dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of

available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes shall be obtained in a commercially reasonable manner and shall be: (i) for a like amount, (ii) of the same Product, (iii) at the same Delivery Point, and (iv) for the remaining Delivery Term. Regardless of the method chosen by the Non-Defaulting Party to calculate the Settlement Amount, the Settlement Amount must still be reasonable under the circumstances.

(b) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of the Terminated Transaction, the Settlement Amount shall be zero.

(c) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount.

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

5.5 Disputes With Respect to Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article Twelve.

5.6 Rights And Remedies Are Cumulative. The rights and remedies of a Party pursuant to this Article Five shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

5.7 Duty to Mitigate. Buyer and Seller shall each have a duty to mitigate damages pursuant to this Agreement, and each shall use reasonable efforts to minimize any damages it may incur as a result of the other Party's non-performance of this Agreement, including with respect to termination of this Agreement.

ARTICLE SIX: PAYMENT

6.1 Billing and Payment; Remedies. On or about the tenth (10th) day of each month beginning with the second month of the first Contract Year, and every month thereafter, and continuing through and including the first month following the end of the Delivery Term, Seller shall provide to Buyer: (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the generation of Product by the Project for any CAISO settlement time interval during the preceding months; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy or amount of any Reductions; and (c) an invoice, in the format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of Article Four. Seller shall continue to provide to Buyer an invoice of CAISO charges, net any sums Buyer owes Seller under this Agreement, on or about the tenth (10th) day of each month until the date of the Final True-Up. Buyer shall pay the undisputed amount of such invoices less

the amount of any RA Deficiency Amount and the amount of any Forecasting Penalties, as applicable on or before the later of the twenty-fifth (25th) day of each month and fifteen (15) days after receipt of the invoice. If either the invoice date or payment date is not a Business Day, then such invoice or payment shall be provided on the next following Business Day. Each Party will make payments by electronic funds transfer, or by other mutually agreeable method(s), to the account designated by the other Party. Any undisputed amounts not paid by the due date will be deemed delinquent and will accrue interest at the Interest Rate, such interest to be calculated from and including the due date to but excluding the date the delinquent amount is paid in full. Invoices may be sent by facsimile or e-mail.

6.2 Disputes and Adjustments of Invoices. 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, with Notice of the objection given to the other Party. 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. Subject to Section 3.6, in the event adjustments to payments are required as a result of inaccurate meter(s), Buyer shall use corrected measurements to recompute the amount due from Buyer to Seller for the Product delivered under the Transaction during the period of inaccuracy. The Parties agree to use good faith efforts to resolve the dispute or identify the adjustment as soon as possible. Upon resolution of the dispute or calculation of the adjustment, any required payment shall be made within fifteen (15) days of such resolution along with interest accrued at the Interest Rate from and including the due date, but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment, but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 6.2 within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made; provided that, such waiver shall not apply to any adjustment or dispute related to Seller's performance under any applicable RMR Contract; and provided further that, any disputes with respect to a statement of CAISO Revenues is waived unless Seller notifies Buyer in accordance with this Section 6.2 within one (1) month after the last statement of CAISO Revenues is provided. If an invoice is not rendered within twelve (12) months after the close of the month during which performance under the Transaction occurred, the right to payment for such performance is waived.

ARTICLE SEVEN: LIMITATIONS

7.1 Limitation of Remedies, Liability and Damages. EXCEPT AS MAY OTHERWISE BE EXPRESSLY PROVIDED IN THIS AGREEMENT, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. LIABILITY SHALL BE LIMITED TO DIRECT ACTUAL DAMAGES ONLY, SUCH DIRECT ACTUAL DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR OTHER BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE. UNLESS EXPRESSLY HEREIN PROVIDED, AND SUBJECT TO THE PROVISIONS OF SECTION 10.4 ("INDEMNITIES"), 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 CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

ARTICLE EIGHT: CREDIT AND COLLATERAL REQUIREMENTS

8.1 Seller Financial Information. If requested by Buyer, Seller shall deliver to Buyer (a) within one hundred twenty (120) days following the end of each of Seller's fiscal years, a copy of Seller's or Seller's guarantor's, if applicable, annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (b) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of such Party's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases the statements shall be for the most recent accounting period and shall be prepared in accordance with Generally Accepted Accounting Principles; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not be an Event of Default so long as such Party diligently pursues the preparation, certification and delivery of the statements.

8.2 Grant of Security Interest/Remedies. To secure its obligations under this Agreement and to the extent Seller delivers the Pre-Delivery Term Security, Delivery Term Security, or Term Security, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) days of the delivery of the Pre-Delivery Term Security, Delivery Term Security, or Term Security, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following: (a) exercise any of the rights and remedies of a secured party with respect to all Pre-Delivery Term Security, Delivery Term Security, or Term Security, as applicable, including any such rights and remedies under the Law then in effect; (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent; (c) draw on any outstanding Letter of Credit issued for its benefit; and (d) liquidate all Pre-Delivery Term Security, Delivery Term Security, or Term 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 the Agreement (Seller remaining liable for any amounts owing to Buyer after such application), subject to the Buyer's obligation to return any surplus proceeds remaining after such obligations are satisfied in full.

8.3 Performance Assurance.

(a) Security. Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement, which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:

(i) Pre-Delivery Term Security pursuant to this Section 8.3(a)(i) in the amount of \$90/kW multiplied by the capacity of the Project as reflected in Section B of the Cover Sheet, within five (5) Business Days following the Effective Date of this Agreement until Seller posts Delivery Term Security pursuant to Section 8.3(a)(ii) below with Buyer.

(ii) Delivery Term Security pursuant to this Section 8.3(a)(ii) in the amount equal to the Damage Payment from the date required pursuant to Section 3.1(c)(i) as a condition precedent to the Initial Energy Delivery Date until the end of the Term; provided that, with Buyer's consent, Seller may elect to apply the Pre-Delivery Term Security posted pursuant to Section 8.3(a)(i) toward the Delivery Term Security posted pursuant to this Section 8.3(a)(ii).

The amount of Performance Assurance required under this Agreement shall not be deemed a limitation of damages. Except as specifically provided for in this Section 8.3(a), Buyer acknowledges that Seller shall not be required to post any additional security.

(b) Use of Pre-Delivery Term Security or Term Security. Buyer shall be entitled to draw upon the Pre-Delivery Term Security or Term Security for any damages arising upon Buyer's declaration of an Early Termination Date.

(c) Termination of Pre-Delivery Term Security. If after the Initial Energy Delivery Date no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Pre-Delivery Term Security, and Buyer shall return to Seller the Pre-Delivery Term Security, less the amounts drawn in accordance with Section 8.3(b). The Pre-Delivery Term Security (or portion thereof) due to Seller shall be returned to Seller within five (5) Business Days of Seller's provision of the Delivery Term Security, as applicable unless, with Buyer's consent, Seller elects to apply the Pre-Delivery Term Security posted pursuant to Section 8.3(a)(i) toward the Delivery Term Security posted pursuant to Section 8.3(a)(ii), as applicable.

(d) Payment and Transfer of Interest. Buyer shall pay interest on cash held as Pre-Delivery Term Security, Delivery Term Security or Term Security, as applicable, at the Interest Rate; provided that, the interest on Pre-Delivery Term Security shall be retained by Buyer until Seller posts the Delivery Term Security pursuant to Section 8.3(a)(ii). Upon Seller's posting of the Delivery Term Security, all accrued interest on the unused portion of Pre-Delivery Term Security shall be transferred from Buyer to Seller in the form of cash by wire transfer to the bank account specified under "Wire Transfer" in the Cover Sheet (Notices List). After Seller posts the Delivery Term Security or Term Security, Buyer shall transfer (as described in the preceding sentence) on or before each Interest Payment Date the Interest Amount due to Seller for such Delivery Term Security or Term Security.

(e) Return of Performance Assurance. Buyer shall return the unused portion of Pre-Delivery Term Security, Delivery Term Security or Term Security, as applicable, including the payment of any interest due thereon, pursuant to Section 8.3(d) above, to Seller promptly after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 8.2, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including payments pursuant to Section 4.5 ("CAISO Charges"), Termination Payment, indemnification

payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

8.4 Letter of Credit. Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(a) If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Eight, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller shall cure such occurrence by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's Notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (A) or (B) below is considered the "Cure"):

(A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's Notice to Seller in Section 8.5(b) above; or

(B) posting cash.

If Seller fails to Cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Article Eight.

(c) Notwithstanding the foregoing in Section 8.4(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "Watch"), then Buyer may make a demand to Seller by Notice ("LC Notice") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("Substitute Letter of Credit"). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit ("Substitute Bank Period").

(i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period ("Ineligible LC Bank Notice Period") that either:

(A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank ("Ineligible LC Bank") and Buyer will not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or

(B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer's Notice to Cure pursuant to Section 8.5(b) and, if Seller fails to Cure, then the last paragraph in Section 8.4(b) shall apply to Seller.

(ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above, then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

(d) In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

8.5 Guaranty. If at any time Seller's guarantor or Guaranty is no longer acceptable to Buyer in its sole discretion, Seller shall replace the Guaranty with Performance Assurance as provided herein. Within five (5) Business Days following Buyer's written request for replacement of the Guaranty, Seller shall deliver to Buyer replacement Performance Assurance in the form of a replacement Guaranty, Letter of Credit or cash in an amount equal to the applicable amount of the Guaranty issued pursuant to this Agreement. In the event Seller shall fail to provide replacement Performance Assurance to Buyer as required in the preceding sentence, then Buyer may declare an Event of Default pursuant to Section 5.1(b)(iii) by providing Notice thereof to Seller in accordance with Section 5.2.

ARTICLE NINE: GOVERNMENTAL CHARGES

9.1 Cooperation. Each Party shall use reasonable efforts to implement the provisions of and to administer this Agreement in accordance with the intent of the Parties to minimize all taxes, so long as neither Party is materially adversely affected by such efforts.

9.2 Governmental Charges. Seller shall pay or cause to be paid all taxes imposed by any Governmental Authority ("Governmental Charges") on or with respect to the Product or the Transaction arising at the Delivery Point, including ad valorem taxes and other taxes attributable to the Project, land, land rights or interests in land for the Project. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Product or the Transaction from the Delivery Point. In the event Seller is required by Law or regulation to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Law or regulation to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller with respect to payments under the Agreement; if Buyer elects not to deduct such amounts from Seller's payments, Seller shall promptly reimburse Buyer for such amounts upon request. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under the Law. A Party that is exempt at any time and for any reason from one or more Governmental Charges bears the risk that such exemption shall be lost or the benefit of such exemption reduced; and thus, in the event a Party's exemption is lost or reduced, each Party's responsibility with respect to such Governmental Charge shall be in accordance with the first four sentences of this Section.

ARTICLE TEN: MISCELLANEOUS

10.1 Representations and Warranties.

(a) General Representations and Warranties. On the Execution Date, each Party represents and warrants to the other Party that:

(i) it is duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it has all regulatory authorizations necessary for it to perform its obligations under this Agreement;

(iii) it is a “forward contract merchant” within the meaning of the United States Bankruptcy Code (as in effect as of the Execution Date of this Agreement);

(iv) the execution, delivery and performance of this Agreement is within its powers, have been duly authorized by all necessary action and do not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Laws applicable to it;

(v) this Agreement and each other document executed and delivered in accordance with this Agreement constitutes a legally valid and binding obligation enforceable against it in accordance with its terms, subject to any Equitable Defenses;

(vi) it is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt;

(vii) there is not pending or, to its knowledge, threatened against it or any of its Affiliates, any legal proceedings that could materially adversely affect its ability to perform its obligations under this Agreement;

(viii) no Event of Default with respect to it has occurred and is continuing and no such event or circumstance would occur as a result of its entering into or performing its obligations under this Agreement;

(ix) it is acting for its own account, has made its own independent decision to enter into this Agreement and as to whether this Agreement is appropriate or proper for it based upon its own judgment, is not relying upon the advice or recommendations of the other Party in so doing, and is capable of assessing the merits of and understanding, and understands and accepts, the terms, conditions and risks of this Agreement; and

(x) it has entered into this Agreement in connection with the conduct of its business and it has the capacity or the ability to make or take delivery of the Product as provided in this Agreement.

(b) Seller Representations and Warranties.

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

(ii) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be

modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(iii) Seller, and, if applicable, its successors, represents and warrants that beginning with the Execution Date and throughout the Delivery Term of this Agreement, the Project is operated in compliance with all applicable Laws as determined by the Governmental Authority charged with implementation and/or enforcement of the specific Law at issue.

10.2 Covenants.

(a) General Covenants. Each Party covenants that throughout the Delivery Term:

(i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

(ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement and the Transaction; and

(iii) it shall perform its obligations under this Agreement and the Transaction in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it.

(b) Seller Covenants.

(i) Seller covenants throughout the Delivery Term that it will take no action or permit any other person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Project in order to satisfy its Resource Adequacy Requirements; and

(ii) Seller covenants that it shall comply with all CAISO Tariff requirements and/or Participating TO tariff requirements, as applicable, that are applicable to an Interconnection Customer (as defined in the CAISO Tariff or Participating TO's tariff, as applicable) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the RA Start Date.

(iii) Seller covenants that the Initial Energy Delivery Date shall occur no later than the Expected Initial Energy Delivery Date specified in Section B of the Cover Sheet.

10.3 Title and Risk of Loss. Title to and risk of loss related to the Product shall transfer from Seller to Buyer at the Delivery Point. Seller warrants that it will deliver to Buyer the Product free and clear of all liens, security interests, Claims and encumbrances or any interest therein or thereto by any person or entity arising prior to or at the Delivery Point.

10.4 Indemnities.

(a) Indemnity by Seller. Seller shall release, indemnify and hold harmless Buyer or Buyers' respective directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with (i) the Product delivered under this Agreement to the Delivery Point, or (ii) Seller's

operation and/or maintenance of the Project, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Buyer, its Affiliates, or Buyers' and Affiliates' respective agents, employees, directors, or officers.

(b) Indemnity by Buyer. Buyer shall release, indemnify and hold harmless Seller, its directors, officers, agents, and representatives against and from any and all loss, Claims, actions or suits, including costs and attorney's fees resulting from, or arising out of or in any way connected with the Product delivered by Seller under this Agreement after the Delivery Point, including any loss, Claim, action or suit, for or on account of injury to, bodily or otherwise, or death of persons, or for damage to or destruction of property belonging to Buyer, Seller, or others, excepting only such loss, Claim, action or suit as may be caused solely by the willful misconduct or gross negligence of Seller, its Affiliates, or Seller's and Affiliates' respective agents, employees, directors or officers.

(c) No Dedication. Without limitation of each Party's obligations under Sections 10.5(a) and 10.5(b) herein, nothing in this Agreement shall be construed to create any duty to, any standard of care with reference to, or any liability to any person or entity not a Party to this Agreement. No undertaking by one Party to the other under any provision of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or the public, nor affect the status of Buyer as an independent public utility corporation or Seller as an independent individual or entity.

10.5 Assignment.

(a) General Assignment. Except as provided in Sections 10.5 (b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Notwithstanding the foregoing and except as provided in Section 10.5(b), consent shall not be required for an assignment of this Agreement where the assigning Party remains subject to liability or obligation under this Agreement, provided that (i) the assignee assumes the assigning Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, and (iii) the assigning Party provides the other Party hereto with at least thirty (30) days' prior written notice of the assignment.

(b) Assignment to Financing Providers. Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Project with the prior written consent of the Buyer, which consent shall not be unreasonably withheld. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Consent to Assignment attached hereto as Appendix IV provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Appendix IV, including extension of any cure periods or additional remedies for financing providers, and (ii) Seller shall be responsible at Buyer's request for Buyer's reasonable costs associated with the review, negotiation, execution and delivery of documents in connection with such assignment, attorneys' fees.

(c) Notice of Change in Control. Except in connection with public market transactions of the equity interests or capital stock of Seller or Seller's Affiliates', Seller shall provide Buyer notice of any direct change of control of Seller (whether voluntary or by operation of Law).

(d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.5 is void.

10.6 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by Law, including without limitation the California Public Records Act (Government Code §§ 6250 et seq, "CPRA"), all documents, data (including operating data provided in connection with the scheduling of energy or otherwise pursuant to this Agreement), drawings, studies, projections, plans and other written information that relate to economic benefits to, or amounts payable by, any Party under this Agreement, and with respect to documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("Confidential Information"). The provisions of this Section 10.6 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Subject to the CPRA, either Party may, without violating this Section 10.6, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective, co-owners, investors, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries or Affiliates;

(ii) to governmental officials and parties involved in any proceeding in which a Party is seeking a Permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, order, ruling or other Requirement of Law, including oral questions, discovery requests, subpoenas, civil investigations or similar processes and laws or regulations requiring disclosure of financial information, information material to financial matters, and filing of financial reports.

(c) If a Party is requested or required, pursuant to any applicable Law, regulation, order, rule, or ruling, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by CPRA. Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA; *provided* that Seller shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 10.6(c) endeavor, in good faith, not to disclose any of Seller's "trade secrets" as consistent with the CPRA and (iii) support, to the extent in compliance with Buyer's rights and obligations under applicable laws, Seller in its efforts to obtain a protective order or other appropriate remedy with respect to the disclosure of operating data from the Project or any engineering drawings, project plans, technical specifications or other similar information regarding the Project.

(e) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement, and the rights, Liens and priorities of Buyer with respect to such credit support.

(f) If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify the other Buyer and Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the Indemnitees from and against all suits, claims, and causes of action brought against Buyer or any Indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any Indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any Indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all Indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all Indemnitees, as well as all damages or liability of any nature.

(g) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Section 7.1.

10.7 Audit. Each Party has the right, at its sole expense and during normal working hours, after reasonable Notice, to examine the records of the other Party to the extent reasonably necessary to verify the accuracy of any statement, charge or computation made pursuant to this Agreement including amounts of Delivered Energy. If any such examination reveals any inaccuracy in any statement, the

necessary adjustments in such statement and the payments thereof will be made promptly and shall bear interest calculated at the Interest Rate from the date the overpayment or underpayment was made until paid; provided, however, that no adjustment for any statement or payment will be made unless objection to the accuracy thereof was made prior to the lapse of twelve (12) months from the rendition thereof, and thereafter any objection shall be deemed waived.

10.8 Insurance. Throughout the Term, Seller shall, at its sole cost and expense, obtain and maintain the following insurance coverages and be responsible for its subcontractors, including Seller's EPC Contractors, maintaining sufficient limits of the appropriate insurance coverage. The obligations of the Seller in this Section 10.10 constitute material obligations of the Agreement.

(a) Workers' Compensation and Employers' Liability.

(i) Workers' Compensation insurance indicating compliance with any applicable labor codes, acts, Laws or statutes, state or federal, where Seller performs Work.

(ii) Employers' Liability insurance shall not be less than one million dollars (\$1,000,000.00) for injury or death occurring as a result of each accident.

(b) Commercial General Liability.

(i) Coverage shall be at least as broad as the Insurance Services Office Commercial General Liability Coverage "occurrence" form, with no alterations to the coverage form.

(ii) The limit shall not be less than three million dollars (\$3,000,000.00) each occurrence for bodily injury, property damage, personal injury and products/completed operations. Defense costs shall be provided as an additional benefit and not included within the limits of liability. Coverage limits may be satisfied using an umbrella or excess liability policy or an Owners Contractors Protective (OPC) policy. Limits shall be on a per project basis.

(iii) Coverage shall:

(A) by "Additional Insured" endorsement add as insureds RCEA, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller. In the event the Commercial General Liability policy includes a "blanket endorsement by contract," the following language added to the certificate of insurance will satisfy Buyer's requirement: "RCEA, its directors, officers, agents and employees with respect to liability arising out of the Work performed by or for the Seller has been endorsed by blanket endorsement;"

(B) be endorsed (blanket or otherwise) to specify that the Seller's insurance is primary and that any insurance or self-insurance maintained by RCEA shall not contribute with it; and

(C) include a severability of interest clause.

(c) Business Auto.

(i) Coverage shall be at least as broad as the Insurance Services Office Business Auto Coverage form covering Automobile Liability, code 1 "any auto".

(ii) The limit shall not be less than one million dollars (\$1,000,000.00) each accident for bodily injury and property damage.

(iii) If scope of Work involves hauling hazardous materials, coverage shall be endorsed in accordance with Section 30 of the Motor Carrier Act of 1980 (Category 2) and the CA 99 48 endorsement.

(d) Additional Insurance Requirements.

(i) Before commencing performance of the Work, Seller shall furnish Buyer with certificates of insurance and endorsements of all required insurance for Seller.

(ii) The documentation shall state that coverage shall not be cancelled except after thirty (30) days prior written Notice has been given to Buyer.

(iii) Certificates of insurance and endorsements shall be signed and submitted by a person authorized by that insurer to issue certificates of insurance and endorsements on its behalf, and shall be Noticed and delivered to Buyer's authorized representative.

(iv) Reviews of such insurance may be conducted by Buyer on an annual basis.

(v) Upon request, Seller shall furnish Buyer evidence of insurance for its subcontractors.

(e) Form And Content.

All policies or binders with respect to insurance maintained by Seller shall waive any right of subrogation of the insurers hereunder against Buyer, its officers, directors, employees, agents and representatives of each of them, and any right of the insurers to any setoff or counterclaim or any other deduction, whether by attachment or otherwise, in respect of any liability of any such person insured under such policy.

10.9 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.

10.10 General. Except to the extent provided for, no amendment or modification to this Agreement shall be enforceable unless reduced to writing and executed by both Parties. The Parties acknowledge and agree that this Agreement is a "forward contract" (within the meaning of the Bankruptcy Code, as in effect as of the Execution Date). This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement). Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default. The headings used herein are for convenience and reference purposes only. Facsimile or PDF transmission will be the same as delivery of an original document; provided that at the request of either Party, the other Party will confirm facsimile or PDF signatures by signing and delivering an original document; provided, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.12. This Agreement shall be binding on each Party's successors and permitted assigns.

10.11 Severability. If any provision in this Agreement is determined to be invalid, void or unenforceable by any court having jurisdiction, such determination shall not invalidate, void, or make unenforceable any other provision, agreement or covenant of this Agreement and the Parties shall use their best efforts to modify this Agreement to give effect to the original intention of the Parties.

10.12 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. Delivery of an executed counterpart of this Agreement by fax will be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile will also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement will not affect the validity or effectiveness of this Agreement.

10.13 Mobile Sierra. Notwithstanding any 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 the FERC pursuant to the 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, a non-Party, or the FERC acting *sua sponte* shall be the “public interest” standard of review set forth in *United States 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).

10.14. Public Announcements. Seller shall make no public announcement regarding any aspect of this Agreement or the role of Seller in regards to the development or operation of the Project without the prior written consent of Buyer, which consent shall not be unreasonably withheld. Any public announcement by Seller must comply with California Business and Professions Code § 17580.5 and with the *Guides for the Use of Environmental Marketing Claims*, published by the FTC, as it may be updated from time to time.

ARTICLE ELEVEN: TERMINATION EVENT

11.1 Force Majeure Termination Event.

(a) Force Majeure Failure. Buyer shall have the right, but not the obligation, to terminate this Agreement after the occurrence of any of the following: (each constituting a “Force Majeure Failure”):

(i) If during the Delivery Term:

(A) the Project fails to deliver at least forty percent (40%) of the Contract Quantity to the Delivery Point for a period of twelve (12) consecutive rolling months following a Force Majeure event that materially and adversely impacts the Project and Buyer has provided Notice to Seller of such failure; provided that, if Seller within forty-five (45) days of receipt of Notice from Buyer, presents Buyer with a plan for mitigation of the effect of the Force Majeure within a period not to exceed six (6) months from the above-mentioned Notice date, which plan is commercially reasonable and satisfactory to Buyer, as evidenced by Buyer’s written acknowledgement of such plan, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the mitigation period deemed necessary by Seller to repair the Project (which shall not exceed six (6) months); provided that Seller diligently pursues such mitigation plan throughout the mitigation period,

and after which time Buyer may terminate this Agreement unless the Project has been repaired, and the Seller has resumed and is satisfying all of its obligations under this Agreement; or

(B) the Project is destroyed or rendered inoperable by a Force Majeure event caused by a catastrophic natural disaster; provided that Seller shall have up to ninety (90) days following such Force Majeure event to obtain a report from an independent, third party engineer stating whether the Project is capable of being repaired or replaced no later than twenty-four (24) months from the date of the report and Seller shall provide Buyer with a copy of the engineer's report, at no cost to Buyer; provided further that if such engineer's report concludes that the Project is capable of being repaired or replaced within such twenty-four (24) month period and Seller undertakes and continues such repair or replacement with due diligence, then Buyer shall not have the right to terminate this Agreement pursuant to this Section 11.1(a) until the expiration of the period deemed necessary by the engineer's report (which shall not exceed twenty-four (24) months), after which time, Buyer may terminate this Agreement unless the Project has been repaired or replaced, as applicable, and the Seller has resumed and is satisfying all of its obligations under this Agreement.

(b) Termination and Right of First Offer.

(i) If Buyer exercises its termination right in connection with the Force Majeure Failure, then the Agreement shall terminate without further liability of either Party to the other, effective upon the date set forth in Buyer's Notice of termination, subject to each Party's satisfaction of all of the final payment and survival obligations set forth in Sections 2.5(a) and (b). The Parties agree that for a period of three (3) years from the date on which Buyer Notifies Seller of termination due to the Force Majeure Failure ("Exclusivity Period"), neither Seller, its successors and assigns, nor its Affiliates shall enter into an obligation or agreement to sell or otherwise transfer any Products from the Project to any third party, unless Seller first offers, in writing, to sell to Buyer such Products from the Project on the same terms and conditions as this Agreement, subject to permitted modifications identified in subpart (ii) below, (the "First Offer") and Buyer either accepts or rejects such First Offer in accordance with the provisions herein.

(ii) If Buyer accepts the First Offer, Buyer shall Notify Seller within thirty (30) days of receipt of the First Offer subject to Buyer's governing board approval ("Buyer's Notice of First Offer Acceptance"), and then the Parties shall have not more than ninety (90) days from the date of Buyer's Notice of First Offer Acceptance to enter into a new power purchase agreement, in substantially the same form as this Agreement, or amend this Agreement, if necessary; provided that the Contract Price may only be increased to reflect Seller's documented incremental costs in overcoming the Force Majeure event.

(iii) If Buyer rejects or fails to accept Seller's First Offer within thirty (30) days of receipt of such offer, Seller shall thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, any Products from the Project to any third party, so long as the material terms and conditions of such sale or transfer are not more favorable to the third party than those of the First Offer to Buyer. If, during the Exclusivity Period, Seller desires to enter into an obligation or agreement with a third party, Seller shall deliver to Buyer a certificate of an authorized officer of Seller (A) summarizing the material terms and conditions of such agreement and (B) certifying that the proposed agreement with the third party will not provide Seller with a lower rate of return than that offered in the First Offer to Buyer. If Seller is unable to deliver such a certificate to Buyer, then Seller may not sell or otherwise transfer, or enter into an agreement to sell or otherwise transfer, the Products from the Project without first offering to sell or otherwise transfer such Products to Buyer on such more favorable terms and conditions (the "Revised Offer") in accordance with subpart (ii) above. If within thirty (30) days of receipt of Seller's Revised Offer the Buyer rejects, or fails to accept by Notice to

Seller, the Revised Offer, then Seller will thereafter be free to sell or otherwise transfer, and to enter into agreements to sell or otherwise transfer, such Products from the Project to any third party on such terms and conditions as set forth in the certificate.

ARTICLE TWELVE: DISPUTE RESOLUTION

In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at law or in equity, subject to the limitations set forth in this Agreement.

ARTICLE THIRTEEN: NOTICES

Whenever this Agreement requires or permits delivery of a “Notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified herein; provided, however, that notices of Outages or other Scheduling or dispatch information or requests, as provided in Appendix III, shall be provided in accordance with the terms set forth in the relevant section of this Agreement. Notices may be sent by facsimile or e-mail. A Notice sent by facsimile transmission or e-mail will be recognized and shall be deemed received on the Business Day on which such Notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) and a Notice of overnight mail or courier shall be deemed to have been received two (2) Business Days after it was sent or such earlier time as is confirmed by the receiving Party. Either Party may periodically change any address, phone number, e-mail, website, or contact, including such information in Appendix III and the “Notices List” in the Cover Sheet, to which Notice is to be given it by providing Notice of such change to the other Party.

SIGNATURES

Agreement Execution

In WITNESS WHEREOF, each Party has caused this Agreement to be duly executed by its authorized representative as of the dates provided below:

HUMBOLDT REDWOOD COMPANY, LLC,
a Delaware limited liability company

REDWOOD COAST ENERGY AUTHORITY,
a California joint powers authority

Signature: _____

Signature: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

APPENDIX I

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: [insert issue date]

Beneficiary: Redwood Coast Energy Authority
633 3rd St,
Eureka, CA 95501

Applicant: [Insert name and address of Applicant]

Attention:

Letter of Credit Amount: [insert amount]

Expiry Date: [insert expiry date]

Ladies and Gentlemen:

By order of **[insert name of Applicant]** (“Applicant”), we hereby issue in favor of Redwood Coast Energy Authority (the “Beneficiary”) our irrevocable standby letter of credit No. **[insert number of letter of credit]** (“Letter of Credit”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ **[insert amount in figures followed by (amount in words)]** (“Letter of Credit Amount”). This Letter of Credit is available with **[insert name of issuing bank, and the city and state in which it is located]** by sight payment, at our offices located at the address stated below, effective immediately, and it will expire at our close of business on **[insert expiry date]** (the “Expiry Date”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. **[insert number]** and stating the amount of the demand; and

2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “Pursuant to the terms of that certain **[insert name of the agreement]** (the “Agreement”), dated **[insert date of the Agreement]**, between Beneficiary and **[insert name of Seller under the Agreement]**, Beneficiary is entitled to draw under Letter of Credit No. **[insert number]** amounts owed by **[insert name of Seller under the Agreement]** under the Agreement; or

B. “Letter of Credit No. **[insert number]** will expire in thirty (30) days or less and **[insert name of Seller under the Agreement]** has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit will be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at **[insert issuing bank's address for drawings]**.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to **[insert fax number]**, Attention: **[insert name of issuing bank's receiving department]**, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at **[insert phone number]** to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit will be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the "UCP 600"); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we will honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of California shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at **[insert number and any other necessary details]**.

Very truly yours,

[insert name of issuing bank]

By: _____
Authorized Signature

Name: **[print or type name]**

Title: _____

Exhibit A SIGHT DRAFT

TO
[INSERT NAME AND ADDRESS OF PAYING BANK]

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF REDWOOD COAST ENERGY
AUTHORITY THE AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO. XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____
NAME AND TITLE

APPENDIX II

GEP DAMAGES CALCULATION

In accordance with the provisions in Section 3.1(e)(ii), GEP Damages means the liquidated damages payment due by Seller to Buyer, calculated as follows:

$$[(A-B) \times (C-D)]$$

Where:

A = the Guaranteed Energy Production for the Performance Measurement Period, in MWh

B = Sum of Delivered Energy plus Deemed Delivered Energy, if any, over the Performance Measurement Period, in MWh

C= Replacement price for the Performance Measurement Period, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff), in which the PNode resides, plus (b) \$50/MWh

D = the unweighted Contract Price specified in the Cover Sheet for the Performance Measurement Period, in \$/MWh

The Parties agree that in the above calculation of GEP Damages, the result of “(C-D)” is less than \$20/MWh, the “(C-D)” will be replaced with \$20/MWh.

APPENDIX III

NOTIFICATION REQUIREMENTS FOR AVAILABLE CAPACITY AND PROJECT OUTAGES

A. NOTIFICATION REQUIREMENTS FOR ROUTINE START-UP AND SHUTDOWNS

Prior to paralleling or after disconnecting from the electric system, ALWAYS follow your balancing authority rules and notify the applicable Participating Transmission Owner's (PTO) switching center

- Call the applicable Participating Transmission Owner's (PTO) switching center and TEA's Real-Time Desk to advise of the intent to parallel before any Start-up.
- Call the applicable Participating Transmission Owner's (PTO) switching center and TEA's Real-Time Desk after the unit has been paralleled and report the parallel time and intended unit output.
- Call the applicable Participating Transmission Owner's (PTO) switching center and TEA's Real-Time Desk after any routine separation and report the separation time as well as the date and time estimate for return to service.

B. SUBMISSION OF AVAILABLE CAPACITY AND PLANNED OUTAGES

1. Implement the procedures set forth below:

- a. For all email correspondence, enter the following in the email subject field: Delivery Date Range, Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity,")
- b. For Annual Forecasts of Available Capacity, email to For Monthly and Daily Forecasts of Available Capacity, email to Group-Corp-TradingCaiso@teainc.org.
- c. For Daily Forecasts of Available Capacity after fourteen (14) hours before the WECC Preschedule Day, but before the CAISO deadline for submitting Schedules into the Day-Ahead Market, call primary phone 425-460-1118 or backup phone 425-460-1126. Also send email to Group-Corp-TradingCaiso@teainc.org.
- d. For Hourly Forecasts of Available Capacity, call TEA's Real Time Desk at 425-460-1118 and email to Group-Corp-TradingCaiso@teainc.org.
- e. For Planned Outages and Prolonged Outages, complete the specifics below and submit by email to Group-Corp-TradingCaiso@teainc.org.
 - i. *Email subject field:* Company Name, Contract Name, Email Purpose, Date Range (For example: "dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity")

ii. Email body:

1. Type of Outage: Planned Outage or Prolonged Outage
2. Start Date and Start Time
3. Estimated or Actual End Date and End Time for Outage
4. Date and time when reported to TEA and name(s) of TEA representative(s) contacted
5. Text description of additional information as needed, including, but not limited to, changes to a Planned Outage or Prolonged Outage.
6. Contact name: first and last name of the individual at the Unit to contact regarding the outage(s) at issue in the email.

C. FORCED OUTAGE REPORTING

1. Forced Outages – Seller shall notify TEA’s Real Time Desk verbally at 425-460-1118 within ten (10) minutes of event or as soon as reasonably possible, after the safety of all personnel and securing of all facility equipment.
 - a. Verbal notification shall include time of forced outage, cause, current availability and estimated return date and time.
 - b. After verbally notifying TEA’s Real Time Desk of the forced outage, Seller shall also submit the following information via email to Group-Corp-TradingCaiso@teainc.org.
 - i. *Email subject field:* Company Name, Contract Name, Email Purpose, Date Range (For example: “dd/mm/yyyy through dd/mm/yyyy, XYZ Company Project #2, Daily Forecast of Available Capacity”)

ii. Email body:

1. Type of Outage: Forced Outage
2. Start Date and Start Time
3. Estimated or Actual End Date and End Time
4. Date and time when reported to TEA and name(s) of TEA representative(s) contacted.
5. Text description of additional information as needed.
6. Primary and secondary causes of Forced Outage, including a detailed description of specific equipment involved and the nature of the problem or condition.
7. Equipment description and nature of work being performed. For generation outages, include NERC Generation Availability Data System

(GADS) numbers (as available) that identify the specific equipment and type of work that affect restrictions. Include additional equipment designations as available.

8. Text description of additional information as needed, including, but not limited to, changes to a previously scheduled Outage, links/cross-references to related outage cards and log entries, outage classifications per the CAISO Tariff, etc.
9. Associated events, e.g. operation of Special Protection Schemes.
10. Impact on CAISO-controlled Grid.

APPENDIX IV

FORM OF CONSENT TO ASSIGNMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT ("Consent and Agreement") is entered into as of [_____, 2____], between REDWOOD COAST ENERGY AUTHORITY ("RCEA"), and [_____] , as collateral agent (in such capacity, "Financing Provider"), for the benefit of various financial institutions (collectively, the "Secured Parties") providing financing to [_____] ("Seller"). RCEA, Seller, and the Financing Provider shall each individually be referred to as a "Party" and collectively as the "Parties".

Recitals

A. Pursuant to that certain Power Purchase Agreement dated as of _____, 2____ (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the "Assigned Agreement") between RCEA and Seller, RCEA has agreed to purchase energy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the "Financing Documents"), and require that Financing Provider be provided certain rights with respect to the "Assigned Agreement" and the "Assigned Agreement Accounts," each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, RCEA has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. Definitions. Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.

2. Consent. Subject to the terms and conditions below, RCEA consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the Loan Agreement and/or Security Agreement of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the "Assigned Agreement Accounts").

3. Limitations on Assignment. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement (whether by foreclosure sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to RCEA a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to RCEA, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as RCEA may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no

rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a “Financing Default”), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

“Permitted Transferee” means any person or entity who is reasonably acceptable to RCEA. Financing Provider may from time to time, following the occurrence of a Financing Default, notify RCEA in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider’s rights under the Financing Documents, and RCEA shall, within thirty (30) business days of its receipt of such written notice, confirm to Financing Provider whether or not such proposed transferee is a “Permitted Transferee” (together with a written statement of the reason(s) for any negative determination) it being understood that if RCEA shall fail to so respond within such thirty (30) business day period such proposed transferee shall be deemed to be a “Permitted Transferee”.

4. Cure Rights.

(a) Notice to Financing Provider by RCEA. RCEA shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an “Event of Default”) to Seller (a “Default Notice”), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next business day after receipt from RCEA, independent of any agreement of RCEA to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by RCEA. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, RCEA shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement “Additional Cure Period” means (i) with respect to a monetary default, ten (10) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, thirty (30) days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by RCEA to Deliver Default Notice. If neither RCEA nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider’s applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either RCEA or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in RCEA’s ability to terminate the Assigned Agreement (in each case only if both RCEA and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of RCEA to deliver any Default Notice shall not waive RCEA’s right to take any action under the Assigned Agreement and will not subject RCEA to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Project (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) days of receiving notice of an Event of Default from RCEA or Seller, whichever is received first, Financing Provider shall be

allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) days; provided, however, that Financing Provider shall provide a written notice to RCEA that it intends to commence foreclosure proceedings with respect to Seller within ten (10) business days of receiving a notice of such Event of Default from RCEA or Seller, whichever is received first. In the event Financing Provider succeeds to Seller's interest in the Project as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that RCEA shall have the right to set off or deduct from payments due to Seller each and every amount due RCEA from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action RCEA may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that RCEA makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider releases RCEA from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that RCEA may agree with Seller to modify or amend the Assigned Agreement, and that RCEA is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases RCEA from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. RCEA shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to [____], as depositary agent, to ABA No. [____], Account No. [____], and Seller hereby irrevocably consents to any and all such payments being made in such manner. Each of Seller, RCEA and Financing Provider agrees that each such payment by RCEA to such depositary agent of amounts due to Seller from RCEA under the Assigned Agreement shall satisfy RCEA's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

If to Financing Provider:	
Name:	
Address:	
Attn:	
Telephone:	
Facsimile:	
Email:	

If to RCEA:	
Name:	
Address:	
Attn:	
Telephone:	
Facsimile:	
Email:	

(b) No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of RCEA, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the loan agreement and/or security agreement.

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

(e) No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

(h) Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

(i) Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

IN WITNESS WHEREOF, each of RCEA and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

Redwood Coast Energy Authority (RCEA)

By: _____
Name: _____
Title: _____

[_____] (Financing Provider), as collateral agent

By: _____
Name: _____
Title: _____

ACKNOWLEDGEMENT

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from RCEA to Financing Provider the next business day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned.

[_____] [name of Seller]

By: _____
Name: _____
Title: _____

APPENDIX V

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer all of the following documentation prior to the Execution Date:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, “Charter Documents”) as in effect, or anticipated to be in effect, on the Execution Date.
2. A certificate signed by an authorized officer of Seller (who must be a different person than the officers listed in clause (C) below), dated no earlier than ten (10) Business Days prior to the Execution Date, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller’s incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
5. Evidence of CEC Certification and Verification (pre-certification) satisfactory to Buyer.
6. A copy of the most recent financial statements (which may be unaudited) from Seller together with a certificate from the Chief Financial or equivalent officer of Seller, dated no earlier than ten (10) Business Days prior to the Execution Date, to the effect that, to the best of such officer’s knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.
7. An executed Letter of Concurrence substantially in the form specified in Appendix VII.

APPENDIX VI

FORM OF ACTUAL AVAILABILITY REPORT

Pursuant to Section 3.1(l)(i), Seller shall prepare an Actual Availability Report in accordance with the procedures described in this Appendix VI.

- (a) Availability Workbook. Seller shall (i) collect the measurement data, listed in (b) below, in one (1) or more Microsoft Excel Workbooks (the “Availability Workbook”) provided in a form and naming convention approved by Buyer and (ii) electronically send the Availability Workbook to an address provided by Buyer. The Actual Availability Report shall reflect the sum of the Settlement Interval Actual Available Capacity of all generators as measured by such generator’s internal turbine controller.
- (b) Log of Availability. The Availability Workbook shall be created on a single, dedicated Excel worksheet and shall be in the form of Attachment A to this Appendix VII.

APPENDIX VI

Attachment A

Form of Actual Availability Report

Seller's Actual Availability Report

All amounts are in MWs

<u>Settlement Interval No.</u>	<u>Date</u>	<u>HE1</u>	<u>HE2</u>	<u>HE3</u>	<u>HE4</u>	<u>HE5</u>	<u>HE6</u>	<u>HE7</u>	<u>HE8</u>	<u>HE9</u>	<u>HE10</u>	<u>HE11</u>	<u>HE12</u>	<u>HE13</u>	<u>HE14</u>	<u>HE15</u>	<u>HE16</u>	<u>HE17</u>	<u>HE18</u>	<u>HE19</u>	<u>HE20</u>	<u>HE21</u>	<u>HE22</u>	<u>HE23</u>	<u>HE24</u>
1	mm/dd/yyyy																								
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Date/Time of Submittal

APPENDIX VII

FORM OF LETTER OF CONCURRENCE

[Date]

[Name]

[Position]

[Company]

[Address]

Re: Letter of Concurrence Regarding Control of [Name] Facility

This letter sets forth the understanding of the degree of control exercised by Redwood Coast Energy Authority (“RCEA”) and [Company Name] with respect to [Facility Name (the “Facility”)] for the purposes of facilitating compliance with the requirements of the Federal Energy Regulatory Commission’s (“Commission”) Order No. 697.¹ Specifically, Order No. 697 requires that sellers filing an application for market-based rates, an updated market power analysis, or a required change in status report with regard to generation specify the party or parties they believe have control of the generation facility and extent to which each party holds control.² The Commission further requires that “a seller making such an affirmative statement seek a ‘letter of concurrence’ from other affected parties identifying the degree to which each party controls a facility and submit these letters with its filing.”³

RCEA and [Company Name] have executed a [power purchase and sale agreement (the “Agreement”)] with regard to the Facility. The Facility is a [XX] MW [description] facility located in [County, State]. Pursuant to the Agreement, [Company Name] maintains sole control of the Facility. [Company Name] agrees to provide subsequent Letters of Concurrence as may be necessary should any of the information provided herein change after the execution date of this letter.

If you concur with the statements made in this letter, please countersign the letter and send a copy to me.

Best regards,

[Author]

[Position]

Redwood Coast Energy Authority

¹ *Market-Based Rates for Wholesale Sales of Electric Energy, Capacity and Ancillary Services by Public Utilities*, Order No. 697 at P 186-187, FERC Stats. & Regs. ¶ 31,252, *clarified*, 121 FERC ¶ 61,260 (2007), *order on reh’g*, Order No. 697-A, FERC Stats. & Regs. ¶ 31,268 (2008), *clarified*, 124 FERC ¶ 61,055 (2008), *order on reh’g*, Order No. 697-B, FERC Stats. & Regs. ¶ 31,285 (2008), *order on reh’g*, Order No. 697-C, FERC Stats. & Regs. ¶ 31,291 (2009), *order on reh’g*, Order No. 697-D, FERC Stats. & Regs. ¶ 31,305 (2010).

² Order No. 697 at P 186.

³ Order No. 697 at P 187.

Concurring Statement

On behalf of [Company Name], I am authorized to countersign this letter in concurrence with its content.

By: _____

[Name]

[Company Position]

[Company Name]

APPENDIX VIII PROJECT SPECIFICATIONS AND CONTRACT CAPACITY CALCULATION

I. PROJECT SPECIFICATIONS

“MVA” means megavolt ampere, the unit of apparent power.

“Nameplate Rated Output” means, with respect to an inverter or electric generator, the MVA that the manufacturer of the inverter or generator has designed such equipment to produce under normal operating conditions as specified by such manufacturer.

“Designated Power Factor” means, with respect to an inverter or electric generator, the power factor required to satisfy the portion of the Project’s reactive power requirements that are specified in *[please identify the applicable source, such as the PTO’s Interconnection Handbook, the CAISO’s Phase II Study, or the Generator Interconnection Agreement for the Project]* and are not being satisfied by other sources of reactive power within the Project.

“Nameplate Rated Power” means, with respect to an inverter or electric generator, the multiplication product of the Nameplate Rated Output and the Designated Power Factor for such inverter or generator, in MWs.

The project specifications shall consist of the following eleven (11) items (each item of which shall be a “Project Specification”). As provided in Section 3.1(g), Seller shall not make any change or modification to any Project Specification without Buyer’s prior written consent.

1. Project name:
2. Project Site name:
3. Project physical address:
4. Total number of Units at the Project:
5. Technology Type:
6. Interconnection Point of Project:
7. Service Territory of Project:
8. Substation:
- 9. Description of Units: **For a Biomass Project**
 - a. For each steam turbine, specify the rated conditions (MW rating, steam inlet temperature, steam inlet pressure, condensing temperature, mass flow rate):
 - b. For each electric generator, specify the Nameplate Rated Output, Designated Power Factor and Nameplate Rated Power:
10. Description of Land:

The Site contains the following Assessor Parcel Numbers upon which the Project is located and as identified on the topographical map included in this Appendix IX: [Insert Map]

11. Description of Interconnection Facilities and metering:

The Project will use the following Interconnection Facilities and metering configuration as identified in this one-line diagram included in this Appendix IX:

[Insert One-Line Diagram for Interconnection Facilities and Metering]

12. Maps: The Site is identified in the following topographical map:

[INSERT MAP]

II. CONTRACT CAPACITY CALCULATION

The Contract Capacity specified in Section B of the Cover Sheet shall be the factor (A) minus each of the factors (B) through (E) provided below:

A	Sum of the Nameplate Rated Power of all inverters/generators	_____ MW
B	Calculated electrical losses from inverter/generator output terminals to Delivery Point (with all inverters/generators operating at Nameplate Rated Outputs)	_____ MW
C	Electrical Losses	_____ MW
D	Auxiliary and station loads coincident with inverters/generators operating at Nameplate Rated Outputs	_____ MW
E	Other factors (explain below)	_____ MW
F	Contract Capacity at the Delivery Point ($F = A - B - C - D - E$), which shall be the same as the MW amount specified for the Contract Capacity in Section B of the Cover Sheet	_____ MW

Inputs for the Nameplate Rated Power calculation:

Designated Power Factor:

	Leading	Lagging
Project power factor requirements	_____	_____
Seller's Designated Power Factor for inverters/generators	_____	_____

Power factor requirement is measured at (check one):

☐ inverter/generator terminals; ☐ Point of Interconnection; ☐ Other: _____

APPENDIX IX

SECTION 3.3(e) LIQUIDATED DAMAGES CALCULATION

I. Equation and Formulas for Calculating RA Deficiency Amount

As provided in Section 3.3(e)(ii)(B), the formula for calculating the RA Deficiency Amount in a given RA Shortfall Month is:

$$\text{RA Deficiency Amount (\$/Month)} = \text{RA Value (\$/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)}$$

Where the:

- A. RA Value shall be \$4,010/MW/Month in calendar year 2016 and shall escalate at 2.5% per year for each succeeding calendar year; and
- B. Expected Net Qualifying Capacity for projects that selected Full Capacity Deliverability Status shall be the product of the Contract Capacity and the applicable monthly Qualifying Capacity factor in the table below; or
- C. Expected Net Qualifying Capacity for Projects seeking Partial Capacity Deliverability Status shall be the minimum of (a) the Expected Net Qualifying Capacity values as calculated in Section B above; or, (b) the product of the Contract Capacity and the Partial Capacity Deliverability Status Amount.

Table XIV-1 Monthly Qualifying Capacity Factor

Month	Biomass	Geothermal	Solar	Wind
Jan	70.61%	84.92%	0.79%	4.43%
Feb	72.50%	85.34%	6.62%	8.25%
March	70.79%	82.42%	15.12%	21.36%
April	62.13%	80.44%	60.43%	23.90%
May	65.57%	81.99%	64.13%	31.04%
June	73.55%	78.59%	80.03%	27.31%
July	76.32%	78.74%	80.39%	17.04%
Aug	75.31%	78.37%	74.86%	15.31%
Sept	74.67%	78.78%	73.05%	9.20%
Oct	71.80%	79.05%	48.29%	7.22%
Nov	70.86%	81.08%	2.49%	4.43%
Dec	74.25%	83.15%	1.33%	4.50%

II. Example of Calculation of the RA Deficiency Amount (for illustrative purposes only) if:

- RA Shortfall Month is June 2019
- Project is a solar system
- Contract Capacity is 20 MW
- RA Start Date is based on the Expected FCDS Date, which is January 1, 2019
- FCDS is achieved on August 14, 2019

RA Value (\$/MW/Month) = \$4,010.00, escalated at 2.5% per year for 3 years, from 2016 to 2019

$$\$4,010 \times (1.025)^3 = \$4,318/\text{MW/Month}.$$

Monthly Qualifying Capacity factor for a solar project in June is 86.74% (from table above).

Expected Net Qualifying Capacity =

$$\text{Contract Capacity (MW)} \times \text{monthly Qualifying Capacity factor} =$$

$$20 \text{ MW} \times 86.74\% = 17.35 \text{ MW}$$

RA Deficiency Amount (\$/Month) =

$$\text{RA Value ($/MW/Month)} \times \text{Expected Net Qualifying Capacity (MW)} =$$

$$\$4,318/\text{MW/Month} \times 17.35 \text{ MW} = \$74,917.30$$

In this example, the RA Shortfall Period is from January through October 2019. The calculations above would be performed and the result applied for each month in this RA Shortfall Period.



REDWOOD COAST Energy Authority

STAFF REPORT

AGENDA DATE:	March 20, 2017
TO:	Board of Directors
PREPARED BY:	Executive Director
SUBJECT:	Additional Local Biomass Procurement (Option 1B)

BACKGROUND

At the February 2017 RCEA Board meeting, in addition to awarding one 9-month and one 51-month Power Purchase Agreement (PPA) to Humboldt Redwood Company (HRC), the Board directed staff to "Explore 5-year contract options for one or both other [local biomass] facilities."

The direction was based on staff's recommendation to pursue providing a 5-year contract option for one or both of the other local facilities, with any additional contracting options at a minimum including similar conditions to the "Material Change" risk-protection provisions of the HRC PPA (see separate staff report: "Humboldt Redwood Company Power Purchase Agreement").

During the February 2017 meeting, the Board further requested that staff and legal counsel investigate the extent and nature of including environmental compliance considerations into the PPAs.

Staff proposed using HRC's winning offer price of \$83/MWh as a basis for negotiating any additional PPA(s). Staff also proposed that any additional biomass procurement would be second in priority after procuring energy from HRC.

This course of action is consistent with the September 2016 Board-adopted CCE Program Guidelines for the first 5 years of program operations, which includes the following biomass procurement guidelines:

1. *Issue a Request for Offers targeting power purchase agreements with 1-2 existing facilities.*
2. *Structure overall biomass procurement strategy around local waste-management and forest restoration priorities and needs.*
3. *Include environmental, community, and economic considerations in selection process.*
4. *Contingent on price and market conditions, contract for a target of around 20MW of local biomass energy (about 15% of the total RCEA power portfolio).*

To support guideline 2 above, staff has focused on immediate local needs related to the management of local mill-waste, and the associated biomass power infrastructure needed to support processing of that waste. This preliminary analysis suggests that contracting with a second facility (for a total of up to 20-30 MW of energy from biomass as planned in the Board's September 2016 policy on procurement mix) is well within the range of what is needed to process local mill waste. This estimate does not include the use of any forest residuals from logging or restoration activities.

Calculation of Energy Available from Local Mill Waste in Humboldt County

There is an estimated 400,000 bone-dry tons of mill waste generated every year in Humboldt County (assuming the Korbel Mill reopens, which is currently scheduled for late 2017 or early 2018). State-wide analysis suggests that about half of all mill waste can typically be sold for paper and chip-board manufacturing, landscaping, animal bedding, and other uses, with the remaining half of the waste processed by biomass plants.

Based on these figures, staff estimates that there is likely in the range of 200,000 tons or more of mill waste that, absent a local biomass infrastructure, would have to be recycled, upcycled, or otherwise disposed of either locally or out of the area.

Processing that quantity of wood waste is estimated to require about 25 MW of power plant capacity. (The above numbers are based on research and analysis performed by HSU Professor Han-Sup Han and others; citations available upon request).

PROPOSED SECOND-ROUND CONTRACTING STRUCTURE

Staff proposes to develop a second-round set of PPAs, including language similar to that developed for HRC's two PPAs, with the following contracting structure:

1. An initial 9-month PPA with all power priced entirely as a market-price pass-through (approximately \$50-60/MWh). The volume of power delivered would be at the facility's discretion.
2. A 51-month PPA with power priced at \$83/MWh, with delivery volume to be negotiated.
 - a. This PPA would have Material Change clauses similar to those in HRC's PPAs, to minimize RCEA's risk exposure. These clauses would be expanded to include RCEA's ability to meet its PPA procurement obligation to HRC, as well as other program viability factors.

The Material Change clauses would also be revised to ensure that RCEA maintains flexibility to pursue other program objectives, such as funding for customer programs and new local renewable energy projects.

- b. The PPAs would have similar terms to the HRC PPAs regarding RCEA's right to exit the agreement based on non-compliance with environmental requirements.

OPTIONS FOR OFFERING SECOND-ROUND CONTRACT(S)

Staff developed the following options for the Board's consideration of how to proceed with additional biomass procurement:

Option	Considerations
1. Pursue negotiations with one additional biomass facility: Pursue negotiations for 9-month and 51-month PPAs with one additional facility.	This would meet the September 2016 guidelines of contracting with two facilities and supporting the biomass infrastructure expected to be sufficient to meet the waste-disposal needs of local mills.
2. Pursue negotiations with the two remaining facilities in ranked order, DG Fairhaven and Blue Lake Power: Pursue negotiations for PPAs with both facilities, ranking them 2 nd and 3 rd priority, if/when there is budget "headroom" that can pay \$83/MWh.	RCEA's technical analysis and forecasts project that there is not enough in the budget to fund PPAs with all three power plants at \$83/MWh. It is likely that the third-ranked facility would consistently be offered market pass through prices.
3. Pursue negotiations with the two remaining facilities, DG Fairhaven and Blue Lake Power, with equal funding priority: Pursue negotiations for PPAs with both facilities, with the PPAs structured so that each receive the same share, if/when there is budget "headroom" that can pay \$83/MWh.	RCEA's technical analysis and forecasts project that there is not enough in the budget to fund PPAs with all three power plants at \$83/MWh. It is likely that both facilities would consistently be offered market pass through prices.

Options 1 and 2 above would require ranking the two additional biomass facilities. Ranking could be informed by the responses and scoring from the Biomass Request for Offers process. As discussed at the February 2016 Board meeting, the original offers were evaluated based on the following factors:

- **Net Market Value:** The purely-quantitative market value of the offer, based on the price and volumes offered.
- **Offeror's Viability:** Qualitative factors related to the viability of the biomass generator include, but are not limited to, the track record of meeting all permitting, reporting and compliance requirements; the experience of the offeror's team to successfully and sustainably operate the facility; offeror's history of investment in maintaining and improving the facility; worker safety record; the offeror's historical and projected financial position; and any other factors that may influence its ability to deliver energy products under an executed agreement with RCEA.
- **Portfolio Fit:** How well a specific offer aligned with RCEA's overall CCE goals and financial needs.
- **Acceptance of Power Purchase Agreement:** Preference for responses that accepted the terms and conditions of the PPA as provided in the RFO.

If the Board chooses Option 1 or 2 for a second-round of contracting, Staff's recommendation is that the Board use the "Offeror's Viability" scoring for the following reasons:

- The Net Market Value scoring and the acceptance of PPA terms are no longer differentiating factors between the offers.
- The review team's scoring of portfolio fit was comparable for the 5-year offers from all three facilities.

Below are the review team's "Offeror's Viability" scoring of the three facilities (the highest score indicates the greatest and most favorable viability):

Bidder	Combined review-team scoring of Offeror's Viability
Blue Lake Power	6.23
DG Fairhaven	19.84
Humboldt Redwood Company	16.32

STAFF RECOMMENDATION

Staff's recommendation is for the Board to approve pursuing contract negotiations with one additional facility (Option 1 above) at this time, and staff recommends the Board select DG Fairhaven for this second round of negotiation, based on its Offeror's Viability score and the RFO review team's qualitative assessment that DG Fairhaven is a strong counterparty with a solid operational track record.

RECOMMENDATION ACTION

Direct staff to pursue negotiations with DG Fairhaven for 9-month and 51-month Power Purchase Agreements.

Attachments

Detailed RFO scoring results

Blue Lake Power Qualitative 12/2/16 RFO Response

DG Fairhaven Qualitative 12/2/16 RFO Response

Humboldt Redwood Company Qualitative 12/2/16 RFO Response

Biomass Request for Offers - Response offer prices, terms and scoring

Project	Average Price per MWh	Duration (years)	Quantitative Net Market Value Score (50%)	Qualitative Factor Score Components			Qualitative Factors Total Score (50%)	Total Score
				Offeror Viability	Degree of Changes to PPA	Portfolio Fit		
Blue Lake	\$83.10	5	45.7	6.32	10.00	18.00	34.3	80.0
	\$81.50	3	50.0			13.00	29.3	79.3
	\$83.10	1	42.4			8.00	24.3	66.8
Fairhaven	\$102.50	5	5.0	19.84	5.00	17.00	41.8	46.8
	\$99.70	3	11.7			13.00	37.8	49.5
	\$95.00	1	26.2			10.00	34.8	61.0
HRC – 12.5 MW	\$83.00	5	49.3	16.32	10.00	19.00	45.3	94.6
	\$100.00	1	7.5			0.00	26.3	33.8
HRC – 15 MW	\$85.00	5	43.8			15.00	41.3	85.1

Notes

- Qualitative scores other than portfolio fit were determined by averaging individual scores assigned by each of the five evaluation committee members.
- Quantitative scores were determined by TEA calculation of net market value of each offer.
- Portfolio fit was determined for each offer through group discussion of offers by the evaluation committee members.
- Quantitative scores for Humboldt Redwood Company have been updated to reflect resolution of a discrepancy in how they reported Resource Adequacy (RA) in their electronic and hard copy versions of their offer.
- Due to a staff error, qualitative scores for Fairhaven's 1-year and 5-year offers were reversed in the February 27, 2017 staff report. These scores have been corrected in this version.

RCEA 2016 Biomass Request for Offers Response of Blue Lake Power to Questionnaire

December 2, 2016

Company Information

1. Please describe the corporate ownership structure.

Blue Lake Power, LLC is a California Limited Liability Company owned by LandGas Technology, an Illinois LLC, and by Renewable Energy Providers, Inc., a Nevada Corporation.

Resource Information

2. Please provide a high level description of the facility and a summary of its operation.

Blue Lake Power, LLC (BLP) is an 11.0 Megawatt (net to line) biomass to energy facility built on its present site in 1983-84. The facility operated until 1999 when it was shuttered because of low available power sales pricing. The facility was purchased by the current owners in 2008 and refurbished and restarted in 2010. The facility then operated for a period of 5 years selling 100% of its electrical output to SDG&E. In May 2015, BLP sold its existing PPA back to SDG&E to generate cash to eliminate debt liabilities. The BLP facility now carries zero debt.

After a brief offline period following the buyout of the SDG&E PPA, BLP negotiated a short-term contract for the sale of power. BLP is currently operating under that short-term contract. The short-term contract expires prior to the proposed June 1, 2017 start of deliveries to RCEA. BLP's onsite operations support 18 positions while approximately 30 additional positions are supported through collateral services such as fuel transport.

3. Please describe the project's fuel supply plans and waste management approach.

Fuel for BLP has historically come from local sawmills, lumber remanufacturing and regional logging and related timber management operations. The intent is to (i) bring fuel to BLP from wildfire at risk federal and private forest lands (Tier I & Tier II) east of the plant location; and (ii) continue to make the operation available to cleanly consume sawmill and remanufacturing wood waste.

Waste water and sewerage is delivered to the municipal waste system. Ash is delivered to ranchers and farmers in the area under a fully-compliant permit. Solid waste is hauled away by the local solid waste disposal company.

4. Please describe any capital spending on the project since January 2013.

Since January 2013, the following items have been refurbished:

- (i) turbine rotor;*
- (ii) cooling towers;*
- (iii) fuel dryer;*
- (iv) boiler grate; and*
- (v) electro-static precipitator.*

5. Please describe what flexibility the Buyer would have to shape energy deliveries for purposes of bidding into the CAISO day-ahead market.

BLP's Pmin is 5.0MW and Pmax is 11.0MW. Assuming shaped deliveries are safely within operating and permitting restraints, including fuel management, BLP could, on an occasional basis, be biddable into the CAISO day-ahead market.

6. Please describe the capability of the facility to receive CAISO communications and ability to respond to curtailment instructions from the CAISO for reliability or economic reasons in the real-time market.

BLP is fully-compliant with CAISO's communications requirements and regularly receives such communications. The plant is dispatchable and capable of responding to curtailment within prudent operating and permitting restraints.

7. Please describe any operational limitations on economically bidding the resource in the day-ahead and real-time markets and responding to CAISO dispatch instructions.

As described in the responses to Questions 5 and 6, within BLP's Pmin of 5.0MW and Pmax of 11.0MW, BLP is able to fully respond to CAISO dispatch and curtailment instructions for reliability reasons and, provided permitting requirements are maintained, for economic reasons. For the purposes of economically bidding in the day-ahead and real-time markets, in addition to operational and permitting limitations, fuel supply and operational efficiency limit BLP's ability to an occasional-only basis.

Team Experience

8. Describe relevant technical experience of key personnel, how long they have been with the company and their backgrounds.

Mike Dedmore – BLP Plant Manager, has been at BLP for 1-year. Previously, Mike worked at the nearby Scotia biomass facility for a total of 25 years (3 years as Plant Manager, 5 years as a Supervisor, and the remaining time in operations). In total, Mike has over 26 years of experience operating biomass plants.

Glenn Zane – As a consultant for UltraPower, Glenn developed the initial fuel supply assessment for the plant prior to construction in the early 1980's. Glenn has been involved in procuring fuel for the plant since the acquisition by Blue Lake Power, LLC in 2008 and will continue managing the fuel acquisition for BLP.

David O'Neill – Principal at LandGas Technology, the managing partner/owner of BLP. David has been involved in power plant operations, environmental engineering and environmental, OSHA and business law for 36 years. Mr. O'Neill began his professional career as a Chemical Engineer in the Power Department at the Inland Steel Company in East Chicago, Indiana in 1981 and has been an attorney concentrating in Energy, Environmental and Safety law since 1987.

Compliance

9. Has any company, partner, or subsidiary in this venture, or any corporate officer, been the subject of any enforcement action, order, decree, or notice of violation of any environmental laws, regulations, or permits? If an answer is "yes," please explain fully including how the issue was resolved.

In 2010, BLP received a notification of air quality non-compliance by the NCUAQMD. NCUAQMD and BLP entered in a Settlement Agreement that has since been completed by BLP, resolving the notification in its entirety.

Based on alleged, but not administratively determined, issues related to BLP's Title V air permit, BLP entered into a Consent Decree with the EPA. The Consent Decree is fully executed and BLP is operating in compliance under the terms of the decree.

10. Has your facility been listed by the EPA as a high priority violator at any time during the past 5 years?

To BLP's knowledge, BLP has never been listed by the EPA as a high priority violator.

Safety

11. Please provide information detailing the worker safety record for the past five (5) years for the company and its affiliates in California or other State(s) where it operates.

For the past 5 years that LandGas Technology has owned BLP, no incidents resulting in serious injury have occurred at any of LandGas Technology managed or owned facilities (including at the BLP facility). Some miscellaneous minor injuries have occurred and a few of those minor injuries have resulted in minimal periods of employee lost time. All employees are fully covered by Workman's Compensation insurance at all times. During its 22-year operating history, LandGas Technology and its affiliates have never had a notice of any violation from OSHA on any managed or owned facilities.

Credit

12. Please provide available information on responder's financial viability including current annual report(s) and recent financial statement(s).

BLP is financially stable and capable of meeting the PPA collateral requirements. Due to the highly confidential nature of private company financials, BLP will, at a time and place convenient for RCEA, present these documents for in camera inspection.

Additional Information

13. Please provide any additional company, contract, market or other information responder believes may be useful to RCEA as it investigates the potential for contracting with local biomass facilities.

As mentioned in response to Question 2, BLP provides 18 on-site jobs and is indirectly responsible for the employment of another 30 related jobs for workers delivering fuel and providing other related services. The 18 on-site jobs are held by Humboldt County residents. The 30 related jobs are also likely held by Humboldt County residents.

RCEA 2016 Biomass Request for Offers Questionnaire

Response Deadline: December 2, 2016

Email questions/comments to: Biomass_RFO_Questions@redwoodenergy.org

Company Information

1. Please describe the corporate ownership structure.

DG Fairhaven owns and operates the (net) 17.25MW biomass fueled electric generator known as DG Fairhaven LLC. Membership interest in Fairhaven is 100% directly owned by EWPRC Biomass Holdings, LLC, which in turn has 20% membership interest and administrative control held by its Manager, EWP Renewable Corporation ("EWPRC"), and 80% membership interest held by Whitehaven Springs Biomass LLC.

EWP Renewable Corporation (EWPRC), the Operator and Manager of the facility, was established in 2002 under previous owners and was purchased September 30, 2010 by (and today remains 100% owned by) EWP America, Inc., a direct, and wholly-owned subsidiary of Korea East-West Power Co. Ltd. (EWP) based in Seoul, South Korea. EWPRC's US management team members each have decades of direct development, acquisition, financing, design, construction and operations experience in cogeneration, biomass and efficient district energy systems. EWPRC today owns and operates three renewable energy biomass plants located in California and New Hampshire, and two natural gas-fired power plants in California. EWPRC currently owns and operates 145 megawatts of efficient and reliable, renewable energy and clean natural gas energy facilities in the US.

Since Korea East-West Power Co. Ltd. spun off from the Korea Electric Power Corporation (KEPCO) in 2001, EWP has worked to become a global leading energy company. Today, EWP's core focus is on providing energy securely and efficiently, which are key driving forces behind our growth. EWP has also strengthened the competitiveness of its workforce through promoting new management initiatives and enhancing management efficiency. EWP presently owns and operates more than 11,100 MWs of power generation projects that include coal-fired plants, LNG fueled combined-cycle gas turbine plants, and renewable energy plants that include wind, solar, biomass and tidal current technologies.

EWP now operates projects in 3 countries with development plans for 4 new projects located in 3 countries.

Credit support for the Applicant will be provided by cash reserves of the Applicant itself, or at the discretion of the Manager (EWPRC) of the Applicant, Letters of Credit from existing major bank facilities.

Korea East West Power Co. Ltd. Experience

1) Total Capacity in Korea: 11,139.5 MW

a) Conventional Energy: 11,072MW

Type	Location	Capacity	Total(MW)	Remarks
Coal-Fired (6,500MW)	Dangjin	500 X 8	4,000	Under construction
		1,000 X 2	2,000	

	Honam	250 X 2	500	
CFBC (400MW)	Donghae	200 X 2	400	
Oil-Fired (1,200MW)	Ulsan	400 X 3	1,200	
Combined Cycle (2,972MW)	Ilsan	GT 100 X 6 ST 200 X 1 ST 100 X 1	900	
	Ulsan	GT 287 X 2 GT 100 X 2 GT 150 X 4 ST 298 X 1 ST 100 X 1 ST 150 X 2	2,072	

b) Renewable Energy: 67.5MW

Type	Location	Capacity	Total(MW)
Mini hydro (8.2MW)	Dangjin	5.0 X 1 3.2 X 1	8.2
Photovoltaic (10.5MW)	Ilsan	1.5 X 1	1.5
	Dangjin	4.0 X 1	4.0
	Ulsan	0.5 X 1	0.5
	Honam	3.5 X 1	3.5
	Donghae	1.0 X 1	1.0
Fuel Cell (10.8MW)	Ilsan	2.4 X 1 2.8 X 2	8.0
	Ulsan	2.8 X 1	2.8
Wind (3.0MW)	Youngkwang	3.0 X 1	3.0
Biomass (2,972MW)	Donghae	30.0 X 1	30.0
	Ilsan	5.0 X 1	5.0

2) Business in US (Except EWPRC)

a) Performing the O&M services for Units 3 and 4 the Gabras Diesel Power(80MW) in Guam

3) Overseas Business

a) Own a 40% share of JPS (Jamaica Public Services Co., Ltd. <http://www.jpsco.com>)

i) Generation Capacity: 644MW

- ii) Sole distributor of electricity in Jamaica
- iii) 8,700 miles (14,000 km) of distribution and transmission lines
- iv) 600,000 customers
- b) Owned a 30% share of 30 MW diesel power plant in Haiti
- c) Performed the O&M services for a 200MW CFBC coal-fired power plant in Cebu, Philippines
- d) Successfully performed commissioning and operation supervising of the 242 MW Nueva Ventanas, 520 MW Angamos, 350MW Santa Maria, and 240MW Campiche Coal-Fired Power Plant in Chile
- e) Under construction kalsel-1 BOT project of 200MW Coal-Fired Power Plant in Indonesia
- f) Developing Kalselteng-3 BOT project of 200MW (100MW/unit x 2 units) coal fired plant in Indonesia
- g) Developing Vung Ang-3 BOT project of 1,200MW (600MW/unit X 2 Units) Coal-Fired Power Plant in Vietnam
- h) Developing BOO project of 190MW LNG fueled Combined-cycle plant in Jamaica.

Resource Information

2. Please provide a high level description of the facility and a summary of its operation.



Fairhaven Power is located approximately five miles from Eureka, California, in Samoa, it started commercial operation in 1986 with more than 30 years of successful operating history. The plant generates power from burning wood-waste in a Riley inclined water-cooled stationary pinhole stoker boiler. The steam generated by the boiler powers an 18.75 (gross) MW Westinghouse non-reheat condensing steam turbine generator that has four extractions for feed water heating. Main steam is about 180,000 lb/hr at full load. Main steam conditions are 625 psig/825°F.

Fairhaven is a Qualifying Facility. The wood waste is obtained from local timber and lumber companies. The timber and lumber company wood waste consists of wood chips and shavings, bark, and sawdust and is stored on-site in piles. Natural gas is also burned at Fairhaven primarily for plant startup, but is also co-fired in the boiler when the wood waste is excessively moist. The boiler is designed to burn wood and wood waste without co-firing provided the moisture content of the fuel is below 60%. Co-firing cannot exceed 20% natural gas for a qualifying facility.

Fairhaven has historically operated at a high availability/ reliability factor. Performance over the past two years is shown below, note that the MW Gen figure shown is a gross generation value before station service and that May is typically a scheduled outage month.

Monthly Totals	Hours (HH:MM)	Steam Flow (KPPH)	MW Gen.
1/31/2014	768.00	131,666.00	13,752.81
2/28/2014	536.83	88,470.00	9,182.98
3/31/2014	737.23	127,864.00	12,677.24
4/30/2014	688.57	124,070.08	12,123.96
5/31/2014	412.88	70,530.00	7,094.13
6/30/2014	630.08	105,337.00	10,867.68
7/31/2014	626.00	108,796.00	11,064.59
8/31/2014	668.00	112,536.41	11,535.32
9/30/2014	665.43	115,160.00	11,856.84
10/31/2014	737.78	125,577.00	13,020.81
11/30/2014	663.97	111,481.00	11,457.20
12/31/2014	744.00	123,124.00	12,697.03
2014 Totals	7,878.8	1,344,611	137,331
1/31/2015	561.37	94,931.13	9,704.10
2/28/2015	559.95	96,482.00	9,730.15
3/31/2015	709.57	121,535.00	12,336.70
4/30/2015	717.57	118,102.00	12,009.97
5/31/2015	395.86	65,624.00	6,675.46
6/30/2015	720.00	126,937.00	13,204.51
7/31/2015	738.48	130,517.00	13,442.37
8/31/2015	592.34	107,676.00	10,734.20
9/30/2015	620.68	109,621.00	10,714.95
10/31/2015	744.00	128,381.00	12,887.70
11/30/2015	612.77	100,742.65	10,203.09
12/31/2015	679.27	110,457.22	10,945.78
2015 Totals	7,651.9	1,311,006	132,589

Fairhaven operated less hours in 2016 due to the expiration of a contract amendment. The legacy PPA has a pricing mechanism that is indexed to the short run avoided cost (SRAC) of the utility. Because SRAC is primarily driven by the cost of natural gas, the resulting energy pricing to the facility was lower than Fairhaven's cost to generate. As a result, Fairhaven elected to shut down the production of

renewable energy for several months in early 2016. However, the facility retained its full staff throughout and focused on maintenance and repair of the component systems with the expectation that the facility would be restarted again.

In addition to the boiler (including primary air, forced draft and induced draft fans and hog fuel feeders and spreaders, two natural gas Coen low NOx burners), turbine generator and auxiliaries (lube oil system with conditioner, Bently Nevada monitoring system), multiclone particulate collector, electrostatic precipitator ("ESP") and stack, the major plant equipment consists of:

- Two high pressure and two low pressure feed water heaters
- Deaerating feed water heater with an 8000 gallon storage section
- Surface condenser
- Two 100% capacity motor driven Bingham boiler feed pumps (there is also a turbine driven feed pump that is not used; the facility manager stated that the turbine driven pump could not provide the required feed water flow rate)
- Two 100% condensate pumps
- Condenser air removal system comprised of hogging and holding steam ejectors
- Two feed water heater drain pumps
- Marley five cell cross flow wood cooling tower
- Two circulating water pumps
- Demineralized water treatment system comprised of carbon filter and anion and cation exchangers
- 10,000 gallon demineralized water tank
- Primary and back up instrument air systems (compressors, receivers and dryers)
- ABB DCS (originally Bailey Network 90 which was upgraded to ABB Conductor NT in 1999)
- Fire protection system comprised of fire water piping motor driven fire pump, diesel engine fire pump and electric jockey pump
- Emergency diesel generator
- DC battery system
- Hog fuel receiving system comprised of two hydraulic truck lift dumper and a truck scale
- Hog fuel handling system comprised of two hydraulic stackers, reclaim system, scalper, conveyors, hog fuel bins and feeders

Municipal water is used for sanitary purposes and as makeup to the cooling tower and demineralized water treatment system. Clean industrial wastewater is purchased for fire protection make up and for wash-downs of equipment.

The facility's operations are comprised of eight major systems: boiler, steam turbine/generator, fuel handling, water treatment, electrical, instrumentation and controls, and ash/air handling.

Boiler System. The plant's boiler was manufactured by Riley Stoker Corporation and is an outdoor-type that is top supported, with a two-stage superheater, bare tube economizer and tubular air heater. Prior to installing Fairhaven's boiler, Riley Stoker had completed approximately 70 similar installations of this technology. The boiler is optimally designed for wood waste fuel, typically not requiring major clean-up maintenance more than once per year. It is rated to generate 180,000 pounds per hour of superheated steam at 625 pounds-force per square inch gauge ("psig") and 825°F when supplied with 365°F feedwater. The rating is based upon wood waste with a higher heating value ("HHV") of 4,005 BTU per pound and moisture content of 55.0% by weight. That said, the facility's boiler can process wood waste with moisture content as high as 70.0% by weight. The boiler employs pinhole-grate combustion technology for the reliable conversion of wood waste to steam.

Steam Turbine / Generator System. Fairhaven's steam turbine/generator unit converts steam from the boiler into electric energy. Manufactured by Westinghouse, the turbine/generator has been subjected to annual inspections and major overhauls on a regular basis. The main operating parameters of the turbine/generator include:

Power output maximum of 18.75 MW gross at power factor of unity;

Voltage 13.8 kV;

Speed 3,600 rpm; and

Frequency 60 Hz

Fuel Handling Systems. The Fairhaven plant sources both whole logs and wood chips for use as fuel. Whole logs are converted to chips by a wood chipper and blended with the purchased wood chips and hog fuel. Fuel is delivered at two separate points from the fuel supply system. All of these systems intersect at the same fuel bin hopper located atop the boiler structure.

Trucks bring wood waste to the site and are automatically off-loaded into one of the two operational truck dumps. From there the facility's fuel handling system is automated to minimize physical work and to ensure an efficient and reliable fuel flow to the boiler. The nominal fuel rate to the boiler is approximately 30 tons per hour at full load, well within the system's maximum capacity of 36 tons per hour.

Fairhaven uses natural gas for start-up, flame stabilization and operational control. Natural gas usage is limited to no more than 270 million cubic feet or 10.0% of annual capacity.

Water Treatment System. The project's water treatment system processes Humboldt Bay Municipal Water, cooling tower blowdown and boiler blowdown to ensure boiler feedwater

quality. Boiler feedwater is demineralized and treated before being fed to the boiler.

Electrical System. The facility's electrical system handles the delivery of power produced by the generator into PG&E's power transmission system and Fairhaven's auxiliary power bus. The facility has a gross capacity of 18.75 MW and a net capacity of 17.25 MW. The plant is interconnected to the power transmission system via a 60 kV transmission line that runs for approximately 0.4 miles to a local PG&E substation. PG&E owns the transmission interconnection, as well as the substation equipment with the exception of the main power transformer, which is owned by Fairhaven. In November 2012 the facility converted from a CPUC-jurisdictional interconnect to a CAISO interconnect, executing a new Qualifying Facility Participating Generator Agreement and a Meter Service Agreement with the CAISO.

Instrumentation and Control System. The monitoring of all critical operating functions including the fuel handling system, boiler, turbine/generator, water treatment system, switchgear and transformer are handled by a Bailey instrumentation and control system. This allows accurate and rapid identification of changing conditions and ensures optimal safety and operational efficiency. The Bailey control system has been well maintained and upgraded over the term of the plant including new monitoring consoles, network cables and new software for a better graphic operator-machine interface.

Ash Handling System. Fairhaven's ash handling system collects and prepares the ash for disposal. The ash handling system consists of a system of valves and conveyors that remove the ash from the boiler and its auxiliaries. Ash is collected in a dedicated storage area. Char is collected and sold under contract for use by a filtering company. Fly ash is then used as an agricultural amendment on nearby farms under permitted applications independently certified by a local engineering firm. Bottom ash is distributed to local farmers as a non-hazardous fill material.

Air Cleaning and Dispersion System. The plant's air cleaning and dispersion system removes particulates from exhaust gases before dispersion of the gases into the atmosphere. This system has three major components: the dust collector, the electrostatic precipitator and the over fire air system.

Ash Handling System. Fairhaven's ash handling system collects and prepares the ash for disposal. The ash handling system consists of a system of valves and conveyors that remove the ash from the boiler and its auxiliaries. Ash is collected in a dedicated storage area. Char is collected and sold under contract for use by a filtering company. Fly ash is then used as an agricultural amendment on nearby farms under permitted applications independently certified by a local engineering firm. Bottom ash is currently shipped to a landfill, but is expected to be approved as non-hazardous fill material in the near future.

Air Cleaning and Dispersion System. The plant's air cleaning and dispersion system removes particulates from exhaust gases before dispersion of the gases into the atmosphere. This system has three major components: the dust collector, the electrostatic precipitator and the stack.

Maintenance Program. The facility typically is shut down for planned maintenance once each

year. The shutdown is typically for 6 or 7 days, plus 12 to 14 hours of natural gas-fired warm-up. During this time, scheduled maintenance services are performed by both Company and third party contractors. Maintenance services performed by Company personnel include, but are not limited to, repacking valves; replacing worn chain, flights and screws; cleaning and inspecting the switchyard; cleaning and inspecting the motor control center; cleaning fans, fill, sump and screens in the cooling tower; inspecting all electrical motors; replacing bearings as needed; checking or changing all gearbox oil and greasing; inspecting and replacing grate blocks; and erecting scaffolding. Maintenance services performed by third party contractors include, but are not limited to, hydro-blasting of the superheater section; vacuuming interior sections of the boiler; washing out the electrostatic precipitator; inspecting and cleaning the Bailey control system; refractory repair; and complete inspection of the water side of the boiler.

3. Please describe the project's fuel supply plans and waste management approach.

Fuel Supply Plan

The Fairhaven facility began commercial operation in February, 1987 and was initially developed to utilize forest products residuals (bark, sawdust, shavings) generated as byproducts from the many sawmill operations located in Humboldt and Del Norte Counties. Affiliates of the current owners purchased Fairhaven Power in April, 2005.

Since the late 1980's, numerous sawmills have closed as a result of significantly reduced timber resources available from publicly-managed forests and public concern over harvest practices on private forest lands in the region. As sawmills have curtailed operations, the once readily available volume of residuals (including hog fuel) has diminished significantly. Due to constrained hog fuel supplies, one of the four biomass power plants that once operated in this region has been closed: Simonson Lumber Company's 10MW plant at Smith River, others are operating sporadically or have transitioned operating objectives.

Fairhaven Power is located in a region that once supported a thriving forest products manufacturing sector. When the plant began commercial operation in 1987, there were almost two dozen commercial-scale forest products manufacturing facilities operating within the Fairhaven Power core fuel supply area. Today only eight facilities are still operating.

The fuel procurement strategy at Fairhaven is to procure wood fuel as it becomes available in the marketplace. Currently, Fairhaven has multiple short term delivery options or spot agreements with regional suppliers. Management has met with numerous local suppliers to assess fuel availability from their operations for the next 5 years. Each supplier has indicated that their waste streams can be made available to DG Fairhaven. Fairhaven will work with these suppliers to pay for the material at a price that will provide economic advantage to the supplier (by eliminating the cost to dispose) and to the RCEA, supporting a low price per MWH for the renewable biomass power provided.

Operating sawmills produce residuals in the form of byproducts that include bark, sawdust, chips and shavings. Traditionally the bark and sawdust residuals have been utilized as hog fuel, with chips having higher value as raw material for pulp/paper and composite panel furnish. Most of the redwood chips generated are now exported.

Over the past several years, Fairhaven Power has been diversifying its fuel stream by purchasing approximately 50,000 GT annually of whole logs. These logs are generally of the species known as tan oak and are considered sub-merchantable compared to the redwood species that is the prime target of forest products producers. These whole logs are purchased seasonally when available and stored on site until they are processed into chips by a third party. The resulting fuel is generally consumed between December and March at Fairhaven Power. These logs assist management in maintaining a high quality fuel mix during the wet season in the Humboldt area.

Waste Management Approach

Air Compliance

Source Tests were most recently performed November 2015. Fairhaven is not affected by any compliance orders or settlements regarding air emissions from operation.

Waste Discharge Permits and Compliance

Water for Fairhaven is purchased from the city water system. The water is used for makeup of cooling tower and boiler water losses. Steam condensate returns help to minimize boiler makeup needs. Water is also used for wash water for the facility and equipment, and for potable and sanitary purposes.

All water used at Fairhaven is supplied from the municipal water system. Fairhaven discharges 150,000 to 180,000 gallons per day into a fully permitted and approved outfall line. Fairhaven has an Outfall Agreement in place with Humboldt Bay Harbor, Recreation and Conservation District, Inc., executed December 14, 2014 that runs through 2030. The Outfall Agreement allows Fairhaven to utilize the line with no restrictions, except to maintain its discharge in accordance with existing permits. Waste from Fairhaven includes; particulates removed from boiler flue gases by a dust collector and ESP, ash from the boiler, blowdown from boilers and cooling towers, fly ash, bottom ash, and drainage from wood fuel storage areas and sanitary sewage from restrooms.

Discharge Permits and Compliance

Fairhaven operates under NPDES Permit No. CA0024571. The permit states boiler blowdown, cooling tower blowdown and demineralizer back flushing is discharged to the Pacific Ocean by ocean outfall, which has an initial dilution of 115:1. This discharge point is described as Serial Number 001 in NPDES Permit No. CA0005894. The average daily flow of wastewater from the permit is 500,000 gallons per day.

All ash from Fairhaven is recycled. It is used by farmers to neutralize the soil and by dairy farmers to stabilize the soil for cattle to prevent hoof diseases and to neutralize cattle urine.

Fairhaven must comply with the State of California Industrial Activities Storm Water Permit (General Permit), Water Quality Control Order No. 97-03-DWQ. This order relates to the NPDES for discharges of

storm water associated with industrial activity. In order to comply with this general permit, Fairhaven must develop and implement a Storm Water Pollution Prevention (“SWPP”) Plan, emphasizing Best Management Practices (“BMP”). The SWPP identifies and addresses sources of pollutants associated with industrial activities that may affect the quality of storm water discharges and authorized non-storm water discharges from Fairhaven, and implements site specific BMPs to reduce and/or eliminate such pollutants.

The facility conforms to a Spill Prevention and Countermeasure Control (“SPCC”) Plan. The SPCC addresses major areas of spill prevention, management, and inspection and reporting requirements as expected.

The 18 aboveground storage tanks and drums listed in the SWPP and the draft SPCC, which include the sulfuric acid and sodium hydroxide tanks, water treatment tanks, diesel oil tank and various lubricating oil tanks all have appropriate containment measures in place.

Fairhaven’s Hazardous Waste generator classification and number is CAL000298444. Hazardous wastes at Fairhaven include waste oil, oily solids, parts cleaners and solvents, paint and fluorescent light bulbs. The facility has been cleared of any presence of PCBs, asbestos or lead paint in the facility. Fairhaven has a Business Plan for Handling Hazardous Materials in place.

Fairhaven holds a number of permits, a summary table has been inserted below.

Figure 2.14: Fairhaven Summary of Permits	
Wastewater Discharge	North Coast Regional Water Quality Control Board (NCRWQCB) Order No. RI-2002-0076; NPDES No: CA0024571; ID NO. 1B85026RHUM
NPDES Permit	NCRWQCB No. 96-92; NPDES Permit No. CA0024571; ID NO. 1B85026RHUM
Storm water Discharge (Statewide General Permit)	State Water Resources Control Board (SWRCB) No. 97-03-DWQ, (NPDES No. CAS000001) WDID No. 1B12S016487
Commercial Fertilizing License	State of California Dept of Food and Agriculture FIRM#1844
Certificate of Registration (Weights and Measures)	County of Humboldt - Department of Agriculture Weights and Measures State of CA No. 33690
Weighmasters License	Department of Food and Agriculture - Division of Measurement Standards 11453
Cal/OSHA Crane Permit	Serial#141477 issued by D&T Crane Certificate
Permit to Operate Steam Boiler	State of CA Dept of Industrial Relations Div of Occupational Safety and Health Serial#B001455-86, N.B.#15455
Permit to Operate Air Pressure Tank	State of CA Dept of Industrial Relations Div of Occupational Safety and Health No. 85154; Tank No. 1458-86; NB 61633
Permit to Operate Air Pressure Tank	State of CA Dept of Industrial Relation Div of Occupational Safety & Health No. 85155; Tank No. 24767-87; NB 67155

4. Please describe any capital spending on the project since January 2013.

Investment in DG Fairhaven preventive maintenance and capital improvements has averaged over \$1M for the past 5 years. Our principles of plant investment go back from the acquisition of DG Fairhaven in 2005 when we shut down the plant and invested approximately \$2.5M to rebuild the boiler and supporting systems to increase plant efficiency and reliability. Since then we have consistently performed preventive maintenance to insure reliability and to increase overall plant operating metrics.

The preventive maintenance and repair practices of Fairhaven are designed to ensure compliance with project agreements and regulatory obligations. The following is a typical list of services performed during scheduled shutdowns. Items with an asterisk are performed by Fairhaven personnel.

- Hydro-blasting of the Superheater section
- Vacuuming interior sections of boiler
- Washing out the ESP
- Bailey Controls: inspection and cleaning
- Refractory repair
- Complete inspection of the water side of boiler
- Repacking valves*
- Replacing worn chain, flights, screws*
- Switchyard cleaning and inspection*
- MCC cleaning and inspection*
- Cooling Tower: cleaning fans, fill, sump, screens*
- Inspection of all electrical motors*
- Bearing replacement as needed*
- Checking or changing all gearbox oil and greasing*
- Grate block inspection and replacement*
- Erecting scaffolding. (Firebox done by contractors)

The chart below provides a 5 year over view of our investments, organized by plant area or major system.

DG Fairhaven					
Capital Cost Spending 2013 to 2016 (Plus 2012)					
	Year				
	2012	2013	2014	2015	2016
General Electrical					
Switchyard Equipment / Maintenance	\$79,916.00	\$91,743.00	\$31,652.00	\$55,535.00	\$24,531.00
Replace Turbine Exciter System			\$222,111.00		
Electrical Maintenance	\$12,080.00	\$950.00			
General Mechanical					
Fuel Handling System Replacement	\$625,302.00				
Fuel System Maintenance	\$32,318.00	\$66,494.00			
Turbine oil purification system		\$55,000.00	\$29,025.00		
New Fuel Distributor Fan	\$24,000.00				
ID Fan / Motor	\$39,291.00	\$46,566.00	\$26,331.00	\$50,800.00	\$45,529.00
Other					
RIG Certification / Telemetry	\$71,615.00	\$5,800.00	\$5,800.00		
Truck Scale Software		\$48,646.00			
Diesel Generator		\$5,460.00			
Installation of Diesel Storage Tank		\$26,151.00			
Precipitator Upgrades		\$5,641.00	\$188,821.00	\$202,851.00	\$12,628.00
Cooling Tower Maintenance	\$12,385.00	\$354.00	\$14,233.00	\$14,158.00	
Dust Collector Maintenance	\$32,049.00	\$0.00	\$2,594.00	\$55,926.00	
Infrastructure Maintenance	\$11,319.00	\$46,443.00	\$4,749.00	\$10,650.00	
Boiler Repair / Maintenance	\$121,514.00	\$172,317.00	\$93,734.00	\$185,955.00	\$188,627.00
Equipment Repairs	\$59,720.00	\$62,770.00			
Other Supplies / Parts / Small Tools	\$180,104.00	\$174,093.00	\$150,035.00	\$79,004.00	\$17,832.00
Other Repairs / Maintenance	\$5,550.00	\$5,666.00	\$352,820.00	\$307,475.00	\$173,296.00
Other Scheduled Shutdown	\$99,851.00	\$71,078.00	\$24,772.00	\$173,041.00	\$119,140.00
Other Emergency Shutdown	Included above	Included above	\$34,287.00	\$13,230.00	\$0.00
Other Building Expense			\$30,194.00	\$21,467.00	\$4,707.00
Total	\$1,407,014.00	\$885,172.00	\$1,211,158.00	\$1,170,092.00	\$586,290.00

5. Please describe what flexibility the Buyer would have to shape energy deliveries for purposes of bidding into the CAISO day-ahead market.

The facility is designed to operate as a base load renewable resource. This type of facility does not contribute to the resource variability of other renewable technologies, and instead provides consistent energy output and capacity even in times of cold weather or disruption of natural gas deliveries. However, if necessary, the facility output can be curtailed in accordance with agreed upon terms.

6. Please describe the capability of the facility to receive CAISO communications and ability to respond to curtailment instructions from the CAISO for reliability or economic reasons in the real-time market.

The facility is staffed 24x7 with trained Shift Engineers who have several lines of external communications. These Engineers have full control over the output of the facility and can respond to CAISO dispatch instructions within the reasonable parameters of the facilities ability to ramp up or down.

Communication with CAISO from FHP is established via a secure dedicated T1 line and router. In accordance with "CAISO Business Practice Manual for Metering", a dedicated certified CAISO Electrical Revenue Meter sends plant output directly to CAISO via this line. In addition, in accordance with "CAISO Business Practice Manual for Direct Telemetry", a Remote Intelligent Gateway (RIG) installed at FHP provides CAISO with real-time plant telemetry.

7. Please describe any operational limitations on economically bidding the resource in the day-ahead and real-time markets and responding to CAISO dispatch instructions.

There are very few operational limitations on bidding the resource into the CAISO markets, although economically doing so might be difficult as the CAISO market is driven by natural gas pricing and DG Fairhaven is a biomass base load energy plant. There are limitations to the frequency and magnitude of ramping up and down due to the fact this is a biomass resource. We would agree to the following curtailment provisions (with reasonable notice and ramp times as determined by us for this facility's existing controls, communications and shift staffing):

- i. Redwood Coast Energy Authority may lower our maximum paid generation to 10MW net (after our agreed notice and ramp times) for a "curtailment charge" of \$425 per hour (including ramp times) for all hours the plant operates under a curtailment order.
- ii. During such curtailment period, we shall be paid for all metered energy at the regular contract price (up to this ramp-adjusted 10MW energy generation level)
- iii. Surplus generation: we shall use our commercially reasonable efforts to maintain generation at or below this 10MW level. Our failure to restrict generation to this 10MW level shall not be an event of default, however we will provide for a penalty provision whereby we are charged a deduct in current month for MWhrs in excess of this 10MW curtailment level (subject to the ramp schedule) at the current market price up to a maximum price of \$50/MW hr. In other words, we will not bear "make whole to market" risk, but will accept a modest penalty to the extent that our commercially reasonable efforts don't keep us to the temporary 10MW net max. RCEA may initiate this curtailment provision as frequently as once per 24 hour day, and the duration may be as little as 4 hours or as much as 72 hours (in each case excluding Ramps). However, there must be at least 18 hours between re-entering any successive curtailment ramp events (either to next 10MW or 0MW curtailment events), and not more than 240 hours of such curtailment total per month.
- iv. 10MW Ramp Down Notice: 30 minutes before beginning of Ramp Down;
- v. 10MW Ramp Down Rate: Assumed linear from 16.5MW to 10MW over period of 40minutes;
- vi. 10MW Ramp Up Notice: 30 minutes before beginning of Ramp Up;
- vii. 10MW Ramp Up Rate: Assumed linear from 10MW to 17.25MW over period of 90 minutes ;

- b. RCEA may also lower our paid generation level to **0MW** net (after our agreed notice and ramp times) for a payment of \$1,350 per hour (including ramp times) for all hours the plant operates under a curtailment order.
- i. Such 0MW period shall be for a period of not less than one hour and not more than four hours (in each case, excluding ramps), unless extended as described below in “Extension”
 - ii. During such curtailment period, we shall be paid for no metered energy (other than as allowed in the ramp periods)
 - iii. Surplus generation: same as above (using commercially reasonable efforts to meet maximum of 0MW net, subject to linear ramp, and with a maximum \$50/MWh penalty as above).
 - iv. RCEA may utilize this curtailment provision as frequently as four times per month, provided that there must be at least 18 hours between re-entering successive curtailment ramp events (excluding ramp periods).
 - v. 0MW Ramp Down Notice: 60 minutes before beginning of Ramp Down;
 - vi. 0MW Ramp Down Rate: Assumed linear from 17.25MW (or, if entering from existing 10MW Curtailment, then assumed linear from 10MW) to 0MW over period of 120 minutes ;
 - vii. 0MW Ramp Up Notice: 240 minutes before beginning of Ramp Up;
 - viii. 0MW Ramp Up Rate: Assumed linear from 0MW to 17.25MW over period of 360 minutes
 - ix. Extension: with notice not later than one hour prior to last possible (and before any) “0MW Ramp Up Notice”, RCEA may elect (not more than once per month nor more than four times per year) to extend a 0MW curtailment event by a period of not less than 24 hours and not more than 120 hours (“Extension Period”). During such Extension Period, the hourly curtailment fee shall be reduced to \$1,000 per hour, plus a one-time payment of \$2,500 per such Extension Period.
 - 1. Extension Period Ramp Up Notice: [12 hours] before beginning of Ramp Up;
 - 2. Extension Period Ramp Up Rate: Assumed linear from 0MW to 17.25MW over period of [12 hours].

Team Experience

- 8. Describe relevant technical experience of key personnel, how long they have been with the company and their backgrounds.**

Biographies of the supporting resources;

Lawrence Gardner
President & CEO

Mr. Gardner has over 35 years of experience in the energy, engineering and construction industries, holding numerous management positions and responsibilities for capital investment and overall business line management. Currently President & CEO of EWP Renewable Corporation comprised of 5 utility grade power plants situated across the United States, Mr. Gardner is responsible for all facets of the business from asset acquisition through contract performance. Over the past 12 years at EWP Renewable Corporation, transformed a collection of distressed energy assets to an impressive operating fleet of generating plants with technology ranging from biomass fueled boilers to simple cycle gas turbines and district energy plants.

Prior to assuming the role of President and CEO, Mr. Gardner as Executive Vice President was responsible for coordinating a corporate office consolidation, establishing a new team in New Jersey to handle all accounting, finance, and human resource duties. Mr. Gardner has also been paramount in the success of the California Power Holdings (CPH) peaker plants, modifying them for operation in the California merchant power market. Through modifications to both plant and emission control systems, he enabled these plants to alter normal operating scenarios from traditional peaker plant operation to flexible, fast response merchant plants able to respond to market volatility. Mr. Gardner remains responsible for daily bid obligations and offerings for the California plants into the California ISO.

As Executive Vice President of Technical Operations, Mr. Gardner provided the technical oversight for a varied energy generation fleet, responsible for providing management oversight and execution responsibilities for all capital project investment, asset purchases and asset rehabilitation projects. Working closely and in concert with the company operations team, the technical services group continues to provide ongoing plant engineering support for all types of technical issues as well as assistance with yearly outage planning and scope development.

Mr. Gardner has held numerous executive positions with large, international engineering and construction companies during his career and holds a degree in Business Administration from Temple University in Philadelphia, PA.

Edward T. Kent
Executive Vice President, Operations

Mr. Kent is a broadly-based business executive with over twenty-five years of experience in the Power/Energy and Facilities Management industry. Mr. Kent has achieved a solid record of accomplishment in managing Operations for EWPRC and Marubeni Sustainable Energy, Inc. (formerly DG Energy Solutions). He was one of the original employees to the start-up company that has become EWPRC and now manages 70 employees at various locations. He has a demonstrated record of achieving substantial improvements in operational metrics. Mr. Kent's strengths are focused in operations management, business strategy, contract negotiation, labor relations, predictive and preventive maintenance programs, business development and asset optimization.

As Executive Vice President of Operations, Mr. Kent's is the responsible executive for the day to day operations for EWPRC's generating assets, assuring that operating assets meet the commercial terms of each contract and guaranteeing all contractual obligations are fulfilled. Mr. Kent has implemented countless fuel supply contracts at two 18 MW biomass plants in New Hampshire ensuring that they can meet their Class 1 Renewable Energy Credit obligations and Power Purchase Agreement obligations. With a background in Operations Management and experience maintaining a variety of renewable energy, fossil fueled steam, diesel, and gas turbine power plants, Mr. Kent has established himself as a proven leader in the energy industry and utilizes his abilities to interact effectively at the highest levels with corporate entities.

Prior to his current role, Mr. Kent spent 10 years in various positions of increasing responsibility while employed by Chevron Shipping Company-USA where he was a seagoing marine engineer. He earned a United States Coast Guard License: Chief Engineer, Steam and Motor Vessels, Unlimited Horsepower. Mr. Kent was honorably discharged from the US Naval Reserves.

Mr. Kent provides direct supervision to EWPRC's operating asset Plant Managers and is actively involved in all facets of the individual plant operations and critical operating decisions.

Bob Marino

Plant Manager, DG Whitefield LLC

Mr. Marino has over 30 years of experience in Operations and Management, and has been in his current position as the Plant Manager at DG Fairhaven, LLC since 2003. He joined Fairhaven Power in an entry level position with the original owner, Eel River Sawmills. He has a variety of operations experience, including Fuel Tender, Water Treatment Technician, Control Room Operator, Shift Engineer, and Assistant Plant Manager.

In his current role as Plant Manager, Mr. Marino is responsible for the profit and loss of the facility, and prepares the annual budget and provides cost oversight on all facility expenditures. He maintains communication with all corporate personnel and outside agencies on a regular basis, addressing any business related issues or concerns. Mr. Marino also serves as the representative of DG Fairhaven LLC in any community affairs and has helped to establish sound business policies and guidelines for the facility. He also lectures Humboldt State University students of Forestry, Engineering, and Environmental Sciences in biomass power production.

Additionally he is responsible for facility compliance in state/federal environmental record keeping and reporting. He also conducts planning off-line maintenance periods, including the drafting of bid work packages, procurement of parts/materials and final awarding of contracts; negotiating multi-year pricing agreements with service and product vendors. Mr. Marino is also involved with personnel oversight, conducting personnel scheduling, performance evaluations and disciplinary hearings, and put a great emphasis on safety within the plant, organizing safety programs and employee training, and providing Safety Committee oversight. He also played a major role in engineering control and process improvements to provide for more efficient facility operation. He directs employee teams to maintain capacity and availability factors over 90% annually, while ensuring the safe, efficient, and reliable operation of the facility.

Prior to his power plant experience, Mr. Marino held various positions with North Coast Export Cooperative which exported wood chips to Japan's pulp and paper industry. In his most senior position, Quality Control Analyst, Mr. Marino developed and implemented programs to track and troubleshoot the quality of wood chips being exported. He reported to the Board of Directors and was the liaison between the chip suppliers and the Japanese customers.

Art McMaster Controller

Mr. McMaster is a results-oriented executive accustomed to profit and loss responsibilities with over twenty-five years of experience in several high volume industries, in diversified roles from Financial Manager to President/CEO. Through his various diverse positions, he has proven leadership in Executive Management, Turnaround Management, Fundraising Initiatives, Financial Planning and Analysis, Financial Reporting, Systems Development and Implementation, Business Planning and Contract Development.

In his current position as Controller at EWPRC, Mr. McMaster oversees the financial accounting and reporting for the company. Duties and responsibilities include preparing financial reports, budgets and financial forecasts, managing the company assets, administration, auditing, tax administration, accounting functions, and internal control.

Previously, Mr. McMaster served as the President/CEO of The Miss America Organization, managing 50 state organizations, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands along with an additional 1,200 franchise organizations. In this role, he helped reverse negative television trend and successfully turned the company around after the loss of a major television contract. Mr. McMaster also successfully negotiated a new television contract with ABC television that included four million dollars annually in client provided marketing and advertising. He also assumed the lead role in marketing and re-branding of the organization, leading the charge to bring The Miss America Pageant television show from Atlantic City to Las Vegas. Mr. McMaster played a crucial role in initiating corporate cost reduction plans to meet the changing business environment while also initiating a new market concept for developing corporate sponsors and researching licensing opportunities.

Prior to his role at The Miss America Organization, Mr. McMaster was the Senior Planner and Assistant to the Vice President of the Saudi Arabian Oil Company. He managed a staff of 12 professionals responsible for financial reporting and analysis of support services business segment with 3,200 employees and 7,000 contractor personnel, \$7 billion in assets, \$300 million annual operating budget and \$50 million annual capital work. Mr. McMaster also developed annual budgets, five year business plans, quarterly and mid-year review of operations and was responsible for corporate strategic planning for all utility operations in local communities throughout the Eastern Province of Saudi Arabia.

Previous assignments also include the position of Nuclear Power Division Controller at Day & Zimmermann in Philadelphia. In this role, Mr. McMaster was responsible for daily accounting activities including general ledger, payroll, accounts payable, accounts receivable and job costing, as well as company Profit and Loss reporting and analysis. He also developed computer stand-alone accounting and cost systems to handle multiple companies, divisions and projects. Mr. McMaster was also Field Administration Manager for Raytheon Engineers where he directed staff accounting and administration for 20 construction projects including hiring of all administrative and financial personnel, training, and continuous monitoring of workflow.

Walter Patrick
Project Engineering

Mr. Patrick has 39 years of experience in a number of various power related fields. His experience includes engineering / project management, design engineering, field construction, system startup, plant optimization / efficiency projects, and material procurement / inventory control.

Mr. Patrick's responsibilities included coordination of engineering activities and construction management responsible for ensuring the proper installation and completion of all projects. He also manages commissioning and startup activities for all new facilities.

Mr. Patrick was the responsible manager for over 40 capital projects across the parent company's portfolio of energy assets and interfaces with environmental consulting engineering firms to insure plant compliance with all operating permits.

Mr. Patrick is directly involved with all operating projects within the EWPRC portfolio supporting annual outage planning and overseeing all major inspections and outages. These activities include Turbine Major Inspection and Repair, Electrostatic Precipitator repair, boiler upgrades and plant critical spares program. Mr. Patrick managed the design and boiler/turbine modification necessary to uprate two biomass plants by 12%, working directly with 3rd party engineering professionals and OEM's to insure proper design and installation was provided. He has also managed numerous plant efficiency projects on our existing assets.

Scott Pisarski
Project Manager - Electrical, Instrumentation & Controls, Automation Engineer

Mr. Pisarski has over 33 years of experience in the power industry, with the last 8 years focusing on Biomass Power Generation & Combined Heat & Power (CHP) Generation. As Project Manager at EWP Renewable Corporation, his responsibilities include development of detailed equipment specifications, procurement of major pieces of equipment, bid tab evaluation, development of FRS's (functional requirement specifications), RFP's (request for proposals), electrical one lines, three lines, protective relaying schemes, schematics, wiring and raceway drawings, instrumentation and controls loop diagrams as well as field start-up, testing and commissioning.

Mr. Pisarski is responsible for electrical and controls system design, PLC and HMI programming, network configuration, and startup and testing for all EWPRC operating plants. He also provides continuing engineering support for each plant, providing technical support, troubleshooting, and the execution of capital projects. Mr. Pisarski was responsible for coordinating with local utilities during two plant uprate projects to ensure that transmission lines could accommodate increased output; responsible for generator evaluation & inspection to ensure generator could support increased output; and responsible for developing scope of work and obtaining proposal, issuing purchase order, and performing on-site construction and start-up manager responsibilities during installation. Additionally, he supports each operating plant working with various vendors to evaluate technology and feasibility for installing fuel moisture content analyzers to determine real time moisture content of hog fuel prior to delivery to the boiler; purchasing, installing and commissioning the new instruments; and OPC programming, maintaining interface servers and plant data historian, network communication and data management and backup for the Plant Data Historian Project.

In addition, Mr. Pisarski has done considerable work in the area of Distributive Control Systems (DCS) with systems such as Foxboro, Bailey Net 90, Emerson DeltaV, ABB Mod 300 Honeywell and others. Rockwell PLC programming experience includes utilizing RSLogix500 & 5000 programming software as well as HMI development software RSView32 and RSStudio. He has extensive computer experience with CAD software packages Intergraph Microstation, Intergraph 3D Plant Design System (PDS), and Autodesk Inc. Autocad.

Fairhaven has a present complement of 22 people onsite as listed below:

Position	
General Manager	1
Asst. Plant Mngr. and Maint. Spv.	1
Shift Engineers	4
Control Room Operators	4
Loader Operators	4
Control Room Operator Trainee	1
Cleanup/Utility	1
Millwright	1
Apprentice Millwright	1
I&E Technician	1
Oiler	1
Utility, Environmental and Safety	1
Administrative Assistant	1
Total Complement	22

Compliance

9. **Has any company, partner, or subsidiary in this venture, or any corporate officer, been the subject of any enforcement action, order, decree, or notice of violation of any environmental laws, regulations, or permits? If an answer is "yes," please explain fully including how the issue was resolved.**

DG Fairhaven has operated under a Title V operating permit since its inception in 1987. Over the course of the past 30 years, DG Fairhaven and its management has taken its environmental responsibilities extremely serious and overall has a tremendous record of compliance with all operating permit considerations. Currently, DG Fairhaven is in discussions with the North Coast Regional Water Quality Control Board (NCRWQCB) regarding administrative reporting failures that have occurred due to changes in the plant's plumbing and other physical modifications made to enhance overall water quality

control. Due to these omissions, the Water Board has issued an administrative civil liability complaint against DG Fairhaven which we are currently negotiating with the Water Board. DG Fairhaven expects to resolve this ACLC soon and has already made the necessary changes in environmental consultant reporting activities to insure these omissions do not occur in the future.

10. Has your facility been listed by the EPA as a high priority violator at any time during the past 5 years?

No.

11. Safety

12. Please provide information detailing the worker safety record for the past five (5) years for the company and its affiliates in California or other State(s) where it operates.

- 2011 Injury, (Mitch Ellis) 3 Days away from work.
- 2012 Injury, (Mike Burns) 2 Days away from work.
- 2013 Injury, (Mike Burns) 121 Days away from work.
- 2014 No lost days in the workplace.
- 2015 Injury, (Kevin White) 1 Day away from work.
- 2016 No lost days in the workplace.

13. Credit

Please provide available information on responder's financial viability including current annual report(s) and recent financial statement(s).

The financial viability of DG Fairhaven Power, LLC, a wholly owned EWP Renewable Corporation company, is more than adequate for the assumption of this contract and has sufficient income to meet all its operating payments, debt commitments and still allow for growth. The attached Audited Consolidated Financial Statements of EWP Renewable Corporation reflect our financial position.



Adobe Acrobat
Document

Additional Information

14. Please provide any additional company, contract, market or other information responder believes may be useful to RCEA as it investigates the potential for contracting with local biomass facilities.

In addition to these renewable energy and Local RA benefits offered by DG Fairhaven Power, our offering to RCEA could include System RA delivered from our existing 44.8 MW Red Bluff natural gas peaking unit (REDBLF_6_UNIT), located in nearby Tehama County, CA. This plant is an efficiently designed and operated natural gas facility with 16 individual Wartsila reciprocating generator units.

This configuration offers unprecedented flexibility, reliability, and availability, including 100% of RCEA Flexible Capacity RAR requirements, together with virtually all of the remaining System RA requirements (at Red Bluff's 44.8 MW monthly max). When combined with DG Fairhaven's total deliverability, these existing Red Bluff generating units combine to easily provide a significant portion of RCEA's System RA, Flex RAR and Local RAR requirements. EWP Renewable Corporation will likely look to another of its owned and controlled resources (CHWCHL_1_UNIT, 48 MW) within the Greater Fresno Local Control Area as an available candidate source of replacement RA capacity (System, Local, and Flex) if ever needed for unexpected deliverability outages of DG Fairhaven Power or Red Bluff, and this replacement unit could also be looked upon for easily contracting for any additional System RA if so desired by RCEA.

DG Fairhaven represents one of the longest, continuously operating biomass plants in the region having been online since 1987. The plant completed a contract amendment that increased its price to standard biomass requirements with PG&E on January 2, 2011. The company spent the month of January performing maintenance on the facility and then remained offline for 3 additional months due to low SRAC pricing but returned to service in April of 2016 and has continued to operate and maintain its full staff of 22 experienced and reliable plant engineers and maintenance staff.

Over the past 5 years the plant has averaged approximately \$1,000,000 per year in preventive and predictive plant maintenance totaling \$4M+ over this time frame which has allowed the facility to achieve over a 90% capacity factor. The plant has generated (net) approximately 600,000 MWHs of renewable energy over the past five years, an average of 120,000 MWHs per year demonstrating its reliability and the corporate support it receives. In 2016 DG Fairhaven kept its gates open to local saw mills who needed a location to dispose of their mill wastes, avoiding the exceptionally expensive and environmentally unfriendly use of local landfills or open burning.

As one of the most reliable renewable resources in Humboldt County, DG Fairhaven has taken tremendous pride in its record of environmental and operating performance, its long-standing participation in the California biomass industry and its highly trained staff. DG Fairhaven remains a valued corporate citizen of the Humboldt County community with strong relationships with the Harbor District, the local saw mills, vendors and local suppliers that provide ongoing support for the plant and create economic benefits for the local economy. With these valued relationships DG Fairhaven is excited by the opportunity to work with the RCEA and continue to provide Humboldt County with reliable, renewable biomass energy converting the area's largest natural resource into sustainable renewable energy in an environmentally responsible and clean way.

RCEA 2016 Biomass Request for Offers
Questionnaire

RESOURCE INFORMATION:

1. Ownership structure.

Humboldt Redwood Company, LLC (the "Company" or "HRC"), a Delaware limited liability company was formed in 2008 and owns and operates one sawmill and a combined heat and power plant located in Scotia, California. The Company also owns and manages approximately 210,000 acres of timber and timberland located in the county of Humboldt. The Company has approximately 250 employees in Humboldt County employed throughout its operations in sawmill, heat and power plant, and timberlands.

RESOURCE INFORMATION:

2. Description of the facility and summary of its operations.

Timberland operations. The Company manages approximately 210,000 acres of coast redwood and Douglas-fir forestland spanning across 60 Northern California coastal watersheds which include approximately 305 miles of fish-bearing streams and nearly 1,100 miles of streams supporting non-fish aquatic life. The timberlands are managed with a high standard of environmental stewardship while also operating as a successful business. The Company's timberland key policies include (i) identifying and retaining old growth trees, (ii) restoring forest habitats, (iii) reducing road-related sediment in streams, and (iv) third party certification through the Forest Stewardship Council ("FSC"). The Forest Stewardship Council® is a non-profit organization dedicated to encouraging responsible forest management by defining best practices for forestry through an emphasis on social, environmental, and economic values. The Forest Stewardship Council® is the leading certification standard for healthy, well managed forests worldwide.

Sawmill operations. The sawmill operations are a continuation of the high stewardship commitment by which we run our business. Currently, the sawmill produces more than 200 million board feet of lumber products annually and has the need to source logs not only from the Company's timberlands but also from other third party land owners including both private and government owned and managed timberlands. Our log procurement policy includes purchasing as many logs from FSC certified lands as possible. The Company currently manages a FSC group certificate program to enable small and medium-sized landowners to participate and maintain FSC certification free of charge. This practice promotes FSC certification across the redwood region which is consistent with Company core values while also offering our customers a unique mix of products for outdoor living and home improvement projects with materials that are obtained from environmentally responsible sources.

Combined Heat and Power Plant/Biomass Fired Cogeneration Plant (the "Plant"). HRC acquired the Plant in October 2015 as the Company believed it could be an extension of our timberland and sawmill operations while providing the best economic opportunity for the merchandising of the approximate 450,000 green tons, or 250,000 bone dry tons, of wood waste created by sawmill operations. The Plant is co-located at the Scotia sawmill complex and due to the proximity of the two facilities the wood waste generated from lumber production is used to produce electricity with no additional Greenhouse Gas footprint. Under HRC's stewardship the Plant resumed producing steam and electricity in January 2016, the steam is used for drying lumber and generating electricity to operate the sawmill facilities with the excess electricity available for sale and distribution. The Plant maintains three independent boilers and turbines, with nameplate ratings for 32.5 MW of electricity. During the period 2008 – 2014 HRC sawmill operations was the primary source of fuel for the Scotia power plant while it was under different ownership. Consolidating ownership of the Plant with the sawmill allows the Company to expand its

product offerings to consumers from environmentally responsible fiber sources through the sale and distribution of electricity.

3. Company's fuel supply and waste management approach.

Fuel supply. The source of fuel for the heat and power plant operations are the sawmill residuals from the co-located sawmill and planer mill. The current fuel supply of approximately 250,000 bone-dry tons of wood waste is a byproduct of Company's harvesting, processing of timber, and distribution of Company's lumber products. The continuation of this business model is necessary to support the significant capital investment made by the Company's ownership group.

Waste management. The byproduct from the generation of steam and electricity include (i) Char, which is primarily used for industrial water filtration material, processed by a Humboldt County business, and (ii) Fly-ash which is a certified organic input material for use as a soil fertilizer by the California Department of Food and Agriculture.

4. Capital spending plan for Heat and Power Plant.

The Company acquired the Plant in October 2015 and has made the following investments in the plant:

- ✓ Restored and refurbished the (i) continuous opacity monitoring system, (ii) controls, (iii) cooling towers, (iv) water treatment facilities, (v) turbine valve racks, (vi) substation tap changer, (vii) feed water pumps, (viii) electrostatic precipitator, and (ix) waste handling systems. The capital investment for these projects totaled \$3.3 million.

Since acquiring the plant the Company has identified several additional capital projects which are under consideration, including:

- ✓ *Redundancy (High Availability).* Restore third boiler (currently off line) to attain a high level of reliability and significantly increase continuous production levels from 15 MW to 23 MW. We anticipate completing this project in May 2017 with an investment of \$1.8 million.
- ✓ *Waste Systems.* Replace ash handling system to increase uptime, anticipated investment of \$1.2 million.
- ✓ *Fuel Conveyor.* Install conveyance system from sawmill to power plant to transport wood waste, anticipated investment of \$1.5 million.
- ✓ *Power Production Expansion.* Install state-of-art auto extracting turbine/generator utilizing the plants full boiler capacity of 450,000 lbs/hour to increase production to 49 MW, anticipated investment of \$20 million plus.
- ✓ *Energy Storage.* Include energy storage as part of an energy resiliency strategy.

The capital plan is not final and remains under analysis and review by the Company.

5. Buyer flexibility regarding shaping energy deliveries for purposes of bidding into the CAISO day-ahead market.

The Company generators are continuously operating on-site biomass units. Due to the on-site manufacturing requirements, the Plant would prefer to run at a steady output to deal with wood waste from on-site sawmill operations. The Plant is able to island upon request with approximately two hour notice. HRC is currently reviewing the viability of storage which would improve the flexibility profile.

6. *Capability of the plant to receive CAISO communications and ability to respond to curtailment instructions from the CAISO for reliability or economic reasons in the real-time market.*

As part of its conversion to a CAISO Participating Generator, the plant has CAISO approved plans for standard metering and communication, including the ability to respond to curtailment instructions.

7. *Operational limitations on economically bidding the resource in the day-ahead and real time markets and responding to CAISO dispatch instructions.*

The Plant, in its current configuration, prefers to run at a steady output to deal with waste wood from on-site manufacturing. The Plant is able to island upon request and is considering additional on-site capabilities to enhance response to dispatch instructions and flexible ramping obligations.

TEAM EXPERIENCE:

8. *Relevant technical experience of key personnel.*

Bob Mertz. Chief Executive Officer of Humboldt Redwood Company, LLC with twenty-five years of experience in the forest products industry including new construction, remodel, and operating biomass fired cogeneration facilities at Humboldt Redwood Company, LLC, Collins Pine Company, and Sierra Pacific Industries. Relevant industry affiliations include California Biomass Energy Alliance and California Forestry Association.

Dean Kerstetter. Executive Vice President of Humboldt Redwood Company, LLC with over twenty-five years of engineering and operations management experience. During the past seven years Dean has held the Executive Vice President position with Humboldt Redwood Company, LLC managing and operating the sawmill operations and for the past year managing and operating the biomass fired cogeneration facility.

Michael Richardson. Director of Operations at Humboldt Redwood Company, LLC with over twenty-five years of progressive management experience in the forest products industry with emphasis on sawmill management and biomass fired cogeneration facility over the past year. Michael is responsible for the day-to-day oversight of safety, quality, productivity and cost management for both the sawmill and the biomass fired cogeneration facility.

Bill Dillard. Superintendent at Humboldt Redwood Company, LLC's biomass fired cogeneration facility with more than twenty-five years of experience in the Scotia facility for Pacific Lumber Company and Eel River Power.

Howard Hughes. Environmental Health and Safety Specialist for the Humboldt Redwood Company, LLC with more than twenty-four years of experience in the forest products industry. Howard has nineteen years of experience working with biomass fired cogeneration facilities for Humboldt Redwood Company, LLC and Sierra Pacific Industries. Relevant trade affiliations include American Forest & Paper Association Air Quality Subcommittee, American Wood Council Environmental Issues Committee.

COMPLIANCE:

9. *Has any company, partner, or subsidiary in this venture, or any corporate officer, been the subject of any enforcement action, order, decree, or notice of violation of any environmental laws, regulations, or permits? If "yes", please explain fully including how issue was resolved.*

The Company works with a number of environmental agencies on a regular basis at the County, State, and Federal level. The agencies are listed below:

County:

- ✓ Certified Unified Program Agency (CUPA)
- ✓ Humboldt County Waste Management Authority (Solid Waste)
- ✓ Humboldt County Department of Environmental Health

State:

- ✓ California Department of Forestry and Fire Protection (Cal Fire)
- ✓ California Department of Fish and Wildlife (CDFW)
- ✓ California Geologic Survey (CGS)
- ✓ North Coast Regional Water Quality Control Board (NCRWQCB)
- ✓ North Coast Unified Air Quality Management District (NCUAQMD)
- ✓ California Air Resources Board (CARB)
- ✓ California State Mining & Geology Board (SMGB)

Federal:

- ✓ United States Fish and Wildlife Service (USFWS)
- ✓ National Marine Fisheries Service (NMFS)
- ✓ National Oceanic and Atmospheric Administration – NOAA Fisheries

Please see **Attachment I** for summary of Notice of Violations.

10. *Has your facility been listed by the EPA as a high priority violator at any time during the past 5 years?*

No

SAFETY:

11. *Please provide information detailing the worker safety record for the past five (5) years for the Company and its affiliates in California or other State(s) where it operates?*

✓ Recordable and Lost Time injuries below:

Recordable and Lost Time Injuries										
	2016		2015		2014		2013		2012	
	Recordable	Lost Time	Recordable	Lost Time	Recordable	Lost Time	Recordable	Lost Time	Recordable	Lost Time
HRC Sawmill	21	2	17	2	18	2	16	5	23	9
Sawmill	15	2	14	3	14	1	14	5	14	6
Forestry	3	0	3	0	4	1	2	0	9	3
CoGen	3	0	--	--	--	--	--	--	--	--

✓ Please see Cal/OSHA Form(s) 300A per **Attachment II**.

CREDIT

12. Please provide available information on responder's financial viability including current annual report(s) and recent financial statement(s).

Please find the Company's financial statements presented on a combined basis per **Attachment III** which includes (i) 2015 year ended balance sheet, cash flow statement, and income statement, and (iii) 2016 October balance sheet, and year-to-date cash flow statement and income statement. Income statement presented for both periods by timberlands and mill/distribution business segments.

ADDITIONAL INFORMATION:

13. Please provide any additional company, contract, market, or other information responder believes may be useful to RCEA as it investigates the potential for contracting with local biomass facilities.

HRC's ownership group has made a significant investment in the assets of the business in Humboldt County and its vision of managing a large block of industrial forestland with high standards of environmental stewardship and at the same time, operate a successful business is meaningful to the employees, local vendors, local businesses, and the residents of Humboldt County. That vision results in a significant direct investment in the local community in the form of (i) high quality employee benefits package which allows employees of the Company the ability to afford housing in the community and maintain exceptional health care and retirement benefits, and (ii) business transactions with local businesses and landowners contributing to the employment of hundreds more Humboldt County residents.

On an annual basis a summary of the Company investment through expenditures in employees and local vendors throughout Humboldt County are as follows:

Employees	250
(\$000s)	
Employee related costs	\$22,243,932
Local operating costs	\$41,806,105
Local log purchases	<u>\$45,338,589</u>
Total	<u>\$109,388,626</u>

Humboldt Redwood Company - Permit and Notice of Violation Summary

Attachment I

Facility	Environmental Permit Type	Status of Permit	Comment	Notice of Violation (NOV)	NOV Description	Status of NOV
Scotia Sawmill (SSM)	Multi Source Air Permit No. NCU 487-12 Boiler, dry lumber kilns, knife planer & gang trimmer, emergency compression ignition engine	Current	Under consolidation with SSM and HMA air permit into a single Title V permit. Title V air permit is up for a 5 year renewal.	Notice of Violation issued 10/3/13	Fugitive dust generated by logging truck activity and dust/wood waste piles. Hole in pneumatic transfer system.	Appealed NOV and settled; Settlement agreement signed 7/20/15.
Scotia Sawmill (SSM)	Same as above		Same as above	Notice of Violation issued 2/5/16	Failure to comply with emission limits as identified in permit #000973-1, condition 43. Source test not done at permitted capacity due to limitation of natural gas.	Natural gas supply to mill is not sufficient to operate boiler at permitted level. Currently under appeal.
Scotia Sawmill (SSM)	Same as above		Same as above	Notice of Violation issued 11/3/16	Beginning construction of dry kilns prior to receiving the ATC permit.	Plan to appeal.
Scotia Sawmill (SSM)	Industrial General Permit Waste Discharge Identification No. 1121021770	Current	Stormwater Pollution Prevention Plan for Scotia Sawmill.	None		
Scotia Sawmill (SSM)	Authority to Construct Air Permit No. 000973-1 (25 MMBtu natural gas boiler)	Current	Under consolidation with SSM and HMA air permit into a single Title V permit. Title V air permit is up for a 5 year renewal.	None		
Aggregate Plant	Air Permit No. 000518-2 Portable Diesel-powered Aggregate Plant	Current		None		
Scotia CoGen (SCG) bio-mass boiler	Air Permit No. NCU 060 -12 Boiler A - NS-074 Boiler B - NS-075 Boiler C - NS-076	Current	Under consolidation with SSM and HMA air permit into a single Title V permit. Title V air permit is up for a 5 year renewal.	None		
Scotia CoGen (SCG) bio-mass boiler	NPDES No. CA0006017 Scotia CoGen	Current	Waste discharge requirements for the CoGen Power Plant.	None		

Attachment I

Humboldt Redwood Company - Permit and Notice of Violation Summary

Facility	Environmental Permit Type	Status of Permit	Comment	Notice of Violation (NOV)	NOV Description	Status of NOV
Hot Mix Asphalt (HMA)	Air permit #000974-2 Asphalt Paving Mixture and Block Manufacturing	Current	Under consolidation with SSM and HMA Air permit into a single Title V permit.	Notice of Violation (5) issued 10/25/16	Record Keeping. Failure to record hourly pressure drop; failure to continuously record temperature; failure to record daily quantity of diesel consumed; failure to maintain outlets temperature less than required 325° F on 6/10, and on 6/14/16.	HRC intends to appeal these NOV's.
Hot Mix Asphalt (HMA)	Same as above			Notice of Violation (1) issued 10/21/16	Failure to run source test on 6/18/15 at required capacity. Violation of permit #000974-1, compliance testing & monitoring (53). Emission testing was not conducted at 95% of maximum production capacity.	The asphalt plant is not capable of operating at maximum permitted capacity. The test was conducted at the maximum operating capacity. HRC intends to appeal this NOV.
Tank Gulch Site Unclassified Waste Pile	Waste Discharge Requirements - Order No. R1-2008-0100	Current	The site is currently inactive.	None		
Tank Gulch Site Unclassified Waste Pile	Industrial General Permit Waste Discharge Identification for Tank Gulch Site	Current	Stormwater Pollution Prevention Plan for Tank Gulch Solid Waste Disposal Site and Transfer Station. 69 page document. Cover sheet attached (see SWPP for Tank Gulch tab).	None		

Cal/OSHA Form 300A (Rev. April 2004)

Summary of Work-Related Injuries and Illnesses

Year: 2015



All establishments covered by CCR Title 8 Section 14300 must complete this Annual Summary, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0."

Employees, former employees, and their representatives have the right to review the Cal/OSHA Form 300 in its entirety. They also have limited access to the Cal/OSHA Form 301 or its equivalent. See CCR Title 8 Section 14300.35, in Cal/OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0 (G)	3 (H)	5 (I)	18 (J)

Number of Days

Total number of days of job transfer or restriction	Total number of days away from work
515 (K)	68 (L)

Injury and Illness Types

Total number of...	(M)
(1) Injuries	17
(2) Skin Disorders	0
(3) Respiratory conditions	0
(4) Poisonings	0
(5) Hearing loss	7
(6) All other illnesses	0
To be verified	

Post this Annual Summary from February 1 to April 30 of the year following the year covered by the form.

Facility Information:	
Establishment name: Humboldt Redwood Company, LLC	
Street: 125 MAIN STREET	
City: SCOTIA	State CA ZIP 95665
Industry description: Sawmill & Planing Mills, General	
Standard Industrial Classification (SIC) if known: 2421	
Employment Information (If you don't have these figures, see the Worksheet on the back of OSHA Form 300A to estimate)	
Annual average number of employees	236
Total hours worked by all employees last year	471,603
Sign here	
Knowingly falsifying this document may result in a fine. I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.	
<i>Bernard Weinert</i>	Vice President, Legal Affairs
Company executive: Bernard Weinert	Date: 5/3/2016
(707) 820-2957	Phone

REMOVE 1 May 16

Cal/OSHA Form 300A (Rev. April 2004) Summary of Work-Related Injuries and Illnesses

Year: **2014**



All establishments covered by CCR Title 8 Section 14300 must complete this Annual Summary, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary.

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0."

Employees, former employees, and their representatives have the right to review the Cal/OSHA Form 300 in its entirety. They also have limited access to the Cal/OSHA Form 301 or its equivalent. See CCR Title 8 Section 14300.35, in Cal/OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0 (G)	4 (H)	5 (I)	14 (J)

Number of Days

Total number of days of job transfer or restriction	Total number of days away from work
316 (K)	138 (L)

Injury and Illness Types

Total number of...	(M)
(1) Injuries	18
(2) Skin Disorders	3
(3) Respiratory conditions	0
(4) Poisonings	0
(5) Hearing loss	2
(6) All other illnesses	0

Post this Annual Summary from February 1 to April 30 of the year following the year covered by the form.

Facility Information:	
Establishment name: Humboldt Redwood Company, LLC	
Street: 108 MAIN STREET	State CA ZIP 95565
City: SCOTIA	
Industry description: Sawmill & Planing Mills, General	
Standard Industrial Classification (SIC) if known	2421
Employment Information (If you don't have these figures, see the Worksheet on the back of OSHA Form 300A to estimate)	
Annual average number of employees	199
Total hours worked by all employees last year	398,725
Sign here	
Knowingly falsifying this document may result in a fine. I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.	
Company executive: Barry J. Weinert	Vice President, Legal Affairs
(707) 620-2987	23-Jan-15
Phone	Date

REMOVE 1 May 15

Cal/OSHA Form 300A (Rev. April 2004) Summary of Work-Related Injuries and Illnesses

Year: **2013** 

All establishments covered by CCR Title 8 Section 14300 must complete this Annual Summary, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0." Employees, former employees, and their representatives have the right to review the Cal/OSHA Form 300 in its entirety. They also have limited access to the Cal/OSHA Form 301 or its equivalent. See CCR Title 8 Section 14300.35, in Cal/OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0 (G)	5 (H)	6 (I)	18 (J)

Number of Days

Total number of days of job transfer or restriction	Total number of days away from work
230 (K)	142 (L)

Injury and Illness Types

Total number of...	(M)
(1) Injuries	16
(2) Skin Disorders	0
(3) Respiratory conditions	0
(4) Poisonings	0
(5) Hearing loss	13
(6) All other illnesses	0

Post this Annual Summary from February 1 to April 30 of the year following the year covered by the form.

Facility Information:

Establishment name:	Humboldt Redwood Company, LLC		
Street:	108 MAIN STREET		
City:	SCOTIA	State	CA ZIP 95565
Industry description:	Sawmill & Planing Mills, General		
Standard Industrial Classification (SIC) if known	2421		

Employment Information (If you don't have these figures, see the Worksheet on the back of OSHA Form 300A to estimate)

Annual average number of employees	201
Total hours worked by all employees last year	382,583

Sign here

Knowingly falsifying this document may result in a fine. I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.

Company executive: Barry J. Weinert	Title	Vice President, Legal Affairs
(707) 620-2967	Date	22-Jan-14
Phone		

Cal/OSHA Form 300A (Rev. April 2004) Summary of Work-Related Injuries and Illnesses

All establishments covered by CCR Title 8 Section 14300 must complete this Annual Summary, even if no work-related injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and accurate before completing this summary. Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the Log. If you had no cases, write "0." Employees, former employees, and their representatives have the right to review the Cal/ OSHA Form 300 in its entirety. They also have limited access to the Cal/ OSHA Form 301 or its equivalent. See CCR Title 8 Section 14300.35, in Cal/ OSHA's recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

Total number of deaths	Total number of cases with days away from work	Total number of cases with job transfer or restriction	Total number of other recordable cases
0 (G)	9 (H)	4 (I)	14 (J)

Number of Days

Total number of days of job transfer or restriction	Total number of days away from work
399 (K)	470 (L)

Injury and Illness Types

Total number of...	(M)	(4)	(5)	(6)
(1) Injuries	22	Poisonings 0	Hearing loss 4	All other illnesses 0
(2) Skin Disorders	1			
(3) Respiratory conditions	0			

Post this Annual Summary from February 1 to April 30 of the year following the year covered by the form.



Facility Information:	
Establishment name:	Humboldt Redwood Company, LLC
Street:	108 MAIN STREET
City:	SCOTIA
State:	CA
ZIP:	95565
Industry description:	Sawmill & Planing Mills, General
Standard Industrial Classification (SIC) if known:	2421
Employment Information (If you don't have these figures, see the Worksheet on the back of OSHA Form 300A to estimate)	
Annual average number of employees	216
Total hours worked by all employees last year	442,199
Sign here Knowingly falsifying this document may result in a fine. I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete.	
Company executive:	Barry J. Weinert
Phone:	(707) 620-2967
Title:	Vice President, Legal Affairs
Date:	16-Jan-13