



# Redwood Coast Energy Authority

633 3<sup>rd</sup> Street, Eureka, CA 95501

Phone: (707) 269-1700 Toll-Free (800) 931-RCEA Fax: (707) 269-1777

E-mail: [info@redwoodenergy.org](mailto:info@redwoodenergy.org) Web: [www.redwoodenergy.org](http://www.redwoodenergy.org)

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## **REGULAR MEETING AGENDA**

**Humboldt Bay Municipal Water District Office**  
**828 7<sup>th</sup> Street, Eureka, CA 95501**

**January 22, 2018**  
**Monday, 3:15 p.m.**

RCEA will accommodate those with special needs. Arrangements for people with disabilities who attend RCEA meetings can be made in advance by contacting Lori Taketa or front office staff at RCEA, 633 3<sup>rd</sup> Street, Eureka, or by calling 269-1700, or by e-mail at [Ltaketa@redwoodenergy.org](mailto:Ltaketa@redwoodenergy.org), by noon the day of the meeting.

### **OPEN SESSION** Call to Order

#### **1. REPORTS FROM MEMBER ENTITIES**

#### **2. 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 and 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.

#### **3. 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.

**3.1 Approve Minutes of December 18, 2017, Regular Board Meeting.**

**3.2 Approve Warrants.**

**3.3 Accept Financial Reports.**

**3.4 Approve 2018 Board Meeting Calendar.**

**3.5 Adopt Resolution No. 2018-1 of the Redwood Coast Energy Authority Approving Membership in the Humboldt Area Chapter of the California Special Districts Association.**

#### **4. REMOVED FROM CONSENT CALENDAR ITEMS**

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

#### **5. OLD BUSINESS**

**5.1 Power Purchase Agreement with DG Fairhaven, LLC**

Approve 12-month Power Purchase Agreement with DG Fairhaven, LLC and authorize the Executive Director to execute the agreement and any other associated documents as necessary.

## **6. NEW BUSINESS**

### **6.1 Election of Officers**

Select RCEA Board Chair and Vice Chair and authorize them as signers on RCEA bank accounts.

### **6.2 Offshore Wind Energy**

Appoint RCEA Board members to an Offshore Wind Energy Subcommittee.

Approve issuing a Request for Qualifications for Offshore Wind Energy Development Partners after final review and approval by RCEA Legal Counsel and the RCEA Offshore Wind Energy Board Subcommittee.

Approve RFQ-response evaluation team members.

### **6.3 Community Advisory Committee Appointments**

Nominate and appoint Community Advisory Committee (CAC) members to fill the vacant seats.

Authorize staff to announce and post the CAC application to fill the four at-large vacancies.

Appoint at least one RCEA Board member as a CAC liaison that will attend CAC meetings.

## **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 weighted voting as established in the RCEA joint powers agreement.

## **7. OLD CCE BUSINESS**

### **7.1. Energy Risk Management Plan Quarterly Report (no action, information only)**

## **8. NEW CCE BUSINESS**

### **8.1 Rate Setting for 2018 (no action, information only)**

## **END OF COMMUNITY CHOICE ENERGY (CCE) BUSINESS**

## **9. STAFF REPORTS**

### **9.1 Executive Director**

- Work with the Governor's Office of Planning and Research on regional and state-level renewable energy planning.

**9.2 Director of Operations**

- Grant submission for California Energy Commission GFO-17-604.

**DISCLOSURE OF ITEMS TO BE DISCUSSED IN CLOSED SESSION**

The Redwood Coast Energy Authority Board of Directors will meet in closed session to consider the items listed under agenda item number 11, "Closed Session."

**10. PUBLIC COMMENT REGARDING THE CLOSED SESSION ITEM(S)**

**11. CLOSED SESSION**

With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957(b)(1):

**11.1. Public Employee Performance Evaluation**

**11.1.1. Executive Director**

**12. RECONVENE TO OPEN SESSION**

**13. REPORT FROM CLOSED SESSION**

**14. ADJOURNMENT**

**NEXT REGULAR MEETING**

**Pending adoption of the 2018 Board Meeting Schedule**

Monday, February 26, 2018, 3:15 p.m.

Note: this is the 4<sup>th</sup> Monday of the month due to the Presidents Day Holiday

Humboldt Bay Municipal Water District Office

828 7<sup>th</sup> Street, Eureka, CA 95501

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# Redwood Coast Energy Authority

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## **MEETING MINUTES**

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

**December 18, 2017  
Monday, 3:15 p.m.**

RCEA will accommodate those with special needs. Arrangements for people with disabilities who attend RCEA meetings can be made in advance by contacting Ahn Fielding or front office staff at RCEA, 633 3<sup>rd</sup> Street, Eureka, or by calling 269-1700, or by e-mail at [ahfielding@redwoodenergy.org](mailto:ahfielding@redwoodenergy.org), by noon the day of the meeting.

### **ROLL CALL**

Board Chair Woo called the meeting to order at 3:15 p.m.

Present: Austin Allison, Michael Sweeney, Michael Winkler, Sheri Woo, Frank Wilson, Dwight Miller, Bobbi Ricca, Mike Wilson (joined the meeting at 3:35 p.m.)

Absent: Dean Glaser, Estelle Fennell

### **1. REPORTS FROM MEMBER ENTITIES**

Board Member Sweeney reported Ferndale is preparing to join the CCE program in January.

Board Member Winkler reported he established a contact with a professor at the University of Delaware who is investigating offshore wind turbines off of the Atlantic Ocean. He also reported an organization he is working with is putting together a resolution they would like agencies to adopt favoring including switching from fossil fuel energy to electric energy as a greenhouse gas reduction strategy. He may bring the resolution to the Board in the future for consideration.

### **2. 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.

None.

### **3. 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.

**3.1** Approve Minutes of November 20, 2017 Regular Board Meeting.

**3.2** Approve Warrants.

**3.3** Accept Financial Reports.

**3.4** Authorize Staff to approve and execute a contract with Nylex.NET Inc. for professional services upon final approval of General Counsel.

Chair Woo pulled consent calendar item(s) 3.2 & 3.3.

**M/S/C: Ricca, Sweeney: Approve consent calendar items 3.1 & 3.4.**

#### **4. REMOVED FROM CONSENT CALENDAR ITEMS**

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

- 3.2 Board Chair Woo asked for a clarification on the warrants, specifically page 14, August Grow House Tax. Executive Director Marshall explained that is the high energy use tax that Arcata passed, so RCEA collects it and passes it through to the City of Arcata.
- 3.3 Board Chair Woo asked for clarification on financial reporting, specifically assets versus money coming in and being reflected on the accounts payable line. Executive Director Marshall explained there is often a lag time between accounts receivables which get reflected in assets, but are in actuality power costs in some stage of being delivered to customers, thus stay on the books until a customer makes payment. She also asked why low carbon settlements appears at 874% of budget. ED Marshall explained that one hydropower transaction initially came with a large credit that we didn't have to pay back until weeks later. Because the credit/debit are not in the same month the numbers appear out of the ordinary. In the future TEA will break out those numbers to be clear about how much RCEA is paying for transactions (net costs).

**M/S/C: Miller, Allison: Approve consent calendar items 3.2 & 3.3.**

#### **5. OLD BUSINESS**

##### **5.1 Revisions to RCEA Board of Directors Operating Guidelines**

Adopt Resolution 2017-6, Revisions to RCEA Board of Directors Operating Guidelines.

Legal Counsel Nancy Diamond reviewed agenda item 5.1. Based on the previous month's Board feedback on the Board of Directors Operating Guidelines, legal counsel Diamond provided a new draft for the board to consider.

**M/S/C: Sweeney, Miller: Adopt resolution 2017-6 Board of Directors Operating Guidelines.**

Mike Wilson joined the meeting as the alternate for Estelle Fennell at 3:35 p.m.

#### **6. NEW BUSINESS**

##### **6.1 Update to the RCEA Harassment Policy**

Adopt Resolution 2017-7, adopting the RCEA Harassment Policy and Complaint Procedure, and replace the previously adopted RCEA Unlawful Harassment Including Sexual Harassment Policy.

Though RCEA's existing policy complies with state law, the HR consultant that RCEA hired earlier this year provided the recommendation to revise the existing harassment policy to clarify the investigation protocol, as well as parameters around confidentiality around harassment complaint files. Legal Counsel Diamond reviewed the policy to address the recommendation, and added a new section which discourages workplace bullying and intimidation regardless of protected class status.

There are a few recommended amendments to the policy provided in the Board packet which include:

Page 58:

In addition to prohibiting all forms of discrimination and harassment, RCEA also prohibits any form of harassment by "intimidation or bullying" in the workplace including offsite work related locations such as at offsite trainings or events, *regardless of protected class status*.

Page 59:

**Internal Reporting Procedure:** Any employee who believes that he or she has been the victim of ~~prohibited~~ harassment, ~~intimidation, or bullying~~ by coworkers, supervisors, clients or customers, visitors, vendors, or others *that is prohibited by State or Federal law* should immediately notify his or her supervisor, or, in the alternative, the Executive Director, depending on which individual the employee feels most comfortable in contacting. Additionally, supervisors, managers and directors who observe or otherwise become aware of harassment, intimidation, or bullying that violates this policy have a duty to notify the Executive Director so that affirmative steps are taken to promptly investigate and remedy such prohibited conduct and prevent its recurrence. The attached complaint form may be used.

**External Reporting Procedure:** Any employee who believes that he or she has been the victim of prohibited harassment, intimidation or bullying by coworkers, supervisors, clients or customers, visitors, vendors, or others may file a complaint with the California Department of Fair Employment & Housing (DFEH) or the United States Equal Employment Opportunity Commission (EEOC).

Board Member Winkler asked whether the policy addressed training and behavior outside the workplace. Legal Counsel Diamond confirmed training is required by law and included in the policy but that attempting to regulate behavior outside the workplace is difficult due to privacy laws, however, if it has a workplace impact, it can be addressed through employee handbook guidelines.

Board Chair Woo clarified the investigation guidelines were added not to reflect concerns about the Executive Director, but rather to assist the Executive Director should anything occur. Executive Director Marshall added that the revisions are helpful guidance for the ED and for employees to better understand the process.

**M/S/C: Miller, Sweeney: Adopt resolution 2017-7, adopting RCEA Harassment Policy and Complaint Procedure as amended, and replace the previously adopted RCEA Unlawful Harassment Including Sexual Harassment Policy.**

Accept the proposal for the Humboldt County Airport solar photovoltaic project submitted by McKeever Energy and Electric (ME&E) and direct staff to negotiate a contract with ME&E if funding is secured and subject to final Board approval of the project.

Executive Director Marshall reminded the Board of the airport microgrid proposal which includes a 2MW wholesale solar array, 250kW airport net-metered solar array, a 2 MW Tesla battery system, and an ability to “island” the airport and Coast Guard to run fully off solar and batteries in an emergency. A request for proposals was issued for the solar component of the grant application. Staff recommended the Board accept the proposal submitted by McKeever Energy and Electric which was reviewed by RCEA staff and deemed the best value to the project. It is anticipated that an announcement about the grant will come out in January, and if awarded, construction would occur between 2019-2020.

A USDA low-interest loan program would finance the solar system and the loan would be repaid through electricity revenue.

**M/S/C: Miller, Sweeney: Accept the proposal for the Humboldt County Airport solar photovoltaic project submitted by McKeever Energy and Electric (ME&E) and direct staff to negotiate a contract with ME&E if funding is secured and subject to final Board approval of the project.**

### 6.3 Offshore Wind – Principle Power

Receive report on activities to date and next-steps for community engagement, grid interconnection, site-selection, and federal leasing process.

Executive Director Marshall updated the board on the exploration of offshore wind energy generation with Principle Power. He reported that staff are currently reaching out to local stakeholders to assess concerns and opportunities. Though this is a long-term process, the goal is to start conversations early to adequately research, plan, and prepare.

Regarding offshore wind: State and Federal research and development funding is being released, and legal counsel is exploring possible public-private business models for the Board to consider in 2018.

Anticipated next steps include stakeholder meetings in January and February, with a commercial fishing-focused meeting on January 11 and open public meetings in late January and early February. The Board discussed interest groups and related representatives to consult with, such as local union leaders, Assembly Member Jim Wood and Senator Mike McGuire.

### 6.4 2017 year-end Recap

Receive summary report on 2017 activities and outcomes.

Community Choice Energy Program:

- 61,369 customers, 1,056 solar net customers, 764 customers opted up.



- Met Board-established portfolio targets
  - \$1.1MM in customer rate savings
  - \$10MM invested in Humboldt County economy through local spending, rate savings, etc.

Electric Vehicle Program:

- 674 EV drivers on RCEA's residential EV electricity rate
- RCEA's 14 public EV locations provided 2,535 charging sessions to drivers
- Received \$109K CA Energy Commission grant to continue efforts supporting the adoption of EVs

Demand Side Management:

- Worked with customers to complete 425 retrofits, plus another 201 assessments resulting in over \$.5MM in annual customer savings
- Provided over \$380,000 in incentives to customers
- 70 Prop 39 school projects completed in 2017, another 40 out-to-bid for coming year

A member of the public stated RCEA needs to do something about customers who have opted-out being automatically re-enrolled. RCEA advised there was a PG&E back office billing glitch where customers who had opted out were recorded as new customers and they were therefore opted back in. The problem should be fixed and bills have been corrected.

## **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.

## **7. OLD CCE BUSINESS**

### **7.1. Biomass Procurement Options Update**

Consider options related to additional biomass procurement and direct staff to move forward toward a preferred option.

Executive Director Marshall discussed the Staff Report for agenda item 7.1, Biomass Procurement Options.

Current market and regulatory uncertainty makes aggressively building reserves prudent in 2018. Increasing the biomass procurement target from 15% to 28% to accommodate a second contract at \$83/MWh would require \$6.5MM/year ongoing above-market subsidy of RCEA discretionary headroom. This headroom is needed to help meet the original CCE goals. Dropping savings below the \$2MM target brings rate savings below 1% for customers. If we used \$1MM for other renewables to partly cover a second biomass contract, our Board-set goals, portfolio mix, and commitment to the community would have to change. It does not look financially sustainable for RCEA to fund two biomass contracts.

He stated with the information regarding current market and regulatory conditions, entering into an additional biomass contract at this time is not advised, however, if the Board still wanted to pursue a second contract, staff strongly recommends that it be done within the constraints of other established program goals rather than dropping the minimum rate savings or reserves below \$2M or reducing the 5% emissions & renewables advantages compared to PG&E. He also noted if a second contract was not pursued or agreed upon,

there is an option to work with HRC on processing excess waste from other local mill operations.

The Board discussed the challenges of the unknown Power Charge Indifference Adjustment (PCIA), as well as balancing the program commitments while supporting local industry and workforce.

Board Member Frank Wilson stated HRC has some production constraints and that the 32MW full capacity figure for isn't an actual output number.

Member of the Public Rob DiPerna from 350 Humboldt stated the focus should be on renewable energy and he encouraged the Board to follow staff recommendations.

Member of the Public Bob Marino stated he was disappointed because he had been laboring 6-8 months under the impression that with the Board's approval, they could negotiate a second contract. He questioned if recent conversations were happening with HRC while little communication was happening with DG Fairhaven. He stated HRC being able to run 32MW at full capacity is an inaccurate figure. He further stated there has not been any discussion of a \$62/MW rate, but that it was the board who directed staff to negotiate at the \$83/MW level. He believes staff and DG Fairhaven can work out a compromise in rate and volume, or just volume and that they're open and willing to go forward with those negotiations

Member of the Public Ellen Golla stated that in the past biomass has been presented as wonderful safe process, however, there are no safe levels of particulate matter. She believes it is time to invest in offshore wind. She also stated she gets contacted frequently by people who are upset about biomass and are asking how they can opt out. She thinks expanding biomass to subsidize the timber industry is not a good idea.

Board Chair Woo identified two options:

- 1) Direct staff to stop negotiations with DG Fairhaven
- 2) Consider further discussion after the PCIA numbers are decided and there is a greater deal of certainty about rates

The Board weighed the merits of option 1 versus option 2, recognizing concerns regarding compromising our headroom and reducing the amount we can invest in other renewable projects, putting money toward a second contract that is not likely financially sustainable, supporting local workforce and industry, ensuring adequate redundancy and self-reliance in emergencies, maintaining fiscal responsibility, not contributing to environmental particulate matter, and maintaining our commitment to the community.

**M/S/C: Winkler, Ricca: Consider negotiations with DG Fairhaven within the constraints of other established program goals once a solid number from PCIA is provided.**

**Ayes: Allison, Sweeney, Winkler, Wilson (Frank), Miller, Ricca, Wilson (Mike)**

**Noes: None**

**Absent: Glaser**

**Not Voting: Woo**

## **8. NEW CCE BUSINESS**

None.

## **END OF COMMUNITY CHOICE ENERGY (CCE) BUSINESS**

### **9. STAFF REPORTS**

#### **9.1 Executive Director**

- Work with the Governor's Office of Planning and Research on regional and state-level renewable energy planning

This item was tabled until the next board meeting.

## **DISCLOSURE OF ITEMS TO BE DISCUSSED IN CLOSED SESSION**

The Redwood Coast Energy Authority Board of Directors will meet in closed session to consider the items listed under agenda item number 11, "Closed Session."

### **10. PUBLIC COMMENT REGARDING THE CLOSED SESSION ITEM(S)**

### **11. CLOSED SESSION**

With respect to every item of business to be discussed in closed session pursuant to Government Code Section 54957(b)(1):

- 11.1. Public Employee Performance Evaluation**
  - 11.1.1. Executive Director**

### **12. RECONVENE TO OPEN SESSION**

### **13. REPORT FROM CLOSED SESSION**

Board Chair Woo reported there was nothing to report from closed session.

### **14. ADJOURNMENT**

Chair Woo adjourned the meeting at 6:10 p.m.

Respectfully submitted: Ahn Fielding

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**Redwood Coast Energy Authority**  
**Warrants Report**  
For the month of November 30, 2017

Type	Date	Num	Name	Memo	Amount
Check	11/01/2017	EFT	CoPower	November Premium	-237.00
Paycheck	11/03/2017	8344	Paycheck	VOID:	0.00
Paycheck	11/03/2017	8345	Paycheck	Final Payroll	-626.59
Bill Pmt -Check	11/03/2017	8346	Arcata Technology Center	Site Host Reimbursement 7/1/16 - 9/30/16 007-ARC-ATC-009 & 010	-114.45
Paycheck	11/03/2017	8347	Paycheck	Vacation payout	-795.81
Bill Pmt -Check	11/03/2017	8348	ABC Office Equipment	October print charges/service contract.	-320.66
Bill Pmt -Check	11/03/2017	8349	AM Conservation	LED Stock	-129.94
Bill Pmt -Check	11/03/2017	8350	Baginski, Eli	October mileage reimbursement	-27.29
Bill Pmt -Check	11/03/2017	8351	Bishop, M.	October mileage	-152.69
Bill Pmt -Check	11/03/2017	8352	Bithell, M.	October purchase reimbursements	-11.52
Bill Pmt -Check	11/03/2017	8353	Chapman, R.	October mileage reimbursements	-69.23
Bill Pmt -Check	11/03/2017	8354	City of Eureka-Water	Water service, 9/27/17-10/25/17	-111.86
Bill Pmt -Check	11/03/2017	8355	Cutten School District	Ridgewood Elementary self-install rebate/Audit 4563	-1,338.43
Bill Pmt -Check	11/03/2017	8356	Dell USA	(2) Monitors & (3) OptiFlex 7050	-2,812.56
Bill Pmt -Check	11/03/2017	8357	Hilson, D.	October mileage reimbursement	-37.24
Bill Pmt -Check	11/03/2017	8358	Jacobson, L.	Travel Expenses/RHTR Meeting SLO 10/25-10/29/17	-405.33
Bill Pmt -Check	11/03/2017	8359	Local Government Commission	CivicSpark	-12,431.34
Bill Pmt -Check	11/03/2017	8360	Mattole Unified School District	MUSD self-install rebate/Audit 4646	-350.00
Bill Pmt -Check	11/03/2017	8361	Means, M.	October mileage	-155.04
Bill Pmt -Check	11/03/2017	8362	North Coast Cleaning	October Cleaning Service	-402.00
Bill Pmt -Check	11/03/2017	8363	North Coast Journal	Recruitment Advertising	-94.00
Bill Pmt -Check	11/03/2017	8364	Owen, P.	Mileage reimbursements	-75.44
Bill Pmt -Check	11/03/2017	8365	PG&E EV Account	EV stations July	-225.23
Bill Pmt -Check	11/03/2017	8366	Sonoma County Office of Education	September 2017 Professional Services.	-525.00
Bill Pmt -Check	11/03/2017	8367	Taketa, L.	October mileage reimbursement	-8.99
Bill Pmt -Check	11/03/2017	8368	Terry, P.	October mileage	-123.05
Bill Pmt -Check	11/03/2017	8369	Times Printing Company	Move in mailing service mailers	-978.12
Check	11/06/2017	ACH	EDD	Payroll Liabilities - 06/30/2017	-600.92
Bill Pmt -Check	11/08/2017	EFT	Staples Charge Account	October Statement	-816.31
Bill Pmt -Check	11/09/2017	8370	APP Imprints, LLC	Bamboo design twist pen.	-418.95

**Redwood Coast Energy Authority**  
**Warrants Report**  
For the month of November 30, 2017

Type	Date	Num	Name	Memo	Amount
Bill Pmt -Check	11/09/2017	8371	Biondini, L.	"Talk Matters" purchase reimbursement.	-132.86
Bill Pmt -Check	11/09/2017	8372	Cissna, A.	October mileage reimbursement	-17.25
Bill Pmt -Check	11/09/2017	8373	FedEx	Shipping documents	-24.94
Bill Pmt -Check	11/09/2017	8374	KHSU-FM	Radio Underwriting	-125.00
Bill Pmt -Check	11/09/2017	8375	LEAN Energy US		-37,648.80
Bill Pmt -Check	11/09/2017	8376	Local Government Commission		-3,272.94
Bill Pmt -Check	11/09/2017	8377	NYLEX.net, Inc.	Cabling project.	-5,886.09
Bill Pmt -Check	11/09/2017	8378	Recology	October garbage service	-85.40
Bill Pmt -Check	11/09/2017	8379	Verizon Wireless	Oct tablet/cell service for field staff/mobile broadband service.	-228.78
Bill Pmt -Check	11/09/2017	8380	Local Government Commission	Jul-Sept Civic Spark program support	-4,606.20
Paycheck	11/09/2017	8381	Paycheck	Payroll 10/16 - 10/31/17	-2,583.21
Bill Pmt -Check	11/09/2017	8382	Arcata Technology Center	Site Host Reimbursement 07/01/17-09/30/17	-548.60
Bill Pmt -Check	11/09/2017	8383	Blue Lake Rancheria	Site Host Reimbursement 07/01/17-09/30/17	-270.95
Bill Pmt -Check	11/09/2017	8384	City of Arcata	Site Host Reimbursement 07/01/17-09/30/17	-547.18
Bill Pmt -Check	11/09/2017	8385	City of Blue Lake	Site Host Reimbursement 07/01/17-09/30/17	-41.51
Bill Pmt -Check	11/09/2017	8386	City of Trinidad	Site Host Reimbursement 07/01/17-09/30/17	-61.56
Bill Pmt -Check	11/09/2017	8387	GHD	Site Host Reimbursement 07/01/17-09/30/17	-163.29
Bill Pmt -Check	11/09/2017	8388	HSU Fdn EVI ARV-14-046		-17,483.45
Bill Pmt -Check	11/09/2017	8389	St. Joseph Hospital	Site Host Reimbursement 07/01/17-09/30/17	-282.33
Bill Pmt -Check	11/09/2017	8390	North Coast Unified Air Quality	Site Host Reimbursement 07/01/17-09/30/17	-54.59
Paycheck	11/09/2017	11091701	Direct Deposit Payroll	Payroll 10/16 - 10/31/17	-47,798.84
Bill Pmt -Check	11/10/2017	8403	Platt/Rexel	Bulb purchases	-63,969.54
ACH	11/13/2017	ACH	CalPine Energy Solutions	October 2017	-114,288.87
Liability Check	11/13/2017	E-pay	Internal Revenue Service	74-3104616 QB Tracking # 523668857	-266.00
Liability Check	11/13/2017	E-pay	EDD	499-0864-3 QB Tracking # 523669127	-37.19
Liability Check	11/13/2017	E-pay	Internal Revenue Service	74-3104616 QB Tracking # 523669447	-346.76
Liability Check	11/13/2017	E-pay	EDD	499-0864-3 QB Tracking # 523669707	-14.82
Liability Check	11/13/2017	E-pay	Internal Revenue Service	74-3104616 QB Tracking # 523670037	-252.90
Liability Check	11/13/2017	E-pay	EDD	499-0864-3 QB Tracking # 523670247	-3,752.40
Liability Check	11/13/2017	E-pay	Internal Revenue Service	74-3104616 QB Tracking # 523670627	-20,763.54

**Redwood Coast Energy Authority**  
**Warrants Report**  
For the month of November 30, 2017

Type	Date	Num	Name	Memo	Amount
Liability Check	11/13/2017	E-pay	EDD	499-0864-3 QB Tracking # 523670907	-251.60
ACH	11/15/2017	ACH	The Energy Authority	October 2017	-1,829,264.94
ACH	11/15/2017	ACH	The Energy Authority	Reimbursement for CAISO Security Deposit	-500,000.00
Bill Pmt -Check	11/16/2017	EFT	VISA	October Statement 09/21- 10/19/17	-5,243.41
Check	11/16/2017	8392	EUC Assessment:Sellers, Donna		-300.00
Bill Pmt -Check	11/17/2017	8393	Best Cleaners	Coverall laundering	-19.00
Bill Pmt -Check	11/17/2017	8394	Bishop, M.	Purchase reimbursements	-41.18
Bill Pmt -Check	11/17/2017	8395	Burks, K.	October mileage	-109.35
Bill Pmt -Check	11/17/2017	8396	Citibank	September Statement 09/25/17	-264.23
Bill Pmt -Check	11/17/2017	8397	Diamond, Nancy	October Legal Services - General	-3,098.15
Bill Pmt -Check	11/17/2017	8398	HireRight	Background Check: new hires	-424.50
Bill Pmt -Check	11/17/2017	8399	Mission Uniform & Linen	Janitorial/mat supplies	-134.18
Bill Pmt -Check	11/17/2017	8400	NYLEX.net, Inc.	Network support services.	-5,000.00
Bill Pmt -Check	11/17/2017	8401	PG&E CCA	November CCE Charges	-27,356.56
Bill Pmt -Check	11/17/2017	8402	Pierson's Home Ctr	Mellaneous tool kit & facilities items	-269.35
Bill Pmt -Check	11/17/2017	8404	Ponting, W.	October mileage reimbursement	-56.71
Bill Pmt -Check	11/17/2017	8405	SDRMA Medical	December premium.	-20,398.00
Bill Pmt -Check	11/17/2017	8406	Taketa, L.	Purchase reimbursement - shelving	-65.09
Bill Pmt -Check	11/17/2017	8407	Thomas B. Dunklin	Group photo	-100.00
Bill Pmt -Check	11/17/2017	8408	Times Printing Company	Move in mailing service mailers	-895.51
Liability Check	11/19/2017	E-pay	EDD	499-0864-3 QB Tracking # 389055902	-3,472.02
Liability Check	11/19/2017	E-pay	Internal Revenue Service	74-3104616 QB Tracking # 389055912	-19,461.70
Liability Check	11/19/2017	E-pay	EDD	499-0864-3 QB Tracking # 389055932	-240.03
Bill Pmt -Check	11/20/2017	EFT	Staples Charge Account	November Statement Pt. 1	-610.15
EFT	11/21/2017	EFT	Umpqua Bank	Service Charge	-129.25
ACH	11/21/2017	ACH	Humboldt Redwood Company	October 2017 Biomass	-636,640.85
Paycheck	11/22/2017	8409	Paycheck	Payroll 11/1 - 11/15/17	-2,583.20
Paycheck	11/22/2017	11221701	Direct Deposit Payroll	Payroll 11/1 - 11/15/17	-42,901.65
Bill Pmt -Check	11/29/2017	EFT	Board of Equalization	BOE Interest	-173.86
Liability Check	11/29/2017	E-pay	EDD	499-0864-3 QB Tracking # 526261317	-59.34

**Redwood Coast Energy Authority**  
**Warrants Report**  
For the month of November 30, 2017

Type	Date	Num	Name	Memo	Amount
Liability Check	11/29/2017	E-pay	Internal Revenue Service	74-3104616 QB Tracking # 526261367	-544.54
Liability Check	11/29/2017	E-pay	EDD	499-0864-3 QB Tracking # 526261447	-20.95
Liability Check	11/29/2017	8430	Umpqua Bank	74-3104616	-558.36
Liability Check	11/29/2017	8431	Calvert	74-3104616	-13,481.71
Paycheck	11/30/2017	8432	Paycheck	Final payroll	-1,246.79
Paycheck	11/30/2017	8433	Paycheck	Final payroll	-503.33
					<b><u>-3,465,870.27</u></b>



**Redwood Coast Energy Authority**  
**Visa**

**For the month of November 30, 2017**

<b>Type</b>	<b>Date</b>	<b>Name</b>	<b>Memo</b>	<b>Amount</b>
Credit Card Charge	11/01/2017	Square	Card Reader Fee	40.00
Credit Card Charge	11/16/2017	U-Verse	December DSL 11/9 - 12/8/16	95.89
Credit Card Charge	11/25/2017	Uberconference	Conference call subscription	11.06
<b>TOTAL</b>				<b>146.95</b>

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## **STAFF REPORT**

### **Agenda Item # 3.3**

AGENDA DATE:	January 22, 2018
TO:	Board of Directors
PREPARED BY:	Steve Edmiston, Director of Power Resources and Matthew Marshall, Executive Director
SUBJECT:	Financial Reports

#### **SUMMARY**

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The overall RCEA Budget is on track for the fiscal year to date. At the February meeting staff will provide a comprehensive mid-year budget review, and from February going forward staff will provide monthly financial update presentation at Board meetings and will also provide narrative staff reports along with the financial statements.

There are couple items of note in the current reports:

#### **Wholesale Power Supply Line-item Bookkeeping**

As discussed at previous meetings, under Wholesale Power Supply Costs, there continues to be two significant budget discrepancies: "Total CAISO ENERGY costs" reflect a net positive income from CAISO transactions for the year to date. Conversely, "Low Carbon Settlements" (hydropower procurement) is shown as approximately \$4 million over budget. These discrepancies from the budget are directly connected, and result from an unanticipated structure to one of RCEA's hydropower procurement contracts for 2017, which shows up on RCEA's invoices from TEA and CAISO in a way that wasn't anticipated in the development of the original budget:

RCEA's purchases of hydropower have contract prices that are structured as "CAISO market energy price + zero carbon premium cost adder." In typical transaction this type of trade is processed so CAISO directly pays the market energy price to the generator and RCEA (through TEA) only pays the zero carbon premium adder directly to the generator. The RCEA annual budget was developed to only reflect the zero carbon premium costs in the "Low Carbon Settlements" line item. The contract causing the budget discrepancies is structured where RCEA receives the payment from CAISO for the value of the energy the generator puts into the grid, and then RCEA passes that amount back through to the generator, along with the zero carbon premium.

The ultimate net cost to RCEA is only the zero carbon premium, though this contract structure does offer a slight benefit in the timing of cashflow to RCEA, as the revenue from these transactions come in on a weekly bases through our weekly CAISO invoices, whereas the payments from RCEA back to the generator are settled up on a monthly

basis. While the net-cost is the same to RCEA, the revenue/credits show up on CAISO invoices grouped in with other CASIO-energy related credits, and so have been booked under that budget line item rather than being credited against the associated costs under Low Carbon Settlements.

Staff is working with TEA to break out the hydro-power revenue/credits on CAISO invoices so that staff can apply that credit in the Low Carbon line item, and this will be reflected in future reports.

While this situation skews the presentation of subcategories of wholesale power supply costs, it should be noted the overall Wholesale Power Supply Budget (which is the only budget number most CCA's present in their financial reports) accurately reflects the amount RCEA has actually paid for power supply – and that amount is currently under budget.

### **Reserve Requirement Contributions**

To manage cashflow during the first few months of CCA operation staff has delayed making internal transfers from the operating account into the reserve account. As reflected on the profit and loss, the \$1 million transferred to-date into the reserve fund combined with additional net revenue for the year of \$3.6 million (that is being maintained for now in the operating account) totals \$4.6 million in overall net revenue for the year to date – putting overall total revenue to date at ~70% of the budget target for the year.

### **STAFF RECOMMENDATION**

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Accept Financial Reports

### **ATTACHMENTS:**

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November Financial Reports

# Redwood Coast Energy Authority

## Balance Sheet

As of November 30, 2017

	Nov 30, 2017
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
1075 · Umpqua Reserve Account 2300	1,000,890.62
1070 · Umpqua Deposit Cntrl Acct 1687	4,133,778.41
1062 · Chase DD Checking	25.00
1060 · Umpqua Checking-9271	267,154.31
1000 · COUNTY TREASURY 3839	4,207.73
1010 · Petty Cash	414.35
1050 · GRANTS & DONATIONS 3840	15,037.26
<b>Total Checking/Savings</b>	5,421,507.68
<b>Accounts Receivable</b>	
1100 · Accounts Receivable	236,481.46
<b>Total Accounts Receivable</b>	236,481.46
<b>Other Current Assets</b>	6,195,846.52
<b>Total Current Assets</b>	11,853,835.66
<b>Fixed Assets</b>	44,983.39
<b>Other Assets</b>	504,100.00
<b>TOTAL ASSETS</b>	<b>12,402,919.05</b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
<b>Accounts Payable</b>	
2000 · Accounts Payable	86,998.41
<b>Total Accounts Payable</b>	86,998.41
<b>Credit Cards</b>	456.53
<b>Other Current Liabilities</b>	
2001 · Accounts Payable-Other	6,534,924.38
2100 · Payroll Liabilities	63,702.24
2210 · Retentions Payable	1,208.96
<b>Total Other Current Liabilities</b>	6,599,835.58
<b>Total Current Liabilities</b>	6,687,290.52
<b>Long Term Liabilities</b>	
<b>2700 · Long-Term Debt</b>	
2701 · Lighting Upgrade	6,520.63
2702 · Headwaters Credit Line	700,000.00
<b>Total 2700 · Long-Term Debt</b>	706,520.63
<b>Total Long Term Liabilities</b>	706,520.63
<b>Total Liabilities</b>	7,393,811.15
<b>Equity</b>	
2320 · Investment in Capital Assets	38,462.75
3900 · Fund Balance	337,549.02
Net Income	4,633,096.13
<b>Total Equity</b>	5,009,107.90
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>12,402,919.05</b>

**Redwood Coast Energy Authority**  
**Profit & Loss Budget vs. Actual**  
July through November 2017

	<b>Jul - Nov 2017</b>	<b>Budget</b>	<b>% of Budget</b>
<b>Income</b>			
Total Revenue - government agencies	110,784	268,835	41%
Total Revenue - program related sales	25,927	15,000	173%
Total Revenue-nongovernment agencies	611,488	1,570,364	39%
Electricity Sales Revenue			
Electricity Sales - Retail Revenue	19,479,579	46,735,993	42%
Electricity Sales - Uncollectable Accounts	(58,439)	(140,208)	42%
Total Electricity Sales Revenue	19,421,140	46,595,785	42%
<b>Total Income</b>	<b>20,169,340</b>	<b>48,449,983</b>	<b>42%</b>
<b>Expense</b>			
<b>WHOLESALE POWER SUPPLY</b>			
<b>CAISO</b>			
Total CAISO Energy	(4,960,378)	5,336,455	-93%
Total CAISO Non-Energy Charges	1,264,363	1,830,563	69%
Total CAISO	(3,696,014)	7,167,018	-52%
<b>Bilateral Activity</b>			
Resource Adequacy	728,297	2,572,007	28%
Energy Hedges Notional Value	9,191,311	19,298,480	48%
Low Carbon Settlements	4,489,435	518,145	866%
Total Bilateral Activity	14,409,044	23,106,420	62%
<b>Local Power Purchase Agreements</b>			
Humboldt Redwood Company	2,079,885	4,862,651	43%
Total Local Power Purchase Agreements	2,079,885	4,862,651	43%
<b>TOTAL WHOLESALE POWER SUPPLY</b>	<b>12,792,915</b>	<b>35,136,090</b>	<b>36%</b>
 <b>PERSONNEL EXPENSES</b>	 846,715	 2,506,578	 34%
 <b>FACILITIES AND OPERATIONS</b>	 49,951	 232,976	 21%
 <b>COMMUNICATIONS AND OUTREACH</b>	 20,302	 200,041	 10%
 <b>TRAVEL AND MEETINGS</b>	 12,138	 48,617	 25%
 <b>PROFESSIONAL AND PROGRAM SERVICES</b>			
Contracts - Program Related Services	37,649	242,029	16%
Wholesale Services - TEA	235,415	567,821	41%
Procurement Credit - TEA	311,270	725,576	43%
Data Management - Calpine	448,044	921,508	49%
Regulatory	-	25,000	0%
Accounting	15,000	45,000	33%
Legal	17,073	85,000	20%
<b>PROFESSIONAL AND PROGRAM SERVICES</b>	<b>1,064,451</b>	<b>2,611,934</b>	<b>41%</b>

**Redwood Coast Energy Authority**  
**Profit & Loss Budget vs. Actual**  
 July through November 2017

	<b>Jul - Nov 2017</b>	<b>Budget</b>	<b>% of Budget</b>
<b>PROGRAM EXPENSES</b>	494,400	965,897	51%
<b>INCENTIVES AND REBATES</b>	236,442	460,000	51%
<b>NON OPERATING COSTS</b>	18,930	65,610	29%
<b>Total Expense</b>	<b>15,536,244</b>	<b>42,227,742</b>	<b>37%</b>
<b>RESERVE REQUIREMENT CONTRIBUTIONS</b>	1,000,000	6,000,000	17%
<b>Net Income</b>	<b>3,633,096</b>	<b>222,241</b>	<b>1635%</b>

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# REDWOOD COAST EnergyAuthority

## STAFF REPORT Agenda Item # 3.4

AGENDA DATE:	January 22, 2018
TO:	Board of Directors
PREPARED BY:	Matthew Marshall
SUBJECT:	Approve 2018 Board Meeting Calendar

### BACKGROUND

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Each year at its January board meeting the RCEA Board of Directors sets its calendar of regular meeting dates. Attached is a calendar of proposed meeting dates that fall primarily on the third Monday of the month. The proposed meeting dates in February 2018 and January 2019 fall on the fourth Monday of the month due to the third Monday being a holiday.

### STAFF RECOMMENDATION

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Approve the 2018 RCEA Board meeting calendar.

### ATTACHMENTS:

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Proposed 2018 Board meeting calendar.

# **Redwood Coast Energy Authority**

## **Board of Directors**

### **PROPOSED 2018 REGULAR MEETING SCHEDULE**

**Meetings scheduled to start at 3:15 p.m.**

February 26	(4 <sup>th</sup> Monday; 3 <sup>rd</sup> Monday is a holiday)
March 19	(3 <sup>rd</sup> Monday)
April 16	(3 <sup>rd</sup> Monday)
May 21	(3 <sup>rd</sup> Monday)
June 18	(3 <sup>rd</sup> Monday)
July 16	(3 <sup>rd</sup> Monday)
August 20	(3 <sup>rd</sup> Monday)
September 17	(3 <sup>rd</sup> Monday)
October 15	(3 <sup>rd</sup> Monday)
November 19	(3 <sup>rd</sup> Monday) (Thanksgiving is Thursday November 22)
December 17	(3 <sup>rd</sup> Monday) (Christmas Day is Tuesday Dec. 25)
January 28, 2019	(4 <sup>th</sup> Monday; 3 <sup>rd</sup> Monday is a holiday)



# REDWOOD COAST Energy Authority

## STAFF REPORT Agenda Item #3.5

AGENDA DATE:	January 18, 2018
TO:	Board of Directors
PREPARED BY:	Steven Edmiston
SUBJECT:	California Special Districts Association Local Chapter Participation

### **Background**

Our District is currently a member of the California Special Districts Association (CSDA). The CSDA is a 501c(6), not-for-profit association that was formed in 1969 to promote good governance and improved core local services through professional development, advocacy, and other services for all types of independent special districts.

For over 40 years, CSDA has been offering its members cost-efficient programs and representation at the State Capitol and boasts a membership of over 1,000 organizations throughout California. It is the only statewide association representing all types of independent special districts including irrigation, water, park and recreation, cemetery, fire, police protection, library, utility, harbor, healthcare and community services districts...just to name a few.

CSDA provides education and training, insurance programs, legal advice, industry-wide litigation and public relations support, legislative advocacy, capital improvement and equipment funding, collateral design services, and, most importantly, current information that is crucial to a special districts management and operational effectiveness.

### **CSDA Mission**

CSDA is the voice for all special districts, providing members with the resources necessary to best serve their communities.

### **CSDA Vision**

CSDA is the essential statewide network of all special districts.

There are currently in excess of 50 local CSDA members within Humboldt County. A group of these members are forming a Local Chapter (Humboldt Area Chapter) of the CSDA. The purpose of this Local Chapter is to propose and advocate constructive means for the improvement and functioning of Independent Special Districts within the Humboldt Area and to assist such Independent Special Districts and their governing bodies to provide an effective and

efficient government that will result in benefits to the public and to cooperate with and support CSDA in fulfilling its mission.

Per the proposed bylaws, the objectives of the Humboldt Area Chapter (HAC) shall be:

- A. To provide a local forum for member districts to discuss and consider issues of importance to special districts.
- B. To establish a communication network among member districts, other chapters, and other local governmental agencies.
- C. To carry out workshops, educational seminars and programs of mutual interest and benefits to member districts.
- D. To make recommendations regarding policy, programs, services and legislation to the Board of Directors of the California Special Districts Association.
- E. To inform the public about the purpose and benefits of local special district government.
- F. To carry out joint studies which benefit the special districts in the Chapter.
- G. To serve as the forum for LAFCO Special District Selection Committee.

HAC dues are anticipated to be nominal and will be determined once the Chapter is officially formed. It is anticipated that the annual dues will be approximately \$50.00.

### **Insurance Requirement**

In accordance with the HAC bylaws Section 2.6 C:

- i. Each member district shall provide proof of insurance that covers the member district's employees while engaged in Chapter business. There shall be no liability assumed by the agency hosting any meetings.
- ii. Each Humboldt Area Chapter member shall name Humboldt Area Chapter as additionally insured.

It was determined by the HAC formation committee that securing and funding its own insurance was an unnecessary use of funds since all members would have their own district insurance.


### **Recommendation**

Staff recommends that the Board adopt the attached Resolution and become a participating member of the Humboldt Area Chapter of the California Special Districts Association. Staff further recommends that the Director of Finance and Human Resources, and Finance Manager be the District's representative and alternate representative respectively to the HAC.

Attachments:

- 1. CSDA Humboldt Area Chapter bylaws
- 2. Resolution authorizing membership in the Humboldt Area Chapter of CSDA

**Chapter Bylaws**  
**For The**  
**Humboldt Area Chapter of CSDA**  
  
**A Chapter of the**  
**California Special Districts Association**

Approved:  \_\_\_\_\_  
Amended: \_\_\_\_\_  
Amended: \_\_\_\_\_

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Attached: Certificate of Chapter Secretary acknowledging approval of attached Bylaws.

## **ARTICLE 1: NAME, PURPOSE and OBJECTIVES**

### **Section 1.1 Name**

**The name of this Chapter shall be the Humboldt Area Chapter of CSDA (HAC).**

**This Chapter is a member of the State office of the California Special Districts Association (CSDA) and hereinafter is referred to as the “Humboldt Area Chapter.”**

**These Chapter bylaws are intended to supplement and be consistent with the California Special Districts Association bylaws, and shall serve to guide the local activities of this Chapter.**

### **Section 1.2 Purpose**

It is the purpose of this Chapter to propose and advocate constructive means for the improvement and functioning of Independent Special Districts within the Humboldt Area and to assist such Independent Special Districts and their governing bodies to provide an effective and efficient government that will result in benefits to the public and to cooperate with and support CSDA in fulfilling its mission.

### **Section 1.3 Objectives**

The objectives of the Humboldt Area Chapter shall be:

- A. To provide a local forum for member districts to discuss and consider issues of importance to special districts.
- B. To establish a communication network among member districts, other chapters, and other local governmental agencies.
- C. To carry out workshops, educational seminars and programs of mutual interest and benefits to member districts.
- D. To make recommendations regarding policy, programs, services and legislation to the Board of Directors of the California Special Districts Association.
- E. To inform the public about the purpose and benefits of local special district government.
- F. To carry out joint studies which benefit the special districts in the Chapter.
- G. To serve as the forum for LAFCO Special District Selection Committee.

### **Section 1.4 Administrative Office**

The administrative office for the transaction of the business of the (name) Humboldt Area Chapter is to be the office of the President of the Chapter. The Chapter Executive Committee is granted full power and authority to change the administrative office from one location to another within Humboldt County and such change shall not require an amendment of these bylaws.



## **ARTICLE 2: MEMBERSHIP**

### **Section 2.1 Types of Membership**

The two types of memberships available in the Humboldt Area Chapter are Regular Memberships and Partner Memberships. Business Affiliates shall be eligible for Partner Membership.

### **Section 2.2 Qualifications for Membership**

#### **A. Regular Members:**

**Any independent special district whose boundaries, in whole or in part, are within Humboldt County and adjoining counties, may become a regular member of the Chapter upon a majority vote of the regular membership and upon payment of annual Chapter dues.**

Independent special districts are defined to mean districts, exclusive of school districts, which are organized and exist under and by virtue of the laws of the State of California to perform authorized local government services. A special district does not include State, County, City or School District governmental entities.

**A regular member may attend and participate in all meetings and activities of the Chapter. Regular members shall have voting rights and shall be eligible to hold office in the Chapter.**

#### **B. Partner Members:**

**Any dependent special district whose boundaries, in whole or in part, are within Humboldt County and adjoining counties may become a partner member upon majority vote of the regular membership and payment of Chapter dues.**

**In addition, any person, government agency or organization that has evidenced interest in the purposes and goals of the Chapter, but is not a special district as defined above, may also become a partner member upon approval of membership and payment of Chapter dues.**

**Partner members shall not have the right to vote, nor shall they serve as officers or members of the Chapter Executive Committee, except when appointed by a majority vote of the Chapter's regular members to serve in that capacity. Partner members may attend and participate in meetings and activities of the Chapter.**

**C. Business Affiliates:**

“Business Affiliate members shall be those persons or organizations that provide services to special districts and/or have evidenced interest in the purposes and goals of CSDA. Business Affiliates have no voting privileges, except as approved members on a CSDA committee, and may not hold a seat on the Board of Directors.”

**Section 2.3 Application for Membership**

Application for membership in the Humboldt Area Chapter shall be by letter and payment of annual dues. The letter shall include:

- A. Type of membership requested.
- B. Name, address, telephone number, email, or fax of the applicant.
- C. Name of individual who will serve as representative and alternate from the applicant.
- D. Special districts must provide its primary functions and its enabling legislation under state law.
- E. Special districts must provide names of the current governing board members and manager.
- F. Special districts must provide a resolution by the governing board requesting membership.
- G. If applicant is from a non-special district, they must submit a statement of interests and purposes in common with the Chapter.

The application for membership and dues should be sent to the Administrative Office as stated in Article I, Section 4 of these bylaws. The Executive Committee of the Chapter may appoint a Membership Committee to review requests for membership. The Membership Committee may request additional information from the applicant. Upon completion of review, the Membership Committee shall make a recommendation to the general membership. A quorum of the regular membership will approve or disapprove the application upon a majority vote.

**Section 2.4 Termination of Membership**

Any member owing payment of dues for a period of three (3) months after due date shall be notified in writing by the Treasurer of delinquent dues. If such dues continue to be unpaid for an additional three (3) months, the member shall automatically cease to be a member of the Chapter. The member shall not be restored to Chapter membership without making written application for reinstatement and payment of delinquent dues to the Board of Directors.

A member district may withdraw membership in the Chapter at any time. A written notice should be sent to the Administrative Office. No refund of dues will be made.

## **Section 2.5 Meetings of Membership**

The membership shall meet on an established basis at a time and place to be determined by the membership or the Chapter President, unless specified otherwise by the Executive Committee.

### **A. Regular Meetings**

Regular meetings of Chapter members shall be Monthly on the first Monday at a place which has been designated by the members. Written notice of regular meetings providing the time, place and agenda shall be faxed, or emailed to each member of the Chapter no less than seven (7) days prior to the meeting.

### **B. Annual Meeting**

The annual meeting of Chapter membership shall be held in December of each year at such place determined by the members for the purpose of electing Officers. Written notice of the annual meeting, providing the time, place and agenda, shall be, faxed or emailed to Chapter members no less than seven (7) days prior to the date of the meeting.

### **C. Special Meetings**

Special meetings of the Chapter membership may be called at any time by the President upon request of 40% of the Chapter members. Written notice of a special meeting, providing the time, place and agenda, shall be, faxed or emailed to each member of the Chapter at least 48 hours before the time set for the meeting.

## **Section 2.6 Rules Governing Membership Meetings**

### **A. Rules of Order**

The Chapter may adopt Rules of Order to govern the meetings of the members insofar as such rules are not inconsistent or in conflict with these Bylaws or the Articles of Incorporation for the State office of the California Special Districts Association.

### **B. Agenda Items**

Any active member of the Chapter may place an item on the agenda for future meetings. The item must be submitted in writing to the President at least two weeks prior to the meeting. Emergency items may be added to the agenda with less notice when approved by the President prior to the meeting.

### **C. Insurance Liability**

- i. Each member district shall provide proof of insurance that covers the member district's employees while engaged in Chapter business. There shall be no liability assumed by the agency hosting any meetings.
- ii. Each Humboldt Area Chapter member shall name Humboldt Area Chapter as additionally insured.

## **ARTICLE 3: VOTING RIGHTS**

### **Section 3.1 Quorum of Membership**

A quorum for all meetings of the membership shall consist of fifty (50) percent plus one (1) of the Chapter's regular membership who are in good standing present at any meeting.

- a. A quorum for all policy changes shall consist of fifty (50) percent plus one (1) of the Chapter's regular membership who are in good standing.

### **Section 3.2 Regular Membership Voting Rights**

#### **A. One Vote Per Member District**

Each regular member district shall be entitled to one (1) vote on all matters brought before the Chapter membership.

#### **B. Official Voting Representative**

The governing body of each regular member district shall designate, in writing, to the Chapter Secretary, one representative who shall exercise the district's right to vote, and one alternate who shall have the right to vote in the absence of the assigned voting representative. The vote of the district shall be cast by the designated representative of the district or the alternate member of the district.

If several members of a special district are in attendance, and no designated voting representative has been selected, they shall select one representative for voting purposes which may include a member of a Board of Directors or an administrator from a member district.

#### **C. Proxy Votes**

Proxy votes shall not be permitted.

#### **D. Business Affiliates**

**Business Affiliates shall not have the right to vote on any matter before the Humboldt Area Chapter.**

### **Section 3.3 Member in Good Standing**

**Any independent special district member that has paid their annual dues to the Chapter and statewide CSDA shall be entitled to vote as a regular member in good standing. Likewise, any member district that has not paid their annual dues shall not be in good standing and shall not be entitled to vote on matters before the Humboldt Area Chapter.**

**Business Affiliates that have paid their annual dues to the Chapter are in good standing and, while not allowed to vote on any issues, are able to participate the activities of the Chapter.**

### **Section 3.4 Written Ballots**

The Chapter Executive Committee may, in its discretion, authorize the voting upon any item by written ballot. The ballot must be emailed to each regular member fifteen (15) days in advance of the voting deadline. The ballot must specify the item, the time and the date when such written ballot must be returned to the President of the Chapter.

## **ARTICLE 4: CHAPTER FINANCES**

### **Section 4.1 Annual Dues**

Annual dues shall be established following a recommendation from the Executive Committee at any regular meeting by a majority vote of eligible regular members present and shall become effective January of the following year.

All members shall pay dues established annually by the membership.

The annual dues shall be due and payable on the first day of July of each calendar year.

New members shall pay their annual dues at the same time they are approved for membership into the Chapter.

### **Section 4.2 Budget**

The Executive Committee shall determine and recommend the annual budget, upon which the annual dues shall be based.

### **Section 4.3 Additional Funds**

Any additional funds required by the Chapter in the conduct of its routine business shall be raised on a vote by a majority of regular members at a regular and properly noticed meeting.

Assessments for specified and approved purposes may be levied on the members, and members shall be subject to or liable for the payment of any assessment or levy, in addition to the payment of regular dues, upon approval of such assessment by 2/3 of the Regular Membership at a regular and properly noticed meeting.

### **Section 4.4 Chapter Liability**

Neither CSDA nor a member of the Humboldt Area Chapter is not individually or personally liable for the debt, liabilities or obligations of the Humboldt Area Chapter.

### **Section 4.5 Annual Financial Report**

An annual summary of all receipts and disbursements during the previous year showing the opening and closing balances shall be prepared by the Treasurer or a designee. Copies of the review shall be available to all Chapter members and filed with the President of the Chapter.

## **ARTICLE 5: CHAPTER ADMINISTRATION**

### **Section 5.1 Officers**

The officers of the Chapter shall be: President; Vice President; Treasurer; Secretary; Immediate Past President.

### **Section 5.2 Term of Office**

Each officer shall serve for a term of one (1) year.

Any officer may be re-elected.

Each officer can hold only one office at a time but may rotate from office to office if elected by the regular membership.

Each officer shall hold office until resignation, disqualification, or until successor shall be elected or appointed.

### **Section 5.3 Qualification for Office**

Each officer shall, at the time of elections, at the time of office and throughout the term of office, be a representative of a member district.

Each officer must represent a district deemed to be in good standing.

No member district shall have more than one representative from the district serve as an officer of the Chapter at the same time.

### **Section 5.4 Nomination and Election of Officers**

The Executive Committee shall present their nominations at the December meeting. The Executive Committee shall also accept nominations from the floor at that time.

At the November membership meeting, any member district through its designated representative may nominate a qualified member from the floor for office to be filled at the election. If such a nominee is elected, the individual shall be eligible to take office only after filing with the Chapter a copy of a motion or resolution adopted by the Board of Directors of the individual's district supporting such an election.

After accepting any further nominations from the floor, the Executive Committee will conduct the election. The candidates receiving a majority of votes shall be considered elected.

The newly elected officers shall take office on January 1st.

### **Section 5.5 Vacancies**

In the event that any officer at the time of taking office, or during the term of office, is no longer qualified to serve as an officer of the Chapter, the office shall become vacant

and said vacancy shall be filled in a manner provided in Section 5.4 or at the point in time when a vacancy occurs.

In the event of a vacancy in the office of President, the Vice President shall assume all presidential duties.

The assumption of the office of President by the Vice President shall constitute a vacancy in the office of the Vice President. The new vacancy shall in turn be filled by a nomination and vote of the membership present at the next regular Chapter meeting.

The Vice President moving into the office of President or elected to complete an unexpired term of Vice President may be elected by the membership to a subsequent full term.

A vacancy in the office of Secretary or Treasurer shall be filled by nomination and election at the next regular meeting.

#### **Section 5.6 Removal of Officers**

Officers of the Humboldt Area Chapter may be removed, with or without cause, at any meeting of the general membership by the affirmative vote of a majority of the membership.

### **ARTICLE 6: DUTIES OF CHAPTER OFFICERS**

#### **Section 6.1 President**

The President shall preside at all Chapter and Executive Committee meetings. The President shall have the power to appoint any Committee and Committee Chairman deemed advisable or authorized by a vote of the Executive Committee or the membership. The President shall provide a meeting agenda to the Secretary or their designee for mailing to the membership and shall perform any other duties as may be required of the office. The President shall be an ex-officio member of all Chapter committees. The President shall be the official spokesperson for the Chapter and the official Chapter representative to all California Special Districts Association meetings.

#### **Section 6.2 Vice President**

The Vice President shall perform all the duties of President in the absence of the President. It shall be the Vice President's responsibility to assist the President in every way possible to further the goals of the Chapter. The Vice President shall be elevated to the office of President at the end of their term and shall also be an ex-officio member of all Chapter Committees.

#### **Section 6.3 Secretary**

The Secretary shall keep or caused to be kept at the principal office of the Chapter a complete record of all membership and all meetings. The Secretary will prepare or

caused to be prepared and mail, email or fax an agenda to the membership prior to the next meeting and the minutes of the previous meetings

#### **Section 6.4 Treasurer**

The Treasurer shall collect and keep an accurate accounting of all Chapter funds and financial transactions. The Treasurer shall disburse funds as directed by the Executive Committee. The Treasurer will prepare a financial report for every Chapter meeting.

Two (2) signatures shall be required from any member of the Executive Committee to disburse Chapter funds. It shall be the responsibility of the Treasurer to obtain and maintain the authorized signatories' cards required on the Chapter bank account(s) whenever there is a change in Chapter officers.

Prior to leaving office, all financial records and a complete statement of receipts and disbursements shall be submitted to the President.

#### **Section 6.5 Immediate Past President**

The Immediate Past President shall serve as the Parliamentarian of the Chapter and shall make final decision on all matters of parliamentary procedure when called upon to do so by the President.

#### **Section 6.6 Executive Committee**

The Executive Committee shall consist of the President, Vice President, Secretary, Treasurer and Immediate Past President.

It is the purpose of the Executive Committee to meet and provide leadership to the Chapter on issues requiring policy decisions. The Executive Committee may take positions on behalf of Humboldt Area Chapter under certain emergency circumstances such as a request from the State office of the California Special Districts Association or if five (5) Chapter members make a recommendation for a Chapter position and time is of the essence. If the Executive Committee takes a position on behalf of the Chapter, a notice of said position will be distributed to Chapter members within 72 hours and be presented for ratification at the next regularly scheduled Chapter meeting.

Each member of the Executive Committee shall have one vote.

The Executive Committee shall conduct and oversee the Chapter elections.

At the annual meeting of each year, the Executive Committee shall present a summary of fund expenditures. The Executive Committee shall also recommend the annual budget and Chapter goals and objectives. The President may convene the Executive Committee as Committee as necessary. Minutes of any Executive Committee meeting will be presented to the Chapter membership at the next regular meeting.



## **ARTICLE 7: CHAPTER COMMITTEES**

### **Section 7.1 Standing Committees**

The following committees are established as permanent standing committees of the Humboldt Area Chapter. The chairperson and members shall hold office until replaced or changed by the Chapter President.

#### **A. Legislation Committee**

The Legislation Committee shall receive, review and make recommendations on all legislation of interest to the Chapter membership that is presented for enactment during the state legislative sessions.

**The Humboldt Area Chapter shall not publish a legislative position that is in opposition to one taken by the State office of the California Special Districts Association, but may approve such a position at the Chapter level and recommend the position to the Statewide Association.**

#### **B. Local Government Committee**

The Local Government Committee shall maintain liaison with city governments, county government and other organizations by tracking and reporting to the Chapter related issues and activities. This committee shall further be responsible to facilitate the special district selection process for the purpose of LAFCo.

### **Section 7.2 Other Chapter Committees**

The Chapter President shall appoint other committees and committee chairmen as determined necessary to carry out the work of the Chapter.

Committees shall not commit Chapter funds without prior approval from the Executive Committee.

## **ARTICLE 8: AFFILIATIONS**

### **Section 8.1 State Office of California Special Districts Association**

**The Humboldt Area Chapter of CSDA shall be a separate legal entity in Humboldt County and /or adjoining counties in support of the purposes and in cooperation with the activities of the State office of the California Special Districts Association.**

**The Chapter will encourage each of its members to become a member of the California Special Districts Association.**

## **ARTICLE 9: AMENDMENTS TO CHAPTER BYLAWS**

### **Section 9.1 Notification of Change**

The Humboldt Area Chapter shall have the power at any time to alter, amend or revise these Bylaws.

The requested change must be submitted in writing to the Secretary who shall notify all members of the proposed amendment change not less than sixty (60) days before the next regular membership meeting at which the proposed amendment will be voted upon.

**Chapter bylaws and amendments to Chapter bylaws are subject to approval by the board of directors of the State office of the California Special Districts Association.**

### **Section 9.2 Voting Requirements**

Voting by the general membership is required for changes to the bylaws.

Any alteration, amendment or revision to the bylaws require a two thirds (2/3) vote of the Chapter membership at a duly noticed meeting to implement any proposed bylaw change.

Unless otherwise stipulated, all amendments to the bylaws shall become effective immediately following approval by the State office of the California Special Districts Association Chapter and the Chapter membership.

**Section 9.3 Certificate of Chapter Secretary**

I, the undersigned, do hereby certify:

(1) That I am the duly elected Secretary of the Humboldt Area Chapter of CSDA,  
and

(2) That the foregoing Bylaws, comprising of (number) \_\_\_\_\_  
pages, constitute the Bylaws of said Chapter as duly adopted at a  
meeting of its membership.

In Witness whereof, I hereunto subscribe my name this (date) \_\_\_\_\_ of  
(month) \_\_\_\_\_, (year) \_\_\_\_\_.

(Signature of Secretary) \_\_\_\_\_  
(Typed Name of Chapter Secretary)

Therefore, any conflict between Chapter bylaws and California Special District  
Association bylaws shall be resolved in favor of the CSDA bylaws. Any article or  
section not expressly cited herein shall be read as the CSDA articles or section without  
modification.

**RESOLUTION NO. 2018-1  
OF THE REDWOOD COAST ENERGY AUTHORITY  
APPROVING MEMBERSHIP IN THE HUMBOLDT AREA CHAPTER  
OF THE CALIFORNIA SPECIAL DISTRICTS ASSOCIATION**

**WHEREAS**, Redwood Coast Energy Authority is a member of the California Special Districts Association (CSDA) in good standing; and

**WHEREAS**, the Redwood Coast Energy Authority obtains value and benefit from its membership in the CSDA; and

**WHEREAS**, a local chapter is being formed named Humboldt Area Chapter of CSDA; and

**WHEREAS**, the Redwood Coast Energy Authority meets the qualifications for membership in the Humboldt Area Chapter; and

**WHEREAS**, the Redwood Coast Energy Authority has the liability insurance to cover staff activity within the Humboldt Area Chapter of CSDA.

**NOW, THEREFORE, BE IT RESOLVED**, that the Board of the Redwood Coast Energy Authority hereby approves District membership, support participation by staff, and payment of annual dues in the local Humboldt Area Chapter of CSDA.

Adopted this \_\_\_\_ day of \_\_\_\_\_, 2018.

ATTEST:

\_\_\_\_\_  
Sheri Woo, RCEA Board Chair

\_\_\_\_\_  
Matthew Marshall, Clerk

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

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

**CLERK'S CERTIFICATE**

I hereby certify that the foregoing is a true and correct copy of Resolution No. 2018-1 passed and adopted at a regular meeting of the Redwood Coast Energy Authority, County of Humboldt, State of California, held on the \_\_\_\_ day of \_\_\_\_\_, 2018, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

\_\_\_\_\_  
Clerk of the Board, Redwood Coast Energy Authority



**STAFF REPORT**  
**Agenda Item # 5.1**

AGENDA DATE:	January 22, 2018
TO:	Board of Directors
PREPARED BY:	Richard Engel, Director of Power Resources
SUBJECT:	Power Purchase Agreement with DG Fairhaven, LLC

**BACKGROUND**

---

Our *Guidelines for the Redwood Coast Energy Authority Community Energy Program Launch-Period Strategy and Targets* document adopted by the Board in 2016 calls for the program to contract for a target of “around 20 MW of local biomass energy (about 15% of the total RCEA power portfolio).” Our existing contract with Humboldt Redwood Company (HRC), procured through our October 2016 request for offers for biomass power, provided approximately 12% of our total portfolio in 2017 through the 5 MW contract volume, plus surplus delivered energy.

The Board has directed staff to negotiate with DG Fairhaven, who also responded to the 2016 RFO and remain interested in providing power for RCEA’s program. At the December Board meeting, staff presented analysis showing that entering into a contract with DG Fairhaven at its proposed 10 MW volume, under the same terms as the HRC contract (five years at \$83/MWh) would likely not be financially sustainable while continuing to meet the other program guidelines adopted by the Board. These guidelines include building a \$35million rate-stabilization/contingency fund, providing \$2 million per year total rate discount to RCEA power customers, exceeding PG&E’s renewable energy content, and achieving greenhouse gas emissions lower than PG&E’s.

Since the December meeting, DG Fairhaven has agreed to terms we believe are financially sustainable and minimize financial risk for our program. Specifically, DG Fairhaven has indicated they will accept a price of \$65/MWh and an initial contract term of one year, with optional renewal in one-year increments subject to agreement by both parties.

At the December meeting staff recommended waiting to make a final decision on this matter until PG&E rates and PCIA charges were set for 2018, which typically occurs in January. However, PG&E has received approval from the CPUC to delay their rate and PCIA updates until March, and delaying until March to finalize a PPA with DG Fairhaven would further strain their ability to restart the facility. Updated financial analysis and PG&E rate & PCIA forecasts by The Energy Authority (TEA) indicate, with a high degree of confidence, that the PPA as proposed should not compromise RCEA’s ability to meet other program targets. While some degree of risk remains due to continuing uncertainty about the final PG&E numbers, staff’s opinion is that the overall benefits of not delaying additional months to make a final decision justify accepting a small degree of risk, particularly in light of DG Fairhaven’s willingness to accept a lower PPA price (which significantly reduces the financial impact of the decision).

The attached draft power purchase agreement (PPA) is presented for the Board's consideration. It is closely modeled on our existing 9-month PPA with HRC (due to be superseded March 1 by a 51-month PPA with HRC that will increase average power delivery from 5 MW to 13.25 MW). In addition to the pricing and the term of the contract, we have agreed with DG Fairhaven to include the following modifications to the PPA that was used with HRC:

- Option to renew the contract for additional 12-month periods by mutual agreement is made explicit in the contract
- Contract quantities (deliverable MWh) are prescribed on an annual basis, not a monthly basis.
- In keeping with their original offer, DG Fairhaven classifies their product as baseload rather than as-available.
- Also in keeping with their original offer, deliverability is full buy-sell rather than excess sale.

If the proposed PPA is adopted, and assuming both HRC and DG Fairhaven deliver their contract quantities, local biomass power is projected to make up approximately 24% of RCEA's energy portfolio during 2018.

#### **STAFF RECOMMENDATION**

---

Approve 12-month Power Purchase Agreement with DG Fairhaven, LLC and authorize the Executive Director to execute the agreement and any other associated documents as necessary.

#### **ATTACHMENTS:**

---

DRAFT Power Purchase Agreement between Redwood Coast Energy Authority and DG Fairhaven, LLC

**TWELVE-MONTH POWER PURCHASE AGREEMENT**

**Between**

**Redwood Coast Energy Authority**  
(as “Buyer”)

**and**

**DG Fairhaven, LLC**  
(as “Seller”)

DRAFT

# 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 VII Project Specifications and Contract Capacity Calculation

Appendix VIII Section 3.3(e) Liquidated Damages Calculation

DRAFT

## 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 DG Fairhaven, 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:

- ☒ Twelve Months

#### B. Contract Capacity and Expected Initial Energy Delivery Date

Contract Capacity: 10 MW

Expected Initial Energy Delivery Date: 3/1/2018

### **C. Contract Price**

The Contract Price for each MWh of Product as measured by Delivered Energy shall be \$65 per MWh. The Contract Price for each MWh of Product as measured by Surplus Delivered Energy shall be Energy Price plus 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**

Total quantity of Delivered Energy to be supplied during 12-month contract term: 87,600 MWh. During the contract term, Seller shall provide Buyer with a forecast of total Delivered Energy and Surplus Delivered Energy for each calendar month, deliverable thirty (30) days before the start of the calendar month.

The 12-month contract term shall be subject to optional renewal for additional 12-month terms by negotiated mutual agreement of Buyer and Seller.

### **E. Collateral**

- Pre-Delivery Term Security (provide dollar amount)

Dollar Amount: \$ 900,000

- Cash, or
- Letter of Credit

- Delivery Term Security (provide dollar amount)

Dollar Amount: \$ 436,800

- 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: 16.75 MW
- Minimum operating capacity: 0.0 MW

- Ramp Rate: .0805 MW/Minute
- Maximum number of Start-ups per calendar day, month, year (if any such operational limitations exist): Unlimited
- 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). Various parameters around notification/curtailment have been detailed in the Seller's questionnaire responses. These answers have been designed to provide the Buyer with different levels of flexibility and are negotiable.

**Other Requirements:**

- Maximum number of hours annually for Buyer Curtailment Periods: unlimited hours
- The Project will be capable of receiving and responding to all Dispatch Instruction in accordance with Section 3.1(q). Yes.
- Start-Up Time (if applicable): 960 Minutes (from extended cold period)
- Minimum Run Time after Start-Up (if applicable): 1080 Minutes
- Minimum Down Time after Shut-Down (if applicable): 60 Minutes

*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)**

**X** Twelve month Delivery Term. Dollar amount: \$436,800

**H. Notices List**

Name: DG Fairhaven, LLC, a Delaware limited liability company ("Seller")  
All Notices:

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

Delivery Address:

Delivery Address:

Street: 303 Fellowship Road, Suite 105  
City: Mount Laurel State: NJ Zip: 08054

633 3rd St  
Eureka, CA 95501

Mail Address: (if different from above)

Mail Address:

Attn: Edward Kent  
Executive Vice President  
Phone: 856-206-0930, ext 303  
Facsimile: 856-206-0940  
Email: kent-e@ewprc.com

Attn: Richard Engel  
Director of Power Resources  
Phone: 707-269-1700, ext. 354  
Email: [rengel@redwoodenergy.org](mailto:rengel@redwoodenergy.org)

**SENSITIVE FINANCIAL INFORMATION REDACTED**

**PAGE REDACTED – CONTAINS SENSITIVE FINANCIAL INFORMATION**

## **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 (Intentionally left blank)

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 “Curtailment 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.

1.43 "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<sub>x</sub>), nitrogen oxides (NO<sub>x</sub>), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO<sub>2</sub>), methane (CH<sub>4</sub>), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by Law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere;<sup>1</sup> (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

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<sup>1</sup> 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.

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 parties, the Initial Energy 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 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. 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, 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. 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. 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) As soon as practical 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](mailto: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](http://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](mailto: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](mailto: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 1<sup>st</sup> 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 March 1, 2018, the Contract Price shall be reduced by \$0.00/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 are 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 constitute legally valid and binding obligations 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' 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

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### 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:

**DG FAIRHAVEN, 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. XXXXXXXX

**Date:** [insert issue date]

**Beneficiary:** Redwood Coast Energy Authority

633 3<sup>rd</sup> St,  
Eureka, CA 95501

Attention:

**Applicant:** [Insert name and address of Applicant]

**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: \_\_\_\_\_

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**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](mailto: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](mailto: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](mailto: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](mailto: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.

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## 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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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.<sup>1</sup> 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.<sup>2</sup> 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.”<sup>3</sup>

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

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<sup>1</sup> *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).

<sup>2</sup> Order No. 697 at P 186.

<sup>3</sup> 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]

DRAFT

**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 \$4,213/MW/Month in calendar year 2018 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 VIII-1 Monthly Qualifying Capacity Factor**

Month	Biomass	Geothermal	Solar	Wind
<b>Jan</b>	70.61%	84.92%	0.79%	4.43%
<b>Feb</b>	72.50%	85.34%	6.62%	8.25%
<b>March</b>	70.79%	82.42%	15.12%	21.36%
<b>April</b>	62.13%	80.44%	60.43%	23.90%
<b>May</b>	65.57%	81.99%	64.13%	31.04%
<b>June</b>	73.55%	78.59%	80.03%	27.31%
<b>July</b>	76.32%	78.74%	80.39%	17.04%
<b>Aug</b>	75.31%	78.37%	74.86%	15.31%
<b>Sept</b>	74.67%	78.78%	73.05%	9.20%
<b>Oct</b>	71.80%	79.05%	48.29%	7.22%
<b>Nov</b>	70.86%	81.08%	2.49%	4.43%
<b>Dec</b>	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 2021
- Project is a solar system
- Contract Capacity is 20 MW
- RA Start Date is based on the Expected FCDS Date, which is January 1, 2021
- FCDS is achieved on August 14, 2021

**RA Value (\$/MW/Month)** = \$4,213.00, escalated at 2.5% per year for 3 years, from 2018 to 2021

$$\$4,213 \times (1.025)^3 = \$4,537/\text{MW/Month}.$$

**Monthly Qualifying Capacity factor** for a solar project in June is 80.03% (from table above).

**Expected Net Qualifying Capacity** =

$$\text{Contract Capacity (MW)} \times \text{monthly Qualifying Capacity factor} =$$

$$20 \text{ MW} \times 80.03\% = 16.01 \text{ MW}$$

**RA Deficiency Amount (\$/Month)** =

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

$$\$4,537/\text{MW/Month} \times 16.01 \text{ MW} = \$72,637.37$$

In this example, the RA Shortfall Period is from January through October 2021. The calculations above would be performed and the result applied for each month in this RA Shortfall Period.

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**STAFF REPORT**  
**Agenda Item # 6.1**

AGENDA DATE:	January 22, 2018
TO:	Board of Directors
PREPARED BY:	Matthew Marshall
SUBJECT:	Election of Officers

---

**BACKGROUND**

By simple majority vote, the RCEA Board selects its Chair and Vice Chair every year at its January meeting. The responsibilities of the Chair include:

- Conducting the monthly and special meetings
- Attending the monthly agenda review meeting
- Being available to sign checks when necessary

The Vice Chair's responsibilities include:

- Conducting the monthly and special meetings when the Chair is unable to
- Attending the monthly agenda review meeting
- Being available to sign checks when necessary

The Chair and Vice Chair will need to make themselves available soon after the January meeting to complete the appropriate signature forms to be filed with RCEA's banking institution.

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**STAFF RECOMMENDATION**

Select RCEA Board Chair and Vice Chair and authorize them as signers on RCEA bank accounts.

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**STAFF REPORT**  
**Agenda Item # 6.2**

AGENDA DATE:	January 22, 2018
TO:	Board of Directors
PREPARED BY:	Matthew Marshall
SUBJECT:	Offshore Wind Energy

**BACKGROUND**

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Staff and RCEA Legal Counsel have continued to evaluate options and next steps to move forward with the potential development of a local offshore wind energy project. This evaluation has included consideration of how to facilitate this effort in a way that also maintains a degree of local control and decision making. As presented at the December RCEA Board meeting, a primary way these objectives can be achieved would be for RCEA to formally enter into a partnership agreement with one or more development partners for the purpose of submitting a lease request to the Bureau of Ocean Energy Management (BOEM) and partnering on the subsequent steps in evaluating and pursuing a potential project.

To enter into a formal partnership agreement with one or more private development partners, RCEA staff and Legal Counsel has come to the determination that it is prudent and necessary to issue a formal Request for Qualification (RFQ) that would provide a well-defined and transparent public procurement process for the selection of any entities that RCEA enters into an agreement with (Draft RFQ attached).

As stated in the draft RFQ, the future efforts from any partnership agreements resulting from the RFQ would be built on the foundation of a significant amount of work already completed to date under the Memorandum of Understanding (MOU) between RCEA and Principle Power (PPI). That work led directly to staff's recommendation to establish the public-private partnerships enabled by the proposed RFQ for the purposes of pursuing a BOEM lease and the eventual development and operation of a local offshore wind project. While the MOU provided an effective framework for an initial phase of exploration by PPI and RCEA, its non-binding/non-exclusive nature does not provide an adequate contractual structure necessary to move forward with the next formal steps of pursuing a project.

There have been no financial transactions between PPI and RCEA, PPI has not been compensated in any way by RCEA for any activities, and PPI did not have any direct role in the decision to recommend issuing this RFQ nor any input in the drafting of the RFQ. Accordingly PPI would not have a conflict of interest or other impediment to being eligible to respond to this RFP as a result of the MOU and/or any other interactions between RCEA and PPI.

It is staff and Legal Counsel's recommendation that this RFQ represents the appropriate next step to establish a formal, contractual public-private partnership(s) with one or more parties to

pursue an offshore wind development project through a public and transparent process. The need and desire to issue this RFQ emerged in part from the cooperative efforts under the MOU between RCEA and PPI. It *should not* be construed to reflect in any way a failing of those efforts, any divergence by PPI from the terms of the MOU, or any other negative action or deficiency of PPI. Indeed, PPI's activities in Humboldt County and efforts in the context of the MOU to date have consistently reflected sound technical capabilities and a strong and respectful commitment to community engagement and community-driven process.

Staff recommends that the Board form an offshore wind subcommittee to work with staff on this effort. If the Board approves issuing the RFQ staff requests that the Board approve a technical review team to evaluate statements of qualifications submitted in response to the RFQ. Staff is reaching out to potential technical reviewers and will provide recommendations for the review team to the Board at the meeting.

### **Financial Impacts**

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There is no financial impact from issuing the RFQ other than staff time. Staff anticipates requesting (in February or March) a modest allocation of program funding from the CCE program budget to support near-term costs associated with offshore wind development efforts (consultant fees, public engagement costs, grid-interconnection study costs, etc). The specifics of any longer-range financial costs/benefits to RCEA will emerge through the negotiation process for whatever partnership agreements maybe developed as a result of the RFQ.

### **STAFF RECOMMENDATION**

---

Appoint RCEA Board members to an Offshore Wind Energy Subcommittee.

Approve issuing Request for Qualifications for Offshore Wind Energy Development Partners after final review and approval by RCEA Legal Counsel and the RCEA Offshore Wind Energy Board Subcommittee.

Approve RFQ-response evaluation team members. (staff will provide recommendations at the Board Meeting).



# **REQUEST FOR QUALIFICATIONS**

**For**

**Humboldt County Offshore Wind Energy  
Development Partners**

**DRAFT**



**RFQ-18-001**

**[www.RedwoodEnergy.org](http://www.RedwoodEnergy.org)**

**Redwood Coast Energy Authority**

**February 2018**

***Responses Due February 28, 2018, 5:00 p.m. PST***

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**DISCLAIMER:** This Request for Qualifications (RFQ) is not a commitment or contract of any kind. The Redwood Coast Energy Authority (RCEA) reserves the right to pursue any, or none, of the ideas generated by this request. Costs for developing the responses are entirely the responsibility of the respondents and shall not be reimbursed. RCEA reserves the right to select the response(s) that is in RCEA's best interest, to reject any and all responses, to terminate the RFQ process, and/or to waive any requirements of this RFQ when it determines that doing so is in the best interest of RCEA. Further, while every effort has been made to ensure the information presented in this RFQ is accurate and thorough, RCEA assumes no liability for any errors or omissions in this document.

# Introduction

The Redwood Coast Energy Authority (RCEA) is issuing this Request for Qualifications (RFQ) to select a qualified entity or group of entities to enter into a public-private partnership for the purpose of pursuing the development of an offshore wind energy project off the Northern California coast.

It is RCEA's intent to enter into a partnership agreement(s) with the entities selected through this RFQ and to work with them to develop and submit an application for an outer continental shelf renewable energy commercial lease to the Bureau of Ocean Energy Management (BOEM) in the spring of 2018 through BOEM's unsolicited lease request process. Should a lease be secured, RCEA intends to then work with these partners to develop and eventually operate a floating offshore wind project within the lease area.

## Background

### RCEA Mission and Goals

---

RCEA is a local government joint powers agency of the County of Humboldt, the Cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna, Rio Dell, Trinidad and the Humboldt Bay Municipal Water District. Formed in 2003, RCEA's mission is to develop and implement sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient and renewable resources available in the region. Relating to the local development of floating offshore wind energy, RCEA's 2003 Joint Powers Agreement includes specific goals to:

- Lead, coordinate and integrate regional efforts that advance secure, sustainable, clean and affordable energy resources.
- Support research, development, demonstration, innovation, and commercialization of sustainable energy technologies by public and private entities operating in Humboldt County.

The Humboldt County General Plan designates RCEA as the regional energy authority with the responsibility to coordinate and facilitate countywide strategic energy planning and implementation. In 2012, RCEA adopted the Humboldt County Comprehensive Action Plan for Energy (CAPE), which is RCEA's primary guiding document. The CAPE established specific strategic action items relevant to the development of the region's offshore wind energy resources, including:

- **Large-Scale Wind Energy:** Work with utilities and private companies to develop off-shore wind energy demonstration projects.
- **Emerging Energy Technologies:** Support the development of emerging energy technology from local innovators and inventors, as well as from non-local sources.

- **Business Development:** Collaborate with local economic development entities to attract technology developers, manufacturers, and energy service providers to locate operations in the County when appropriate.
- **Proactive Development Support:** Collaborate with local jurisdictions to identify and pre-assess locations and facilities that could appropriately support energy generation projects and/or other energy-related business ventures.
- **Local Energy Investment:** Work with local economic development entities and financial institutions to develop programs and resources that facilitate local community investment in and/or ownership of energy efficiency and renewable energy projects.

### RePower Humboldt Strategic Plan

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Expanding on the strategies outlined in the CAPE, RCEA initiated RePower Humboldt, a community-wide effort to define a vision and Strategic Plan for achieving energy independence and energy security in Humboldt County. With the support of the Humboldt State University Schatz Energy Research Center, the CA Energy Commission, Pacific Gas & Electric, and many community stakeholders, this effort culminated in the development of the RePower Humboldt Strategic Plan to establish a vision for the year 2030 and guide the integration of renewable energy into Humboldt County, develop local energy infrastructure, and set energy-related goals.

Finalized in 2014, the RePower Humboldt Strategic Plan identifies “**pursuing opportunities for off-shore wind energy research, development, and demonstration**” as an important objective, noting that Humboldt County is uniquely positioned to play a critical role in the early adoption of offshore wind energy resources in California and that local harbor infrastructure can support development of these technologies.

In addition to technical and economic assessment of local renewable energy development potential, the RePower Humboldt project conducted a robust community and stakeholder engagement process to identify community values and guiding principles for pursuing the development of local renewable energy projects. Community stakeholders prioritized “local acceptance, participation, and control” as a key criterion for future projects, which was captured in the following strategy from the RePower Plan:

**Develop options for local development and ownership of renewable energy projects:** Local participation and control over renewable energy resource development is a key guiding principle identified in the RePower Humboldt stakeholder process. We can achieve local control and ownership of energy projects through private development that involves local entities, public development by municipal actors, and development by local Tribes. The community should promote and support policies that achieve local ownership of renewable energy projects, as well as local involvement in projects that are developed and owned by out-of-county entities.

## Community Choice Aggregation

---

In 2015 RCEA identified community choice aggregation (CCA) as a critical mechanism for the implementation of the Repower Humboldt Strategic Plan and RePower Humboldt 2030 vision. To that end, over the course of 2015-2017 RCEA's local-government members approved revisions to RCEA's joint powers agreement, adopted ordinances, and completed the necessary planning and regulatory steps to establish RCEA as the community choice aggregator for the County of Humboldt and all the Cities within the County. Launched in May 2017, RCEA's CCA program is now the default electricity generation service provider for the County, serving over 60,000 customers with some 700,000 MWh of annual load. Operated in partnership with PG&E, the CCA program provides local control over electricity supply, resulting customer rate savings, and increased use of renewable electricity, while maintaining the same reliable grid operations and customer services provided by PG&E.

Based on the groundwork established by the RePower Humboldt strategic plan for developing local renewable energy, the RCEA Board of Directors determined to proceed with developing the CCA with the core goal to "Maximize the use of local renewable energy while providing competitive rates to customers. "

In September of 2016 the RCEA Board adopted Guidelines for the CCA Program's Launch-Period Strategy and Targets, which were developed with public input received through a series of public presentations, meetings, and workshops. These Guidelines establish specific targets and objectives for the initial launch phase of the program during years 1-5 of operation. In addition to the over-arching goal of maximizing the use of local renewable energy, the Guidelines establish that the program will be designed to also pursue the following aspirations and community benefits:

- Environmental Quality
- Local Control and the Ability to Pursue Local Priorities
- Economic Development
- Energy Independence
- Customer Rate-savings, Choice, and Community Programs

Further, the CCA Program Guidelines lay out power-portfolio goals for near-term and long-term local renewable energy generation. These include the goal of pursuing the development of offshore wind energy, specifically directing that "RCEA will allocate resources to moving forward with community and stakeholder engagement, site selection, environmental review, and project scoping" for a local offshore wind project.

## Recent Efforts

---

Based on the many years of planning and public engagement summarized above, combined with the maturation of floating offshore wind technology and the ramp-up of State and Federal efforts to enable offshore wind development in California, in 2017 RCEA began to evaluate potential next steps toward developing local offshore wind consistent with the objectives of the CCA Program Guidelines and previously established goals.

Early on in this evaluation RCEA was approached by Principle Power Inc (PPI), a technology, engineering, and development services provider for deep-water offshore wind energy projects.

Based on a mutual interest to explore the potential for a Humboldt County offshore wind project, PPI and RCEA began to collaborate on this evaluation and eventually entered into a Memorandum of Understanding (MOU) to provide a framework for cooperatively working together on this exploratory effort. This effort has included preliminary technical and economic assessments as well as initial outreach and engagement with local stakeholders.

While RCEA's local efforts were underway, the U.S. Navy recently designated the majority of the California coastline outside of Humboldt County as excluded from offshore wind development due to potential military mission incompatibility.<sup>1</sup> The Navy's designation, combined with the North Coast's world-class offshore wind resource and other community assets, has resulted in an increased focus on Humboldt being a potential location for early deployment of offshore wind in California.

As the local agency tasked with encouraging and coordinating the development of local renewable energy resources and offshore wind development specifically, RCEA welcomes the increase in State, Federal, and industry interest in Humboldt's wind energy resource. Within this context, the long-established and consistently-restated community interest in maintaining local control over the development of our community's renewable resources compels RCEA to pursue an offshore wind development pathway that incorporates a direct local stake in planning and potential development off our coastline.

Further, as the local power provider and potential off-taker or purchaser of power generated by a local offshore wind project, RCEA also has a direct interest in holding a stake in the project to ensure the maximum benefits and the minimum costs to its constituents and ratepayers. Accordingly, RCEA has determined that applying for a commercial wind-area lease through BOEM's unsolicited lease request process is the preferred next step to secure a degree of local control over any potential development and to direct that development toward a location and project design best aligned with the local community's needs.

However, time is of the essence and RCEA is well aware that it currently lacks the technical and financial resources to develop the local offshore wind resource without substantial outside support. To address these constraints RCEA has issued this RFQ to identify and engage the needed technical and financial/development partners willing and able to work with RCEA to cooperatively develop Humboldt County's offshore wind resource as a community energy asset.

The future efforts from any partnership agreements resulting from this RFQ would be built on the foundation of a significant amount of work already completed to date under the MOU between RCEA and PPI. That work led directly to the decision for RCEA to seek to establish the public-private partnerships enabled by this RFQ for the purposes of pursuing a BOEM lease and the eventual development and operation of a local offshore wind project. While the MOU provided an effective framework for an initial phase of exploration by PPI and RCEA, its non-binding/non-exclusive nature does not provide an adequate contractual structure necessary to move forward with the next formal steps of pursuing a project. Regarding PPI and RCEA's relationship to-date, it should also be explicitly noted that:

- 1) The framing of the MOU was collaborative but intentionally non-binding in nature, specifically stating: "This Memorandum does not establish a joint venture, partnership, or business unit of any kind between the Parties, nor does it necessarily create a financial

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<sup>1</sup> <http://greenfleet.dodlive.mil/rsc/departments-of-the-navy-california-offshore-wind-compatibility/>

or future legal obligation on behalf of either Party. Further, the Memorandum does not grant or create an exclusive right to negotiate between RCEA and PPI; and, subject to the provisions of the Non-disclosure Agreement, either party is free to negotiate or explore the development of offshore wind energy with other persons and entities.”

In addition, there have been no financial transactions between PPI and RCEA, PPI has not been compensated in any way by RCEA for any activities, and PPI did not have any direct role in the decision by RCEA to issue this RFQ nor any input in the drafting of the RFQ. Accordingly it is RCEA’s determination that no conflict of interest or other impediment to being eligible to respond to this RFP exists for PPI as a result of the MOU and/or any other interactions between RCEA and PPI.

- 2) It is RCEA’s determination that this RFQ represents the appropriate next step to establish a formal, contractual public-private partnership(s) with one or more parties to pursue an offshore wind development project through a public and transparent process. The need and desire to issue this RFQ emerged in part from the cooperative efforts under the MOU between RCEA and PPI. It *should not* be construed to reflect in any way a failing of those efforts, any divergence by PPI from the terms of the MOU, or any other negative action or deficiency of PPI. Indeed, PPI’s activities in Humboldt County and efforts in the context of the MOU to date have consistently reflected sound technical capabilities and a strong and respectful commitment to community engagement and community-driven process. Accordingly, RCEA expects and encourages PPI to respond to this RFQ.

## Goals, Objectives, and Desired Partners

The goal of this RFQ is to identify and engage one or more qualified entities to enter into a public-private partnership agreement(s) for the purpose of submitting an application for an outer continental shelf renewable energy commercial lease to the Bureau of Ocean Energy Management (BOEM) in the spring of 2018 through BOEM’s unsolicited lease request process for the development of an offshore wind energy project off the Northern California coast. Should a lease be secured, RCEA intends to then work with this(these) partner(s) to develop and eventually operate a floating offshore wind project within the lease area.

The first stage in that process would be to develop and submit an application for an outer continental shelf renewable energy commercial lease to BOEM in the spring of 2018 through BOEM’s unsolicited lease request process. This would provide RCEA and its partners the exclusive right to subsequently seek BOEM approval for the development of the leasehold. The lease does not grant the lessee the right to construct any facilities; rather, the lease grants the right to use the lease area to develop its plans, which must be approved by BOEM before the lessee can move on to the next stage of the process.

If a lease is secured, RCEA and its partners will then be required by BOEM to develop a Site Assessment Plan and a Construction and Operations Plan. BOEM summarizes these steps in the process as follows:

- **Site Assessment.** The site assessment phase includes the submission of a Site Assessment Plan (SAP), which contains the lessee’s detailed proposal for the

construction of a meteorological tower and/or the installation of meteorological buoys on the leasehold. The lessee's SAP must be approved by BOEM before it conducts these "site assessment" activities on the leasehold. BOEM may approve, approve with modification, or disapprove a lessee's SAP. It is also during this phase that the lessee would conduct site characterization surveys and studies (e.g., avian, marine mammal, archeological).

- **Construction and Operations.** The construction and operations phase consists of the submission of a Construction and Operations Plan (COP), which is a detailed plan for the construction and operation of a wind energy project on the lease. BOEM conducts environmental and technical reviews of the COP and decides whether to approve, approve with modification, or disapprove the COP. Prior to the end of the lease term, the developer must submit a plan to decommission facilities.

In addition to these BOEM lease development requirements, RCEA and its partners will have to complete a range of additional activities, including but not limited to:

- Perform the environmental, technical, and stakeholder-engagement activities needed for the SAP and COP processes along with the wide range of State and Federal environmental permitting requirements and processes necessary for the development of the project, including NEPA and CEQA.
- Coordinate with Federal and State agencies for support and to align the project with their priorities as well as pursuing any relevant funding or other opportunities for support.
- Identify and secure a grid interconnection location for the project and identify solutions for any transmission system upgrades the project may require.
- Develop power off-take terms, requirements, and necessary agreements for RCEA and any other additional power purchasers.
- Identify local infrastructure needs and opportunities with a focus on local harbor utilization and maximizing local economic development benefits.

Should the above phases of project planning and development lead to a potential for a technically, economically, and environmentally viable project, RCEA and its partners would proceed with the implementation of the Construction and Operations Plan to deploy and operate the project under terms and agreements cooperatively developed through the partnership.

### **Partner "Areas of Capability" and Associated Required Qualifications and Capacities**

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To move forward with the above activities, RCEA has initially identified three distinct areas of qualification and capacity desired for the success of project completion: 1) Technical Consulting Services; 2) Floating Offshore Wind Technology and Project Design; and 3) Offshore Wind Energy Project Financing, Development, and Operations. Additional details on the specific needs associated with these three "areas of capability" are outlined below. Respondents may offer qualifications responsive to any one or more of the three distinct areas.



## 1. Technical Consulting Services

Core activities under this partnership component would include the environmental and regulatory planning, permitting, and compliance components of project development. This role would include substantive work on activities that include but would not be limited to:

- Engage, educate, and involve the local community and key stakeholders in all stages of the project development process.
- Develop the lease application.
- Conduct site characterization studies.
- Develop and submit to BOEM a Site Assessment Plan (SAP).
- Develop and submit to BOEM a Construction and Operations Plan (COP).
- Support the environmental and technical review of the SAP and COP.
- Complete the wide range of State and Federal environmental permitting requirements and processes necessary for the development of the project, including NEPA and CEQA.
- Design and implement environmental monitoring and mitigation plans.

Ideal respondent qualifications would include:

- A depth and breadth of experience working with the relevant California and Federal agencies and their respective requirements and approval processes.
- Specific qualifications and experience relevant to Northern California offshore environmental and community resources, values, and conditions.
- Experience with offshore renewable energy development and the BOEM unsolicited lease application process.

## 2. Floating Offshore Wind Technology Provider and Project Design

The water depths off the coast of Humboldt County make fixed-bottom wind turbines infeasible and/or undesirable, requiring the use of a floating turbine foundation approach. To ensure a timely deployment and to minimize risk and uncertainty, RCEA seeks to utilize to the greatest extent feasible technologies that are beyond the R&D phase and are ready for commercial deployment. Qualified technological responses would include:

- Proven floating-wind platform technology that has been deployed in open-ocean conditions for at least 2 years of continuous operation with a 1MW or greater nameplate capacity turbine delivering power to shore.
- Ability to scale up to accommodate modern offshore turbine sizes of 8MW+. It is also preferred that the platform be flexible in design to be able to accommodate a range of conventional/available offshore turbine models.
- Able to be deployed in depths of up to 900 meters.
- Capacity to scale up and deploy a Humboldt County project approximately 100-150MW in size in the next 5-7 years using 8+MW turbines.
- Credible and justifiable levelized cost of energy (LCOE) projections applicable to the proposed deployment timeline of 5-7 years and 100-150MW scale of this project.

In addition to the above technology requirements, qualified respondents should have relevant general experience in designing and deploying offshore wind projects, including collaboratively working with a diverse range of community and development partners.

### **3. Offshore Wind Energy Project Financing, Development, and Operations**

Successfully developing a utility-scale floating wind project that may eventually be the first commercial offshore wind project in California (or the west coast) will require substantial project financing, development, and operations capabilities. To that end, RCEA seeks to partner with one or more renewable energy project developers with the means and commitment to work with the community to finance, plan, construct, and operate this project. Responses should demonstrate experience and organizational capability with the following:

- Experience to install, manage, operate, maintain, repair, dismantle, and decommission an offshore wind energy project -- including the size and number of projects completed (or in process) to date.
- Financial capacity and project-financing capabilities to facilitate the anticipated 5-8 year development timeline and eventual up-front construction costs prior to the operational, power-production phase.
- Demonstrated commitment and track record of transparent and collaborative community engagement and participation.
- Flexibility and creativity to successfully complete a cutting-edge project of this nature.
- Experience developing utility-scale renewable energy projects through public-private partnerships and/or experience working with public power entities.
- Development experience in the United States, and particularly experience with and/or relevant to the BOEM offshore renewable lease and development process.

The project's financing, ownership, and operations structure are expected to be negotiated as a part of the process of developing the partnership agreement(s) intended to result from this RFQ. However, respondents are encouraged to provide with their response any partnership models/structures, examples, or concepts that they think could be a good fit for this project.

## **Response Process**

RCEA reserves the right to interpret or change any provision of this RFQ at any time prior to the proposal due date. Such interpretations or changes shall be made in the form of addenda to this RFQ. RCEA, in its sole discretion, may determine that a time extension is required for submission of responses to this RFQ, in which case such addenda shall indicate a new RFQ submission deadline.

RCEA, in its sole discretion, may decide to split this RFQ process into separate tracks and timelines for the three areas of capabilities described above, including a time extension or other RFQ modification that applies to one or more of the three tracks but not the others. For example, due to the scope and complexity of the "Project Financing, Development, and Operations" area of capabilities as defined above, it may be required to extend the timeline or otherwise modify this RFQ for that partnership area while still moving forward with the original Technical Consulting and/or Technology Provider areas.

RCEA reserves the right to waive inconsequential deviations from stated requirements.

### Schedule

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RCEA intends to adhere to the schedule provided below during the selection process. This schedule may change at RCEA's sole discretion as described above.

Activity	Date
RFQ Released	2/1/18
<b>Deadline to submit written Questions</b>	<b>2/9/18, 5:00pm</b>
Anticipated distribution of Questions and Answers	2/14/18
Addenda, if any, issued	2/2 - 2/28/18
<b>SOQs Due</b>	<b>2/28/18 5:00pm</b>
RCEA may request clarifying information from Respondents	3/1 - 3/12/18
<b>RCEA may conduct interviews with select Respondents</b>	<b>3/5 - 3/9/18</b>
Anticipated notice of recommendation for preferred Respondent(s)	3/12/18
Anticipated RCEA Board selection of Respondent(s) to enter into negotiations with	3/19/18

The questions and answers, any addenda, and any other updates in the RFQ process will be posted to RCEA's website. Interested parties may request to receive notification of the questions and answers as well as any addenda by emailing Lori Biondini at [lbiondini@redwoodenergy.org](mailto:lbiondini@redwoodenergy.org). Notifications will be provided via email to any interested party that provides RCEA with electronic contact information.

### Submittal of Written Questions

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RCEA requires Respondents to submit all questions and requests for information in writing via email to RCEA at [lbiondini@redwoodenergy.org](mailto:lbiondini@redwoodenergy.org). The deadline for submitting written questions and requests for information will be February 9, 2018 at 5:00 PM Pacific time. RCEA will NOT accept questions or requests for information related to the RFQ after this time. Questions and answers will be posted and distributed by the anticipated date of February 14, 2018.

### Clarification of Statement of Qualifications (SOQ) Information

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A Respondent may be asked to clarify information through written or verbal communications and/or in-person interviews. The clarification process may be performed by RCEA staff, the SOQ review team, and/or the RCEA Board's Offshore Wind Subcommittee at any time during the course of the RFQ process at RCEA's discretion.

One or more Respondents may be invited to present their qualifications to the SOQ review team, RCEA Offshore Wind Board Subcommittee, and/or the RCEA Board. If such presentations are requested, RCEA intends to schedule them the week of March 5-9, 2018;

RCEA will try to provide reasonable advance notice of any such presentation but Respondents should plan accordingly.

## Contact and Address

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Respondents shall submit all correspondence, questions and their statement of qualifications to the following contact individual:

Lori Biondini, Director of Business Planning and Development  
Redwood Coast Energy Authority  
633 3<sup>rd</sup> Street Eureka, CA 95501  
Telephone: 707-269-1700  
Email: [lbiondini@redwoodenergy.org](mailto:lbiondini@redwoodenergy.org)

## Statement of Qualifications Contents and Submittal

**THE RESPONSES TO THIS RFQ SHOULD BE SUBMITTED ELECTRONICALLY VIA EMAIL IN PDF FILE FORMAT TO LORI BIONDINI AT: [lbiondini@redwoodenergy.org](mailto:lbiondini@redwoodenergy.org) NO LATER THAN 5:00 P.M. PACIFIC TIME ON FEBRUARY 28, 2018.** Files should be formatted for printing on 8.5"x11" paper; respondents can submit hard copies of their responses if they choose, but this is not required. Electronic submittal is mandatory in any case.

Respondents must provide all information requested in this section and addendum items, if any, as part of their responses. Failure to provide all required information as listed below may be grounds for rejection of a response. Please read this entire RFQ and all attachments before preparing your response. Respondents should seek clarification of any requirements they do not fully understand. Misunderstandings that result in an incomplete or improper response will not be considered a valid reason for submitting a non-responsive submittal. Any clarification desired by respondents regarding the meaning or interpretation of this RFQ must be requested in writing by email not later than February 9, 2018 at 5:00 P.M pacific time.

Responses shall be submitted according to the following format and include the following information:

- 1. Cover letter**

Provide a cover letter that includes the following:

- Name, address, and telephone and email of Respondent and primary contact person.
- If team arrangement is proposed, describe the structure of the relationship and any past working relationships on similar projects.

- A statement that you have reviewed the requirements of the project as described in this RFQ, its enclosures, and all addenda, by listing all addenda.
- The cover letter and any forms must be signed by an officer or agent of the Respondent authorized to bind the Respondent.

## **2. Executive summary**

Provide an executive summary, not to exceed two pages, describing in brief the area (or multiple areas) of capability, as defined by this RFQ, that you propose to partner with RCEA on and that highlights the major elements of your qualifications and capabilities.

## **3. Company Description, Experience and Qualifications**

### ***Background Information***

Provide the following company Information:

- Name of Firm
- Address of Firm
- Telephone, Fax Number, and E-Mail Address
- Primary Contact Person
- Legal Structure (corporation, partnership, joint venture, etc.)
- Size of Firm / Staff
- Years in Business
- Name and titles of the entity's principal officers

If team arrangement is proposed, provide the above information for each team member.

### ***Staff Qualifications***

Provide the names and contact information of individuals who will be assigned to lead the partnership efforts described in this RFQ. List the qualifications of each individual and provide a resume or curriculum vitae (CV) for each such individual.

Specify how the respondent has attained or fulfills the knowledge, experience, abilities, and capacity necessary to meet the needs of the Area(s) of Capability that the respondent is proposing to provide.

### ***Sample Projects and References***

Describe projects and/or services provided currently, or in the past, that are directly relevant to offshore wind project development needs described in this RFQ.

Provide the name, telephone number, and address for three (3) clients or project partners as references for your experience and capabilities as requested in this RFQ.

### ***Subcontractors or Partners***

Respondents shall identify all subcontractors or partner entities with whom they propose to work for this project. Specify what roles the subcontractors will perform and include their contact information and qualifications; qualifications should include all information listed above.

#### 4. Technical Response

***Qualifications and Capacity Specific to the Relevant “Area(s) of Capability” as defined in this RFQ***

Respond to the project needs and specific requirements associated with whichever of the three areas of capability proposed to be addressed (1. technical consulting, 2. platform technology, or 3. financing, development, and operations), as described above.

If a respondent or team of respondents is proposing to address more than one of the areas of capability, organize your response to delineate each area of capabilities as outlined in the RFQ, and address separately and in thorough detail your qualifications, strategy, and capabilities associated with each element required for a successful project.

***Understanding of the Project and the Related Partnership Needs and Requirements***

Respondents should provide a summary of their understanding of the project and the needs and requirements of RCEA and its selected partners to ensure a successful project. This should include such factors as:

- Development and stakeholder/community engagement process, and the Respondent's commitment and track record in working with local communities.
- Understanding of local environmental and community characteristics in Humboldt County.
- Understanding of BOEM process and the California-specific regulatory and development environment, including CAISO market conditions and interconnection requirements, CCA/IOU relationships and dynamics, and relevant State policies and regulations.

#### 5. Conflict of Interest

All Respondents must disclose any contractual or personal relationship that exists, or has existed, between the Respondent and a predecessor organization of the Respondent, or a subcontractor or team participant included in the Respondent's response to this RFQ, and RCEA or its Member Agencies, including any RCEA or Member Agency officer. Respondent must also disclose any existing business or personal relationship between the Respondent, its principals, or any affiliate or subcontractor, and RCEA, its Member Agencies, including any RCEA or Member Agency officer, or any other entity or person involved in the project that is the subject of this RFQ.

Failure to disclose any such prior or existing contractual or personal relationship as described in this section may result in disqualification of the SOQ. RCEA will make the final determination regarding the existence of a conflict of interest.

#### 6. Appendix of Additional Information

Other information or data relevant to your SOQ is optional and may be included as an Appendix to the SOQ.

# SOQ Evaluation and Selection

## Evaluation Procedures

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The SOQs should be clear and concise to enable RCEA to make a thorough evaluation and arrive at a sound determination as to whether the SOQ meets RCEA's requirements. To this end, the SOQ should be specific, detailed, and complete to clearly and fully demonstrate that the Respondent has a thorough understanding of and has demonstrated knowledge of the requirements to perform the work.

The SOQs will be evaluated based on their content, completeness, and clarity. Based on the contents of submitted responses, the results of any interviews and oral presentations (if conducted), along with any other information requested by RCEA will prepare a final ranking of the responses and present its ranking to the RCEA Board.

The RCEA Board will have the sole and final authority to select a preferred Respondent(s). In the event that negotiations with the selected Respondent(s) do not progress toward an agreement that is satisfactory to both parties, RCEA, in its sole discretion, may rescind its selection of the Respondent(s) and select another Respondent(s) to negotiate with.

## Evaluation Consideration

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The evaluation of SOQs will consider the following:

1. Completeness of response submission - Responses should respond to each of the items set forth in the RFQ.
2. Experience and Qualification - Evaluation of the qualifications, expertise, and overall experience of the organization as well as that of the personnel specifically assigned to perform the activities described.
3. Quality and depth of references.
4. Economic feasibility and local economic development benefits.
5. Availability - Evaluation of the workload of the respondent and the staffing/resources to be assigned to the services requested. Evaluation of the time schedule of the respondent, and evaluation of the locations of offices and facilities from which the services are to be provided to RCEA.
6. Any other criteria RCEA deems relevant.

Respondent(s) selection will be based on, in RCEA's sole discretion, what is in the best interest of RCEA, its Members, and its constituents based on the Respondents' demonstrated competence and qualifications, experience, capacity, and other qualitative and quantitative factors RCEA deems relevant.

## Agreement Negotiation

A partnership agreement(s) will be negotiated with the successful Respondent(s). The parties will decide as part of the negotiation how best to structure the legal relationship, for example project phasing based on milestones or objectives, timeline or other project complexity. In addition, RCEA may negotiate and enter into separate and/or joint agreements with multiple Respondents in order to ensure the most qualified Respondent is selected for each of the three identified Capability Areas. There will be no binding contractual agreement between the selected firm(s) and RCEA unless and until the RCEA Board or its designee, as applicable, accepts and signs any -agreement(s).

RCEA reserves the right, in its sole discretion, to terminate agreement negotiations at any time, rescind its selection of a particular Respondent and begin agreement negotiations with another Respondent.

## SOQ Considerations

### Rights of RCEA

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RCEA's rights include, but are not limited to, the following:

- Reissuing or modifying the RFQ, and/or issuing addenda to the RFQ, including extending or revising the timeline for submittals for one, two, or all three of the "areas of capability" defined in the RFQ.
- Withdrawing the RFQ at any time during the procurement process.
- Requesting clarification or additional information from Respondents at any time during the procurement process.
- Execution of an agreement(s) with the successful Respondent(s) on the basis of the original responses and/or any other information submitted by the Respondents during the procurement process.
- Rejection of any or all responses, waiving irregularities in any response, accepting or rejecting all or part of any response, and waiving any requirements of the RFQ, as may be deemed in the best interest of RCEA.
- Negotiating with more than one Respondent.
- Discontinuing negotiations after commencing negotiations with a selected Respondent if progress is unsatisfactory in the sole judgment of RCEA, and commencing negotiations with another qualified Respondent.

### SOQ Costs

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Costs of investigating, preparing, and submitting an SOQ are the sole responsibility of the Respondent and shall not be chargeable in any manner to RCEA. RCEA will not reimburse any Respondent for any costs associated with the preparation and submission of SOQs or expenses



incurred in making an oral presentation, participating in an interview, or negotiating an Agreement with RCEA regardless of whether RCEA discontinues negotiations at any time or if negotiations result in a final Agreement.

### **Public Nature of Response Material**

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All SOQs submitted in response to this RFQ, including response documents, pre-submittal and post-submittal communications with RCEA, will become the exclusive property of RCEA. SOQs and communications with RCEA are subject to disclosure in accordance with the California Public Records Act (Cal. Government Code section 6250 et seq.).

If you believe that there are portions of your SOQ that are exempt from disclosure under the Public Records Act, you must mark the specific relevant pages and portions of your SOQ as such and state the specific provision in the Public Records Act which provides the exemption as well as the factual basis for claiming the exemption. For example, if you submit trade secret information, you must plainly mark the information as "Trade Secret, Government Code Section 6254(k)," or equivalent. In all cases the main, non-confidential sections of the SOQ should contain adequate detail to characterize the Respondent's approach and qualifications without the need to reference information the Respondent believes to qualify for confidential treatment.

The Respondent is solely responsible for identifying and labeling any information contained within an SOQ that may be subject to an exemption from public disclosure. Only those portions of a response which are actually exempt from disclosure under state law will be withheld from disclosure, regardless of whether labeled by the Respondent as exempt.

RCEA has determined that the public interest will be best served if SOQs submitted in response to this RFQ are not made available for review by other companies participating in the competitive selection process. For that reason, SOQs submitted during the RFQ process will not be made available to other Respondents or the public earlier than the date on which the RCEA selection process issues to the RCEA Board a recommendation of a company or group of companies for selection. At that time, all parts of all SOQs are subject to public disclosure excepting those portions clearly labeled or marked by the Respondent as subject to non-disclosure pursuant to state law, provided such portions are exempt.

The RCEA Executive Director may in his sole discretion after consultation with RCEA legal counsel, defer public disclosure of any or all SOQ contents until RCEA Board approval of any partnership agreement. In such event, SOQs (excepting those portions that are exempt from public disclosure pursuant to state law) shall be available for disclosure at the same time a final partnership agreement is forwarded to the Board for approval.

Prior to the date on which the Board of Directors selects its preferred Respondent(s), RCEA will limit the release of SOQ contents as described above. If at any time during or after the selection process RCEA receives a request to review and/or copy materials submitted by any Respondent that they have marked as confidential, RCEA will decline release of those materials as set out above.

If the person submitting the request files a legal action against RCEA seeking its release, RCEA will notify the affected Respondent(s) and will not oppose a motion by such Respondent(s) to

intervene in the action. The Respondent(s) must either intervene or agree to pay RCEA and its agent(s) legal expenses in defending the action, including fees, if any, awarded to the plaintiff. Absent such an agreement, the RCEA will have no obligation to defend the action and may release the information sought without any liability whatsoever.

**BY SUBMITTING AN SOQ, RESPONDENTS AGREE TO HOLD HARMLESS AND NOT SEEK DAMAGES AGAINST RCEA, ITS OFFICERS, EMPLOYEES AND AGENTS, OR ANY MEMBER GOVERNMENT OR RECOVERY OF ITS ATTORNEYS' FEES AS A RESULT OF ANY DISPUTE RELATED TO THE RELEASE OR WITHHOLDING OF INFORMATION SUBMITTED IN RESPONSE TO THIS RFQ.**

### **Respondent Code of Conduct**

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Respondents are required to adhere to the following Respondent Code of Conduct:

- No Respondent including any member of an SOQ development team may engage in ex parte communications with RCEA staff, the RFQ review group, RCEA Board members, or elected officials of RCEA Member Governments;
- No Respondent including any member of an SOQ development team may give any gift or monetary compensation to an RCEA Board member, RCEA staff member or agent, or SOQ reviewer.

Failure to abide by the above will result in the SOQ being disqualified.

### **Non-discrimination**

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Respondents may not engage in any discriminatory hiring or employment practices, and shall make personnel policies available to RCEA upon request. Respondents shall ensure equal employment opportunity based on objective standards of recruitment, selection, promotion, classification, compensation, performance evaluations, and management relations, for all employees under any contract that may result from this submittal. No person shall, on the grounds of race, color, creed, national origin, religious affiliation or non-affiliation, sex, sexual orientation, marital status, age, disability, medical condition (including but not limited to AIDS, HIV positive diagnosis or cancer), political affiliation or union membership be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any contract or agreement that may result from this submittal.

Materials Submitted  
to Board  
After Packet Publishing

# Offshore Wind Energy Development Partners

## Request for Qualifications

### Technical Review Team

Below are staff recommendations for a technical review team to work with the RCEA Offshore Wind Board Subcommittee on evaluating responses to the RFQ. Individuals listed as “willing” have confirmed their interest and availability to participate if selected by the Board; “pending” indicates individuals that staff reached out to but has not be able to yet confirm their interest/availability.

- Arne Jacobson, HSU Schatz Energy Research Center (willing)
- Karen Diemer, City of Arcata (pending)
- Rob Holmlund, City of Eureka (willing)
- Tim Nelson, Wiyot Tribe (pending)
- Shirley Laos, Trinidad Rancheria (pending)
- Gregg Foster, Redwood Region Economic Development Commission (willing)
- Larry Oetker, Humboldt Bay Harbor District (willing)
- Ken Bates or Harrison Ibach, Humboldt Fisherman’s Marketing Association (willing to participate in review, though maybe abstaining from voting on final recommendation)
- Alison Talbott, Pacific Gas & Electric (willing)
- Jen Kalt, Humboldt Baykeeper / Northcoast Environmental Center (willing)

#### *Internal members:*

- Matthew Marshall, Redwood Coast Energy Authority
- Richard Engel, Redwood Coast Energy Authority
- Shehzad Wadalawala, The Energy Authority – TEA

Staff proposed that the Board delegate approval of the members of the review team to the Board Offshore Wind Subcommittee, and staff will work with the Subcommittee finalize the list of review team participants.



**STAFF REPORT**  
**Agenda Item # 6.3**

AGENDA DATE:	January 22, 2018
TO:	Board of Directors
PREPARED BY:	Lori Biondini, Nancy Stephenson
SUBJECT:	Community Advisory Committee Appointments

**BACKGROUND**

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In May 2016 the Board approved community engagement guidelines which included appointing an initial Community Advisory Committee (CAC) to facilitate public engagement and provide input to the Board. The Board agreed at that time that each Board member would nominate one community member to be appointed to the CAC who would serve for an initial commitment through 2016. After launch of the CCE in May 2017, RCEA proposed continuing the CAC. The Committee subsequently met twice and reviewed and revised their Charter to reflect a new status as a standing committee that would meet quarterly. Recently the Board of Directors Operating Guidelines was updated to include that the Board will appoint at least one RCEA Board member as a CAC liaison that will attend CAC meetings, but will not vote.

Currently there are several vacancies on the CAC that can be filled through Board-appointment. There are also four at-large vacancies to be filled through an application and voting process. To facilitate this process, RCEA staff has developed the attached form that the Board may provide to appointed CAC members so that they understand the commitment involved in serving on the committee, and to community members interested in applying for an open at-large seat.

Current Community Advisory Committee:

- Eureka: *vacant*
- Arcata: Norman Bell
- Fortuna: *vacant*
- Rio Dell: *vacant*
- Ferndale: *vacant*
- Blue Lake: Kit Mann
- Trinidad: Richard Johnson
- HBMWD: *vacant*
- County 1: Luna Latimer (Orleans - Eastern Humboldt)
- County 2: *vacant* (ideally Southern Humboldt)
- County 3: *vacant* (ideally McKinleyville)
- Four at-large: *vacant* – staff will announce and post application

**STAFF RECOMMENDATION**

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Nominate and appoint Community Advisory Committee (CAC) members to fill the vacant seats, authorize staff to announce and post the CAC application to fill the four at-large vacancies, and appoint at least one RCEA Board member as a CAC liaison that will attend CAC meetings.

**ATTACHMENTS:**

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Community Advisory Committee Application



## COMMUNITY ADVISORY COMMITTEE **APPLICATION**

The Redwood Coast Energy Authority Board of Directors established a Community Advisory Committee (CAC) to support RCEA public engagement efforts and to provide decision-making support and input to the RCEA Board.

The CAC will have up to 15 members. Eleven will be appointed by the RCEA Board, and four additional members will be selected through an open application process and voted on by the full Board. CAC members will be appointed for 2-year terms, and all CAC members shall have their primary residence in Humboldt County.

CAC meetings will be held quarterly with the option of special, additional CAC meetings to address specific topics or situations as needed. CAC meeting agendas will be developed by the Executive Director, and may include items requested by the Board.

Applicant Name: \_\_\_\_\_ Home Phone: \_\_\_\_\_

Home/Street Address: \_\_\_\_\_

Mailing Address (if different): \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail address: \_\_\_\_\_ Length of time in the area: \_\_\_\_\_

Present Employer: \_\_\_\_\_ Your job title: \_\_\_\_\_

Over 18 years of Age? YES NO Education (last year completed): \_\_\_\_\_

Organizations in which you are currently involved: \_\_\_\_\_

Reasons for wanting to serve on this committee: \_\_\_\_\_

Expertise or perspective you would bring to this committee: \_\_\_\_\_

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

**Note:** Please feel free to use additional paper and/or attach your resume to this application.  
Mail, email or deliver to the Redwood Coast Energy Authority, 633 3<sup>rd</sup> St., Eureka, 95501.  
If appointed, your name, appointment date and term of office will be subject to public disclosure.

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## **STAFF REPORT**

### **Agenda Item # 7.1**

AGENDA DATE:	January 22, 2018
TO:	Board of Directors
PREPARED BY:	Richard Engel, Director of Power Resources
SUBJECT:	Energy Risk Management Plan Quarterly Report

#### **BACKGROUND**

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In order to oversee financial decision-making for our Community Choice Energy program, including power purchasing, new project investment, and rate-setting, the Redwood Coast Energy Authority established an Energy Risk Management Team and adopted an Energy Risk Management Policy. The policy calls for an “update on activities and projected financial performance to be presented quarterly at RCEA Board meetings.” Staff will make a presentation to the Board addressing these topics.

#### **STAFF RECOMMENDATION**

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None – informational only

#### **ATTACHMENTS:**

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None

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## **STAFF REPORT**

### **Agenda Item # 8.1**

AGENDA DATE:	January 22, 2018
TO:	Board of Directors
PREPARED BY:	Richard Engel, Director of Power Resources
SUBJECT:	Rate Setting for 2018

#### **BACKGROUND**

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Until recently, PG&E was expected to set their 2018 electric generation rates in early January. RCEA staff had proposed to set our own electric generation rates immediately thereafter for Board approval in the current January meeting. Knowing PG&E's generation rates is critical to setting our own rates, as we have a directive from the Board to maintain our rates at a level that provides at least \$2 million yearly customer rate savings relative to PG&E's rates.

PG&E has requested and received permission from the California Public Utilities to postpone its rate-setting until March 1, in order to consolidate what would have been multiple rate changes during the first months of the year into a single rate change. For this reason, we propose to delay presentation and approval of any needed 2018 rate changes until the March Board meeting.

A rate forecast provided by The Energy Authority and its rates consultant MRW Associates estimates that PG&E's aggregate generation rate increase will be on the order of 8.8% above current rates. If this turns out to be the case, we will propose a commensurate rate change while maintaining the \$2 million yearly customer savings target.

#### **STAFF RECOMMENDATION**

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None – informational only

#### **ATTACHMENTS:**

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None

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## **STAFF REPORT**

### **Agenda Item # 9.2**

AGENDA DATE:	January 22, 2018
TO:	Board of Directors
PREPARED BY:	Dana Boudreau, Director of Operations
SUBJECT:	Grant submission for California Energy Commission GFO-17-604

#### **BACKGROUND**

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The California Energy Commission has released a solicitation titled “Electric Vehicle (EV) Ready Communities Challenge; Phase I – Blueprint Plan Development”. RCEA staff is applying as the lead agency for this grant since it aligns well with our existing electric vehicle planning and infrastructure growth initiatives. Being awarded this grant would allow us to accelerate and expand our existing readiness plan for infrastructure deployment, add plans for multiple electric transportation options such as buses and bicycles, and develop an EV-ready local workforce.

RCEA is currently assembling the project team, and is in discussion with the Schatz Energy Research Center, Lawrence Berkeley National Lab, North Coast Unified Air Quality Management District, Humboldt County Association of Governments, Humboldt Workforce Development Board, Humboldt Transit Authority, Local Government Commission, Pacific Gas and Electric Company, California Center for Rural Policy, and others. Response from potential project partners is positive and we anticipate having a strong, diverse team.

The maximum grant award for our region is \$200,000, with a \$50,000 match requirement. The application due date is February 9, 2018, and once awarded, the project will run for one year. Successful grant recipients who complete their EV Community Blueprints will then be eligible for Phase II implementation funds to achieve blueprint goals by 2023.

This is expected to be a highly competitive solicitation since only three awards are anticipated for our regional group, which includes most all California counties north of San Luis Obispo. Information is available at: <http://www.energy.ca.gov/contracts/GFO-17-604/>.

#### **STAFF RECOMMENDATION**

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None – informational only

#### **ATTACHMENTS:**

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None

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