



Redwood Coast Energy Authority  
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## **BOARD OF DIRECTORS MEETING AGENDA**

**August 25, 2022 -Thursday, 3:30 p.m.**

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### **COVID-19 NOTICE**

#### **RCEA AND HUMBOLDT BAY MUNICIPAL WATER DISTRICT OFFICES WILL NOT BE OPEN TO THE PUBLIC FOR THIS MEETING**

Pursuant to the Governor's Executive Order [N-29-20](#) of March 17, 2020, and [revised Brown Act provisions](#) signed into law on September 16, 2021, the RCEA Board of Directors meeting will not be convened in a physical location. Board members will participate in the meeting via an online Zoom video conference.

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**To participate in the meeting by phone**, call (669) 900-6833 or (253) 215-8782. Enter webinar ID: 819 7236 8051. **To participate in the meeting online**, join the Zoom webinar at <https://us02web.zoom.us/j/81972368051>.

**To make a comment during the public comment periods**, raise your hand in the online Zoom webinar, or press star (\*) 9 on your phone to raise your hand. You will continue to hear the meeting while you wait. When it is your turn to speak, a staff member will ask you to unmute your phone or computer. You will have 3 minutes to speak.

**You may submit written public comment** by email to [PublicComment@redwoodenergy.org](mailto:PublicComment@redwoodenergy.org). Please identify the agenda item number in the subject line. Comments will be included in the meeting record but not read aloud during the meeting.

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

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In compliance with the Americans with Disabilities Act, any member of the public needing special accommodation to participate in this meeting should call (707) 269-1700 or email [Ltaketa@redwoodenergy.org](mailto:Ltaketa@redwoodenergy.org) at least 3 business days before the meeting. Advance notice enables RCEA staff to make their best effort to reasonably accommodate access to this meeting while maintaining public safety.

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Pursuant to Government Code section 54957.5, all writings or documents relating to any item on this agenda which have been provided to a majority of the Board of Directors, including those received less than 72 hours prior to the RCEA Board meeting, will be made available to the public at [www.redwoodenergy.org](http://www.redwoodenergy.org).

## **OPEN SESSION** Call to Order

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

### **2. ORAL COMMUNICATIONS**

This time is provided for people to address the Board on matters not on the agenda. At the conclusion of all oral 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 in 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 July 28, 2022, Board Meeting.
- 3.2 Approve Disbursements Report.
- 3.3 Accept Financial Reports.
- 3.4 Extend Resolution No. 2022-6 Ratifying Governor Newsom's March 4, 2020, State of Emergency Proclamation and Authorizing Remote Teleconference Meetings of RCEA's Legislative Bodies, for the Period August 27, 2022, Through September 25, 2022, Pursuant to Brown Act Revisions of AB 361.
- 3.5 Authorize the Executive Director to Execute an Amendment for a Six-Month Extension of the Commercial Office Lease for RCEA's Existing Headquarters at 633 3rd Street, Eureka, CA.
- 3.6 Approve Amendment to Professional Services Agreement with Aiqueous for Demand-Side Management Database Development and Operation Services, Increasing the Not-to-Exceed Amount to \$334,000 Through December 2023, and Authorize the Executive Director to Prepare and Execute All Applicable Documents, Including Contract Extension Provisions.
- 3.7 Approve Amendment to Master Services Agreement with Schatz Energy Research Center for Programmatic Research and Development Technical Support Services, Increasing the Not-to-Exceed Amount From \$100,000 to \$250,000 Through June 2025, and Authorize the Executive Director to Prepare and Execute All Applicable Documents.
- 3.8 Authorize staff to Develop and Execute a Contract with the Bear River Band of the Rohnerville Rancheria for the Reimbursement of Installing Mobile Home Solar at Two Agreed Upon Locations Not to Exceed a Total Project Cost of \$29,700.00, Pending Final Contract Review and Approval by RCEA General Counsel Prior to Execution.
- 3.9 Authorize Staff to Solicit Bids for Electrical Portions of Construction Work at the Eureka 3rd and H Streets Electric Vehicle Charging Site for a Budget Not to Exceed \$56,000 and Authorize the Executive Director to Execute All Applicable Documents With the Lowest Responsive Bidder.
- 3.10 Accept Quarterly Budget Report (Q4).

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

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

#### **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.

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

##### **5.1. 2021 Power Source Disclosure Attestation**

Adopt Resolution 2022-7 Approving and Attesting to the Veracity of RCEA's 2021 Power Source Disclosure Report and Power Content Label.

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

##### **6.1. Zero-Emission Resource Mid-Term Reliability Request for Offers**

Authorize staff to issue the Request for Offers for Zero-Emission Resources, in accordance with the terms provided.

Establish an ad hoc Board offer review committee to review and approve the following actions provided they are consistent with the RFO: (i) the offer shortlist, (ii) replacement of offers on the shortlist if negotiations with a shortlisted respondent are discontinued, and (iii) continued negotiations with a shortlisted respondent whose offer changes during the negotiation process.

Authorize staff to engage with the shortlisted respondents, including execution of exclusivity agreements, collection of shortlist deposits, and negotiation of contract terms, prior to full Board review and approval of resulting contracts.

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

#### **7. OLD BUSINESS**

##### **7.1. Quarterly (Q2) CAPE/RePower Strategic Plan Status Update (Information only)**

##### **7.2. Offshore Wind Development Cooperative Agreement, Agreement in Principle**

1. Approve Third Amendment to Cooperation Agreement;
2. Approve Termination of Cooperation Agreement;
3. Approve Agreement in Principle;
4. Authorize the Executive Director to execute all such documents.

#### **8. NEW BUSINESS – None.**

## **9. STAFF REPORTS**

### **9.1. Executive Director's Report**

## **10. FUTURE AGENDA ITEMS**

Any request that requires Board action will be set by the Board for a future agenda or referred to staff.

## **11. CLOSED SESSION**

- 11.1.** Conference with real property negotiators pursuant to Government Code § 54956.8 in re: APNs 001-141-005 and 001-141-006; RCEA negotiator: Executive Director; Owner's negotiating party: Wells Commercial; Under negotiation: price and terms.

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

## **13. CLOSED SESSION REPORT**

## **14. ADJOURNMENT**

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### **NEXT REGULAR MEETING**

Thursday, September 22, 2022, 3:30 p.m.

This meeting will be an online teleconference following revised Brown Act meeting laws.



# Public Comment

August 25, 2022

Regular Board of Directors Meeting

**From:** [Redwood Coast Energy Authority](#)  
**To:** [Richard Engel](#)  
**Cc:** [Jocelyn Gwynn](#); [Lori Taketa](#)  
**Subject:** FW: End biomass combustion  
**Date:** Friday, July 29, 2022 8:22:39 AM

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-----Original Message-----

From: B Dass [REDACTED]  
Sent: Thursday, July 28, 2022 7:35 PM  
To: Redwood Coast Energy Authority <info@redwoodenergy.org>  
Subject: End biomass combustion

Dear RCEA

I call on RCEA to move forward on its commitment in the RePower Plan to end biomass combustion. Biomass is neither clean, nor carbon free. Biomass plants are federally designated major sources of air pollution no cleaner than coal.

Biomass pollution doesn't just harm people living nearby. Fine particulates can stay in the air for many days and travel hundreds of miles. The science is clear that even low levels of exposure cause heart attacks, lung disease, hospitalizations, and premature death. Requiring each community with a power plant to have its own study proving harm, aka the "show me the bodies", before taking action is a shameful delaying tactic that runs counter to the basic tenets of epidemiology and public health.

Humboldt Redwoods' biomass plant burns mill waste, not slash, so it doesn't prevent forest fires. In fact, it increases the risk of fire by emitting tons of greenhouse gas that will not be reabsorbed from the atmosphere fast enough to avoid climate catastrophe. Wildfires and drought are also decreasing air quality in our county. The American Lung Association's State of the Air Report for 2022 gave Humboldt County a C for 24 hour fine particulate pollution and indicated that our annual average fine particulate exposure is increasing and is only a few decimal points away from violating the new air quality standard recommended to the EPA by its expert panel. The American Lung Association counts over 50,000 Humboldt residents who are particularly vulnerable to health harms from fine particulates. The best way to protect these residents is to decrease fine particulate emissions from the sources we can control.

The American Academy of Pediatrics, the American Lung Association, and the American Public Health Association have declared that biomass combustion plants are harmful to human health and should not be supported with public dollars. RCEA's practice of prioritizing local renewable energy, regardless of pollutant and carbon emissions, does not serve our county well. We ask that you place a higher value on protecting the health of current residents and future generations by putting public health and climate first and prioritizing clean carbon-free power over dirty local energy.

With only 8 years remaining until the current biomass contract ends and another timber company talking about building a new biomass plant, RCEA must make it clear now that polluting and carbon emitting power plants do not have a future in its portfolio. We ask the RCEA board to commit to:

1. Not increasing the amount of biomass energy between now and 2030
2. Not renewing contracts for biomass combustion after 2030.
3. Only contracting with new non-combustion biomass plants which have pollution controls that reduce emissions to at least the level of a natural gas fired power plant and capture of at least 90% of carbon emissions.
4. Passing a resolution that reorders your priorities to put public health and climate first, above local, when making energy procurement decisions

Sincerely,

Jorge De Cecco



Ukiah, CA 95482



## **BOARD OF DIRECTORS DRAFT MEETING MINUTES**

**July 28, 2022 - Thursday, 3:30 p.m.**

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Notice of this meeting was posted on July 22, 2022. Chair Stephen Avis called a regular meeting of the Board of Directors of the Redwood Coast Energy Authority to order on the above date at 3:32 p.m., stating that the teleconference meeting was being conducted pursuant to the AB 361 Brown Act open public meeting law revisions signed into law on September 16, 2021, and Governor Newsom's State of Emergency Proclamation of March 4, 2020. Chair Avis stated that the posted agenda contained public teleconference meeting participation instructions.

PRESENT: Chair Stephen Avis, Rex Bohn, Sarah Schaefer, Jack Tuttle, Frank Wilson, Sheri Woo. ABSENT: Scott Bauer, Vice Chair Chris Curran, Mike Losey. STAFF AND OTHERS PRESENT: Business Planning and Finance Director Lori Biondini; Power Resources Director Richard Engel; Power Resources Specialist Colin Mateer; Senior Power Resources Manager Jocelyn Gwynn; The Energy Authority Client Services Manager Jaclyn Harr; Administration Specialist Meredith Matthews; Clerk of the Board Lori Taketa; Deputy Executive Director Eileen Verbeck.

### **ORAL COMMUNICATIONS**

There were no public comments on items not on the agenda. Chair Avis closed the oral communications portion of the meeting.

### **CONSENT CALENDAR**

- 3.1 Approve Minutes of June 23, 2022, Board Meeting.
- 3.2 Approve Disbursements Report.
- 3.3 Accept Financial Reports.
- 3.4 Accept Legislative Quarterly Report.
- 3.5 Extend Resolution No. 2022-6 Ratifying Governor Newsom's March 4, 2020, State of Emergency Proclamation and Authorizing Remote Teleconference Meetings of RCEA's Legislative Bodies, for the period July 28, 2022, through August 26, 2022, pursuant to Brown Act revisions of AB 361.
- 3.6 Approve Amendment No. 3 Extending the Term of the Current Professional Services Agreement with Frontier Energy Inc. for Reporting and Technical Services in Support of the RCEA-Administered CPUC Energy Programs through December 2023 and Authorize the Executive Director to Execute All Applicable Documents.

**M/S: Woo, Schaefer: Approve consent calendar items.**

**The motion passed with a unanimous roll call vote. Ayes: Avis, Bohn, Schaefer, Tuttle, Wilson, Woo. Noes: None. Absent: Bauer, Curran, Losey. Abstain: None.**

Chair Avis confirmed there was a quorum to conduct Community Choice Energy business.

## **OLD CCE BUSINESS**

### **5.1 Energy Risk Management Quarterly Report**

Power Resources Director Engel stated that the updated Hedging Strategy which was previously kept confidential to protect RCEA's negotiating ability on behalf of its customers, was now publicly available. Increased CPUC procurement scrutiny led staff and The Energy Authority (TEA) to publish the revised strategy which allows more short-term energy procurement decision-making flexibility while still preventing speculative practices.

TEA Client Services Manager Jaclyn Harr reported on forecasted power costs, market conditions and RCEA's anticipated revenues and financial outlook.

RCEA is still projected to enjoy positive net revenues this year and in future years and the agency should be on track for building reserves. The projected net revenues are slightly lower than were forecast earlier due to lower projected electricity loads. The Sandrini Solar Project with amended energy prices will benefit the agency's financial position when it goes online in summer 2023. The project will generate most of its power and accrue most of its revenues during summer months. Completed 2022 renewable and carbon free procurement requirements will help RCEA lock in prices in a volatile market. Energy prices in the next two years are forecast to be significantly higher due to global natural gas price increases.

The directors discussed the utility practice of building six months of agency operating expenses to be held in reserve, the possibility of increasing RCEA customer savings and models other CCAs use to set rates. The six-month reserve, \$35 million for RCEA, is achievable by 2023 according to current forecasts. Reaching this reserve goal would enable RCEA to obtain a credit rating, eliminating the need to encumber millions of dollars of agency funds in buyer's deposits for major projects. RCEA customers would also benefit from lowered TEA energy market services costs and rate stability during volatile energy markets. The directors were reminded of last year's volatile energy markets, when RCEA depleted reserves and borrowed funds to continue operations. Board discussion of investment policies may take place once the reserve target is reached. RCEA currently has minimal reserves.

Ms. Harr described the 2022 Summer Assessment, a standard utility practice to prepare for peak season. Recent weather data was used to see if all the power that can be obtained from all available sources will be adequate to meet peak demand at 8 p.m. on the hottest September day with a 15% buffer. There are adequate resources for this projected day in 2022. Planning and preparing for these scenarios is the purpose of statewide resource adequacy procurement requirements and Integrated Resource Plan preparation by load serving entities like RCEA. Meeting peak demand days will be more challenging in the future as heatwaves become more frequent and the state's rapid transition to electric vehicles outstrips progress in energy conservation. Humboldt County is threatened with being cut off from the statewide grid when energy supply does not meet demand. This increases the importance of developing local energy sources.

There were no responses from the public to Chair Avis' invitation for comment. Chair Avis closed the public comment period.

**M/S: Schaefer, Woo: Accept Energy Risk Management Quarterly Report.**

**The motion passed with a unanimous roll call vote. Ayes: Avis, Bohn, Schaefer, Tuttle, Wilson. Noes: None. Absent: Bauer, Curran, Losey. Abstain: None. Non-Voting: Woo.**

## **OLD BUSINESS**

### **7.1. CC Power Firm Clean Resources Agreements**

Power Resources Director Engel described the CPUC's mandate to procure resources to help develop future grid reliability statewide, and how RCEA is fulfilling this obligation by participating in a joint procurement with other CCAs through the CC Power JPA. Of the proposed projects that fulfilled this mandated purchase's specific requirements, geothermal projects in the Nevada desert were the best prospects. The CCAs would procure energy and renewable energy certificates and will need import capability to be able to receive resource adequacy credit for these purchases. The Board's ad hoc Firm Clean Energy Resources Solicitation Subcommittee unanimously recommends Board approval for participating in this joint procurement. The procurement also helps RCEA comply with Senate Bill 350's long term renewable procurement mandate.

The directors discussed how attempts to stop the Diablo Canyon plant's closure requires a lengthy process of federal and state government approvals, therefore the CPUC is still asking load-serving entities to procure resources in anticipation of the plant's retirement.

Chair Avis invited public comment. There were no comments from the public. Chair Avis closed the public comment period.

**M/S: Schaefer, Woo: Delegate authority to Executive Director to execute necessary Project Participation Share Agreements and Buyer's Liability Pass Through Agreements with California Community Power and Participating Members for two new Geothermal Projects:**

- **Ormat Nevada Inc. Portfolio of Geothermal Projects**
  - **Expected Participation Share: 3.20% or 4.00 MW with quantity not to exceed 5.00 MW**
  - **Delivery term: 20 years starting on or about June 1, 2024**
- **Open Mountain Energy LLC., Fish Lake Geothermal**
  - **Expected Participation Share: 2.80% or 0.36 MW with quantity not to exceed 0.45 MW**
  - **Delivery term: 20 years starting on or about April 1, 2024..**

**The motion passed with a unanimous roll call vote. Ayes: Avis, Bohn, Schaefer, Tuttle, Wilson, Woo. Noes: None. Absent: Bauer, Curran, Losey. Abstain: None.**

### **7.2. Power Purchase Agreement for Renewable America Foster A Clean Power**

Power Resources Director Engel reported that staff and Renewable America were close to agreement on, but have not yet finalized, a proposed power purchase agreement. Due to supply chain issues, the developer is reconsidering the project's battery supplier and cannot make the operation date originally offered in alignment with the CPUC's mid-term reliability

compliance timeline. Staff requested more time to work with the developer on this power purchase agreement.

There were no responses from the public to Chair Avis' invitation for comment. Chair Avis closed the public comment period.

**M/S: Schaefer, Tuttle: Table consideration of a Power Purchase Agreement with Foster Clean Power A LLC until the next Board meeting.**

**The motion passed with a unanimous roll call vote. Ayes: Avis, Bohn, Schaefer, Tuttle, Wilson, Woo. Noes: None. Absent: Bauer, Curran, Losey. Abstain: None.**

## **STAFF REPORTS**

### **9.1. Deputy Executive Director's Report**

Deputy Executive Director Verbeck reported that the Offshore Wind Subcommittee met and that developments will be presented at the August Board meeting. RCEA's Transportation team's Rural Electric Vehicle Charging Grant application scored the second highest in the state. The CEC sent a notice of proposed \$700,000 award which will be brought to the Board for acceptance after more information is gathered. Deputy Executive Director Verbeck commended staff for their work on this grant. Director Bohn reported that eight electric vehicle charging stations were being connected to power in the County on the previous night.

## **FUTURE AGENDA ITEMS**

Director Schaefer informed the Board that the Offshore Wind Subcommittee had lost two members due to member agency director changes and requested discussion of this group's membership at the August Board meeting.

Chair Avis inquired about the procedure for Board directors or members of the public to request agenda items. Clerk Taketa was asked to distribute that section of the Board Operating Guidelines to the directors after the meeting.

## **CLOSED SESSION**

There was no new information to share nor actionable items regarding closed session item:

**11.1** Conference with real property negotiators pursuant to Government Code § 54956.8 in re: APNs 001-141-005 and 001-141-006; RCEA negotiator: Executive Director; Owner's negotiating party: Wells Commercial; Under negotiation: price and terms.

The directors declined adjourning to closed session. Chair Avis adjourned the meeting at 4:57 p.m.

Lori Taketa  
Clerk of the Board

**Redwood Coast Energy Authority**  
**Disbursements Report**  
As of June 30, 2022

Type	Date	Num	Name	Memo	Amount
Liability Check	06/09/2022	E-pay	EDD	Payroll Taxes	-6,602.77
Liability Check	06/09/2022	E-pay	Internal Revenue Service	Payroll Taxes	-29,277.32
Check	06/10/2022	13772-76	CCE Customers	Heat Pump Rebates	-4,568.50
Check	06/10/2022	13777	An Electrician, Inc.	PA install - Royal Gold #DI-NR-220407-0152	-9,433.70
Check	06/10/2022	13778	City of Ferndale	PA install - WWTP #DI-NR-220404-0140	-3,327.32
Check	06/10/2022	13779-98	NEM Customers	NEM Clost Out Payments	-2,352.47
Bill Pmt -Check	06/10/2022	13799	Amazon.com	IT and office supplies - May 2022	-32.75
Bill Pmt -Check	06/10/2022	13800	AT&T	RCAM Router charges - ACV: 4/19 - 5/18	-163.00
Bill Pmt -Check	06/10/2022	13801	AT&T	RCAM dedicated line charges: 6/1 - 6/30/2022	-857.51
Bill Pmt -Check	06/10/2022	13802	AT&T Long Distance	Toll free number charges 5/25 - 6/24/2022	-146.73
Bill Pmt -Check	06/10/2022	13803	Baker Tilly US, LLP	Accounting services - May 2022	-11,817.50
Bill Pmt -Check	06/10/2022	13804	Bithell, M.	Mileage reimbursement - May 2022	-46.00
Bill Pmt -Check	06/10/2022	13805	Braun Blaising & Wynne	Legal Services - Regulatory -Apr 2022	-21,546.92
Bill Pmt -Check	06/10/2022	13806	City of Arcata	May 2022 Utility User Tax	-12,193.96
Bill Pmt -Check	06/10/2022	13807	City of Arcata	May 2022 Excessive Energy Use Tax	-4,969.80
Bill Pmt -Check	06/10/2022	13808	City of Eureka-Water	Water service, 4/24- 5/25/22	-162.19
Bill Pmt -Check	06/10/2022	13809	Donald Dame	Professional Services May 2022	-248.50
Bill Pmt -Check	06/10/2022	13810	Eureka Rubber Stamp	Name plates for directors	-56.57
Bill Pmt -Check	06/10/2022	13811	FedEx	VOID: INCORRECT BILL TOTAL - Res Kit 5802	0.00
Bill Pmt -Check	06/10/2022	13812	Hilson, D.	Mileage reimbursement - May 2022	-38.30
Bill Pmt -Check	06/10/2022	13813	HireRight	Background Check: new hires	-187.45
Bill Pmt -Check	06/10/2022	13814	Humboldt Bay Coffee Co.	Office Coffee	-25.95
Bill Pmt -Check	06/10/2022	13815	Local Worm Guy	Bi-monthly compost pickup - Mar-May 2022	-60.00
Bill Pmt -Check	06/10/2022	13816	Mission Uniform & Linen	JUNE mat service	-8.47
Bill Pmt -Check	06/10/2022	13817	North Coast Cleaning	May monthly cleaning service	-480.00
Bill Pmt -Check	06/10/2022	13818	North Coast Journal	May job recruitment postings	-486.00
Bill Pmt -Check	06/10/2022	13819	PG&E EV Account	EV stations 4/15-5/15/2022	-884.87
Bill Pmt -Check	06/10/2022	13820	Ray Morgan Company	Printer charges	-128.09
Bill Pmt -Check	06/10/2022	13821	Recology	May 2022 garbage service	-93.21
Bill Pmt -Check	06/10/2022	13822	Smith, S.	May 2022 mileage reimbursement	-98.90
Bill Pmt -Check	06/10/2022	13823	Stitch Witch	50% deposit - promotional gear	-552.00
Bill Pmt -Check	06/10/2022	13824	Suddenlink Communications	Feb, Mar, & May internet charges	-3,297.51
Bill Pmt -Check	06/10/2022	13825	Times Printing Company	Move in mailers	-1,630.27
Bill Pmt -Check	06/10/2022	13826	Verizon Wireless	Tablet/cell service, 4/29 - 5/28/2022	-1,312.40
Bill Pmt -Check	06/10/2022	13827	FedEx	Res Kit 5802	-69.37
Paycheck	06/10/2022	ACH	Employees	Payroll	-65,377.63
Check	06/22/2022	Debit	Umpqua	Account maintenance fee	-18.02
Bill Pmt -Check	06/23/2022	ACH	Leapfrog Energy	May 2022 RA	-36,740.00
Bill Pmt -Check	06/23/2022	ACH	Snow Mountain Hydro, LLC	May 2022 Electricity	-50,849.79
Bill Pmt -Check	06/23/2022	ACH	CalPine Corporation	Calpine May 2022 Costs	-61,485.12
Bill Pmt -Check	06/23/2022	ACH	Humboldt Sawmill Co.	May 2022 Electricity	-752,258.67
Liability Check	06/24/2022	E-pay	EDD	Payroll Taxes	-6,500.07
Liability Check	06/24/2022	E-pay	Internal Revenue Service	Payroll Taxes	-29,534.94
Liability Check	06/24/2022	E-pay	EDD	Payroll Taxes	-6.82
Bill Pmt -Check	06/24/2022	WIRE	USDA	Loan Payment Q2-2022	-30,139.97
Check	06/24/2022	13828	Joanna Welch	PA install - Res #DS-R-220603-0344	-968.00
Check	06/24/2022	13829	Six Rivers Brewery	PA Equipment Rebate - Non-Res #DS-NR-220622-0	-270.00
Check	06/24/2022	13830-37	NEM Customers	NEM Clost Out Payments	-9,807.23
Bill Pmt -Check	06/24/2022	13838	Alber's Tractor and Ag Work	Mowing services for ACV solar site	-1,000.00
Bill Pmt -Check	06/24/2022	13839	Ameritas - Dental	#010-055098-00001 July 2022	-2,189.11
Bill Pmt -Check	06/24/2022	13840	Ameritas - Vision	010-055098-00002 July 2022	-406.12
Bill Pmt -Check	06/24/2022	13841	Colonial Life	Colonial Life Premiums June 2022	-1,197.14
Bill Pmt -Check	06/24/2022	13842	David L. Moonie & Co., LLP	Accounting services	-2,109.00
Bill Pmt -Check	06/24/2022	13843	Diamond, Nancy	Legal Services	-11,550.00



**Redwood Coast Energy Authority**  
**Disbursements Report**  
As of June 30, 2022

Type	Date	Num	Name	Memo	Amount
Bill Pmt -Check	06/24/2022	13844	Frontier Energy, Inc.	Professional Services - PA Program Support	-1,773.75
Bill Pmt -Check	06/24/2022	13845	HCOE	Business card printing	-63.00
Bill Pmt -Check	06/24/2022	13846	Humboldt Bay Coffee Co.	Office Coffee	-69.20
Bill Pmt -Check	06/24/2022	13847	Developed Employment Services, LLC.	Facilities maintenance work	-52.41
Bill Pmt -Check	06/24/2022	13848	Mahalo Video	RCAM grand opening video recording	-750.00
Bill Pmt -Check	06/24/2022	13849	Mission Uniform & Linen	JUNE mat service & janitorial supplies	-179.52
Bill Pmt -Check	06/24/2022	13850	North Coast Journal	Job recruitment ads	-227.00
Bill Pmt -Check	06/24/2022	13851	PG&E CCA	May 2022 CCE Charges	-22,226.33
Bill Pmt -Check	06/24/2022	13852	PG&E Utility Account	Office utilities 5/16-6/13/22	-878.69
Bill Pmt -Check	06/24/2022	13853	SDRMA P&L	P&L 2022-23 Insurance package invoice	-66,662.16
Bill Pmt -Check	06/24/2022	13854	SDRMA WC	FY 22-23 Workers Comp program invoice	-20,213.68
Bill Pmt -Check	06/24/2022	13855	Shred Aware	Shredding services - June 2022	-65.00
Bill Pmt -Check	06/24/2022	13856	Winzler, John	Office Lease - July	-7,132.00
Bill Pmt -Check	06/24/2022	13857	WREGIS	Retired RECs - June 2022	-228.05
Paycheck	06/24/2022	ACH	Employees	Payroll	-68,791.83
Check	06/24/2022	06252201	VISA	Statement 4/21-5/23/22 pd by phone ref #220624170	-2,957.04
Liability Check	06/27/2022	ACH	Newport Group	Deferred compensation contributions: June	-34,550.19
<b>TOTAL</b>					<b><u>-1,406,383.78</u></b>

**Redwood Coast Energy Authority**  
**Profit & Loss Budget vs. Actual**  
July 2021 through June 2022

	<u>Jul '21 - Jun 22</u>	<u>Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense			
Income			
<b>5 REVENUE EARNED</b>			
Total 5000 · Revenue - government agencies	600,610.95	911,000.00	65.93%
Total 5100 · Revenue - program related sales	26,707.22	31,000.00	86.15%
Total 5400 · Revenue-nongovernment agencies	1,240,862.28	1,377,873.00	90.06%
Total 5500 · Revenue - Electricity Sales	48,401,198.04	44,645,168.00	108.41%
<b>Total 5 REVENUE EARNED</b>	<u>50,269,378.49</u>	<u>46,965,041.00</u>	<u>107.04%</u>
<b>Total Income</b>	<u>50,269,378.49</u>	<u>46,965,041.00</u>	<u>107.04%</u>
Gross Profit	50,269,378.49	46,965,041.00	107.04%
Expense			
Total 6 WHOLESALE POWER SUPPLY	48,421,662.68	41,084,582.00	117.86%
Total 7 PERSONNEL EXPENSES	2,956,994.26	3,517,800.00	84.06%
Total 8.1 FACILITIES AND OPERATIONS	662,015.95	3,313,389.00	19.98%
Total 8.2 COMMUNICATIONS AND OUTREACH	99,433.47	118,570.00	83.86%
Total 8.3 TRAVEL AND MEETINGS	6,037.18	44,300.00	13.63%
<b>8.4 PROFESSIONAL &amp; PROGRAM SRVS</b>			
8400 · Regulatory	197,311.90	180,000.00	109.62%
8410 · Contracts - Program Related Ser	120,907.63	393,000.00	30.77%
8420 · Accounting	24,039.50	55,000.00	43.71%
8430 · Legal	152,349.95	153,000.00	99.58%
8450 · Wholesale Services - TEA	662,188.82	639,088.00	103.62%
8460 · Procurement Credit - TEA	675,497.20	340,032.00	198.66%
8470 · Data Management - Calpine	738,225.60	738,144.00	100.01%
<b>Total 8.4 PROFESSIONAL &amp; PROGRAM SRVS</b>	<u>2,570,520.60</u>	<u>2,498,264.00</u>	<u>102.89%</u>
<b>Total 8.5 PROGRAM EXPENSES</b>	<u>618,528.91</u>	<u>631,393.00</u>	<u>97.96%</u>
<b>Total 8.6 INCENTIVES &amp; REBATES</b>	<u>121,879.69</u>	<u>601,000.00</u>	<u>20.28%</u>
<b>Total 9 NON OPERATING COSTS</b>	<u>149,684.16</u>	<u>414,320.00</u>	<u>36.13%</u>
<b>Total Expense</b>	<u>55,606,756.90</u>	<u>52,223,618.00</u>	<u>106.48%</u>
Net Ordinary Income	<u>-5,337,378.41</u>	<u>-5,258,577.00</u>	<u>101.5%</u>
Other Income/Expense			
Total Other Income	<u>0.00</u>	<u>6,600,000.00</u>	<u>0.0%</u>
Net Other Income	<u>0.00</u>	<u>6,600,000.00</u>	<u>0.0%</u>
Net Income	<u><b>-5,337,378.41</b></u>	<u><b>1,341,423.00</b></u>	<u><b>-397.89%</b></u>

**Redwood Coast Energy Authority**  
**Balance Sheet**  
As of June 30, 2022

	<u>Jun 30, 22</u>
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
1010 · Petty Cash	300.00
1050 · GRANTS & DONATIONS 3840	15,995.51
1060 · Umpqua Checking Acct 0560	97,255.66
1071 · Umpqua Deposit Cntrol Acct 8215	3,752,720.54
1075 · Umpqua Reserve Account 2300	99,942.09
1076 · First Republic Bank - 4999	62,263.94
8413 · COUNTY TREASURY 3839	5,329.01
<b>Total Checking/Savings</b>	4,033,806.75
<b>Total Accounts Receivable</b>	104,155.10
<b>Other Current Assets</b>	
1101 · Allowance for Doubtful Accounts	-2,373,914.14
1103 · Accounts Receivable-Other	11,962,650.13
1120 · Inventory Asset	21,715.00
1202 · Prepaid Expenses	-15,364.56
1205 · Prepaid Insurance	32,212.29
1499 · Undeposited Funds	1,403.00
<b>Total Other Current Assets</b>	9,628,701.72
<b>Total Current Assets</b>	13,766,663.57
<b>Total Fixed Assets</b>	8,678,528.16
<b>Other Assets</b>	
1700 · Retained Deposits	4,293,600.00
<b>Total Other Assets</b>	4,293,600.00
<b>TOTAL ASSETS</b>	<u><u>26,738,791.73</u></u>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Total Accounts Payable	4,009,242.33
Total Credit Cards	6,811.36
<b>Other Current Liabilities</b>	
2002 · Deposits Refundable	195,840.00
2013 · Unearned Revenue - PA 2020-2023	988,348.00
2050 · Liabilities	
2056 · BLR Short Term Loan	2,000,000.00
2057 · MCE Short Term Loan	4,000,000.00
<b>Total 2050 · Liabilities</b>	6,000,000.00
<b>Total 2100 · Payroll Liabilities</b>	360,592.89
<b>Total Other Current Liabilities</b>	7,544,780.89
<b>Total Current Liabilities</b>	11,560,834.58
<b>Long Term Liabilities</b>	
2700 · Long-Term Debt	
2704 · USDA Loan	6,287,592.00
<b>Total 2700 · Long-Term Debt</b>	6,287,592.00
<b>Total Long Term Liabilities</b>	6,287,592.00
<b>Total Liabilities</b>	17,848,426.58
<b>Equity</b>	
2320 · Investment in Capital Assets	215,489.00
3900 · Fund Balance	14,012,254.56
Net Income	-5,337,378.41
<b>Total Equity</b>	8,890,365.15
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<u><u>26,738,791.73</u></u>



## STAFF REPORT Agenda Item # 3.4

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Eileen Verbeck, Deputy Executive Director
SUBJECT:	Virtual Board and CAC Meeting Authorization

### BACKGROUND

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In response to the COVID-19 public health emergency and in compliance with emergency Brown Act meeting law changes, the RCEA Board of Directors, Community Advisory Committee and the subcommittees of those bodies have been meeting online via the Zoom teleconference platform since April 2020. In September 2021 Governor Newsom signed AB 361 into law. This bill authorized legislative bodies to meet virtually provided there is a state of emergency, and either 1) state or local officials have imposed or recommended measures to promote social distancing, or 2) the legislative body determines by majority vote that meeting in person would present imminent risks to the health and safety of attendees.

To date, Governor Newsom's March 4, 2020, COVID-19 State of Emergency is still in effect. According to the Centers for Disease Control and Prevention, COVID-19 transmission in Humboldt County is at a high level. The California Department of Public Health especially recommends masking in indoor settings with unvaccinated persons or with persons whose vaccination status is unknown, and in any public place for people who are older or with medical conditions that put them at higher risk of severe COVID illness. In addition, when COVID-19 community levels are high the Centers for Disease Control recommend avoiding crowded areas and keeping adequate distance between yourself and others.

### SUMMARY

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At its June 2022 meeting, this Board decided to continue meeting virtually until the number of COVID-19 cases locally begin trending downward. At the time of agenda publication, local COVID case counts are fluctuating but remain high.

In order to continue virtual meetings and for Board directors and CAC members to participate without making their remote meeting locations publicly accessible, the Board must adopt or extend AB 361 resolutions every 30 days.

### ALIGNMENT WITH [RCEA'S STRATEGIC PLAN](#)

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N/A – Operations.

## **EQUITY IMPACTS**

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N/A. Staff recommends taking measures to reduce health risks to vulnerable populations.

## **FINANCIAL IMPACT**

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Annual teleconferencing subscription costs have been included in the Fiscal Year 2022-23 budget.

## **STAFF RECOMMENDATION**

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Extend Resolution No. 2022-6 Ratifying Governor Newsom's March 4, 2020, State of Emergency Proclamation and Authorizing Remote Teleconference Meetings of RCEA's Legislative Bodies, for the period August 27, 2022, through September 25, 2022, pursuant to Brown Act revisions of AB 361.

## **ATTACHMENTS**

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1. Resolution No. 2022-6 Ratifying Governor Newsom's March 4, 2020, State of Emergency Proclamation and Authorizing Remote Teleconference Meetings of RCEA's Legislative Bodies, for the period June 27, 2022, through July 27, 2022, pursuant to Brown Act revisions of AB 361, adopted June 23, 2022.

**RESOLUTION NO. 2022-6**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE REDWOOD COAST ENERGY AUTHORITY  
RATIFYING THE PROCLAMATION OF A STATE OF EMERGENCY  
BY GOVERNOR GAVIN NEWSOM ON MARCH 4, 2020,  
AND AUTHORIZING REMOTE TELECONFERENCE MEETINGS  
OF THE LEGISLATIVE BODIES OF REDWOOD COAST ENERGY AUTHORITY  
FOR THE PERIOD JUNE 27, 2022, THROUGH JULY 27, 2022,  
PURSUANT TO BROWN ACT PROVISIONS**

**WHEREAS**, the Redwood Coast Energy Authority (RCEA) is committed to preserving and nurturing public access and participation in meetings of the Board of Directors; and

**WHEREAS**, all meetings of RCEA's legislative bodies are open and public, as required by the Ralph M. Brown Act (Cal. Gov. Code 54950 – 54963), so that any member of the public may attend, participate, and watch RCEA's legislative bodies conduct their business; and

**WHEREAS**, the Brown Act, Government Code section 54953(e), makes provisions for remote teleconferencing participation in meetings by members of a legislative body, without compliance with the requirements of Government Code section 54953(b)(3), subject to the existence of certain conditions; and

**WHEREAS**, a required condition is that a state of emergency is declared by the Governor pursuant to Government Code section 8625, proclaiming the existence of conditions of disaster or of extreme peril to the safety of persons and property within the state caused by conditions as described in Government Code section 8558; and

**WHEREAS**, a proclamation is made when there is an actual incident, threat of disaster, or extreme peril to the safety of persons and property within the jurisdictions that are within RCEA's boundaries, caused by natural, technological, or human-caused disasters; and

**WHEREAS**, it is further required that state or local officials have imposed or recommended measures to promote social distancing, or, the legislative body has determined that meeting in person would present imminent risks to the health and safety of attendees; and

**WHEREAS**, such conditions now exist in Humboldt County, specifically, Governor Newsom's Proclamation of a State of Emergency of March 4, 2020, remains in effect; and

**WHEREAS**, the Humboldt County Department of Health and Human Services recommends practicing physical distancing at meetings of legislative bodies; and

**WHEREAS**, COVID-19 public health emergency and increased risk of infection has caused, and will continue to cause, conditions of peril to the safety of persons within Humboldt County that are likely to be beyond the control of services, personnel, equipment, and facilities of RCEA, and desires to ratify the proclamation of state of emergency by the Governor of the State of California; and

**WHEREAS**, as a consequence of the emergency, the Board of Directors does hereby find that the legislative bodies of RCEA shall conduct their meetings without compliance with paragraph (3) of subdivision (b) of Government Code section 54953, as authorized by subdivision (e) of section 54953, and that such legislative bodies shall comply with the requirements to provide the public with access to the meetings as prescribed in paragraph (2) of subdivision (e) of section 54953; and

**WHEREAS**, public access and participation in meetings of RCEA's legislative bodies shall be provided via online video conferencing software which shall also allow for public participation and real-time public comment opportunity by telephone.

**NOW, THEREFORE, THE BOARD OF DIRECTORS OF REDWOOD COAST ENERGY AUTHORITY DOES HEREBY RESOLVE AS FOLLOWS:**

Section 1. Recitals. The Recitals set forth above are true and correct and are incorporated into this Resolution by this reference.

Section 2. Ratification of Governor's Proclamation of a State of Emergency. The Board hereby ratifies the Governor of the State of California's Proclamation of State of Emergency, effective as of its issuance date of March 4, 2020.

Section 3. Remote Teleconference Meetings. The staff and legislative bodies of Redwood Coast Energy Authority, including but not limited to the Board of Directors and its subcommittees, and the Community Advisory Committee and its subcommittees, are hereby authorized and directed to take all actions necessary to carry out the intent and purpose of this Resolution including conducting open and public meetings in accordance with Government Code section 54953(e) and other applicable provisions of the Brown Act.

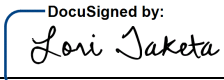
Section 4. Effective Date of Resolution. This Resolution shall take effect immediately upon its adoption and shall be effective for 30 days or until this Resolution is extended by a majority vote of the Board of Directors in accordance with Section 5 of this Resolution.

Section 5. Extension by Motion. The Board of Directors may extend the application of this Resolution by motion and majority vote by up to 30 days at a time, provided that it makes all necessary findings consistent with and pursuant to the requirements of Section 54953(e)(3).

Adopted this 23<sup>rd</sup> day of June 2022.

ATTEST:

DocuSigned by:  
  
 Stephen Avis, RCEA Board Chair

DocuSigned by:  
  
 Lori Taketa, Clerk of the Board

Date: 6/30/2022

Date: 7/14/2022

### CLERK'S CERTIFICATE

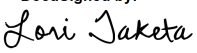
I hereby certify that the foregoing is a true and correct copy of Resolution 2022-6 passed and adopted at a regular meeting of the Redwood Coast Energy Authority, County of Humboldt, State of California, held on the 23<sup>rd</sup> day of June 2022, by the following vote:

AYES: Avis, Bauer, Bohn, Curran, Losey, Schaefer, Tuttle, Wilson, Woo.

NOES: None.

ABSENT: None.

ABSTENTIONS: None.

DocuSigned by:  
  
88ED7D8C21DA4AB  
Clerk of the Board, Redwood Coast Energy Authority





**STAFF REPORT**  
**Agenda Item # 3.5**

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Eileen Verbeck, Deputy Executive Director
SUBJECT:	RCEA Office Lease Extension

**SUMMARY**

Redwood Coast Energy Authority operates out of a single facility at 633 3<sup>rd</sup> Street in Eureka. In June 2022 the Board authorized staff to enter real property negotiations for a larger facility, which are currently underway. To continue business while a new site is secured, staff sought to obtain a short-term extension to RCEA's lease at the current site. The existing lease was set to terminate August 31, 2022. The landlord proposed extending the lease for a total period of six months from September 1, 2022, to February 28, 2023. After November 30, 2022, the remaining three months of the extended lease will become a month-to-month tenancy that either Landlord or Tenant may terminate with written notice.

The proposed increase to rent fees are slightly more than typical costs for Eureka office space. However, considering the flexibility of a short-term lease with month-to-month options staff consider the proposed rent increase reasonable.

**FINANCIAL IMPACTS**

RCEA currently pays \$7,132.00 (\$1.15/SF) per month in rent. Rent will increase to \$8,372.70 (\$1.35/SF) per month for the term listed above.

**RECOMMENDED ACTIONS**

Authorize the Executive Director to execute an amendment for a six-month extension of the commercial office lease for RCEA's existing headquarters at 633 3<sup>rd</sup> Street, Eureka, CA.

**ATTACHMENT**

Second Amendment to Commercial Office Lease.

## **SECOND AMENDMENT TO COMMERCIAL OFFICE LEASE**

This "Second Amendment to Commercial Office Lease" (this "First Amendment") is entered into as of August \_\_, 2022, by and between JOHN R. WINZLER REVOCABLE TRUST, FLORA N. WINZLER MARITAL TRUST and REED A. KELLY ("Landlord") and REDWOOD COAST ENERGY AUTHORITY, a local government Joint Powers Authority ("Tenant").

### **Recitals**

A. WHEREAS, Landlord is the owner of certain land and improvements consisting of an approximately 6,202 square foot building located at 633 3<sup>rd</sup> Street, Eureka, California ("Premises");

B. WHEREAS, Landlord and Tenant entered and executed that certain written "Commercial Office Lease" dated on or about September 1, 2019 (the "Lease"), a copy of which is attached hereto as **Exhibit "A"** and incorporated by reference herein;

C. WHEREAS, Landlord and Tenant entered and executed that certain written "First Amendment to Commercial Office Lease" dated on or about May 5, 2020 ("First Amendment"), a copy of which is attached hereto as **Exhibit "B"** and incorporated by reference herein;

E. WHEREAS, the term of the Lease, pursuant to the "Extension Term" identified in First Amendment, expires on August 31, 2022;

F. WHEREAS, Landlord and Tenant desire to continue the terms and conditions and tenancy created by the Lease, subject to the respective rights and obligations created by this Second Amendment.

NOW, THEREFORE, for good and valuable consideration, and incorporating the above-stated Recitals of Facts as material terms hereof, the parties agree as follows:

### **Agreement**

#### **1. Amendment to Lease, Section 3, Term and Option Term.**

Section 3 of the Lease shall be renamed "Continuation of Occupancy and Extension Term" and the content shall be deleted in its entirety and in its place the following language shall be inserted, and the Lease shall hereafter be read and interpreted as if this text exists:

Landlord and Tenant agree to extend and continue Tenant's right(s) to lease and occupy the Premises subject to the terms and conditions of the Lease and this Second Amendment, for a period of time commencing September 1, 2022 and terminating at 11:59 PM, on November 30, 2022 (the "Extension Term").

Upon expiration of the Extension Term, effective on December 1, 2022, this Lease will convert to a month-to-month tenancy. During this month-to-month tenancy, either Landlord or Tenant may unilaterally terminate the Lease upon provision of forty-five (45) days written notice to the other party.

In no event is the Lease contemplated to extend beyond February 28, 2023. If Tenant wants to remain in possession of the Premises beyond February 28, 2023, Tenant must

issue a written request to extend to Landlord at least forty-five (45) days prior to February 28, 2023. Landlord will have ten (10) days to approve or deny Tenant's request in writing, in Landlord's sole and absolute discretion. If the Lease extends beyond February 28, 2023, it will do so on a month-to-month basis, subject to termination by either Landlord or Tenant, in their respective discretion, by provision of thirty (30) days written notice of termination to the other party.

**2. Amendment to Lease, Section 2(a) and (b), Lease and Rent.**

Section 2(a) and (b) of the Lease shall be deleted in their entirety and in their place the following language shall be inserted, and the Lease shall hereafter be read and interpreted as if this text exists:

Tenant shall pay rent in the sum of Eight Thousand Three Hundred Seventy-Two Dollars and Seventy Cents (\$8,372.70) (\$1.35/SF) per month, each and every month during the Extension Term and continuing thereafter during any continued month-to-month occupancy of the Premises by Tenant. Rent shall be due and payable on the first (1<sup>st</sup>) day of each month, and shall be deemed late if not tendered to Landlord prior to the fifth (5<sup>th</sup>) day of each month.

**3. Amendment to Lease, Section 10. Alterations**

The following language shall be inserted as Subsection (b) to Section 10, and the Lease shall hereafter be read and interpreted as if this text exists:

(b) Upon execution of this Second Amendment, Landlord and Tenant shall determine and mutually agree upon alterations which must be removed and any additional restoration of the interior of the premises which must be made prior to Tenant vacating the building.

**4. Amendment to Lease, Section 11. Entry by Landlord**

The following language shall be inserted as Subsection (b) to Section 11, and the Lease shall hereafter be read and interpreted as if this text exists:

(b) Landlord and Landlord's consultants/contractors/agents and prospective tenants shall have the right to enter, inspect, and make investigations of the Premises to assess the building's interior conditions in preparation for occupancy by a future tenant at any time. Such inspections and testing will not be disruptive to the Tenant's operations or business, and Landlord will discuss and coordinate such inspections and investigations with Tenant in advance and provide a minimum of forty-eight (48) hours advance notice to Tenant prior to the inspection(s).

**5. Continuation of Lease Terms and First Amendment and Second Amendment Execution**

Except to the extent amended and supplemented by the terms and conditions of this Second Amendment, the Lease and First Amendment shall continue in full force and effect. This

Second Amendment may be executed in counterparts, all of which shall be taken together as one whole. A facsimile or electronically scanned signature by DocuSign or other means shall be deemed to constitute an original signature.

Effective as of the date first set forth above.

**Signatures**

**LANDLORD:**

\_\_\_\_\_  
\_\_\_\_\_, Trustee of the John R. Winzler Revocable Trust

\_\_\_\_\_  
\_\_\_\_\_, Trustee of the Flora N. Winzler Marital Trust

\_\_\_\_\_  
Reed A. Kelly

**TENANT:**

REDWOOD COAST ENERGY AUTHORITY, a local government Joint Powers Agency

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**Attachments**

**“Exhibit A”:** Copy of Commercial Office Lease

**“Exhibit B”:** Copy of First Amendment to Commercial Office Lease

## **Exhibit A**

## COMMERCIAL OFFICE LEASE

THIS LEASE ("Lease") is entered into as of September 1, 2019 (the "Effective Date"), between JOHN R. WINZLER REVOCABLE TRUST, FLORA N. WINZLER MARITAL TRUST and REED A. KELLY (collectively "Landlord") and REDWOOD COAST ENERGY AUTHORITY, a local government Joint Powers Agency ("Tenant").

### Recitals

A. Landlord is the owner of certain land, and improvements consisting of an approximately 6,200 square foot building located at 633 3<sup>rd</sup> Street, Eureka, California (the "Real Property").

B. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord a portion of the Real Property consisting of approximately 6,202 square feet of office space (the "Premises") on the terms and conditions in this Lease.

C. Tenant has occupied the Premises continually since April, 2013, pursuant to a prior written lease with Landlord.

### Agreement

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

#### **Section 1. Definitions**

As used in this Lease the following terms shall have the following definitions:

"Commencement Date" is defined in Section 3 hereof.

"Event of Default" is defined in Section 20 hereof.

"Landlord" is defined in the preamble of this Lease.

"Lease" is defined in the preamble of this Lease.

"Premises" is defined in Recital B hereof.

"Real Property" is defined in Recital A hereof.

"Rent" is defined in Section 2 hereof.

"Tenant" is defined in the preamble of this Lease.

"Term" is defined in Section 3 hereof.

"Termination Date" is defined in Section 3 hereof.

"Trade Fixtures" is defined in Section 15(a) hereof.

## **Section 2. Lease and Rent**

(a) Landlord leases to Tenant and Tenant leases from Landlord the Premises on the terms and conditions in this Lease. Tenant shall pay rent in the amount of Five Thousand Five Hundred Eight Two Dollars (\$5,582.00) per month ("Rent"), each and every month during the Initial Term (as defined in Section 3 of this Lease, below) of the Lease. Rent shall be due and payable on the first (1st) day of each month, and shall be deemed late if not tendered to Landlord prior to the fifth (5th) day of each month.

(b) Commencing on September 1, 2020, the Rent set forth in Section 2(a), above shall increase annually during the Option Term if exercised, by using the Consumer Price Index for All Urban Consumers for San Francisco-Oakland-San Jose, California published by the United States Bureau of Labor Statistics (CPI-U) in effect at the commencement of each year.

No adjustment shall be less than two and one-half percent (2.5%) per year or greater than four percent (4%) per year.

(c) The Security Deposit previously pledged by Tenant in the sum of Four Thousand One Hundred Dollars (\$4,100.00) will remain on deposit during the term of this Lease.

## **Section 3. Term and Option Term**

(a) Term. The term of this Lease is for one (1) year ("Term"), commencing on September 1, 2019 ("Commencement Date"), and ending on August 31, 2020 ("Termination Date").

(b) Option to Renew. Provided Tenant is not in material default under the Lease, Tenant shall have the option to extend the Term of this Lease for one additional three (3) year period ("Option Term"). In the event Tenant desires to exercise the Option Term, Tenant shall provide Landlord with written notice of its intent to exercise the Option at least six (6) months before the expiration of the Term.

## **Section 4. Use**

(a) Tenant will occupy and use the Premises for a business office including energy information for the public and all other operations incident to the conduct of the business, and Tenant agrees not to use the Premises for any immoral or unlawful purpose.

(b) Tenant shall not commit any acts on the Premises, nor use the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises.

(c) Tenant shall not commit any waste or any public or private nuisance upon the Premises.

(d) Tenant shall comply with all laws, rules, and orders of all federal, state, and municipal governments or agencies that may be applicable to use of the Premises.

### **Section 5. Utilities**

During the Term, Tenant shall pay, before delinquency, all charges or assessments for telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises.

### **Section 6. Taxes**

(a) Landlord shall pay all real property taxes. Tenant shall independently pay, and hold Landlord and the Premises harmless from, any and all personal property taxes attributable to Tenant's use of and operations at the Premises.

(b) If Tenant has not paid any tax, assessment, or public charge required by this Lease to be paid by Tenant before its delinquency, then Landlord may, but shall not be required to, pay and discharge the tax, assessment, or public charge. If a tax, assessment, or public charge, including penalties and interest, are paid by Landlord, the amount of that payment shall be due and payable to Landlord by Tenant with the next succeeding rental installment, and shall bear interest at the rate of ten percent (10%) per annum from the date of the payment by Landlord until repayment by Tenant.

### **Section 7. Condition of Premises**

Tenant acknowledges that as of the date of this Lease, Tenant has occupied and inspected the Premises and all improvements on the Premises and asserts no defects in the habitability or fitness for occupancy of the Premises as of the Effective Date.

### **Section 8. Accessibility Inspection Disclosure**

The Premises has not been inspected by a Certified Access Specialist ("CASp"), based on Lessor's current information and belief. A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

### **Section 9. Repairs and Maintenance; Janitorial**

(a) Tenant agrees, at Tenant's own expense, to keep the Premises in good condition and repair, and to deliver to Landlord physical possession of the Premises at the end of the Term in good condition and repair, reasonable wear and tear and use and loss by fire or other casualty or by earthquake or other act of God excepted.



(b) Landlord shall be responsible for any necessary repairs to the HVAC units, building roof, and exterior walls. Tenant shall be responsible for keeping and maintaining a HVAC maintenance contract for the inspection, replacement of the filters (with a minimum Merv 12 rating), making minor repairs and adjusting the HVAC units on an annual basis as well as prior to vacating the Premises. Tenant shall professionally maintain the Premises including electrical, plumbing and water systems and keep glass, windows and doors in operable and safe condition.

(c) If at any time during the Term, Tenant fails to maintain the Premises or make any repairs or replacements as required by Section 9(a), Landlord may, but shall not be required to, enter the Premises and perform the maintenance or make the repairs or replacements for the account of Tenant; any sums expended by Landlord in so doing, together with interest at ten percent (10%) per annum, shall be deemed additional rent and shall be immediately due from Tenant on demand of Landlord.

(d) Tenant waives the provisions of Civil Code §§1941 and 1942 and any other law that would require Landlord to maintain the Premises in a tenantable condition or would provide Tenant with the right to make repairs and deduct the cost of those repairs from the rent.

(e) Tenant shall be solely responsible for all costs and expenses related to janitorial and landscaping services at the Premises during the Term (and any extended term) of the Lease.

#### **Section 10. Alterations**

Tenant shall not make any alterations to either the interior or exterior of the Premises without Landlord's written consent. Any alterations made with Landlord's consent shall remain on and be surrendered with the Premises on expiration or termination of the term, except that Landlord can elect within sixty (60) days before expiration of the term, or within ten (10) days after termination of the term, to require Tenant to remove any alterations that Tenant has made to the Premises, at Tenant's cost.

#### **Section 11. Entry and Inspection**

Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Premises at all reasonable times and upon reasonable notice to inspect the Premises to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Premises under this Lease or to perform Landlord's duties under this Lease. Landlord shall have the right to inspect and show the Premises to prospective tenants upon forty-eight (48) hours advance notice.

#### **Section 12. Surrender of Premises; Holding Over**

(a) On the first day following expiration of the Term (or Option Term if exercised) or earlier termination of this Lease, Tenant shall promptly surrender and deliver the Premises to Landlord in as good condition as they were at the inception of the initial lease in April, 2013, reasonable wear and tear excepted.

(b) At the end of the Term (or Option Term if exercised), should Tenant hold over for any reason, it is agreed that in the absence of a written agreement to the contrary, that tenancy shall be from month-to-month only and not a renewal of this Lease. Tenant shall pay Rent in an

amount equal to one hundred and fifty percent (150%) of the Rent payable prior to the end of the Term (or Option Term if exercised). The month-to-month tenancy shall be subject to every other term, covenant, and condition in this Lease that is consistent with and not contrary to a month-to-month tenancy.

### **Section 13. Indemnity**

Tenant agrees to indemnify and defend Landlord from any claims, demands, and causes of action of any nature and any expense incident to the defense, for injury to or death of persons or loss of or damage to property occurring on or about the Premises that grow out of or are connected with Tenant's use and occupation of the Premises or the condition of the Premises (unless the condition is one for which Landlord has expressly assumed the responsibility for remedying and the condition is not caused by Tenant), during the Term. Landlord agrees to indemnify Tenant from any claims, demands, and causes of action of any nature and any expense incident to the defense, for injury to or death of persons or loss of or damage to property occurring on or about the Premises to the extent arising out of the negligent acts or omissions of landlord.

### **Section 14. Insurance**

(a) Landlord shall maintain fire and extended coverage insurance on the Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures and inventory, located in the Premises.

(b) Tenant shall, at Tenant's own cost and expense, secure and maintain during the entire term of this Lease and any extended Term of this Lease, a policy or policies of comprehensive general liability insurance with the premiums thereon fully paid on or before due date, issued by and binding upon an insurance company approved by Landlord, with policy limits of no less than \$1,000,000 per incident, \$2,000,000 per occurrence, combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph.

### **Section 15. Trade Fixtures**

(a) Tenant shall have the right, at any time and from time to time during the Term, at Tenant's sole cost and expense, to install and affix on the Premises items for use in Tenant's trade or business, which Tenant, in Tenant's sole discretion, deems advisable (collectively "Trade Fixtures"). Trade Fixtures installed in the Premises by Tenant shall always remain the property of Tenant and may be removed at the expiration of the Term, provided that any damage to the Premises caused by the removal of the Trade Fixtures shall be repaired by Tenant, and further provided that Landlord shall have the right to keep any Trade Fixtures or to require Tenant to remove any Trade Fixtures that Tenant might otherwise elect to abandon.

(b) As security for Tenant's performance of obligations under this Lease, Tenant grants to Landlord a security interest in all Trade Fixtures owned by Tenant and now or later placed on the Premises by Tenant. Any right to remove the Trade Fixtures given Tenant by the provisions of

Section 15(a) shall be exercisable only if, at the time of the removal, Tenant is not in default in performance of this Lease. Tenant may, however, at any time Tenant is not in default in performance of this Lease, trade in or replace any Trade Fixture, free of the security interest created by this section. This security interest will then attach to the item that replaced the previous Trade Fixture. Upon default under this Lease, Landlord shall immediately have as to the Trade Fixtures the remedies provided to a secured party under relevant sections of the California Uniform Commercial Code.

(c) Any Trade Fixtures that are not removed from the Premises by Tenant prior to expiration of the Term shall be deemed abandoned by Tenant and shall automatically become the property of Landlord as owner of the real property to which they are affixed and not due to the lien provided to Landlord in Section 15(b).

### **Section 16. Signs**

Tenant shall not place, maintain, nor permit on any exterior door, wall, or window of the Premises any sign, awning, canopy, marquee, or other advertising without the express written consent of Landlord. Furthermore, Tenant shall not place any decoration, lettering, or advertising matter on the glass of any exterior show window of the Premises without the written approval of Landlord. If Landlord consents to any sign, awning, canopy, marquee, decoration, or advertising matter, Tenant shall maintain it in good appearance and repair at all times during this Lease. At the Termination Date, Tenant shall be obligated to remove signage and repaint the building as necessary to restore the interior or exterior condition of the building to the pre-lease condition. If any of the items mentioned in this section that are not removed from the Premises by Tenant may, without damage or liability, be destroyed by Landlord.

### **Section 17. Damage and Destruction**

(a) If the building or other improvements constructed on the Premises are damaged or destroyed, whether partially or entirely, by any cause, Tenant, at Tenant's own cost and expense, but utilizing the proceeds of insurance, if any, including any insurance carried by Landlord to the extent available, shall repair, restore, or reconstruct the damaged or destroyed building and other improvements so that the condition and quality of the new building and other improvements shall be as near as reasonably possible to the condition and quality immediately prior to the damage or destruction. Damage to or destruction of any portion of the building, fixtures, or other improvements on the Premises by fire, the elements, or any other cause shall not terminate this Lease or entitle Tenant to surrender the Premises or otherwise affect the respective obligations of the parties, any present or future law to the contrary notwithstanding. However, if the building, fixtures, or other improvements on the Premises are totally destroyed or damaged to the extent that the Premises is wholly unsuitable or inadequate for the purposes for which Tenant was using the Premises prior to the destruction or damage, all Rent, together with other costs payable by Tenant, shall abate effective the date of the destruction or damage. Further, if the building constructed on the Premises is damaged to the extent that the Premises is partially unsuitable or inadequate for the purposes for which Tenant was using the Premises prior to the damage, the Rent otherwise payable by Tenant shall be reduced effective the date of the damage so that the new Rent payable shall be an amount equivalent to the proportion of the Rent otherwise payable as the total floor area of the building still reasonably suitable for Tenant's use under this Lease bears to the total floor area of the building prior to the damage. Upon the completion by Tenant of a new building and other improvements after completion of their repair, restoration, or

reconstruction, all partial or total abatement of rental shall cease and the full rental provided for in this Lease shall again be payable.

(b) If the Premises are damaged or destroyed in whole or in part, Tenant shall proceed with due diligence to have plans and specifications prepared and obtain approval by Landlord, which approval shall not be unreasonably withheld, to commence rebuilding, reconstruction, or restoration as promptly as possible after the occurrence of the event causing the damage or destruction, and thereafter to diligently complete the work. If Tenant does not proceed with due diligence and does not diligently finish the work, Landlord or any beneficiary under any deed of trust covering the Premises, if permitted by the deed of trust, may, but shall not be obligated to, enter the Premises and do whatever may be necessary for the rebuilding, recordation, repair, or restoration of any building or improvements damaged or destroyed.

(c) Before any contract or subcontract is let or other agreement executed for the performance of any service, or the furnishing of any materials, and before any work of any kind or nature is commenced upon the rebuilding, reconstruction, repair, or restoration, Tenant will procure and deliver to Landlord a completion bond or agreement in form satisfactory to Landlord issued by a reputable surety corporation or bonding corporation qualified to do business in California, guaranteeing or otherwise assuring Landlord that the reconstruction and repair of the building and improvements will proceed to completion with due diligence, that the reconstruction and repair, when completed, will be fully paid for, and that the Premises will remain free of all mechanics', laborers' or materialmen's liens or claimed liens on account of any services or materials furnished or labor or work performed in connection with the performance of the reconstruction and repair.

(d) Regardless of any contrary provisions in this Lease, if the building or other improvements to be constructed on the Premises or any substitute are damaged or destroyed by any cause to the extent of more than twenty-five percent (25%) of its insurable value during Term, Tenant may, at Tenant's sole option, terminate this Lease within ninety (90) days of the damage or destruction by giving written notice to Landlord. In the event of termination, Tenant shall pay to Landlord all insurance proceeds, if any, received by Tenant as a result of the damage or destruction to the extent allocable to the building or other improvements owned by Landlord.

### **Section 18. Condemnation**

(a) If, during the Term, the whole of the Premises shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of 12:01 a.m. of the date that actual physical possession of the Premises is taken, and after that, both Landlord and Tenant shall be released from all obligations under this Lease.

(b) If, during the Term, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable or adequate for the purposes for which Tenant was using the Premises prior to the taking, or if the Premises should become unsuitable or inadequate for those purposes by reason of the taking of any other property adjacent to or over the Premises pursuant to any condemnation proceeding, or if by reason of any law or ordinance the use of the Premises for the purposes specified in this Lease shall become unlawful, then and after the taking or after the occurrence of other described events, Tenant shall have the option to terminate, and the option can be exercised only after the taking or after the occurrence of other described events by Tenant giving ten (10) days' written notice to Landlord, and rent shall be

paid only to the time when Tenant surrenders possession of the Premises. Without limiting the generality of the previous provision, it is agreed that in the event of a partial taking of the Premises pursuant to any condemnation proceeding, if the number of square feet of floor area in the portion remaining after the taking is less than eighty percent (80%) of the number of square feet of floor area at the commencement of the Term, Tenant shall, after the taking, have the option to terminate this Lease on ten (10) days' written notice to Landlord, and rent shall be paid only to the time when Tenant surrenders possession of the Premises.

(c) If only a part of the Premises is taken pursuant to any condemnation proceeding under circumstances that Tenant does not have the option to terminate this Lease as provided in this Section, or having the option to terminate, Tenant elects not to terminate, then Landlord shall at Landlord's expense promptly proceed to restore the remainder of the Premises to a self-contained architectural unit, and the Rent payable shall be reduced effective the date of the taking to an amount that shall be in the same proportion to Rent payable prior to the taking, as the number of square feet of floor area remaining after the taking bears to the number of square feet of floor area immediately prior to the taking.

(d) If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to Tenant's unsalvageable Trade Fixtures.

#### **Section 19. Assignment and Subletting**

(a) Except as provided in Section 19(b), Tenant shall not assign this Lease without the prior written consent of Landlord, which shall not be unreasonably withheld, provided that subsequent to any assignment Tenant shall remain primarily liable for the rental to be paid under this Lease and the performance of all terms and conditions of this Lease.

(b) However, Tenant may assign this Lease without Landlord's written consent if the assignment is made:

(i) to a successor corporation into which or with which Tenant is merged or consolidated in accordance with applicable statutory provisions for the merger or consolidation of corporations,

(ii) to a wholly-owned subsidiary of Tenant, or

(iii) to a corporation to which Tenant shall sell all or substantially all of Tenant's assets; and the liabilities of the corporations participating in the merger or consolidation or of the transferor corporation must be assumed by the corporation surviving the merger or created by the consolidation or by the transferee corporation, in the event of a transfer to a wholly-owned subsidiary or a sale of all or substantially all assets, and that corporation (except in the case of a wholly-owned subsidiary) must have a net worth at least equal to the net worth of Tenant at the time of execution of this Lease. Upon delivery to Landlord, by a successor corporation to which this Lease is assigned or transferred, of the agreement of the corporation to be bound by the terms, covenants, and conditions of this Lease to be performed by Tenant after the date of the assignment or transfer, Tenant shall be released and discharged from all obligations later arising under this Lease, except where the transfer is to a wholly-owned subsidiary of Tenant.

## **Section 20. Default**

(a) **Default by Tenant.** Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(i) The failure by Tenant to pay any amount in full when it is due under the Lease;

(ii) The failure by Tenant to perform any obligation under this Lease, which by its nature Tenant has no capacity to cure;

(iii) The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of ten (10) days after Landlord demands in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Tenant may have a longer period as is necessary to cure the failure, but this is conditioned upon Tenant's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. Tenant shall indemnify and defend Landlord against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(iv) Any of the following: A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary filing, petition, or application by Tenant under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Premises by Tenant without Landlord's prior written consent; or the dispossession of Tenant from the Premises (other than by Landlord) by process of law or otherwise;

(v) The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Tenant, or any general partner of Tenant if Tenant is a partnership, of

(i) a petition to have Tenant, or any partner of Tenant if Tenant is a partnership, declared bankrupt, or

(ii) a petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days;

(vi) The abandonment of the Premises by Tenant.

(b) **Default by Landlord.** The failure by Landlord to perform any of Landlord's obligations under this Lease, if the failure has continued for a period of ten (10) days after Tenant demands in writing that Landlord cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Landlord may have a longer period as is necessary to cure

the failure, but this is conditioned upon Landlord's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure.

### **Section 21. Remedies**

Upon the occurrence of an Event of Default under this Lease by Tenant, Landlord is entitled at Landlord's option to the following:

- (a) to reenter and take exclusive possession of the Premises;
- (b) to collect immediately the present value of the unpaid rent reserved for the entire term, or to collect each installment of rent as it becomes due;
- (c) to continue this Lease in force or to terminate it at any time;
- (d) to relet the Premises for any period on Tenant's account and at Tenant's expense, including real estate commissions actually paid, and to apply the proceeds received during the balance of Term to Tenant's continuing obligations under this Lease;
- (e) to take custody of all personal property on the Premises and to dispose of the personal property and to apply the proceeds from any sale of that property to Tenant's obligations under this Lease;
- (f) to recover from Tenant the damages described in Civil Code §§ 1951.2(a)(1), 1951.2(a)(2), 1951.2(a)(3), and 1951.2(a)(4), the provisions of which are expressly made a part of this Lease;
- (g) to restore the Premises to the same condition as received by Tenant, or to alter the Premises to make them suitable for reletting, all at Tenant's expense; and
- (h) to enforce by suit or otherwise all obligations of Tenant under this Lease and to recover from Tenant all remedies now or later allowed by law.

Any act that Landlord is entitled to do in exercise of Landlord's rights upon an Event of Default may be done at a time and in a manner deemed reasonable by Landlord in Landlord's sole discretion, and Tenant irrevocably authorizes Landlord to act in all things done on Tenant's account.

In the event of default by Landlord, Tenant shall have all rights and remedies available in law or in equity.

### **Section 22. Late Charge**

Tenant acknowledges that Tenant's failure to pay any installment of the Rent or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any installment of the Rent or any other amount due under the Lease is not received by Landlord as and when due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to five percent

(5%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant.

### **Section 23. Default Interest**

If Tenant fails to pay any amount due under this Lease as and when due, that amount shall bear interest at the rate of ten percent (10%) from the due date until paid.

### **Section 24. Waiver of Breach**

Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of rent accepted.

### **Section 25. Estoppel Certificates**

At any time, with at least fifteen (15) days' prior notice by Landlord, Tenant shall execute, acknowledge, and deliver to Landlord a certificate certifying:

- (a) the Commencement Date and the Term;
- (b) the amount of the Rent;
- (c) the dates to which rent and other charges have been paid;

(d) that this Lease is unmodified and in full force or, if there have been modifications, that this Lease is in full force, as modified, and stating the date and nature of each modification;

(e) that no notice has been received by Tenant of any default by Tenant that has not been cured except, if any exist, those defaults must be specified in the certificate, and Tenant must certify that no event has occurred that, but for the expiration of the applicable time period or the giving of notice or both, would constitute an Event of Default under this Lease;

(f) that no default of Landlord is claimed by Tenant, except, if any, those defaults must be specified in the certificate; and

(g) other matters as may be reasonably requested by Landlord.

Any certificate may be relied on by prospective purchasers, mortgagees, or beneficiaries under any deed of trust on the Premises or any part of it.

### **Section 26. Attorney Fees**

If any action at law or in equity is brought to recover any rent or other sums under this Lease, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs reasonable attorney fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.



### **Section 27. Potential Lease of Additional Space; Agreement Not to List Real Property**

Landlord is aware that Tenant is in need of a larger space totaling approximately 10,000 square feet in order to expand its operations. The Landlord and Tenant mutual desire to explore the feasibility of Tenant leasing additional portions of the Real Property and/or an adjacent building owned by Landlord. Both parties agree to be responsive, provide information in a timely fashion and work in good faith in order to evaluate the Real Property and adjacent property for its suitability for use by Tenant. In consideration for the Tenant entering into this Lease and agreeing to pay Rent in the amounts listed in Section 2(a), above, Landlord agrees not to list the Real Property for sale or rent for a period of six (6) months from the Effective Date so that the parties may determine if the space can accommodate the proposed expanded operations of Tenant.

### **Section 28. Authority**

If Tenant is a corporation, trust, or general or limited partnership, all individuals executing this Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity. If Tenant is a corporation, trust, or partnership, Tenant shall, prior to the execution of this Lease, deliver to Landlord evidence of that authority and evidence of due formation, all satisfactory to Landlord. If Tenant is a partnership, Tenant shall furnish Landlord with a copy of Tenant's partnership agreement and with a certificate from Tenant's attorney, stating that the partnership agreement constitutes a correct copy of the existing partnership agreement of Tenant.

### **Section 29. Notices**

Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to Tenant at:

Redwood Coast Energy Authority  
633 3<sup>rd</sup> Street  
Eureka, CA 95501

or to Landlord at:

John Winzler  


Either party, Tenant or Landlord, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

### **Section 30. Heirs and Successors**

This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant.

### **Section 31. Partial Invalidity**

Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease shall remain in effect, unimpaired by the holding.

### **Section 32. Entire Agreement**

This instrument constitutes the sole agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, and the specified lease term, and correctly sets forth the obligations of Landlord and Tenant. This Lease supersedes and all previous leases and agreements (both written and oral) between the Landlord and Tenant. Any agreement or representations respecting the Premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are void.

### **Section 33. Time of Essence**

Time is of the essence in this Lease.

### **Section 34. Rent**

All monetary obligations of Tenant to Landlord under the Lease, including but not limited to the Rent shall be deemed rent.

### **Section 35. Amendments**

This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

### **Section 36. Subordination**

(a) This Lease shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or later placed upon the Premises and to any advances made on the security of it or Landlord's interest in it, and to all renewals, modifications, consolidations, replacements, and extensions of it. However, if any mortgagee, trustee, or ground landlord elects to have this Lease prior to the lien of its mortgage or deed of trust or prior to its ground lease, and gives notice of that to Tenant, this Lease shall be deemed prior to the mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of the mortgage, deed of trust, or ground lease, or the date of recording of it. If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, Tenant shall attorn to the purchaser at the foreclosure sale or to the grantee under the deed in lieu of foreclosure. If any ground lease to which this Lease is subordinate is terminated, Tenant shall attorn to the ground landlord. Tenant agrees to execute any documents, in form and substance reasonably acceptable to Tenant, required to for the subordination, to make this Lease prior to the lien of any mortgage or deed of trust or ground lease, or to evidence the attornment.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed. Neither shall the rights and possession of Tenant under this Lease be disturbed, if Tenant is not then in default in the payment of rental and other sums due under this Lease or otherwise in default under the terms of this Lease, and if Tenant attorns to the purchaser, grantee, or ground landlord as provided in Section 36(a) or, if requested, enters into a new lease for the balance of the term of this Lease on the same terms and provisions in this Lease. Tenant's covenant under Section 36(a) to subordinate this Lease to any ground lease, mortgage, deed of trust, or other hypothecation later executed is conditioned on each senior instrument containing the commitments specified in this subsection.

### **Section 37. Merger**

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of the Lease, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to a Landlord of any of the subtenancies.

### **Section 38. Governing Law**

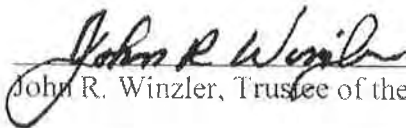
This Lease shall be governed by and construed in accordance with California law.

### **Section 39. Counterparts**

This Lease may be executed in separate counterparts, the executed parts of which shall be deemed to constitute one whole. Facsimile and electronically scanned or copied signatures shall be deemed to constitute an original signature.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

**"LANDLORD":**

  
John R. Winzler, Trustee of the John R. Winzler Revocable Trust

  
John R. Winzler, Trustee of the Flora N. Winzler Marital Trust

  
Reed A. Kelly

**"TENANT":**

**REDWOOD COAST ENERGY AUTHORITY, a local government Joint Powers Agency**

By: 

Name: MATTHEW MARSHALL

Its: EXECUTIVE DIRECTOR

## **Exhibit B**

## **FIRST AMENDMENT TO COMMERCIAL OFFICE LEASE**

This "First Amendment to Commercial Office Lease" (this "First Amendment") is entered into as of May 3, 2020, by and between JOHN R. WINZLER REVOCABLE TRUST, FLORA N. WINZLER MARITAL TRUST and REED A. KELLY ("Landlord") and REDWOOD COAST ENERGY AUTHORITY, a local government Joint Powers Authority ("Tenant").

### **Recitals**

A. WHEREAS, Landlord is the owner of certain land and improvements consisting of an approximately 6,202 square foot building located at 633 3<sup>rd</sup> Street, Eureka, California ("Premises");

B. WHEREAS, Landlord and Tenant entered and executed that certain written "Commercial Office Lease" dated on or about September 1, 2019 (the "Lease"), a copy of which is attached hereto as **Exhibit "A"** and incorporated by reference herein;

C. WHEREAS, the term of the Lease expires on August 31, 2020;

D. WHEREAS, Landlord and Tenant desire to continue the terms and conditions and tenancy created by the Lease, subject to the respective rights and obligations created by this First Amendment.

NOW, THEREFORE, for good and valuable consideration, and incorporating the above-stated Recitals of Facts as material terms hereof, the parties agree as follows:

### **Agreement**

#### **1. Amendment to Lease, Section 3, Term and Option Term.**

Section 3 of the Lease shall be renamed "Continuation of Occupancy and Extension Term" and the existing text shall be deleted in its entirety and in its place the following underlined text shall be inserted, and the Lease shall hereafter be read and interpreted as if this text exists:

Landlord and Tenant agree to extend and continue Tenant's right(s) to lease and occupy the Premises subject to the terms and conditions of the Lease and this First Amendment, for a period of time commencing September 1, 2020 and terminating at 11:59 PM, on August 31, 2022 (the "Extension Term").

#### **2. Amendment to Lease, Section 2(a) and (b), Lease and Rent.**

The text appearing at Section 2(a) and (b) of the Lease shall be deleted in its entirety and in its place the following underlined text shall be inserted, and the Lease shall hereafter be read and interpreted as if this text exists:

Tenant shall pay rent in the sum of Six Thousand Five Hundred and Twelve Dollars (\$6,512.00) (\$1.05/SF) per month, each and every month during the first year of the Extension Term (i.e., September 1, 2020 through August 31, 2021). Rent shall increase to Seven Thousand One Hundred and Thirty Two Dollars (\$7,132.00) (\$1.15/SF) per

month, each and every month during the second year of the Extension Term (i.e., September 1, 2021 through August 31, 2022). Rent shall be due and payable on the first day of each month, and shall be deemed late if not tendered to Landlord prior to the fifth (5<sup>th</sup>) day of each month. Tenant is obligated to pay rent through the end of the Extension Term (i.e., continually through August 31, 2022).

**3. Amendment to Lease, Section 11. Entry by Landlord**

The following underlined text shall be inserted and added as Subsection (b) to Section 11 of the Lease, and the Lease shall hereafter be read and interpreted as if this text exists:

(b) Landlord and Landlord's consultants/contractors/agents shall have the right to enter, inspect, and make investigations to assess the building's interior conditions in preparation for occupancy by a future tenant at any time up to six months in advance of the lease's expiration. Such inspections and testing will not be disruptive to the Tenant's operations or business, and Landlord will discuss and coordinate such inspections and investigations with Tenant in advance and provide a minimum of forty-eight (48) hours advance notice.

**4. Deletion of Section 27. Potential Lease of Additional Space; Agreement Not to List Real Property**

Section 27 of the Lease is hereby deleted in its entirety.

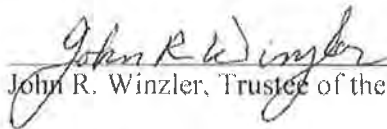
**5. Continuation of Lease Terms and First Amendment Execution**

Except to the extent amended and supplemented by the terms and conditions of this First Amendment, the Lease shall continue in full force and effect. This First Amendment may be executed in counterparts, all of which shall be taken together as one whole. A facsimile or electronically scanned signature shall be deemed to constitute an original signature.

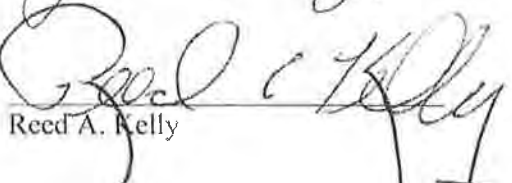
Effective as of the date first set forth above.

**Signatures**

**LANDLORD:**

  
John R. Winzler, Trustee of the John R. Winzler Revocable Trust

  
John R. Winzler, Trustee of the Flora N. Winzler Marital Trust

  
Reed A. Kelly

**TENANT:**

REDWOOD COAST ENERGY AUTHORITY, a local government Joint Powers Agency

By: 

Name: MATTHEW MARSHALL

Its: EXECUTIVE DIRECTOR

**Attachments**

**"Exhibit A":** Copy of Lease



## COMMERCIAL OFFICE LEASE

THIS LEASE ("Lease") is entered into as of September 1, 2019 (the "Effective Date"), between JOHN R. WINZLER REVOCABLE TRUST, FLORA N. WINZLER MARITAL TRUST and REED A. KELLY (collectively "Landlord") and REDWOOD COAST ENERGY AUTHORITY, a local government Joint Powers Agency ("Tenant").

### Recitals

A. Landlord is the owner of certain land, and improvements consisting of an approximately 6,200 square foot building located at 633 3<sup>rd</sup> Street, Eureka, California (the "Real Property").

B. Landlord desires to lease to Tenant and Tenant desires to lease from Landlord a portion of the Real Property consisting of approximately 6,202 square feet of office space (the "Premises") on the terms and conditions in this Lease.

C. Tenant has occupied the Premises continually since April, 2013, pursuant to a prior written lease with Landlord.

### Agreement

NOW THEREFORE, for good and valuable consideration, the parties agree as follows:

#### **Section 1. Definitions**

As used in this Lease the following terms shall have the following definitions:

"Commencement Date" is defined in Section 3 hereof.

"Event of Default" is defined in Section 20 hereof.

"Landlord" is defined in the preamble of this Lease.

"Lease" is defined in the preamble of this Lease.

"Premises" is defined in Recital B hereof.

"Real Property" is defined in Recital A hereof.

"Rent" is defined in Section 2 hereof.

"Tenant" is defined in the preamble of this Lease.

"Term" is defined in Section 3 hereof.

"Termination Date" is defined in Section 3 hereof.

“Trade Fixtures” is defined in Section 15(a) hereof.

## **Section 2. Lease and Rent**

(a) Landlord leases to Tenant and Tenant leases from Landlord the Premises on the terms and conditions in this Lease. Tenant shall pay rent in the amount of Five Thousand Five Hundred Eight Two Dollars (\$5,582.00) per month (“Rent”), each and every month during the Initial Term (as defined in Section 3 of this Lease, below) of the Lease. Rent shall be due and payable on the first (1st) day of each month, and shall be deemed late if not tendered to Landlord prior to the fifth (5th) day of each month.

(b) Commencing on September 1, 2020, the Rent set forth in Section 2(a), above shall increase annually during the Option Term if exercised, by using the Consumer Price Index for All Urban Consumers for San Francisco-Oakland-San Jose, California published by the United States Bureau of Labor Statistics (CPI-U) in effect at the commencement of each year.

No adjustment shall be less than two and one-half percent (2.5%) per year or greater than four percent (4%) per year.

(c) The Security Deposit previously pledged by Tenant in the sum of Four Thousand One Hundred Dollars (\$4,100.00) will remain on deposit during the term of this Lease.

## **Section 3. Term and Option Term**

(a) Term. The term of this Lease is for one (1) year (“Term”), commencing on September 1, 2019 (“Commencement Date”), and ending on August 31, 2020 (“Termination Date”).

(b) Option to Renew. Provided Tenant is not in material default under the Lease, Tenant shall have the option to extend the Term of this Lease for one additional three (3) year period (“Option Term”). In the event Tenant desires to exercise the Option Term, Tenant shall provide Landlord with written notice of its intent to exercise the Option at least six (6) months before the expiration of the Term.

## **Section 4. Use**

(a) Tenant will occupy and use the Premises for a business office including energy information for the public and all other operations incident to the conduct of the business, and Tenant agrees not to use the Premises for any immoral or unlawful purpose.

(b) Tenant shall not commit any acts on the Premises, nor use the Premises in any manner that will increase the existing rates for or cause the cancellation of any fire, liability, or other insurance policy insuring the Premises or the improvements on the Premises.

(c) Tenant shall not commit any waste or any public or private nuisance upon the Premises.

(d) Tenant shall comply with all laws, rules, and orders of all federal, state, and municipal governments or agencies that may be applicable to use of the Premises.

## **Section 5. Utilities**

During the Term, Tenant shall pay, before delinquency, all charges or assessments for telephone, water, sewer, gas, heat, electricity, garbage disposal, trash disposal, and all other utilities and services of any kind that may be used on the Premises.

## **Section 6. Taxes**

(a) Landlord shall pay all real property taxes. Tenant shall independently pay, and hold Landlord and the Premises harmless from, any and all personal property taxes attributable to Tenant's use of and operations at the Premises.

(b) If Tenant has not paid any tax, assessment, or public charge required by this Lease to be paid by Tenant before its delinquency, then Landlord may, but shall not be required to, pay and discharge the tax, assessment, or public charge. If a tax, assessment, or public charge, including penalties and interest, are paid by Landlord, the amount of that payment shall be due and payable to Landlord by Tenant with the next succeeding rental installment, and shall bear interest at the rate of ten percent (10%) per annum from the date of the payment by Landlord until repayment by Tenant.

## **Section 7. Condition of Premises**

Tenant acknowledges that as of the date of this Lease, Tenant has occupied and inspected the Premises and all improvements on the Premises and asserts no defects in the habitability or fitness for occupancy of the Premises as of the Effective Date.

## **Section 8. Accessibility Inspection Disclosure**

The Premises has not been inspected by a Certified Access Specialist ("CASp"), based on Lessor's current information and belief. A Certified Access Specialist (CASp) can inspect the subject premises and determine whether the subject premises comply with all of the applicable construction-related accessibility standards under state law. Although state law does not require a CASp inspection of the subject premises, the commercial property owner or lessor may not prohibit the lessee or tenant from obtaining a CASp inspection of the subject premises for the occupancy or potential occupancy of the lessee or tenant, if requested by the lessee or tenant. The parties shall mutually agree on the arrangements for the time and manner of the CASp inspection, the payment of the fee for the CASp inspection, and the cost of making any repairs necessary to correct violations of construction-related accessibility standards within the premises.

## **Section 9. Repairs and Maintenance; Janitorial**

(a) Tenant agrees, at Tenant's own expense, to keep the Premises in good condition and repair, and to deliver to Landlord physical possession of the Premises at the end of the Term in good condition and repair, reasonable wear and tear and use and loss by fire or other casualty or by earthquake or other act of God excepted.

(b) Landlord shall be responsible for any necessary repairs to the HVAC units, building roof, and exterior walls. Tenant shall be responsible for keeping and maintaining a HVAC maintenance contract for the inspection, replacement of the filters (with a minimum Merv 12 rating), making minor repairs and adjusting the HVAC units on an annual basis as well as prior to vacating the Premises. Tenant shall professionally maintain the Premises including electrical, plumbing and water systems and keep glass, windows and doors in operable and safe condition.

(c) If at any time during the Term, Tenant fails to maintain the Premises or make any repairs or replacements as required by Section 9(a), Landlord may, but shall not be required to, enter the Premises and perform the maintenance or make the repairs or replacements for the account of Tenant; any sums expended by Landlord in so doing, together with interest at ten percent (10%) per annum, shall be deemed additional rent and shall be immediately due from Tenant on demand of Landlord.

(d) Tenant waives the provisions of Civil Code §§1941 and 1942 and any other law that would require Landlord to maintain the Premises in a tenantable condition or would provide Tenant with the right to make repairs and deduct the cost of those repairs from the rent.

(e) Tenant shall be solely responsible for all costs and expenses related to janitorial and landscaping services at the Premises during the Term (and any extended term) of the Lease.

#### **Section 10. Alterations**

Tenant shall not make any alterations to either the interior or exterior of the Premises without Landlord's written consent. Any alterations made with Landlord's consent shall remain on and be surrendered with the Premises on expiration or termination of the term, except that Landlord can elect within sixty (60) days before expiration of the term, or within ten (10) days after termination of the term, to require Tenant to remove any alterations that Tenant has made to the Premises, at Tenant's cost.

#### **Section 11. Entry and Inspection**

Tenant shall permit Landlord or Landlord's agents, representatives, or employees to enter the Premises at all reasonable times and upon reasonable notice to inspect the Premises to determine whether Tenant is complying with the terms of this Lease and to do other lawful acts that may be necessary to protect Landlord's interest in the Premises under this Lease or to perform Landlord's duties under this Lease. Landlord shall have the right to inspect and show the Premises to prospective tenants upon forty-eight (48) hours advance notice.

#### **Section 12. Surrender of Premises; Holding Over**

(a) On the first day following expiration of the Term (or Option Term if exercised) or earlier termination of this Lease, Tenant shall promptly surrender and deliver the Premises to Landlord in as good condition as they were at the inception of the initial lease in April, 2013, reasonable wear and tear excepted.

(b) At the end of the Term (or Option Term if exercised), should Tenant hold over for any reason, it is agreed that in the absence of a written agreement to the contrary, that tenancy shall be from month-to-month only and not a renewal of this Lease. Tenant shall pay Rent in an

amount equal to one hundred and fifty percent (150%) of the Rent payable prior to the end of the Term (or Option Term if exercised). The month-to-month tenancy shall be subject to every other term, covenant, and condition in this Lease that is consistent with and not contrary to a month-to-month tenancy.

### **Section 13. Indemnity**

Tenant agrees to indemnify and defend Landlord from any claims, demands, and causes of action of any nature and any expense incident to the defense, for injury to or death of persons or loss of or damage to property occurring on or about the Premises that grow out of or are connected with Tenant's use and occupation of the Premises or the condition of the Premises (unless the condition is one for which Landlord has expressly assumed the responsibility for remedying and the condition is not caused by Tenant), during the Term. Landlord agrees to indemnify Tenant from any claims, demands, and causes of action of any nature and any expense incident to the defense, for injury to or death of persons or loss of or damage to property occurring on or about the Premises to the extent arising out of the negligent acts or omissions of landlord.

### **Section 14. Insurance**

(a) Landlord shall maintain fire and extended coverage insurance on the Premises in such amounts as Landlord shall deem appropriate. Tenant shall be responsible, at its expense, for fire and extended coverage insurance on all of its personal property, including removable trade fixtures and inventory, located in the Premises.

(b) Tenant shall, at Tenant's own cost and expense, secure and maintain during the entire term of this Lease and any extended Term of this Lease, a policy or policies of comprehensive general liability insurance with the premiums thereon fully paid on or before due date, issued by and binding upon an insurance company approved by Landlord, with policy limits of no less than \$1,000,000 per incident, \$2,000,000 per occurrence, combined single limit coverage of bodily injury, property damage or combination thereof. Landlord shall be listed as an additional insured on Tenant's policy or policies of comprehensive general liability insurance, and Tenant shall provide Landlord with current Certificates of Insurance evidencing Tenant's compliance with this Paragraph.

### **Section 15. Trade Fixtures**

(a) Tenant shall have the right, at any time and from time to time during the Term, at Tenant's sole cost and expense, to install and affix on the Premises items for use in Tenant's trade or business, which Tenant, in Tenant's sole discretion, deems advisable (collectively "Trade Fixtures"). Trade Fixtures installed in the Premises by Tenant shall always remain the property of Tenant and may be removed at the expiration of the Term, provided that any damage to the Premises caused by the removal of the Trade Fixtures shall be repaired by Tenant, and further provided that Landlord shall have the right to keep any Trade Fixtures or to require Tenant to remove any Trade Fixtures that Tenant might otherwise elect to abandon.

(b) As security for Tenant's performance of obligations under this Lease, Tenant grants to Landlord a security interest in all Trade Fixtures owned by Tenant and now or later placed on the Premises by Tenant. Any right to remove the Trade Fixtures given Tenant by the provisions of

Section 15(a) shall be exercisable only if, at the time of the removal, Tenant is not in default in performance of this Lease. Tenant may, however, at any time Tenant is not in default in performance of this Lease, trade in or replace any Trade Fixture, free of the security interest created by this section. This security interest will then attach to the item that replaced the previous Trade Fixture. Upon default under this Lease, Landlord shall immediately have as to the Trade Fixtures the remedies provided to a secured party under relevant sections of the California Uniform Commercial Code.

(c) Any Trade Fixtures that are not removed from the Premises by Tenant prior to expiration of the Term shall be deemed abandoned by Tenant and shall automatically become the property of Landlord as owner of the real property to which they are affixed and not due to the lien provided to Landlord in Section 15(b).

### **Section 16. Signs**

Tenant shall not place, maintain, nor permit on any exterior door, wall, or window of the Premises any sign, awning, canopy, marquee, or other advertising without the express written consent of Landlord. Furthermore, Tenant shall not place any decoration, lettering, or advertising matter on the glass of any exterior show window of the Premises without the written approval of Landlord. If Landlord consents to any sign, awning, canopy, marquee, decoration, or advertising matter, Tenant shall maintain it in good appearance and repair at all times during this Lease. At the Termination Date, Tenant shall be obligated to remove signage and repaint the building as necessary to restore the interior or exterior condition of the building to the pre-lease condition. If any of the items mentioned in this section that are not removed from the Premises by Tenant may, without damage or liability, be destroyed by Landlord.

### **Section 17. Damage and Destruction**

(a) If the building or other improvements constructed on the Premises are damaged or destroyed, whether partially or entirely, by any cause, Tenant, at Tenant's own cost and expense, but utilizing the proceeds of insurance, if any, including any insurance carried by Landlord to the extent available, shall repair, restore, or reconstruct the damaged or destroyed building and other improvements so that the condition and quality of the new building and other improvements shall be as near as reasonably possible to the condition and quality immediately prior to the damage or destruction. Damage to or destruction of any portion of the building, fixtures, or other improvements on the Premises by fire, the elements, or any other cause shall not terminate this Lease or entitle Tenant to surrender the Premises or otherwise affect the respective obligations of the parties, any present or future law to the contrary notwithstanding. However, if the building, fixtures, or other improvements on the Premises are totally destroyed or damaged to the extent that the Premises is wholly unsuitable or inadequate for the purposes for which Tenant was using the Premises prior to the destruction or damage, all Rent, together with other costs payable by Tenant, shall abate effective the date of the destruction or damage. Further, if the building constructed on the Premises is damaged to the extent that the Premises is partially unsuitable or inadequate for the purposes for which Tenant was using the Premises prior to the damage, the Rent otherwise payable by Tenant shall be reduced effective the date of the damage so that the new Rent payable shall be an amount equivalent to the proportion of the Rent otherwise payable as the total floor area of the building still reasonably suitable for Tenant's use under this Lease bears to the total floor area of the building prior to the damage. Upon the completion by Tenant of a new building and other improvements after completion of their repair, restoration, or

reconstruction, all partial or total abatement of rental shall cease and the full rental provided for in this Lease shall again be payable.

(b) If the Premises are damaged or destroyed in whole or in part, Tenant shall proceed with due diligence to have plans and specifications prepared and obtain approval by Landlord, which approval shall not be unreasonably withheld, to commence rebuilding, reconstruction, or restoration as promptly as possible after the occurrence of the event causing the damage or destruction, and thereafter to diligently complete the work. If Tenant does not proceed with due diligence and does not diligently finish the work, Landlord or any beneficiary under any deed of trust covering the Premises, if permitted by the deed of trust, may, but shall not be obligated to, enter the Premises and do whatever may be necessary for the rebuilding, recordation, repair, or restoration of any building or improvements damaged or destroyed.

(c) Before any contract or subcontract is let or other agreement executed for the performance of any service, or the furnishing of any materials, and before any work of any kind or nature is commenced upon the rebuilding, reconstruction, repair, or restoration, Tenant will procure and deliver to Landlord a completion bond or agreement in form satisfactory to Landlord issued by a reputable surety corporation or bonding corporation qualified to do business in California, guaranteeing or otherwise assuring Landlord that the reconstruction and repair of the building and improvements will proceed to completion with due diligence, that the reconstruction and repair, when completed, will be fully paid for, and that the Premises will remain free of all mechanics', laborers' or materialmen's liens or claimed liens on account of any services or materials furnished or labor or work performed in connection with the performance of the reconstruction and repair.

(d) Regardless of any contrary provisions in this Lease, if the building or other improvements to be constructed on the Premises or any substitute are damaged or destroyed by any cause to the extent of more than twenty-five percent (25%) of its insurable value during Term, Tenant may, at Tenant's sole option, terminate this Lease within ninety (90) days of the damage or destruction by giving written notice to Landlord. In the event of termination, Tenant shall pay to Landlord all insurance proceeds, if any, received by Tenant as a result of the damage or destruction to the extent allocable to the building or other improvements owned by Landlord.

### **Section 18. Condemnation**

(a) If, during the Term, the whole of the Premises shall be taken pursuant to any condemnation proceeding, this Lease shall terminate as of 12:01 a.m. of the date that actual physical possession of the Premises is taken, and after that, both Landlord and Tenant shall be released from all obligations under this Lease.

(b) If, during the Term, only a part of the Premises is taken pursuant to any condemnation proceeding and the remaining portion is not suitable or adequate for the purposes for which Tenant was using the Premises prior to the taking, or if the Premises should become unsuitable or inadequate for those purposes by reason of the taking of any other property adjacent to or over the Premises pursuant to any condemnation proceeding, or if by reason of any law or ordinance the use of the Premises for the purposes specified in this Lease shall become unlawful, then and after the taking or after the occurrence of other described events, Tenant shall have the option to terminate, and the option can be exercised only after the taking or after the occurrence of other described events by Tenant giving ten (10) days' written notice to Landlord, and rent shall be

paid only to the time when Tenant surrenders possession of the Premises. Without limiting the generality of the previous provision, it is agreed that in the event of a partial taking of the Premises pursuant to any condemnation proceeding, if the number of square feet of floor area in the portion remaining after the taking is less than eighty percent (80%) of the number of square feet of floor area at the commencement of the Term, Tenant shall, after the taking, have the option to terminate this Lease on ten (10) days' written notice to Landlord, and rent shall be paid only to the time when Tenant surrenders possession of the Premises.

(c) If only a part of the Premises is taken pursuant to any condemnation proceeding under circumstances that Tenant does not have the option to terminate this Lease as provided in this Section, or having the option to terminate, Tenant elects not to terminate, then Landlord shall at Landlord's expense promptly proceed to restore the remainder of the Premises to a self-contained architectural unit, and the Rent payable shall be reduced effective the date of the taking to an amount that shall be in the same proportion to Rent payable prior to the taking, as the number of square feet of floor area remaining after the taking bears to the number of square feet of floor area immediately prior to the taking.

(d) If the whole or any part of the Premises are taken pursuant to any condemnation proceeding, then Landlord shall be entitled to the entirety of any condemnation award except that portion allocable to Tenant's unsalvageable Trade Fixtures.

#### **Section 19. Assignment and Subletting**

(a) Except as provided in Section 19(b), Tenant shall not assign this Lease without the prior written consent of Landlord, which shall not be unreasonably withheld, provided that subsequent to any assignment Tenant shall remain primarily liable for the rental to be paid under this Lease and the performance of all terms and conditions of this Lease.

(b) However, Tenant may assign this Lease without Landlord's written consent if the assignment is made:

(i) to a successor corporation into which or with which Tenant is merged or consolidated in accordance with applicable statutory provisions for the merger or consolidation of corporations,

(ii) to a wholly-owned subsidiary of Tenant, or

(iii) to a corporation to which Tenant shall sell all or substantially all of Tenant's assets; and the liabilities of the corporations participating in the merger or consolidation or of the transferor corporation must be assumed by the corporation surviving the merger or created by the consolidation or by the transferee corporation, in the event of a transfer to a wholly-owned subsidiary or a sale of all or substantially all assets, and that corporation (except in the case of a wholly-owned subsidiary) must have a net worth at least equal to the net worth of Tenant at the time of execution of this Lease. Upon delivery to Landlord, by a successor corporation to which this Lease is assigned or transferred, of the agreement of the corporation to be bound by the terms, covenants, and conditions of this Lease to be performed by Tenant after the date of the assignment or transfer, Tenant shall be released and discharged from all obligations later arising under this Lease, except where the transfer is to a wholly-owned subsidiary of Tenant.



## **Section 20. Default**

(a) Default by Tenant. Any of the following events or occurrences shall constitute a material breach of this Lease by Tenant and, after the expiration of any applicable grace period, shall constitute an event of default (each an "Event of Default"):

(i) The failure by Tenant to pay any amount in full when it is due under the Lease;

(ii) The failure by Tenant to perform any obligation under this Lease, which by its nature Tenant has no capacity to cure;

(iii) The failure by Tenant to perform any other obligation under this Lease, if the failure has continued for a period of ten (10) days after Landlord demands in writing that Tenant cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Tenant may have a longer period as is necessary to cure the failure, but this is conditioned upon Tenant's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure. Tenant shall indemnify and defend Landlord against any liability, claim, damage, loss, or penalty that may be threatened or may in fact arise from that failure during the period the failure is uncured;

(iv) Any of the following: A general assignment by Tenant for the benefit of Tenant's creditors; any voluntary filing, petition, or application by Tenant under any law relating to insolvency or bankruptcy, whether for a declaration of bankruptcy, a reorganization, an arrangement, or otherwise; the abandonment, vacation, or surrender of the Premises by Tenant without Landlord's prior written consent; or the dispossession of Tenant from the Premises (other than by Landlord) by process of law or otherwise;

(v) The appointment of a trustee or receiver to take possession of all or substantially all of Tenant's assets; or the attachment, execution or other judicial seizure of all or substantially all of Tenant's assets located at the Premises or of Tenant's interest in this Lease, unless the appointment or attachment, execution, or seizure is discharged within thirty (30) days; or the involuntary filing against Tenant, or any general partner of Tenant if Tenant is a partnership, of

(i) a petition to have Tenant, or any partner of Tenant if Tenant is a partnership, declared bankrupt, or

(ii) a petition for reorganization or arrangement of Tenant under any law relating to insolvency or bankruptcy, unless, in the case of any involuntary filing, it is dismissed within sixty (60) days;

(vi) The abandonment of the Premises by Tenant.

(b) Default by Landlord. The failure by Landlord to perform any of Landlord's obligations under this Lease, if the failure has continued for a period of ten (10) days after Tenant demands in writing that Landlord cure the failure. If, however, by its nature the failure cannot be cured within ten (10) days, Landlord may have a longer period as is necessary to cure

the failure, but this is conditioned upon Landlord's promptly commencing to cure within the ten (10) day period and thereafter diligently completing the cure.

### **Section 21. Remedies**

Upon the occurrence of an Event of Default under this Lease by Tenant, Landlord is entitled at Landlord's option to the following:

- (a) to reenter and take exclusive possession of the Premises;
- (b) to collect immediately the present value of the unpaid rent reserved for the entire term, or to collect each installment of rent as it becomes due;
- (c) to continue this Lease in force or to terminate it at any time;
- (d) to relet the Premises for any period on Tenant's account and at Tenant's expense, including real estate commissions actually paid, and to apply the proceeds received during the balance of Term to Tenant's continuing obligations under this Lease;
- (e) to take custody of all personal property on the Premises and to dispose of the personal property and to apply the proceeds from any sale of that property to Tenant's obligations under this Lease;
- (f) to recover from Tenant the damages described in Civil Code §§ 1951.2(a)(1), 1951.2(a)(2), 1951.2(a)(3), and 1951.2(a)(4), the provisions of which are expressly made a part of this Lease;
- (g) to restore the Premises to the same condition as received by Tenant, or to alter the Premises to make them suitable for reletting, all at Tenant's expense; and
- (h) to enforce by suit or otherwise all obligations of Tenant under this Lease and to recover from Tenant all remedies now or later allowed by law.

Any act that Landlord is entitled to do in exercise of Landlord's rights upon an Event of Default may be done at a time and in a manner deemed reasonable by Landlord in Landlord's sole discretion, and Tenant irrevocably authorizes Landlord to act in all things done on Tenant's account.

In the event of default by Landlord, Tenant shall have all rights and remedies available in law or in equity.

### **Section 22. Late Charge**

Tenant acknowledges that Tenant's failure to pay any installment of the Rent or any other amounts due under this Lease as and when due may cause Landlord to incur costs not contemplated by Landlord when entering into this Lease, the exact nature and amount of which would be extremely difficult and impracticable to ascertain. Accordingly, if any installment of the Rent or any other amount due under the Lease is not received by Landlord as and when due, then, without any notice to Tenant, Tenant shall pay to Landlord an amount equal to five percent

(5%) of the past due amount, which the parties agree represents a fair and reasonable estimate of the costs incurred by Landlord as a result of the late payment by Tenant.

### **Section 23. Default Interest**

If Tenant fails to pay any amount due under this Lease as and when due, that amount shall bear interest at the rate of ten percent (10%) from the due date until paid.

### **Section 24. Waiver of Breach**

Any express or implied waiver of a breach of any term of this Lease shall not constitute a waiver of any further breach of the same or other term of this Lease; and the acceptance of rent shall not constitute a waiver of any breach of any term of this Lease, except as to the payment of rent accepted.

### **Section 25. Estoppel Certificates**

At any time, with at least fifteen (15) days' prior notice by Landlord, Tenant shall execute, acknowledge, and deliver to Landlord a certificate certifying:

(a) the Commencement Date and the Term;

(b) the amount of the Rent;

(c) the dates to which rent and other charges have been paid;

(d) that this Lease is unmodified and in full force or, if there have been modifications, that this Lease is in full force, as modified, and stating the date and nature of each modification;

(e) that no notice has been received by Tenant of any default by Tenant that has not been cured except, if any exist, those defaults must be specified in the certificate, and Tenant must certify that no event has occurred that, but for the expiration of the applicable time period or the giving of notice or both, would constitute an Event of Default under this Lease;

(f) that no default of Landlord is claimed by Tenant, except, if any, those defaults must be specified in the certificate; and

(g) other matters as may be reasonably requested by Landlord.

Any certificate may be relied on by prospective purchasers, mortgagees, or beneficiaries under any deed of trust on the Premises or any part of it.

### **Section 26. Attorney Fees**

If any action at law or in equity is brought to recover any rent or other sums under this Lease, or for or on account of any breach of or to enforce or interpret any of the covenants, terms, or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party as part of prevailing party's costs reasonable attorney fees, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

### **Section 27. Potential Lease of Additional Space; Agreement Not to List Real Property**

Landlord is aware that Tenant is in need of a larger space totaling approximately 10,000 square feet in order to expand its operations. The Landlord and Tenant mutual desire to explore the feasibility of Tenant leasing additional portions of the Real Property and/or an adjacent building owned by Landlord. Both parties agree to be responsive, provide information in a timely fashion and work in good faith in order to evaluate the Real Property and adjacent property for its suitability for use by Tenant. In consideration for the Tenant entering into this Lease and agreeing to pay Rent in the amounts listed in Section 2(a), above, Landlord agrees not to list the Real Property for sale or rent for a period of six (6) months from the Effective Date so that the parties may determine if the space can accommodate the proposed expanded operations of Tenant.

### **Section 28. Authority**

If Tenant is a corporation, trust, or general or limited partnership, all individuals executing this Lease on behalf of that entity represent that they are authorized to execute and deliver this Lease on behalf of that entity. If Tenant is a corporation, trust, or partnership, Tenant shall, prior to the execution of this Lease, deliver to Landlord evidence of that authority and evidence of due formation, all satisfactory to Landlord. If Tenant is a partnership, Tenant shall furnish Landlord with a copy of Tenant's partnership agreement and with a certificate from Tenant's attorney, stating that the partnership agreement constitutes a correct copy of the existing partnership agreement of Tenant.

### **Section 29. Notices**

Except as otherwise expressly provided by law, all notices or other communications required or permitted by this Lease or by law to be served on or given to either party to this Lease by the other party shall be in writing and shall be deemed served when personally delivered to the party to whom they are directed, or in lieu of the personal service, upon deposit in the United States Mail, certified or registered mail, return receipt requested, postage prepaid, addressed to Tenant at:

Redwood Coast Energy Authority  
633 3<sup>rd</sup> Street  
Eureka, CA 95501

or to Landlord at:

John Winzler  


Either party, Tenant or Landlord, may change the address for the purpose of this Section by giving written notice of the change to the other party in the manner provided in this Section.

### **Section 30. Heirs and Successors**

This Lease shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of Landlord and Tenant.

### **Section 31. Partial Invalidity**

Should any provision of this Lease be held by a court of competent jurisdiction to be either invalid or unenforceable, the remaining provisions of this Lease shall remain in effect, unimpaired by the holding.

### **Section 32. Entire Agreement**

This instrument constitutes the sole agreement between Landlord and Tenant respecting the Premises, the leasing of the Premises to Tenant, and the specified lease term, and correctly sets forth the obligations of Landlord and Tenant. This Lease supersedes and all previous leases and agreements (both written and oral) between the Landlord and Tenant. Any agreement or representations respecting the Premises or their leasing by Landlord to Tenant not expressly set forth in this instrument are void.

### **Section 33. Time of Essence**

Time is of the essence in this Lease.

### **Section 34. Rent**

All monetary obligations of Tenant to Landlord under the Lease, including but not limited to the Rent shall be deemed rent.

### **Section 35. Amendments**

This Lease may be modified only in writing and only if signed by the parties at the time of the modification.

### **Section 36. Subordination**

(a) This Lease shall be subordinate to any ground lease, mortgage, deed of trust, or any other hypothecation for security now or later placed upon the Premises and to any advances made on the security of it or Landlord's interest in it, and to all renewals, modifications, consolidations, replacements, and extensions of it. However, if any mortgagee, trustee, or ground landlord elects to have this Lease prior to the lien of its mortgage or deed of trust or prior to its ground lease, and gives notice of that to Tenant, this Lease shall be deemed prior to the mortgage, deed of trust, or ground lease, whether this Lease is dated prior or subsequent to the date of the mortgage, deed of trust, or ground lease, or the date of recording of it. If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, Tenant shall attorn to the purchaser at the foreclosure sale or to the grantee under the deed in lieu of foreclosure. If any ground lease to which this Lease is subordinate is terminated, Tenant shall attorn to the ground landlord. Tenant agrees to execute any documents, in form and substance reasonably acceptable to Tenant, required to for the subordination, to make this Lease prior to the lien of any mortgage or deed of trust or ground lease, or to evidence the attornment.

(b) If any mortgage or deed of trust to which this Lease is subordinate is foreclosed or a deed in lieu of foreclosure is given to the mortgagee or beneficiary, or if any ground lease to which this Lease is subordinate is terminated, this Lease shall not be barred, terminated, cut off, or foreclosed. Neither shall the rights and possession of Tenant under this Lease be disturbed, if Tenant is not then in default in the payment of rental and other sums due under this Lease or otherwise in default under the terms of this Lease, and if Tenant attorns to the purchaser, grantee, or ground landlord as provided in Section 36(a) or, if requested, enters into a new lease for the balance of the term of this Lease on the same terms and provisions in this Lease. Tenant's covenant under Section 36(a) to subordinate this Lease to any ground lease, mortgage, deed of trust, or other hypothecation later executed is conditioned on each senior instrument containing the commitments specified in this subsection.

### **Section 37. Merger**

The voluntary or other surrender of this Lease by Tenant, or a mutual cancellation of the Lease, or a termination by Landlord, shall not work a merger, and shall, at the option of Landlord, terminate all or any existing subtenancies or may, at the option of Landlord, operate as an assignment to a Landlord of any of the subtenancies.

### **Section 38. Governing Law**

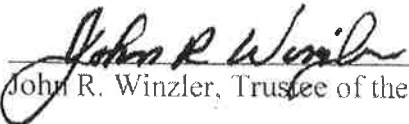
This Lease shall be governed by and construed in accordance with California law.


### **Section 39. Counterparts**

This Lease may be executed in separate counterparts, the executed parts of which shall be deemed to constitute one whole. Facsimile and electronically scanned or copied signatures shall be deemed to constitute an original signature.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first above written.

**"LANDLORD":**

  
John R. Winzler, Trustee of the John R. Winzler Revocable Trust

  
John R. Winzler, Trustee of the Flora N. Winzler Marital Trust

  
Reed A. Kelly

**"TENANT":**

**REDWOOD COAST ENERGY AUTHORITY, a local government Joint Powers Agency**

By: 

Name: MATTHEW MARSHALL

Its: EXECUTIVE DIRECTOR



**STAFF REPORT**  
**Agenda Item #3.6**

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Stephen Kullmann, Director of Demand Side Management
SUBJECT:	Database Development Contract Amendment

**SUMMARY**

On November 19, 2020, the RCEA Board of Directors authorized a contract with Aiqueous to provide development and operation services for a Salesforce-based database for Demand Side Management (DSM) activities for an amount not to exceed \$250,000. This database, called PowerPath, was to replace two outdated and unsupported platforms, BEAM and EAST, as well as multiple spreadsheets. RCEA entered a three-year contract with Aiqueous beginning January 2021.

In partnership with Aiqueous, we have created a robust tool that helps RCEA better serve its customers with innovative programs to save money and reduce greenhouse gas emissions while providing customer and project information that will be essential for designing, launching, and marketing new programs.

Through extensive needs assessment, development, and implementation phases we have refined and expanded our scope of work to include tracking of locally-funded rebates and projects and more comprehensive assessment data collection, which was not originally included in the contract. During the implementation process, DSM has expanded its suite of customer program offerings, which has required repeated adjustments to database capabilities.

Through the development phase, we have needed to dip into some of our funds set aside for ongoing support and licensing. RCEA staff worked closely with Aiqueous to identify costs and attribute them to expansion of scope, delays due to RCEA changes to requirements, or contractor cost overrun. Aiqueous has agreed to absorb cost associated with their overruns in the form of “gift hours” toward ongoing support. Staff and Aiqueous have instituted a detailed accounting system to prevent future cost overruns and hours spent will be specifically designated to tasks to avoid any spending out of category. To continue use and expansion of PowerPath, staff is recommending increasing the total not-to-exceed contract amount to \$334,000.

With the increased not-to-exceed amount, Aiqueous’ cost is still less than any of the competing bids received. Furthermore, ongoing support and license fees are significantly less than any competitors, which is important since staff anticipate using PowerPath long past 2023 in the development of RuralREN and other programs.

**FINANCIAL IMPACTS**

This action will increase the approved not-to-exceed amount by \$84,000 through December 2023. A portion of this cost will be covered by RCEA’s Program Administrator contract with the California



Public Utilities Commission. The increased contract cost was accounted for in the fiscal year 2022-2023 adopted budget.

## **RECOMMENDED ACTIONS**

Approve amendment to professional services agreement with Aiqueous for Demand-Side Management database development and operation services, increasing the not-to-exceed amount to \$334,000 through December 2023, and authorize the executive director to prepare and execute all applicable documents, including contract extension provisions.

## **ATTACHMENTS**

Amended professional services agreement and scope of work

**AMENDMENT NO. 1 TO  
AGREEMENT FOR PROFESSIONAL SERVICES  
BETWEEN THE REDWOOD COAST ENERGY AUTHORITY AND  
AIQUEOUS, LLC**

This is an amendment (“Amendment”) to that certain Agreement by and between the Redwood Coast Energy Authority (“RCEA”), a Joint Powers Authority, and Aiqueous, LLC (“CONSULTANT”), a limited liability company organized under the laws of Texas, entitled “Agreement For Professional Services Between The Redwood Coast Energy Authority And Aiqueous, LLC” dated January 1, 2021 (“Agreement”). This Amendment is effective as of August 1, 2022.

**RECITALS**

**WHEREAS**, RCEA has need for additional professional consulting services to support a comprehensive database solution to manage its Demand Side Management programs;

**WHEREAS**, the Parties wish to amend the Agreement to revise the term of the agreement accordingly with revisions to the compensation due.

**NOW, THEREFORE**, based on the conditions recited herein and made a material part hereof, the parties agree as follows:

**1. Compensation and Billing.** Section 3 shall be replaced in its entirety with the following:

“(a) Compensation. CONSULTANT shall be paid for Services, based on, and not to exceed, the schedule set forth in Exhibit A.

(b) Billing and Payment Terms. CONSULTANT shall submit invoices no more frequently than monthly and the final bill upon completion of Services. Invoices shall contain a time summary of work performed separated and tracked by budget task, and shall include detail for each person for whom charges are billed. Invoices for technology licenses will be sent when software licenses are activated. Invoices shall be sent to RCEA, 633 3rd Street, Eureka, CA 95501, Attention: Accounting, or emailed to [accounting@redwoodenergy.org](mailto:accounting@redwoodenergy.org). If RCEA disputes an invoice in good faith, it may withhold that portion so contested and shall pay the undisputed amount. RCEA may withhold all or any portion of the funds provided for by this Agreement in the event that the CONSULTANT has materially violated, or threatens to materially violate, any term, provision, or condition of this Agreement; or the CONSULTANT fails to maintain reasonable progress toward completion of the Services or any component thereof. RCEA shall make payment to CONSULTANT within thirty (30) working days after approval of the invoice.

(c) Taxes. Payments due to CONSULTANT under this Agreement shall be net of all sales, value-added, use or other taxes and obligations.”

**2. Amendment to Exhibit A.**

Exhibit A to the Agreement shall be replaced in its entirety with Exhibit A attached hereto.

**3. Ratification of Agreement.**

The terms and conditions of the Agreement, including all exhibits and attachments, are ratified in their entirety except to the extent inconsistent with the terms and provisions of this Amendment. In the event of such inconsistency, this Amendment shall control.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 1 on the date and year first herein above written.

**RCEA:**

**CONSULTANT:**

\_\_\_\_\_  
Matthew Marshall, Executive Director  
Redwood Coast Energy Authority

\_\_\_\_\_  
Jonathan Kleinman, CEO  
AIQUEOUS

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

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

## **EXHIBIT A: SCOPE OF SERVICES**

### **STAGE 1. KICKOFF AND DISCOVERY**

#### **Task 1.1: Kickoff Meetings**

AIQUEOUS and RCEA will schedule a defined set of meetings during which time AIQUEOUS will get a deeper dive into the current and near-future business processes, system architectures, tracking and reporting requirements, and legacy data migration. AIQUEOUS will also request the gathering of all program forms and manuals, business processes, work instructions legacy data sets, and information architecture necessary for systems to be integrated as part of the Discovery process.

#### **Task 1.2: Needs Assessment Expansion**

AIQUEOUS will review and build on the Desired Database User Functions (AIQUEOUS Proposal Appendix 8) with RCEA, working to define, prioritize, and create a list of desired user functions. AIQUEOUS will work with RCEA to determine at what stages implementation of those functions will occur. The JIRA system will be used to continually define, modify, prioritize, and schedule the desired functions.

#### **Task 1.3: Establish Acceptance Criteria**

AIQUEOUS and RCEA will establish the acceptance criteria for the platform and the expected performance of the platform to inform the quality assurance (QA) process to be implemented during User Acceptance Testing.

#### **Task 1.4: Project Plan**

Following Discovery, AIQUEOUS will provide a detailed Project Plan for RCEA review to capture tasks and subtasks along with sequences and timelines. Any adjustments to the Scope of Services will be captured in an addendum to the Professional Services Agreement before proceeding to implementation.

#### ***Stage 1 Key Deliverables***

##### **From AIQUEOUS:**

1. Written summaries from Discovery Meetings
2. Requirements Gathering Documentation stored in a common drive
3. Documentation of communications: meeting notes stored in common drive
4. Provision of central requirements tracking system – JIRA
5. Creation of individual tickets for development in JIRA
6. Documentation of data security certifications and protocols

##### **From RCEA:**

7. Scheduling and securing attendance at Kickoff and discovery meetings by appropriate RCEA staff and team representatives
8. Review and edits to written notes from Discovery meetings
9. Provide documentation of RCEA data security requirements
10. Identification of any RCEA third-party users whose input needs to be considered for POWERPATH
11. Identification and training of primary POC users for JIRA Service Desk

### **STAGE 2. INITIAL CONFIGURATION**

#### **Task 2.1: Configuration**

AIQUEOUS will begin by deploying POWERPATH, the online application, document and signature solutions according to the architecture defined in Stage 1 to present a functionally viable product to RCEA team for feedback and refinement. AIQUEOUS will conduct a gap analysis and prioritize the buildout. JIRA Service Desk will serve as the tool for prioritization and structuring the spring schedule.

## **Task 2.2: Implementation Sprints**

AIQUEOUS follows a 2-Week Deployment Schedule and Process using Sprint Cycles. POWERPATH will be installed on all copies of the RCEA environment, including Partial, Developer and Full Sandboxes and the Production environments. Configuration will start in a Partial Copy and/or Development Sandbox.

## **2.3 Data migration**

AIQUEOUS will work with RCEA to map and migrate legacy program data into POWERPATH. AIQUEOUS will review the submitted data fields and propose an architecture in ECOiQ that can scalably capture those data and accommodate future data sources and review that architecture with RCEA. AIQUEOUS will work with RCEA to create a test data migration and integration deployment in a POWERPATH Sandbox for Final Configuration, user acceptance testing (UAT) and training. AIQUEOUS will work proactively with RCEA to identify data architecture and quality issues and communicate those via updates with the project team.

## **STAGE 2 KEY DELIVERABLES**

### **For AIQUEOUS:**

1. Host a regular meeting cadence to manage project
2. Initial build-out in sprints
3. Integration Test Plan for legacy data migration
4. Host walk-through of initial build outs / configuration
5. Documentation of communications: meeting notes stored in shared location
6. Data Dictionary – documents to provide field mapping, translations, and clarification between all systems
7. Ongoing requirements documentation through JIRA Service Desk

### **For RCEA:**

8. Sign off on priority schedule and Backlog items
9. Sign-off on data mapping and upload process
10. Attendance by appropriate staff of walk-through of initial buildouts

## **STAGE 3. FINAL CONFIGURATION**

## **Task 3.1: Finalize Configuration**

AIQUEOUS will focus on building dashboards, reports, and approval processes to further meet RCEA's expectations. The AIQUEOUS project team will also build online applications, communication email templates, program eligibility validation rules, and any program-specific workflows.

## **Task 3.2: Refine Roles and Permissions**

AIQUEOUS will refine roles and permissions across all users and ensure that appropriate Salesforce Best Practices are implemented consistent with RCEA Organizational Practices.

## **STAGE 3 KEY DELIVERABLES**

### **For AIQUEOUS:**

1. Ongoing regular meeting cadence to manage project
2. Final build-out in sprints
3. Configuration of online applications, communication email templates, program eligibility, validation roles, and any program-specific workflows
4. Scripts and feedback mechanism for mini UAT on dashboards, reports, and workflows
5. Ongoing documentation of communications; meeting notes stored in shared location
6. Ongoing requirements documentation through JIRA Service Desk

**For RCEA:**

7. Test data for upload from relevant data systems
8. Pre-UAT participation and sign-off

**STAGE 4. USER ACCEPTANCE TESTING****4.1: User Acceptance Testing (UAT)**

AIQUEOUS will work with the RCEA Admins to coordinate user acceptance testing by appropriate RCEA Staff. Through the process of UAT, AIQUEOUS will capture and manage any errors or inconsistencies through tickets created in JIRA Service Desk. Tickets created during UAT will be informed, qualified, and prioritized, in terms of urgency and priority. The AIQUEOUS team will secure the RCEA Administrators' "acceptance" of Ticket resolution according to their urgency/priority as well as "acceptance" of each business process.

**Task 4.2: Quality Assurance**

AIQUEOUS will work with RCEA to establish the different scripts to be tested for business rules, workflows, savings calculations, UI / UX and reporting. In parallel, AIQUEOUS will develop and implement tests on the data integration and perform "smoke / sanity" testing on key participant and user access points. AIQUEOUS will provide a QA Report showing test execution and bug status.

**Task 4.3: Live Testing**

Once all testing is completed and passed by both AIQUEOUS and Client within the Full Copy Sandbox, the AIQUEOUS team will provide access for all additional users. Appropriate security and permission sets will be established prior to granting access.

**STAGE 4 KEY DELIVERABLES****For AIQUEOUS:**

1. UAT Test Plan
2. Use cases (scripts) and feedback mechanism for full, end-to-end UAT
3. Beta Tester training and documentation: i.e. Word / Excel / Google doc instructions, recorded webinars and feedback templates
4. Ongoing documentation of communications: meeting notes stored in shared location
5. Ongoing requirements documentation through JIRA Service Desk

**For RCEA:**

6. Confirmation/acceptance of UAT schedule
7. Secure RCEA resources to participate in UAT according to schedule
8. UAT feedback informed by SLA
9. Sign-off on UAT

**STAGE 5. TRAINING****Task 5.1: Training**

AIQUEOUS will work with the RCEA Administrators to schedule and coordinate training for various RCEA Project Managers and other staff. Training will take place remotely via recorded sessions. The AIQUEOUS Team will begin by providing an overview of the core POWERPATH functionality to all RCEA platform users. Following this, tailored training and user guides will be provided for specific RCEA groups of users to cover system functionality for their roles/responsibilities. Optional one-on-one sessions with staff can also be scheduled during the on-site training week.

### **Task 5.2: Training Materials**

All training materials – recordings, PowerPoints, and PDFs – are provided and will continue to be available to RCEA staff through JIRA Service Desk. Additionally, internal staff can enhance their understanding of the Salesforce platform using Salesforce’s Trailhead website.

### **STAGE 5 KEY DELIVERABLES**

#### **For AIQUEOUS:**

1. Training materials
2. User guides
3. In person training sessions
4. Recorded posting of training sessions

#### **For RCEA**

5. Acceptance of Training Schedule
6. Securing RCEA staff participation at training sessions

### **STAGE 6. STABILIZATION & NEXT 90**

#### **Task 6.1: Stabilization & Next 90**

The first six months after the launch will be considered a “Stabilization and Next 90 Period” for the platform. AIQUEOUS will transition to open status meetings with RCEA staff to ensure the platform continues to meet RCEA’s expectations and business requirements. Through the stabilization and next 90 period and into ongoing support, RCEA staff will also be able to submit tickets through the JIRA online ticketing system, and the AIQUEOUS Team will work to resolve these issues in a timely manner based on the priority and urgency level of each ticket. The tasks associated with next 90 work will be agreed upon by both parties and tracked separately in the JIRA online ticketing system. After the stabilization and next 90 period which will occur when all identified next 90 tasks are complete, the product will be considered complete but RCEA reserves the right to request additional program modules as needed during the ongoing support phase.

#### **Task 6.2: Design Document**

Once AIQUEOUS and RCEA have determined that the Stabilization period has ended, AIQUEOUS will provide a High-Level Design Document – a design report that articulates the technical configurations made on POWERPATH to incorporate business processes and integrations.

#### **Task 6.3: Data Backup**

AIQUEOUS will use Salesforce’s native capability to create a weekly backup of RCEA’s POWERPATH data. Salesforce creates a data backup which will be downloaded onto RCEA’s secure environment.

### **STAGE 6 KEY DELIVERABLES**

#### **For AIQUEOUS:**

1. High Level Design Document
2. Host a regular meeting cadence through stabilization and then support

#### **For RCEA:**

3. Final sign-off and acceptance of platform following stabilization
4. Ongoing meetings with AIQUEOUS support and maintenance team

## **STAGE 7. ONGOING SUPPORT**

### **Task 7.1: Incident Management and Feature or Service Request Management**

AIQUEOUS will track incident management and feature or service request management through the JIRA online ticketing system. Incident management will be addressed according to assigned Priority and Urgency levels as defined in the Service Level Agreement. Incident management tickets will be categorized as “support”, “next 90”, “bug fix”, “gift hours”, or other established categories as applicable and agreed upon. Future feature additions or refinements will be prioritized and bundled for development for staged Releases. Each feature request will include a level of effort estimate, will be approved by RCEA, tested by AIQUEOUS and RCEA in the Sandbox, and migrated to production environment, as updated versions of RCEA’s configured POWERPATH.

Ongoing and maintenance support has hours caps, pursuant to the Budget table below.

### **Task 7.2: Ongoing Training**

RCEA will have the responsibility to designate “super users” of the POWERPATH platform from among RCEA staff. These super users’ responsibility will be to receive initial training on releases and features and to deliver trainings to RCEA staff in the event of new releases, new features, and staff turnover and onboarding.

For new releases, AIQUEOUS will develop training materials, walk the super users through the training, and update the training materials in response to feedback. RCEA super users will then train RCEA staff on the new releases.

## **STAGE 7 KEY DELIVERABLES**

### **For AIQUEOUS:**

1. Maintain and manage Online Ticketing System
2. Provide Training to super users

### **For RCEA:**

3. Designate “Super users” for future training

## **STAGE 8. PROGRAM CLOSEOUT**

### **Task 8.1 Winding Down**

Upon a program sunset, RCEA will work with AIQUEOUS to migrate the data into a desired format for archiving.

### **Task 8.2 Physical Delete**

AIQUEOUS will then submit a ticket to Salesforce on RCEA’s behalf to purge specific program records. The data will be fully removed from POWERPATH.

## **STAGE 8 KEY DELIVERABLES**

### **For AIQUEOUS:**

1. Migrate data or provide training to migrate data into desired format for archiving
2. Submit ticket to Salesforce for Physical Delete

### **For RCEA:**

3. Provide information about the desired format for archiving



## COMPENSATION

CONSULTANT will perform the above services on a time and materials basis for a not-to-exceed amount of \$334,400.00. Time and licensing fees and will be billed at the fixed rates displayed in the fee schedule according to the budget table below.

Billable Item	Description	Rate	Quantity	Not to Exceed Amounts
A. Stages 1-5 services	Labor	Project Team: \$150/hour Engineering: \$135/hour	625.5 hours	\$93,750
B. Stage 6 services	Stabilization Labor	\$150/hour	245 hours	\$36,750
	"Next 90" Labor	\$150/hour	144 hours	\$21,600
C. Stage 7: Aug. – Dec. 2022 services	Labor	\$150/hour	18 hours/month (\$2,700/month)	\$13,500
D. Stage 7: Jan-Dec 2023 services	Labor	\$150/hour	18 hours/month (\$2,700/month)	\$32,400
E. Stage 8 services & misc. additional services and fees	Labor	\$150/hour for labor and fees at actual cost	n/a	\$14,580
F. Licensing	POWERPATH user licenses	Annual fees for Lite and power users	approx. 5 Super licenses & 20 Lite licenses	\$101,785
	FormStack Go Online form fees	Annual fee	2.66 years	\$19,635
<b>Total Not To Exceed Amount:</b>				<b>\$334,000</b>



## **STAFF REPORT**

### **Agenda Item # 3.7**

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Lexie Perez, Grants & Contracts Manager
SUBJECT:	Master Services Agreement Amendment No.1 with Schatz Energy Research Center

### **SUMMARY**

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On February 25, 2021, the RCEA Board of Directors authorized a Master Services Agreement with Schatz Energy Research Center for programmatic research and development services that require professional expertise for an amount not to exceed \$100,000 through June 20, 2022. The agreement was structured to allow staff to develop task orders with individual scopes of work, bypassing the need for individual contracts and associated staff and legal expenses.

To date, RCEA has utilized the MSA for a task order to develop a set of construction plans for ground mounted solar PV arrays for the Mobile Home Solar Project. Staff in the CCE and Infrastructure departments have expressed a need for similar programmatic research and development services over the next two fiscal years that would fit well under the purpose and task order structure of this MSA. Staff is recommending extending the MSA through June 2025 and increasing the not-to-exceed agreement amount to \$250,000.

### **ALIGNMENT WITH RCEA'S STRATEGIC PLAN**

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Although task orders will vary in scope, the Schatz Energy Research Center has been an essential local research and development partner to RCEA since inception, specifically in the areas of alternative fuels for transportation and renewable energy. This MSA is meant to aide RCEA in utilizing expert consultant support to realize the ambitious goals set in the RePower plan.

### **EQUITY IMPACTS**

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Not applicable.

### **FINANCIAL IMPACT**

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This action will increase the approved not-to-exceed amount by \$150,000 through June 2025. It is anticipated that most task orders will fall under the Professional and Program Services, Program Related Services Contracts budget category which totals \$290,000 for fiscal year 2022-2023. Task orders may also fall under the Airport Microgrid operations and maintenance budget (\$75,800) or require new funding. In the case that a task order is not funded by the

adopted budget and will result in more than a 5% increase to a budget category, staff will ask the Board to consider a budget adjustment before approving it, per RCEA's Financial Management Policy.

#### **STAFF RECOMMENDATION**

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Approve amendment to master services agreement with Schatz Energy Research Center for programmatic research and development technical support services, increasing the not-to-exceed amount from \$100,000 to \$250,000 through June 2025, and authorize the Executive Director to prepare and execute all applicable documents.

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#### **ATTACHMENTS**

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1. Amendment No. 1 to Master Services Agreement Between The Redwood Coast Energy Authority and Humboldt State University Sponsored Programs Foundation / Schatz Energy Research Center

**Amendment No. 1 to  
Master Services Agreement  
Between The Redwood Coast Energy Authority  
and**

**Humboldt State University Sponsored Programs Foundation / Schatz Energy Research Center**

This is an amendment (“Amendment”) to that certain Agreement by and between the Redwood Coast Energy Authority (“RCEA”), a Joint Powers Authority, and Humboldt State University Sponsored Programs Foundation / Schatz Energy Research Center, (“CONSULTANT”), a 501(c)(3) not-for-profit corporation that is an auxiliary organization to Humboldt State University entitled “Master Services Agreement between The Redwood Coast Energy Authority and Humboldt State University Sponsored Programs Foundation / Schatz Energy Research Center,” dated March 30, 2021 (“Agreement”). This Amendment is effective as of July 1, 2022.

**RECITALS**

**WHEREAS**, RCEA has need for continued technical support services related to programmatic research and development.

**WHEREAS**, the Parties wish to amend the Agreement to revise the term of the agreement accordingly.

**NOW, THEREFORE**, based on the conditions recited herein and made a material part hereof, the parties agree as follows:

- 1. Term of Agreement.** The section titled “Term of Agreement” shall be replaced in its entirety with the following:

“The term of this agreement shall be for a period commencing on March 30, 2021 through June 30, 2025 unless terminated earlier or extended, as provided for herein. This Agreement may be renewed for additional 12-month periods upon the express written agreement of the parties. Period of service for each Task Order to be further defined in Exhibit A, as amended.”

- 2. Compensation and Payment.** The section titled “Compensation and Payment” shall be replaced in its entirety with the following:

“RCEA shall pay Consultant on a time and materials basis for services rendered under each Task Order, as defined in Exhibit A, with a combined maximum amount not to exceed \$250,000. Consultant shall invoice RCEA per the budget and payment schedule under each Task Order. Non-labor expenses shall be invoiced at actual cost and labor expenses shall be invoiced per Exhibit B “Schatz Energy Research Center – Hourly Rates.” Consultant shall invoice no more frequently than monthly. Invoices shall be itemized and include backup documentation of non-labor expenses and a time summary of work performed by each person for whom charges are billed. Invoices shall be sent to RCEA, 633 3rd Street, Eureka, CA 95501, Attention: Accounting, or emailed to ap@redwoodenergy.org. If RCEA disputes an invoice, it may withhold that portion so contested and shall pay the undisputed amount. RCEA may withhold all or any portion of the funds provided for by this Agreement in the event that the Consultant has materially violated, or threatens to materially violate, any term, provision, or condition of this Agreement; or the Consultant fails to maintain reasonable progress toward completion of the Services or any component thereof. Payment will be made to Consultant within thirty (30) calendar days of receipt of invoice and associated deliverables, as applicable.”

**3. Schatz Energy Research Center – Hourly Rates – Exhibit B**

Exhibit B to the Agreement shall be replaced in its entirety with Exhibit B attached hereto.

**4. Ratification of Agreement.**

The terms and conditions of the Agreement, including all exhibits and attachments, are ratified in their entirety except to the extent inconsistent with the terms and provisions of this Amendment. In the event of such inconsistency, this Amendment shall control.

**IN WITNESS WHEREOF**, the parties hereto have executed this Amendment No. 1 on the date and year first herein above written.

**RCEA:**

**CONSULTANT:**

\_\_\_\_\_  
Matthew Marshall, Executive Director  
Redwood Coast Energy Authority

\_\_\_\_\_  
Kacie Flynn, Interim Executive Director  
HSU Sponsored

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

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

## SCHATZ ENERGY RESEARCH CENTER – HOURLY RATES – EXHIBIT B

<b>Classification</b>	<b>FY20 7/1/20- 6/30/21</b>	<b>FY21 7/1/21- 6/30/22</b>	<b>FY 22 7/1/22- 6/30/23</b>	<b>FY23 7/1/23- 6/30/24</b>	<b>FY24 7/1/24- 6/30/25</b>
Director	\$176	\$185	\$193	\$203	\$213
Operations Director, Principal Engineer, Principal Energy Analyst, Faculty Scientist, Research Scientist, Faculty Research Associate	\$126	\$132	\$138	\$145	\$152
Senior Research Engineer, Senior Energy Analyst	\$113	\$119	\$124	\$130	\$137
Research Engineer, Energy Analyst, Project Manager, Comms & Outreach Manager	\$102	\$107	\$112	\$117	\$123
Engineering Technician, Research Assistant, Office Manager	\$63	\$66	\$69	\$73	\$77
Administrative Assistant	\$50	\$53	\$55	\$58	\$61
Student Assistant	\$38	\$40	\$42	\$44	\$46

*\*Rates increase 5% annually on July 1.*



## STAFF REPORT Agenda Item # 3.8

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Stephen Kullmann, Director of Demand Side Management Mike Avcollie, Manager of Demand Side Management
SUBJECT:	Update on RCEA's Mobile Home Solar Program and Authorize Staff to Develop and Execute Contract with Bear River Band of the Rohnerville Rancheria

### BACKGROUND

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In March 2019, as part of a Board approved process, RCEA staff received eight program concepts through a Citizen Sourcing effort. Among those concepts was a program to advance solar installations at mobile and manufactured homes in Humboldt County. In April 2019, RCEA's Community Advisory Committee (CAC) scored the proposals and made a recommendation to RCEA's Board of Directors to advance the **Mobile Home Solar program**.

In May 2019, RCEA's Board of Directors approved \$50,000 in funding to implement the Mobile Home Solar program. RCEA's Demand Side Management (DSM) staff has taken the lead in developing and implementing the program since Board approval. Original objectives included identifying and overcoming some of the barriers to solar adoption for residents of manufactured and mobile homes and to develop an "off-the-shelf" pole-mounted solar product that could make pole mounted solar installations more affordable and accessible to these residents.

The proposal recommended working with and learning from New Mexico Energy Conservation and Management (ECM) Division staff whose work inspired the program proposal. In January 2020, in the early stages of program development, RCEA staff connected with New Mexico ECM staff and was able to share documents and learn from their experiences implementing a similar program.

In February of 2021, RCEA's Board approved a Master Services Agreement (MSA) with the Schatz Energy Research Center (SERC). The first task order was dedicated to the Mobile Home Solar Program. SERC's task was to develop a set of plans for a pole-mounted solar PV array that will be permittable by all local jurisdictions and the California Department of Housing and Community Development for use on mobile and manufactured homes. SERC also provided an Engineer's Estimate for the total cost of installation of one unit, including all labor and materials, of \$13,500.00.

RCEA staff is pleased to report that this first programmatic objective was achieved, and in collaboration with SERC has developed an "open source" plan set that meets the objectives

above and can, and has been, made available to any customer, housing advocate or public agency in Humboldt County.

RCEA's approach throughout has been to find community partners to advance this program among housing agencies, local governments, and tribes. In this process staff has explored working relationships with Redwood Community Action Agency, Home Contained (a non-profit working to advance tiny homes built of shipping containers and provide job training for tribal and at-risk youth) and the Bear River Band of the Rohnerville Rancheria. One result of this work has been to share the plan set described above, at no cost, to Home Contained for one of their pilot projects.

In April 2022, RCEA entered into a Memorandum of Understanding with the Bear River Band of the Rohnerville Rancheria (TRIBE). The areas of cooperation under the MOU are:

- To work together in identifying and assessing potential sites at the TRIBE to ensure they meet the site qualifications for the Mobile Home Solar Program funding.
- To continue to identify and assess potential installation sites until it is agreed by both Parties that a reasonable number of sites have been identified and verified to ensure programmatic success if any one site is not viable for installation.
- RCEA will make available to the TRIBE the engineered plan set developed by RCEA for use in permitting and construction of any future installations.
- Upon successful site identification and verification, to enter into an agreement to provide the TRIBE with the funding to implement the Mobile Home Solar Program and maintain ownership and responsibility of all installations.

Through the MOU with Bear River Band of the Rohnerville Rancheria, RCEA and tribal staff have identified 2 initial sites suitable for implementing pole mounted solar arrays in accordance with the plans and specifications developed with SERC, one at a tribal residence and one at the TRIBE'S Social Services building.

## **Next Steps**

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RCEA staff can continue this process by developing and executing a Contract with Bear River Band of the Rohnerville Rancheria (TRIBE) wherein RCEA would:

- Award \$13,500.00 per installed system (in accordance with the Engineer's Estimate) with a 10% contingency for verifiable cost overruns, for a total, Not-to-Exceed amount of \$29,700.00.
- Ensure that the units are installed at the agreed upon sites
- Ensure that all work done under the Contract would be at the applicable prevailing wages
- RCEA would receive the following prior to paying reimbursement for the systems installed
  - Copies of the completed permits, signed by the Authority Having Jurisdiction,
  - Copies of any invoices for materials and labor
  - Copies of any "as built" drawings
  - Copies of the interconnection agreement and permission to operate documents from PG&E



- Copies of installation manuals and warranty information for all equipment installed
- Copies of any photos taken during and/or after system installation
- Links and log in credentials for system monitoring platforms if available
- Upon completion of the two installations, RCEA staff will prepare a final report on the Mobile Home Solar project, outlining challenges and successes. The completed plan set will be publicly available at no charge in order to help facilitate additional mobile home and other low-income solar installations.

## **ALIGNMENT WITH [RCEA'S STRATEGIC PLAN](#)**

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**1.4.1 Support Renewable Energy Permitting.** Support the County in streamlining permitting for renewable energy generation.

**2.4.1 Support Customer Installation of Distributed Generation.** Support the deployment of behind-the-meter grid-connected renewable energy and storage systems as core strategies toward achieving environmental, economic, and community stability/resilience goals.

## **EQUITY IMPACTS**

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The collaboration with Bear River Band of the Rohnerville Rancheria advances RCEA's External Partnerships and Programs initiatives specific to Tribal Engagement: "RCEA staff will continue and expand efforts to identify opportunities to collaborate with local Tribes as partners on sustainable energy initiatives."

The program, by its very nature of serving residents of mobile and manufactured homes, seeks to serve low-income residents that are not normally served by existing solar programs and thus advances RCEA goal to address "diversity, equity and inclusion in program selection design and implementation."

## **FINANCIAL IMPACT**

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This action will award \$29,700 of the \$50,000 in funding approved by the Board to implement the Mobile Home Solar program. This funding is included in the fiscal year 2022-23 adopted budget.

## **RECOMMENDED ACTIONS**

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Authorize staff to develop and execute a contract with Bear River Band of the Rohnerville Rancheria for the reimbursement of installing mobile home solar at two agreed upon locations not to exceed a total project cost of \$29,700.00, pending final contract review and approval by RCEA general counsel prior to execution.

## **ATTACHMENTS**

1. Fully executed Memorandum of Understanding between Bear River Band of the Rohnerville Rancheria and RCEA for mobile home solar planning

**MEMORANDUM OF UNDERSTANDING BETWEEN  
BEAR RIVER BAND OF THE ROHNERVILLE RANCHERIA AND  
REDWOOD COAST ENERGY AUTHORITY  
FOR MOBILE HOME SOLAR PROGRAM PLANNING**

This MEMORANDUM OF UNDERSTANDING ("MOU") is entered into this 19 day of April, 2022 and sets forth the understanding between Bear River Band of the Rohnerville Rancheria ("TRIBE") and Redwood Coast Energy Authority ("RCEA") concerning planning activities in preparation for Mobile Home Solar program implementation. TRIBE and RCEA are hereinafter also referred to collectively as the "Parties" and individually as a "Party".

**The Parties:**

1. Bear River Band of the Rohnerville Rancheria is a Federally-Recognized Native American Tribe of Mattole, Bear River and Wiyot people in Humboldt County, California.
2. Redwood Coast Energy Authority is a California joint powers authority with member agencies consisting of the Cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna, Rio Dell and Trinidad, the County of Humboldt, and the Humboldt Bay Municipal Water District. A purpose of RCEA 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 for the benefit of RCEA's member agencies and their constituents.

**Background:**

1. The Mobile Home Solar Program ("Program") is a citizen-sourced program that was approved by RCEA's Board of Directors in May of 2019. RCEA staff was directed to explore ways to deliver low-cost solar installations for low- and moderate-income residents living in mobile or manufactured housing that cannot be served by existing low-income solar programs.
2. Staff realized that the goals of the Program could be met by working with a local tribe or public housing agency as a partner organization to implement this Program. RCEA staff has been working with the TRIBE to provide technical assistance and energy advisor services since September of 2020 and believes that partnering with the TRIBE would benefit tribal residents who are RCEA customers and would further the goals of the Program.
3. RCEA has worked with staff from the Environment and Natural Resource department of the TRIBE to provide technical support on energy related projects including energy efficiency, renewable energy generation and battery energy storage.
4. The TRIBE has demonstrated interest in the Program and a willingness to identify suitable sites for project installation and be an implementer of project installations.

**Anticipated Areas of Cooperation:**

The Parties intend to cooperate and work together in good faith for the purpose of researching and planning for the Program in the TRIBE territory or for citizens of the TRIBE residing off of Tribe property, to be implemented in the future under a separate contract. The anticipated areas of cooperation under this MOU are the following:

- To work together in identifying and assessing potential sites at the TRIBE to ensure they meet the site qualifications for the Mobile Home Solar Program funding.
- To continue to identify and assess potential installation sites until it is agreed by both Parties that a reasonable number of sites have been identified and verified to ensure programmatic success if any one site is not viable for installation.
- RCEA will make available to the TRIBE the engineered plan set developed by RCEA for use in permitting and construction of any future installations.
- Upon successful site identification and verification, to enter into an agreement to provide the TRIBE with the funding to implement the Mobile Home Solar Program and maintain ownership and responsibility of all installations.

**General Provisions:**


Either party may terminate this MOU at any time upon 30 days' written notice to other party.

This MOU does not establish a joint venture, partnership, or business unit of any kind between the Parties, nor does it necessarily create a financial obligation on behalf of any Party.

This MOU may be executed in counterparts, each of which is an original and all of which constitute one and the same instrument. Delivery of an executed counterpart of this MOU by e-mail will be deemed as effective as delivery of an originally executed counterpart. This MOU may be executed electronically through a verified signature third party application such as DocuSign.


**IN WITNESS WHEREOF**, each Party has caused this MOU to be duly signed and delivered, effective as of the date of the last Party signing.

**Redwood Coast Energy Authority**

Signature:   
*Eileen Verbeck, acting Executive Director*

Date: 4/20/2022

**Bear River Band of the Rohnerville Rancheria**

Signature:   
Name: Josefina Cortez  
Title: Chairperson

Date: 4/19/2022



# REDWOOD COAST Energy Authority

## STAFF REPORT Agenda Item # 3.9

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Dana Boudreau, Director of Infrastructure Planning & Operations
SUBJECT:	EV Charging Network: CALeVIP H Street Project Update

### BACKGROUND

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In May 2019 with the application for state California's Electric Vehicle Infrastructure Project funding (CALeVIP) Phase 2, Redwood Coast Energy Authority was awarded funds to add three new electric vehicle charging locations. All three sites were selected and in October 2020 funds were reserved for the approved locations. During the October 2020 meeting the Board authorized staff to solicit bids and secure construction of electric vehicle charging stations at Eureka 3<sup>rd</sup> and H Streets, Arcata Community Center and Fortuna City Hall for a total budget not to exceed \$176,000.

Two of the three projects have been completed and include electric vehicle charging stations at Arcata Community Center and Fortuna City Hall. The remaining site is the 3<sup>rd</sup> and H Street location in Old Town Eureka, for which \$26,000 in CALeVIP funding has been reserved.

### SUMMARY

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The City of Eureka is working with RCEA to proceed with the installation at the 3<sup>rd</sup> and H Street Eureka site. RCEA is responsible for providing the hardware and procuring the electrical services required for the project, and the City of Eureka has agreed to complete any other site modification that may be required. RCEA has already purchased electric vehicle charging equipment for this installation. RCEA seeks to solicit bids from qualified contractors to install the new hardware and perform necessary electrical work.

### FINANCIAL IMPACT

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In October 2020, the Board approved a \$50,000 in general funds and \$126,000 of CALeVIP grant funds to install charging stations at the three new locations. After two installations, the remaining balance of the approved general funds is \$21,785.

Unforeseen increases in the cost of material and labor have impacted the overall budget for the final installation of electric vehicle charging equipment at 3<sup>rd</sup> and H Street. Staff estimates that the total project cost for 3<sup>rd</sup> and H Street to exceed the project budget approved by the Board in

October 2020 by \$8,214.12. Staff estimates the total project cost of the 3<sup>rd</sup> and H Street installation will not exceed \$56,000, \$26,000 of which will be funded by CALeVIP.

The total cost and off-setting grant funds for the 3<sup>rd</sup> and H Street project were included in the adopted FY 2022/2023 budget.

#### **STAFF RECOMMENDATION**

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Authorize staff to solicit bids for electrical portions of construction work at the Eureka 3<sup>rd</sup> and H Streets Electric Vehicle Charging Site for a budget not to exceed \$56,000 and authorize Executive Director to execute all applicable documents with the lowest responsive bidder.



# REDWOOD COAST Energy Authority

## STAFF REPORT Agenda Item # 3.10

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Lori Biondini, Business Planning and Finance Director
SUBJECT:	Fiscal Year 2021-2022 Q4 Budget Update

### SUMMARY

The June 2022 Profit and Loss Budget versus Actual report presented this month reflects RCEA's draft final revenue and expenses for the 2021-2022 fiscal year. Discussions about the proposed 2022-2023 fiscal year budget in May and June included an overview of RCEA's expected net income for this year, and no significant changes have occurred since.

Final net ordinary income reflects a difference of -1.5% from the budget, or about \$79,000 less. Total ordinary income and expenses are 7% and 6.5% above their respective budgets. As a reminder, Other Income - debt proceeds of \$6.6M from a USDA Rural Utilities Services guaranteed loan- has been received and is included in RCEA's Balance Sheet as a liability (Long Term Debt), with the associated microgrid asset recorded as Construction in Progress. Considering wholesale power supply expenses were 18% above the amount in the budget, a net difference of -1.5% in budget versus actuals reflects an appropriate electricity rate increase and conservative spending.

### REVENUE

- Revenue from government agencies remains low. This budget line item includes the RCEA-administered California Public Utilities Commission efficiency program as well as a Zero-emissions Vehicles grant from the California Energy Commission (CEC) which are both invoiced on a reimbursement basis. The global pandemic continued to be a barrier to customer uptake of energy efficiency upgrades and rebates, however, the Demand Side Management team is continuing to ramp up efforts and the number of rebates issued to customers and contractors increased towards the end of the fiscal year.
- Revenue from program related sales (RCEA's electric vehicle charging network and feed-in-tariff applications, as well as any customer co-pays for efficiency projects) was about 15% less than budgeted but still covered charging station electricity and maintenance costs.
- Revenue from non-government agencies was about 10% less than budgeted. This budget line item includes the remainder of grant funds from Sponsored Programs Foundation/Schatz Energy Research Center for the Airport Microgrid that has not been invoiced due to delays in Pacific Gas and Electric's project closeout activities, including remedying system billing errors and refunding costs now covered by the Community Microgrid Enablement Program (CMEP) tariff. The amount yet to be invoice is included as revenue in the current fiscal year budget.
- Revenue from electricity sales was 8% above the budgeted amount which reflects an increase in electricity rates that was effective in March 2022.

## EXPENSES

- Wholesale power supply expenses, as have been previously discussed in Risk Management and budget-setting meetings, have been very high and volatile since last year. Total expense was about 18%, or about \$7.3M above budget.
- Personnel expenses total about 15% less than budgeted. Staff vacancies account for most of the savings.
- The facilities and operations budget category includes capital expenses associated with the airport microgrid, which were moved to the Balance Sheet and recorded as a capital asset mid-year. The remaining budget of about \$510,000 was overspent by \$150,000 due to overages associated with the development of a program database and associated employee training, and property and liability insurance coverage for the microgrid components.
- Communications and outreach expenses were about 16% below budget.
- Travel and meetings expenses continued to be very low this fiscal year.
- Total expenses for professional and program services were just under 3% over budget. Procurement credit fees paid to The Energy Authority were twice the amount budgeted, or about \$335,000 above budget, due to RCEA's average daily bank account balances being lower than expected for much of the year. RCEA's contract with The Energy Authority includes a fee schedule that reflects their level of risk, with higher fees associated with higher risk. As RCEA paid a large cash security deposit for the development of the Sandrini Solar project, and covered rising energy costs without raising customer rates, bank account balances were depleted. However, Program Related Services Contracts and Accounting services expenses came in under budget, resulting in a net overage of only \$75,000 for the budget category.
- The bulk of the incentives and rebates line item directly correlates with energy efficiency program revenues, but also includes some CCE-funded customer rebate programs, all of which have been slow to roll out and attract customers but are steadily increasing.
- The non-operating costs category includes payments towards the USDA loan, however due to the delays in receiving the loan funds, RCEA has only made interest payments thus far and won't begin making principal and interest payments until quarter two of the current fiscal year, which is reflected in the current year's budget.

## RECOMMENDED ACTIONS

Accept Quarterly Budget Report (Q4).

## ATTACHMENTS

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1. June 2022 Profit and Loss Actual versus Budget
2. June 2022 Balance Sheet

**Redwood Coast Energy Authority**  
**Profit & Loss Budget vs. Actual**  
July 2021 through June 2022

	<u>Jul '21 - Jun 22</u>	<u>Budget</u>	<u>% of Budget</u>
Ordinary Income/Expense			
Income			
5 REVENUE EARNED			
Total 5000 · Revenue - government agencies	600,610.95	911,000.00	65.93%
Total 5100 · Revenue - program related sales	26,707.22	31,000.00	86.15%
Total 5400 · Revenue-nongovernment agencies	1,240,862.28	1,377,873.00	90.06%
Total 5500 · Revenue - Electricity Sales	48,401,198.04	44,645,168.00	108.41%
Total 5 REVENUE EARNED	50,269,378.49	46,965,041.00	107.04%
Total Income	50,269,378.49	46,965,041.00	107.04%
Gross Profit	50,269,378.49	46,965,041.00	107.04%
Expense			
Total 6 WHOLESALE POWER SUPPLY	48,421,662.68	41,084,582.00	117.86%
Total 7 PERSONNEL EXPENSES	2,956,994.26	3,517,800.00	84.06%
Total 8.1 FACILITIES AND OPERATIONS	662,015.95	3,313,389.00	19.98%
Total 8.2 COMMUNICATIONS AND OUTREACH	99,433.47	118,570.00	83.86%
Total 8.3 TRAVEL AND MEETINGS	6,037.18	44,300.00	13.63%
8.4 PROFESSIONAL & PROGRAM SRVS			
8400 · Regulatory	197,311.90	180,000.00	109.62%
8410 · Contracts - Program Related Ser	120,907.63	393,000.00	30.77%
8420 · Accounting	24,039.50	55,000.00	43.71%
8430 · Legal	152,349.95	153,000.00	99.58%
8450 · Wholesale Services - TEA	662,188.82	639,088.00	103.62%
8460 · Procurement Credit - TEA	675,497.20	340,032.00	198.66%
8470 · Data Management - Calpine	738,225.60	738,144.00	100.01%
Total 8.4 PROFESSIONAL & PROGRAM SRVS	2,570,520.60	2,498,264.00	102.89%
Total 8.5 PROGRAM EXPENSES	618,528.91	631,393.00	97.96%
Total 8.6 INCENTIVES & REBATES	121,879.69	601,000.00	20.28%
Total 9 NON OPERATING COSTS	149,684.16	414,320.00	36.13%
Total Expense	55,606,756.90	52,223,618.00	106.48%
Net Ordinary Income	-5,337,378.41	-5,258,577.00	101.5%
Other Income/Expense			
Total Other Income	0.00	6,600,000.00	0.0%
Net Other Income	0.00	6,600,000.00	0.0%
Net Income	<u>-5,337,378.41</u>	<u>1,341,423.00</u>	<u>-397.89%</u>



# Redwood Coast Energy Authority

## Balance Sheet

As of June 30, 2022

	Jun 30, 22
<b>ASSETS</b>	
<b>Current Assets</b>	
<b>Checking/Savings</b>	
1010 · Petty Cash	300.00
1050 · GRANTS & DONATIONS 3840	15,995.51
1060 · Umpqua Checking Acct 0560	97,255.66
1071 · Umpqua Deposit Cntrl Acct 8215	3,752,720.54
1075 · Umpqua Reserve Account 2300	99,942.09
1076 · First Republic Bank - 4999	62,263.94
8413 · COUNTY TREASURY 3839	5,329.01
<b>Total Checking/Savings</b>	<b>4,033,806.75</b>
<b>Total Accounts Receivable</b>	<b>104,155.10</b>
<b>Other Current Assets</b>	
1101 · Allowance for Doubtful Accounts	-2,373,914.14
1103 · Accounts Receivable-Other	11,962,650.13
1120 · Inventory Asset	21,715.00
1202 · Prepaid Expenses	-15,364.56
1205 · Prepaid Insurance	32,212.29
1499 · Undeposited Funds	1,403.00
<b>Total Other Current Assets</b>	<b>9,628,701.72</b>
<b>Total Current Assets</b>	<b>13,766,663.57</b>
<b>Total Fixed Assets</b>	<b>8,678,528.16</b>
<b>Other Assets</b>	
1700 · Retained Deposits	4,293,600.00
<b>Total Other Assets</b>	<b>4,293,600.00</b>
<b>TOTAL ASSETS</b>	<b>26,738,791.73</b>
<b>LIABILITIES &amp; EQUITY</b>	
<b>Liabilities</b>	
<b>Current Liabilities</b>	
Total Accounts Payable	4,009,242.33
Total Credit Cards	6,811.36
<b>Other Current Liabilities</b>	
2002 · Deposits Refundable	195,840.00
2013 · Unearned Revenue - PA 2020-2023	988,348.00
2050 · Liabilities	
2056 · BLR Short Term Loan	2,000,000.00
2057 · MCE Short Term Loan	4,000,000.00
<b>Total 2050 · Liabilities</b>	<b>6,000,000.00</b>
<b>Total 2100 · Payroll Liabilities</b>	<b>360,592.89</b>
<b>Total Other Current Liabilities</b>	<b>7,544,780.89</b>
<b>Total Current Liabilities</b>	<b>11,560,834.58</b>
<b>Long Term Liabilities</b>	
2700 · Long-Term Debt	
2704 · USDA Loan	6,287,592.00
<b>Total 2700 · Long-Term Debt</b>	<b>6,287,592.00</b>
<b>Total Long Term Liabilities</b>	<b>6,287,592.00</b>
<b>Total Liabilities</b>	<b>17,848,426.58</b>
<b>Equity</b>	
2320 · Investment in Capital Assets	215,489.00
3900 · Fund Balance	14,012,254.56
Net Income	-5,337,378.41
<b>Total Equity</b>	<b>8,890,365.15</b>
<b>TOTAL LIABILITIES &amp; EQUITY</b>	<b>26,738,791.73</b>



## STAFF REPORT Agenda Item # 5.1

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Richard Engel, Director of Power Resources Jocelyn Gwynn, Senior Power Resources Manager
SUBJECT:	2021 Power Source Disclosure and Power Content Label Attestation

### BACKGROUND

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Each year, the Board is presented with RCEA's power mix from the previous year for submission to the California Energy Commission (CEC) as part of their Power Source Disclosure (PSD) Program. Staff submitted the 2021 PSD Report (Exhibit I to Attachment A) to the CEC by the June 1 due date. The report shows RCEA's annual energy purchases from each generating facility from last year, and percentages of each resource type in the REpower and REpower+ products. Additionally, the PSD includes the greenhouse gas emission intensity of each product.

Staff have also prepared the 2021 Power Content Label (PCL) that is to be mailed out to RCEA customers and submitted to the CEC by September 30. The PCL (Exhibit II to Attachment A) includes information from RCEA's PSD and compares it to the state's overall power mix.

### SUMMARY

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Staff ask that the Board adopt a resolution (Attachment A) formally approving and attesting to the information in the Power Source Disclosure and Power Content Label, as part of the documentation required by the CEC for compliance with the PSD Program.

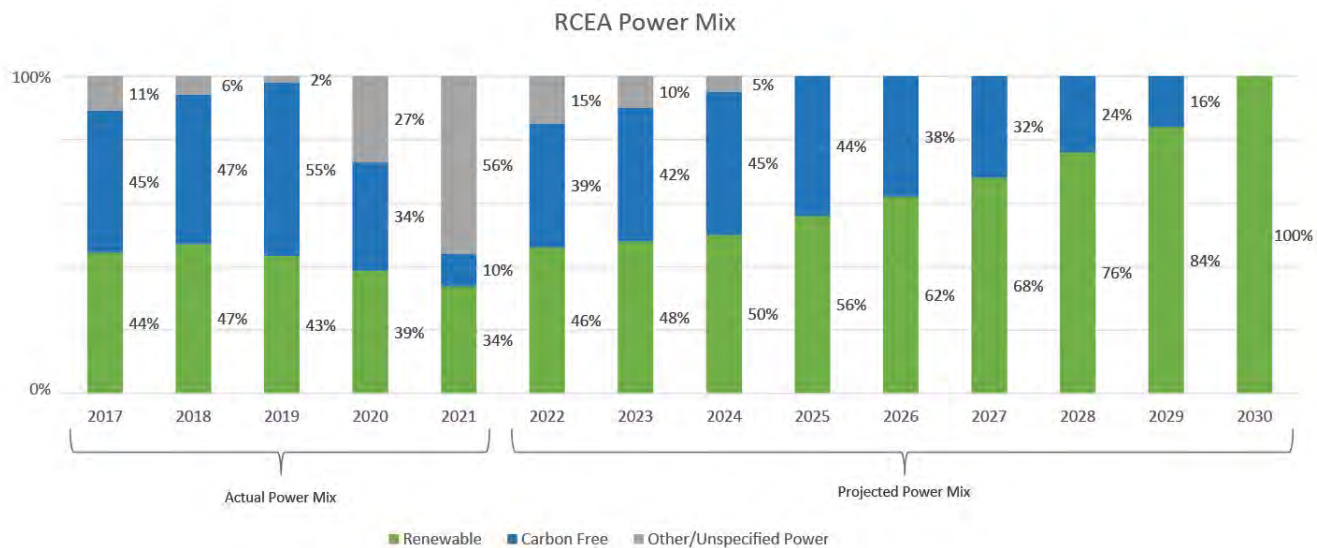
As has been discussed previously with the Board, 2021 was a challenging year for RCEA financially as well as for regional clean power procurement. Tighter renewable energy markets and increased wholesale prices for energy, carbon-free attributes and renewable energy certificates resulted in a narrowed set of procurement options for RCEA.

At its November 2020 meeting, with information from staff and consultants forecasting the challenges to come in 2021, the Board approved with only one dissenting vote a plan to "...reduce procurement of renewable and carbon-free power to as low as minimum compliance levels and reduce the customer rate discount to as little as 0.5% below PG&E rates." As a result, the 2021 REpower mix provided to most of RCEA's customers included lower amounts of renewable and carbon free energy and higher amounts of unspecified power, with associated higher emissions, compared with previous years.

The premium REpower+ mix that is chosen by about 1.3% of RCEA's customers and makes up about 1.0% of our load is 100% renewable as always. Its portfolio is made up of equal amounts of solar, wind, and small hydro power. Normally this mix would also be 100% carbon-free, however, in 2021 the solar energy included in the mix was from an out-of-state product content category 2 (PCC2)

renewable source. PCC2 renewable energy is less expensive than in-state PCC1 renewable energy but does not enjoy the same rigorous chain of custody accounting associated with PCC1 products. Consequently, the California Energy Commission attributes some emissions to the unspecified energy assumed to “firm and shape” certain imported PCC2 energy products. This resulted in some emissions associated with RCEA’s 2021 REpower+ mix. In 2022 and future years, staff will ensure that only emissions-free PCC1 energy is used to make up the REpower+ 100% renewable portfolio.

It is important to keep in mind that 2021 and to a lesser extent 2020 were necessarily a one-time deviation from RCEA’s clean power trajectory that began with the launch of our CCE program in 2017. With nearly all 2022 procurement completed, RCEA is getting firmly back on track this year to resume our path toward a portfolio made up of entirely renewable or carbon-free resources for all customers by 2025, and a 100% renewable portfolio by 2030, as shown in the figure below.



**ALIGNMENT WITH [RCEA’S STRATEGIC PLAN](#)**

Not applicable.

**EQUITY IMPACTS**

Not applicable.

**FINANCIAL IMPACT**

None.

**STAFF RECOMMENDATION**

Adopt Resolution 2022-7 Approving and Attesting to the Veracity of RCEA’s 2021 Power Source Disclosure Report and Power Content Label.

## **ATTACHMENTS**

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Attachment A: Resolution 2022-7

Exhibit I: RCEA 2021 Power Source Disclosure Report

Exhibit II: RCEA 2021 Power Content Label

**RESOLUTION NO. 2022-7**

**A RESOLUTION OF THE BOARD OF DIRECTORS  
OF THE REDWOOD COAST ENERGY AUTHORITY  
APPROVING AND ATTESTING TO THE VERACITY  
OF THE 2021 POWER SOURCE DISCLOSURE REPORT  
AND POWER CONTENT LABEL**

**WHEREAS**, Senate Bill 1305 was adopted in 1997, establishing an Electricity Generation Source Disclosure (also known as Power Source Disclosure or “PSD”) Program, which requires retail suppliers of electricity to annually submit a PSD Report to the California Energy Commission (“CEC”) and to annually mail a Power Content Label (“PCL”) to their electricity customers; and

**WHEREAS**, Redwood Coast Energy Authority (“RCEA”) is a retail supplier of electricity as defined by the PSD Program (Ca. Code of Regs., Title 20, Section 1391(r)); and

**WHEREAS**, the PSD Regulation requiring an annual audit by an outside certified public accountant of the information in the annual PSD Report, was updated effective May 4, 2020, with an exemption from this requirement for retail suppliers that are public agencies providing electric services, provided that the governing body of the public agency approves at a public meeting the submission to the CEC of an attestation of the veracity of the annual report for each electricity product; and

**WHEREAS**, RCEA is a public agency providing electric services; and

**WHEREAS**, the CEC exemption therefore allows the RCEA Board of Directors to approve an attestation of the veracity of RCEA’s 2021 PSD Annual Report and PCL provided hereto as Exhibits I and II.

**NOW, THEREFORE, IT IS HEREBY DETERMINED AND ORDERED** that the Board:

1. Approves the submission to the CEC of the attached 2021 Power Source Disclosure Report and Power Content Label for RCEA’s REpower and REpower+ electricity products; and
2. Attests to the veracity of the information presented in the Power Source Disclosure and Power Content Label.

Adopted this 25th day of August 2022.

ATTEST:

\_\_\_\_\_  
Stephen Avis, RCEA Board Chair

\_\_\_\_\_  
Lori Taketa, Clerk of the Board

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

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

## Attachment A

### CLERK'S CERTIFICATE

I hereby certify that the foregoing is a true and correct copy of Resolution 2022-7 passed and adopted at a regular meeting of the Redwood Coast Energy Authority, County of Humboldt, State of California, held on the 25th day of August 2022, by the following vote:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

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Clerk of the Board, Redwood Coast Energy Authority

## 2021 POWER SOURCE DISCLOSURE ANNUAL REPORT For the Year Ending December 31, 2021

Retail suppliers are required to use the posted template and are not allowed to make edits to this format. Please complete all requested information.

### GENERAL INSTRUCTIONS

RETAIL SUPPLIER NAME	
Redwood Coast Energy Authority	
ELECTRICITY PORTFOLIO NAME	
REpower	
CONTACT INFORMATION	
NAME	Colin Mateer
TITLE	Power Resources Specialist
MAILING ADDRESS	633 3rd St.
CITY, STATE, ZIP	Eureka, CA 95501
PHONE	(707) 269-1700
EMAIL	<a href="mailto:cmateer@redwoodenergy.org">cmateer@redwoodenergy.org</a>
WEBSITE URL FOR PCL POSTING	<a href="https://redwoodenergy.org/power-resources/">https://redwoodenergy.org/power-resources/</a>

Submit the Annual Report and signed Attestation in PDF format with the Excel version of the Annual Report to [PSDprogram@energy.ca.gov](mailto:PSDprogram@energy.ca.gov). Remember to complete the Retail Supplier Name, Electricity Portfolio Name, and contact information above, and submit separate reports and attestations for each additional portfolio if multiple were offered in the previous year.

**NOTE:** Information submitted in this report is not automatically held confidential. If your company wishes the information submitted to be considered confidential an authorized representative must submit an application for confidential designation (CEC-13), which can be found on the California Energy Commissions's website at <https://www.energy.ca.gov/about/divisions-and-offices/chief-counsels-office>.

If you have questions, contact Power Source Disclosure (PSD) staff at [PSDprogram@energy.ca.gov](mailto:PSDprogram@energy.ca.gov) or (916) 805-7439.

**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT**  
**SCHEDULE 1: PROCUREMENTS AND RETAIL SALES**  
**For the Year Ending December 31, 2021**  
**Redwood Coast Energy Authority**  
**REpower**

Instructions: Enter information about power procurements underlying this electricity portfolio for which your company is filing the Annual Report. Insert additional rows as needed. All fields in white should be filled out. **Fields in grey auto-populate as needed and should not be filled out.** For EIA IDs for unspecified power or specified system mixes from asset-controlling suppliers, enter "Unspecified Power", "BPA", or "Tacoma Power" as applicable. For specified procurements of ACS power, use the ACS Procurement Calculator to calculate the resource breakdown comprising the ACS system mix. **Procurements of unspecified power must not be entered as line items below; unspecified power will be calculated automatically in cell N9.** Unbundled RECs must not be entered on Schedule 1; these products must be entered on Schedule 2. At the bottom portion of the schedule, provide the other electricity end-uses that are not retail sales including, but not limited to transmission and distribution losses or municipal street lighting. Amounts should be in megawatt-hours.

Retail Sales (MWh)	<b>645,333</b>
Net Specified Procurement (MWh)	281,310
Unspecified Power (MWh)	364,023
Procurement to be adjusted	-
Net Specified Natural Gas	-
Net Specified Coal & Other Fossil Fuels	-
Net Specified Nuclear, Large Hydro, Renewables, and ACS Power	281,310
GHG Emissions (excludes grandfathered emissions)	180,046
GHG Emissions Intensity (in MT CO <sub>2</sub> e/MWh)	0.2790

DIRECTLY DELIVERED RENEWABLES													
Facility Name	Fuel Type	State or Province	WREGIS ID	RPS ID	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO <sub>2</sub> e/MWh)	GHG Emissions (in MT CO <sub>2</sub> e)	N/A
Biglow Canyon Wind Farm Phase 2	Wind	OR	W1268	63055A		56485	3,515	-	3,515	3,515	-	-	
Snow Mtn Hydro (Cove)	Eligible hydro	CA	W674	60178A		10707	550	-	550	550	-	-	
Pacific Lumber Co. - Pacific Lumber Co. Unit 1	Biomass & biowa	CA	W645	60083A		50049	23,061	-	23,061	23,061	0.0067	154	
Pacific Lumber Co. - Pacific Lumber Co. Unit 2	Biomass & biowa	CA	W790	60083A		50049	38,435	-	38,435	38,435	0.0067	257	
Pacific Lumber Co. - Pacific Lumber Co. Unit 3	Biomass & biowa	CA	W791	60083A		50049	38,435	-	38,435	38,435	0.0067	257	
Biglow Canyon Wind Farm Phase 3	Wind	OR	W1588	63056A		56485	1,040	-	1,040	1,040	-	-	
Tucannon River Wind Farm	Wind	WA	W4482	63027A		58571	53,491	-	53,491	53,491	-	-	
							-	-	-	-	#N/A	-	
FIRMED-AND-SHAPED IMPORTS													
Facility Name	Fuel Type	State or Province	WREGIS ID	RPS ID	EIA ID of REC Source	EIA ID of Substitute Power	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO <sub>2</sub> e/MWh)	GHG Emissions (in MT CO <sub>2</sub> e)	Eligible for Grandfathered Emissions?
Biglow Canyon Wind Farm Phase 3	Wind	OR	W1588	63056A	56485	Unspecified	39,500	-	39,500	39,500	0.4280	16,906	
Biglow Canyon Wind Farm Phase 2	Wind	OR	W1268	63055A	56485	Unspecified	15,000	-	15,000	15,000	0.4280	6,420	
Airport Solar	Solar	OR	W7750	64268A	62560	Unspecified	586	-	586	586	0.4280	251	
							-	-	-	-	#N/A	-	
SPECIFIED NON-RENEWABLE PROCUREMENTS													
Facility Name	Fuel Type	State or Province	N/A	N/A	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO <sub>2</sub> e/MWh)	GHG Emissions (in MT CO <sub>2</sub> e)	N/A
Balch #1 PH	Large hydro	CA				217	319	-	319	319	-	-	
Balch #2 PH	Large hydro	CA				218	953	-	953	953	-	-	
Belden	Large hydro	CA				219	1,203	-	1,203	1,203	-	-	
Bucks Creek	Large hydro	CA				220	164	-	164	164	-	-	
Butt Valley	Large hydro	CA				221	156	-	156	156	-	-	
Caribou 1	Large hydro	CA				222	293	-	293	293	-	-	
Caribou 2	Large hydro	CA				223	1,333	-	1,333	1,333	-	-	
Cresta	Large hydro	CA				231	1,066	-	1,066	1,066	-	-	
Drum #1	Large hydro	CA				235	375	-	375	375	-	-	
Drum #2	Large hydro	CA				236	1,312	-	1,312	1,312	-	-	
Electra	Large hydro	CA				239	1,410	-	1,410	1,410	-	-	
Haas	Large hydro	CA				240	761	-	761	761	-	-	
James B Black	Large hydro	CA				249	2,983	-	2,983	2,983	-	-	
Kerckhoff #2 PH	Large hydro	CA				682	1,014	-	1,014	1,014	-	-	
Kings River	Large hydro	CA				254	260	-	260	260	-	-	
Pit 1	Large hydro	CA				265	1,079	-	1,079	1,079	-	-	
Pit 3	Large hydro	CA				266	1,449	-	1,449	1,449	-	-	
Pit 4	Large hydro	CA				267	1,579	-	1,579	1,579	-	-	
Pit 5	Large hydro	CA				268	3,776	-	3,776	3,776	-	-	
Pit 6	Large hydro	CA				269	1,875	-	1,875	1,875	-	-	
Pit 7	Large hydro	CA				270	2,303	-	2,303	2,303	-	-	
Poe	Large hydro	CA				272	1,958	-	1,958	1,958	-	-	
Rock Creek	Large hydro	CA				275	1,756	-	1,756	1,756	-	-	
Salt Springs	Large hydro	CA				279	570	-	570	570	-	-	
Stanislaus	Large hydro	CA				285	1,172	-	1,172	1,172	-	-	



Tiger Creek	Large hydro	CA				287	1,156	-	1,156	1,156	-	-	
South Feather Water and Power Agency - Forbestown	Large hydro	CA				417	331	-	331	331	-	-	
South Feather Water and Power Agency - Woodleaf	Large hydro	CA				419	537	-	537	537	-	-	
NID-Chicago Park	Large hydro	CA				412	553	-	553	553	-	-	
CHPD - Rocky Reach & Rock Island	Large hydro	WA				3883	8,000	-	8,000	8,000	-	-	
GCPD - Priest Rapids & Wanapum	Large hydro	WA				3887	26,000	-	26,000	26,000	-	-	
									-	-	#N/A		
PROCUREMENTS FROM ASSET-CONTROLLING SUPPLIERS													
Facility Name	Fuel Type	N/A	N/A	N/A	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO <sub>2</sub> e/MWh)	GHG Emissions (in MT CO <sub>2</sub> e)	N/A
										-	#N/A		
										-	#N/A		
										-	#N/A		
										-	#N/A		
END USES OTHER THAN RETAIL SALES	MWh												

**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT**  
**SCHEDULE 2: RETIRED UNBUNDLED RECS**  
**For the Year Ending December 31, 2021**  
**Redwood Coast Energy Authority**  
**REpower**

INSTRUCTIONS: Enter information about retired unbundled RECs associated with this electricity portfolio. Insert additional rows as needed. All fields in white should be filled out. Fields in grey auto-populate as needed and should not be filled out.

[illegible]

**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT**  
**SCHEDULE 3: POWER CONTENT LABEL DATA**  
**For the Year Ending December 31, 2021**  
**Redwood Coast Energy Authority**  
**REpower**

Instructions: No data input is needed on this schedule. Retail suppliers should use these auto-populated calculations to fill out their Power Content Labels.

	Adjusted Net Procured (MWh)	Percent of Total Retail Sales
<b>Renewable Procurements</b>	213,614	33.1%
Biomass & Biowaste	99,931	15.5%
Geothermal	-	0.0%
Eligible Hydroelectric	550	0.1%
Solar	586	0.1%
Wind	112,546	17.4%
Coal	-	0.0%
Large Hydroelectric	67,696	10.5%
Natural gas	-	0.0%
Nuclear	-	0.0%
Other	-	0.0%
Unspecified Power	364,023	56.4%
<b>Total</b>	<b>645,333</b>	<b>100.0%</b>

<b>Total Retail Sales (MWh)</b>	<b>645,333</b>
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<b>GHG Emissions Intensity (converted to lbs CO<sub>2</sub>e/MWh)</b>	<b>615</b>
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<b>Percentage of Retail Sales Covered by Retired Unbundled RECs</b>	<b>0.0%</b>
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**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT  
ATTESTATION FORM**

**For the Year Ending December 31, 2021**

**Redwood Coast Energy Authority**

**REpower**

I, Colin Mateer, Power Resources Specialist, declare under penalty of perjury, that the statements contained in this report including Schedules 1, 2, and 3 are true and correct and that I, as an authorized agent of Redwood Coast Energy Authority, have authority to submit this report on the company's behalf. I further declare that the megawatt-hours claimed as specified purchases as shown in these Schedules were, to the best of my knowledge, sold once and only once to retail customers.

**Name: Colin Mateer**

**Representing (Retail Supplier): Redwood Coast Energy Authority**

**Signature: /s/ Colin Mateer**

**Dated: 6/1/2022**

**Executed at: Arcata, CA**

## 2021 POWER SOURCE DISCLOSURE ANNUAL REPORT For the Year Ending December 31, 2021

Retail suppliers are required to use the posted template and are not allowed to make edits to this format. Please complete all requested information.

### GENERAL INSTRUCTIONS

RETAIL SUPPLIER NAME	
Redwood Coast Energy Authority	
ELECTRICITY PORTFOLIO NAME	
REpower+	
CONTACT INFORMATION	
NAME	Colin Mateer
TITLE	Power Resources Specialist
MAILING ADDRESS	633 3rd St.
CITY, STATE, ZIP	Eureka, CA 95501
PHONE	(707) 269-1700
EMAIL	<a href="mailto:cmateer@redwoodenergy.org">cmateer@redwoodenergy.org</a>
WEBSITE URL FOR PCL POSTING	<a href="https://redwoodenergy.org/power-resources/">https://redwoodenergy.org/power-resources/</a>

Submit the Annual Report and signed Attestation in PDF format with the Excel version of the Annual Report to [PSDprogram@energy.ca.gov](mailto:PSDprogram@energy.ca.gov). Remember to complete the Retail Supplier Name, Electricity Portfolio Name, and contact information above, and submit separate reports and attestations for each additional portfolio if multiple were offered in the previous year.

**NOTE:** Information submitted in this report is not automatically held confidential. If your company wishes the information submitted to be considered confidential an authorized representative must submit an application for confidential designation (CEC-13), which can be found on the California Energy Commissions's website at <https://www.energy.ca.gov/about/divisions-and-offices/chief-counsels-office>.

If you have questions, contact Power Source Disclosure (PSD) staff at [PSDprogram@energy.ca.gov](mailto:PSDprogram@energy.ca.gov) or (916) 805-7439.

**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT**  
**SCHEDULE 1: PROCUREMENTS AND RETAIL SALES**  
**For the Year Ending December 31, 2021**  
**Redwood Coast Energy Authority**  
**REpower+**

Instructions: Enter information about power procurements underlying this electricity portfolio for which your company is filing the Annual Report. Insert additional rows as needed. All fields in white should be filled out. **Fields in grey auto-populate as needed and should not be filled out.** For EIA IDs for unspecified power or specified system mixes from asset-controlling suppliers, enter "Unspecified Power", "BPA", or "Tacoma Power" as applicable. For specified procurements of ACS power, use the ACS Procurement Calculator to calculate the resource breakdown comprising the ACS system mix. **Procurements of unspecified power must not be entered as line items below; unspecified power will be calculated automatically in cell N9.** Unbundled RECs must not be entered on Schedule 1; these products must be entered on Schedule 2. At the bottom portion of the schedule, provide the other electricity end-uses that are not retail sales including, but not limited to transmission and distribution losses or municipal street lighting. Amounts should be in megawatt-hours.

Retail Sales (MWh)	5,807
Net Specified Procurement (MWh)	5,807
Unspecified Power (MWh)	-
Procurement to be adjusted	-
Net Specified Natural Gas	-
Net Specified Coal & Other Fossil Fuels	-
Net Specified Nuclear, Large Hydro, Renewables, and ACS Power	5,807
GHG Emissions (excludes grandfathered emissions)	819
GHG Emissions Intensity (in MT CO <sub>2</sub> e/MWh)	0.1410

DIRECTLY DELIVERED RENEWABLES														
Facility Name	Fuel Type	State or Province	WREGIS ID	RPS ID	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO <sub>2</sub> e/MWh)	GHG Emissions (in MT CO <sub>2</sub> e)	N/A	
Biglow Canyon Wind Farm Phase 2	Wind	OR	W1268	63055A		56485	1,936		1,936	1,936	-	-		
Snow Mtn Hydro (Cove)	Eligible hydro	CA	W674	60178A		10707	1,936		1,936	1,936	-	-		
Redwood Coast Airport Microgrid	Solar	CA	W12135	64947A		P365	22	-	22	22	-	-		
									-	-	#N/A			
FIRMED-AND-SHAPED IMPORTS														
Facility Name	Fuel Type	State or Province	WREGIS ID	RPS ID	EIA ID of REC Source	EIA ID of Substitute Power	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO <sub>2</sub> e/MWh)	GHG Emissions (in MT CO <sub>2</sub> e)	Eligible for Grandfathered Emissions?	
Airport Solar	Solar	OR	W7750	64268A	62560	Unspecified	1,914		1,914	1,914	0.4280	819		
									-	-	#N/A			
SPECIFIED NON-RENEWABLE PROCUREMENTS														
Facility Name	Fuel Type	State or Province	N/A	N/A	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO <sub>2</sub> e/MWh)	GHG Emissions (in MT CO <sub>2</sub> e)	N/A	
									-	-	#N/A			
									-	-	#N/A			
PROCUREMENTS FROM ASSET-CONTROLLING SUPPLIERS														
Facility Name	Fuel Type	N/A	N/A	N/A	N/A	EIA ID	Gross MWh Procured	MWh Resold	Net MWh Procured	Adjusted Net MWh Procured	GHG Emissions Factor (in MT CO <sub>2</sub> e/MWh)	GHG Emissions (in MT CO <sub>2</sub> e)	N/A	
										-	#N/A			
										-	#N/A			
END USES OTHER THAN RETAIL SALES	MWh													

<b>Total Retired Unbundled RECs</b>	-
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96

**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT**  
**SCHEDULE 3: POWER CONTENT LABEL DATA**  
**For the Year Ending December 31, 2021**  
**Redwood Coast Energy Authority**  
**REpower+**

Instructions: No data input is needed on this schedule. Retail suppliers should use these auto-populated calculations to fill out their Power Content Labels.

	Adjusted Net Procured (MWh)	Percent of Total Retail Sales
<b>Renewable Procurements</b>	5,807	100.0%
Biomass & Biowaste	-	0.0%
Geothermal	-	0.0%
Eligible Hydroelectric	1,936	33.3%
Solar	1,936	33.3%
Wind	1,936	33.3%
Coal	-	0.0%
Large Hydroelectric	-	0.0%
Natural gas	-	0.0%
Nuclear	-	0.0%
Other	-	0.0%
Unspecified Power	-	0.0%
<b>Total</b>	<b>5,807</b>	<b>100.0%</b>

<b>Total Retail Sales (MWh)</b>	<b>5,807</b>
---------------------------------	--------------

<b>GHG Emissions Intensity (converted to lbs CO<sub>2</sub>e/MWh)</b>	<b>311</b>
---	------------

<b>Percentage of Retail Sales Covered by Retired Unbundled RECs</b>	<b>0.0%</b>
---	-------------



**2021 POWER SOURCE DISCLOSURE ANNUAL REPORT  
ATTESTATION FORM**

**For the Year Ending December 31, 2021**

**Redwood Coast Energy Authority**

**REpower+**

I, Colin Mateer, Power Resources Specialist, declare under penalty of perjury, that the statements contained in this report including Schedules 1, 2, and 3 are true and correct and that I, as an authorized agent of Redwood Coast Energy Authority, have authority to submit this report on the company's behalf. I further declare that the megawatt-hours claimed as specified purchases as shown in these Schedules were, to the best of my knowledge, sold once and only once to retail customers.

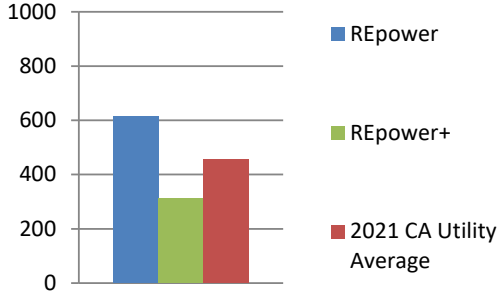
**Name: Colin Mateer**

**Representing (Retail Supplier): Redwood Coast Energy Authority**

**Signature: /s/ Colin Mateer**

**Dated: 6/1/2022**

**Executed at: Arcata, CA**

2021 POWER CONTENT LABEL						
Redwood Coast Energy Authority						
<a href="https://redwoodenergy.org/power-resources/">https://redwoodenergy.org/power-resources/</a>						
Greenhouse Gas Emissions Intensity (lbs CO <sub>2</sub> e/MWh)			Energy Resources	REpower	REpower+	2021 CA Power Mix
REpower	REpower+	2021 CA Utility Average	Eligible Renewable <sup>1</sup>	33.1%	100.0%	33.6%
615	311	456	Biomass & Biowaste	15.5%	0.0%	2.3%
			Geothermal	0.0%	0.0%	4.8%
			Eligible Hydroelectric	0.1%	33.3%	1.0%
			Solar	0.1%	33.3%	14.2%
			Wind	17.4%	33.3%	11.4%
			Coal	0.0%	0.0%	3.0%
			Large Hydroelectric	10.5%	0.0%	9.2%
			Natural Gas	0.0%	0.0%	37.9%
			Nuclear	0.0%	0.0%	9.3%
			Other	0.0%	0.0%	0.2%
			Unspecified Power <sup>2</sup>	56.4%	0.0%	6.8%
			<b>TOTAL</b>	<b>100.0%</b>	<b>100.0%</b>	<b>100.0%</b>
Percentage of Retail Sales Covered by Retired Unbundled RECs <sup>3</sup> :				0%	0%	
<sup>1</sup> The eligible renewable percentage above does not reflect RPS compliance, which is determined using a different methodology. <sup>2</sup> Unspecified power is electricity that has been purchased through open market transactions and is not traceable to a specific generation source. <sup>3</sup> Renewable energy credits (RECs) are tracking instruments issued for renewable generation. Unbundled renewable energy credits (RECs) represent renewable generation that was not delivered to serve retail sales. Unbundled RECs are not reflected in the power mix or GHG emissions intensities above.						
For specific information about this electricity portfolio, contact:			Redwood Coast Energy Authority (707) 269-1700			
For general information about the Power Content Label, visit:			<a href="http://www.energy.ca.gov/pcl/">http://www.energy.ca.gov/pcl/</a>			
For additional questions, please contact the California Energy Commission at:			Toll-free in California: 844-454-2906 Outside California: 916-653-0237			



# 2021 Power Source Disclosure

## Past & Future Power Portfolio

Presentation to RCEA Board of Directors  
August 25, 2022



# 2021 POWER CONTENT LABEL

Redwood Coast Energy Authority

<https://redwoodenergy.org/power-resources/>

**Greenhouse Gas Emissions Intensity  
(lbs CO<sub>2</sub>e/MWh)**

**Energy Resources**

**REpower**

**REpower+**

**2021 CA  
Power Mix**

REpower

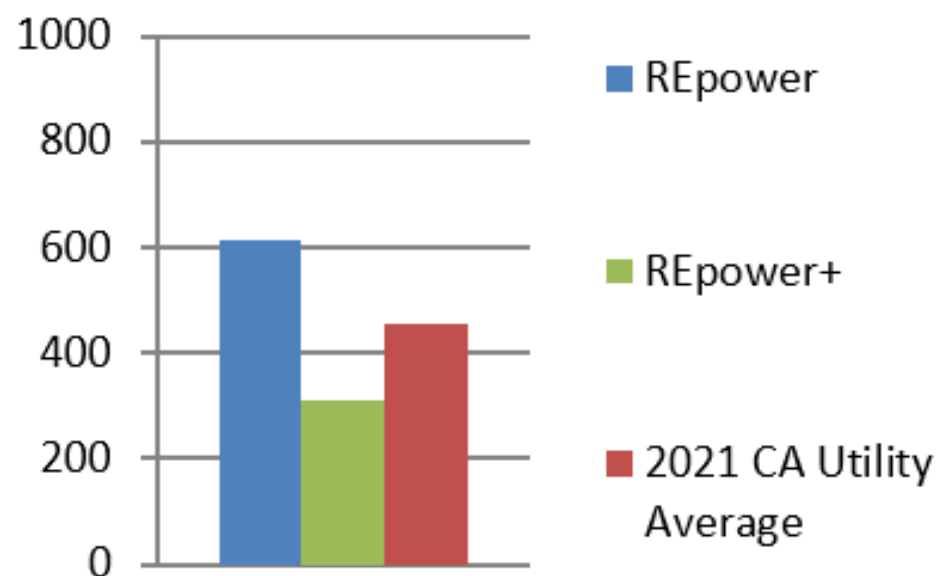
REpower+

2021 CA Utility  
Average

**615**

**311**

**456**



**Eligible Renewable<sup>1</sup>**

**33.1%**

**100.0%**

**33.6%**

Biomass & Biowaste

15.5%

0.0%

2.3%

Geothermal

0.0%

0.0%

4.8%

Eligible Hydroelectric

0.1%

33.3%

1.0%

Solar

0.1%

33.3%

14.2%

Wind

17.4%

33.3%

11.4%

**Coal**

**0.0%**

**0.0%**

**3.0%**

**Large Hydroelectric**

**10.5%**

**0.0%**

**9.2%**

**Natural Gas**

**0.0%**

**0.0%**

**37.9%**

**Nuclear**

**0.0%**

**0.0%**

**9.3%**

**Other**

**0.0%**

**0.0%**

**0.2%**

**Unspecified Power<sup>2</sup>**

**56.4%**

**0.0%**

**6.8%**

**TOTAL**

**100.0%**

**100.0%**

**100.0%**

**Percentage of Retail Sales Covered by Retired Unbundled RECs<sup>3</sup>:**

**0%**

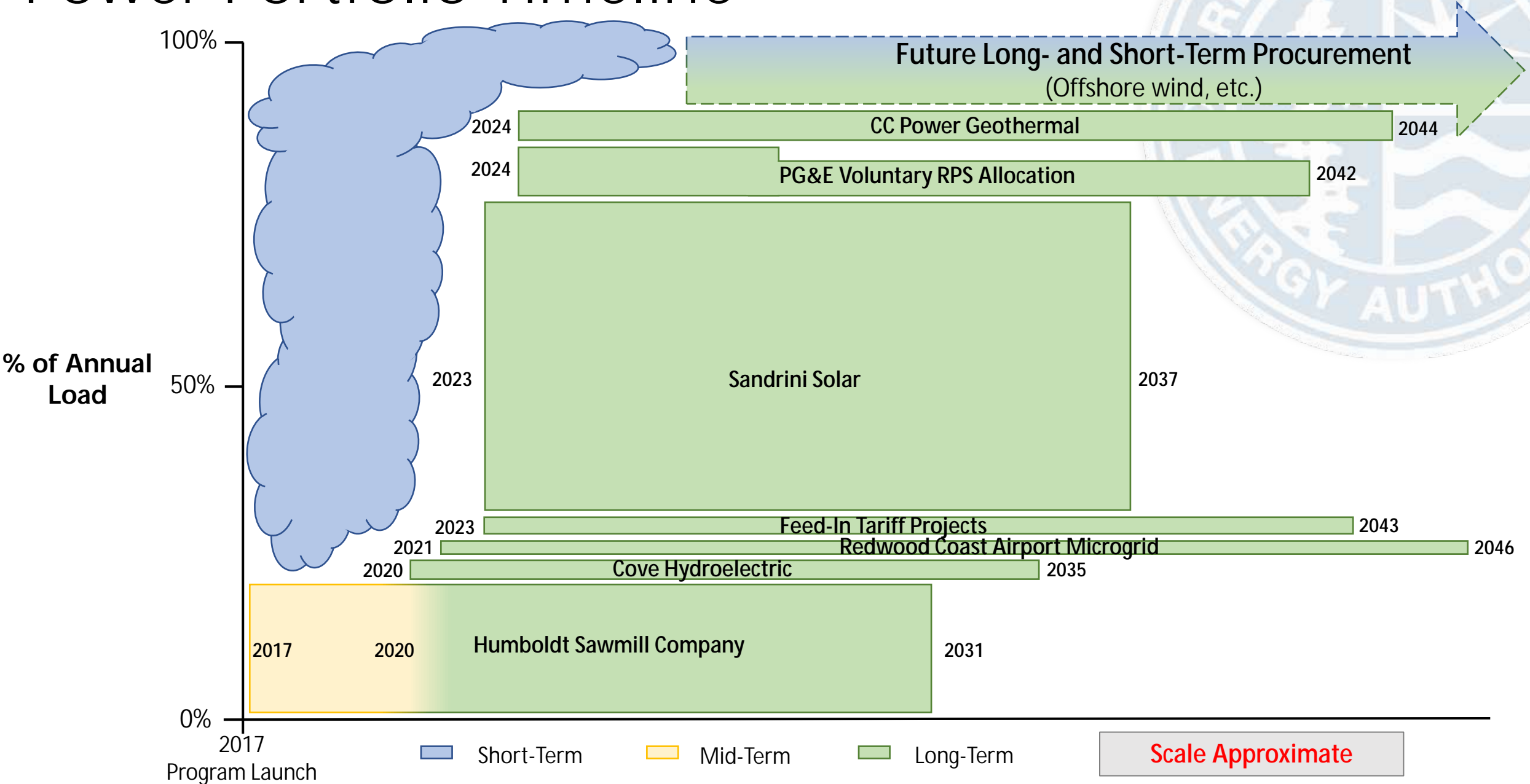
**0%**



# REpower Past and Future Power Mix



# Power Portfolio Timeline





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

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Jocelyn Gwynn, Senior Power Resources Manager Richard Engel, Director of Power Resources
SUBJECT:	Zero-Emission Resource Mid-Term Reliability Request for Offers

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**BACKGROUND**

In fall 2021, RCEA issued a solicitation in response to the California Public Utilities Commission's (CPUC) Decision 21-06-035 to address the mid-term reliability (MTR) needs of the state's electric grid in 2023-2026. This decision requires each load-serving entity (LSE) in California, including RCEA, to procure its allocated share of new or incremental resource adequacy (RA) capacity. That solicitation led to the Fairhaven energy storage project agreement approved by the Board in June 2022 and additional short-listed offers for which contracts are still under negotiation.

A subset of the required procurement is designated as replacement for the Diablo Canyon Nuclear Power Plant (DCPP) which is scheduled to retire in 2024 and 2025. This capacity must come from a generating resource that can operate at its claimed incremental capacity from 5-10 p.m. daily. Also, because the DCPP does not produce greenhouse gas emissions, the replacement generating capacity must come from carbon-free or otherwise renewable resources. Due to these specifications, it is expected that the majority of these resources will include energy storage.

In response to its 2021 solicitation, RCEA did not receive any attractive offers that would reliably meet this DCPP replacement procurement obligation, so still has a need to procure a project that will deliver at least 8 MW of Net Qualifying Capacity (NQC) to the grid by summer 2025. RCEA also has a remaining compliance need of 10-15 NQC MW for general mid-term reliability resource adequacy, which staff aim to fulfill via the same resource(s) that may be procured via this solicitation, since the DCPP replacement capacity can count toward a load serving entity's general mid-term reliability resource adequacy obligation.

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**SUMMARY**

Staff propose to issue a Request for Offers (RFO) for Zero-Emission Resources with the goal of concluding its Mid-Term Reliability procurement efforts. In order to maximize benefits to RCEA customers, the proposed solicitation is intended to build our portfolio of long-term contracts for

local renewable energy and energy storage resources, while also giving RCEA the flexibility to procure non-local resources if needed, depending on the offers received. The proposed RFO seeks resources that can be developed and brought online by Q2 2025 at the latest.

The following is a summary of the RFO terms and conditions:

**Resource Type:** The solicitation will be open to renewable plus storage and carbon-free energy resources that can reliably generate power during the evening time.

**Products & Capacity:** The solicitation will seek to procure one or more projects 1-50 MW in size. Resource Adequacy Net Qualifying Capacity is the product sought for CPUC Decision 21-06-035 compliance, but energy and renewable attributes would be procured in addition, helping meet RCEA's long-term clean energy goals.

**Location:** In keeping with Board-adopted goals, the solicitation will express geographic preference in descending order for projects that are in the Humboldt Local Reliability Area (LRA), Northern California, Southern California, or outside California. The Humboldt LRA is an area identified by the California Independent System Operator that roughly corresponds geographically to Humboldt County but is a more relevant envelope for power projects.

**Term:** In keeping with the CPUC decision, contracts resulting from the solicitation will need to be for a minimum of 10 years.

**Evaluation:** An evaluation committee made up of RCEA staff and its technical consultants will review responses to this RFO. Responses deemed complete will be scored using the following weighted criteria on a scale of 0-100.

**Weighted Scoring Criteria:**

- 1) 30 – Overall price, customer value and compliance value
- 2) 20 – Respondent experience, qualifications, creditworthiness
- 3) 20 – Project risk
- 4) 20 – Site-specific environmental impact
- 5) 10 – Location and community benefit

**Ad Hoc Offer Review Committee:** Staff recommends the Board form an ad hoc committee to review offers, approve the shortlist and authorize staff to perform certain actions in a timely manner. Proposed shortlisted offers would be brought to the ad hoc offer review committee for approval of the shortlist prior to commencing contract negotiations. Upon the committee's approval of the shortlist, respondents would be required to enter into exclusivity agreements with RCEA, submit shortlist deposits and propose any desired revisions to RCEA's Proforma Renewable + Storage Power Purchase Agreement. The Board would approve all final long-term purchase agreements and the committee would dissolve once any resulting contracts are executed.

**Schedule:** Staff plan to issue the solicitation immediately upon Board approval, with responses due in mid-September, presentation of shortlisted responses to the ad hoc committee in October, and negotiation and Board approval of contracts under the RFO late in 2022 or early in 2023.



## **ALIGNMENT WITH RCEA'S STRATEGIC PLAN**

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This solicitation will likely result in new clean energy projects that will contribute to the following goals:

- *4.1.2 Minimize Greenhouse Gas Emissions Associated with RCEA's CCE Program.*
- *4.1.4 Maximize Renewable Energy Content of RCEA's CCE Program.*
- *4.1.8.1 Support Utility Scale Solar Energy Development.*

## **EQUITY IMPACTS**

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As with all RCEA's power solicitations, this RFO encourages potential respondents who may qualify as a diverse business enterprise under the CPUC's Supplier Diversity Program to sign up for certification through the program clearinghouse.

Additionally, respondents are asked to report any non-energy benefits of their project in relation to Disadvantaged Communities, labor and workforce, and community engagement, the answers to which are factored into the offer evaluation process.

## **FINANCIAL IMPACT**

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In addition to meeting the CPUC compliance requirement described above, any capacity procured through this solicitation will count toward RCEA's normal energy, capacity, and environmental attribute procurement obligations and goals. It is likely there will be no additional financial impact of the proposed procurement above that normally incurred, and potentially some savings from locking in long-term price certainty. To the extent that the products are offered at above-market rates, RCEA will evaluate the benefits, such as environmental and community benefit and avoided penalties of non-compliance with the CPUC decision, that may outweigh the additional cost.

In contrast with the previous CPUC procurement order in 2019 (D.19-11-016), the current decision does not allow RCEA the option of allowing PG&E to procure on its behalf and pass on the cost to RCEA's customers.

## **STAFF RECOMMENDATION**

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1. Authorize staff to issue the Request for Offers for Zero-Emission Resources, in accordance with the terms provided.
2. Establish an ad hoc Board offer review committee to review and approve the following actions provided they are consistent with the RFO: (i) the offer shortlist, (ii) replacement of offers on the shortlist if negotiations with a shortlisted respondent are discontinued, and (iii) continued negotiations with a shortlisted respondent whose offer changes during the negotiation process.

3. Authorize staff to engage with the shortlisted respondents, including execution of exclusivity agreements, collection of shortlist deposits, and negotiation of contract terms, prior to full Board review and approval of resulting contracts.

## **ATTACHMENTS**

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DRAFT Request for Offers for Zero-Emission Resources, with selected appendices to be included in the solicitation:

- Statement of Qualifications Form & Project Details Addendum
- Proforma Renewable + Storage Power Purchase Agreement
- Exclusivity Agreement

**REQUEST FOR OFFERS**  
**FOR**  
**ZERO-EMISSION RELIABILITY RESOURCES**  
**COMPLIANT WITH CALIFORNIA PUBLIC UTILITIES COMMISSION**  
**MID-TERM RELIABILITY DECISION D.21-06-035**



**Redwood Coast Energy Authority**  
**[www.RedwoodEnergy.org](http://www.RedwoodEnergy.org)**

**August 26, 2022**

Responses due by 5:00pm Pacific Time on  
September 16, 2022 via email to  
**[procurement@redwoodenergy.org](mailto:procurement@redwoodenergy.org)**

# 1 CONTENTS

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2	Background .....	3
3	Objective .....	3
4	Eligibility Specifications .....	4
4.1	Mandatory Project Criteria .....	4
4.2	Preferred Project Criteria .....	4
4.3	Products & Capacity .....	5
5	Submission Details.....	5
5.1	Response Submittal Instructions .....	5
5.2	Solicitation Documents .....	5
5.3	Submission Materials.....	5
5.4	Supplier Diversity and Labor Practices.....	6
5.5	Public Nature of Responses .....	7
5.6	Questions About this Solicitation .....	7
6	Schedule .....	7
6.1	.....	<b>Error! Bookmark not defined.</b>
7	Evaluation and Selection Process .....	8
7.1	Completeness .....	<b>Error! Bookmark not defined.</b>
7.2	Weighted Scoring Criteria .....	8
7.3	Interviews.....	9
7.4	Shortlisting.....	9
7.5	Contract Negotiations .....	10
7.6	Respondent Communications .....	10
7.7	Disclaimer for Acceptance or Rejection of Offers and RFO Termination.....	11

## 2 BACKGROUND

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Redwood Coast Energy Authority (RCEA) is a local government Joint Powers Authority founded in 2003 whose members include the County of Humboldt, the Cities of Arcata, Blue Lake, Eureka, Ferndale, Fortuna, Rio Dell, and Trinidad, and the Humboldt Bay Municipal Water District. RCEA develops and implements sustainable energy initiatives that reduce energy demand, increase energy efficiency, and advance the use of clean, efficient and renewable resources. RCEA has been providing electric power generation service to its member jurisdictions as a community choice aggregator (CCA) since 2017, and thus is subject to the legislative and regulatory requirements imposed on load serving entities (LSE) within the state of California.

In 2020, RCEA's Board of Directors adopted a resolution to procure 100% carbon-free and renewable energy on an annual basis by 2025. Additionally, RCEA's RePower Comprehensive Action Plan for Energy<sup>1</sup> ("Strategic Plan") calls for the development of new power resources within RCEA's service area to achieve 100% local renewable energy by 2030. Pursuant to its Strategic Plan, RCEA strives to source as much of its power procurement from local projects as possible.

Through the 2020 Integrated Resource Planning (IRP) proceeding, the California Public Utilities Commission (CPUC) has identified the need for additional zero-emitting energy resources and firm capacity to replace the Diablo Canyon Nuclear Power Plant ("DCPP") slated to retire in 2024 and 2025. Subsequently, in June 2021 the CPUC issued D.21-06-035 Requiring Procurement to Address Mid-Term Reliability<sup>2</sup> ("MTR Decision"), which mandates jurisdictional LSEs to procure and/or develop a collective 2,500 MW of new zero-emission generation, generation paired with storage, or demand response capacity to be operational by summer of 2025.

## 3 OBJECTIVE

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RCEA seeks offers for new or incremental, zero-emission resources that can deliver resource adequacy (RA) to further its contributions to the reliability of the California power grid, and to fulfill its procurement obligations pursuant to the MTR Decision. Specifically, offers of zero-emission generation or generation plus storage that meet the MTR Decision criteria for replacement of DCPP are eligible for consideration under this RFO. Specific deliverability criteria associated with this requirement are described in Section 4.1.

Respondents will provide complete offers per the guidelines below. RCEA intends to execute one or more power purchase agreements with qualified offerors whose projects are selected and approved by the RCEA Board of Directors.

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<sup>1</sup> <https://redwoodenergy.org/wp-content/uploads/2020/06/RePower-2019-Update-FINAL-.pdf>

<sup>2</sup> <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>

## 4 ELIGIBILITY SPECIFICATIONS

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### 4.1 MANDATORY PROJECT CRITERIA

To be eligible for consideration under this RFO, offered projects must meet the following requirements:

1. Located within the California Independent System Operator (CAISO) or dynamically transferred or pseudo tied to CAISO;
2. Qualified or on track to provide at least System RA, with Local and Flex RA optional;
3. Excluded from the baseline list of resources associated with the CPUC Decision<sup>3</sup>;
4. Available to contract with RCEA for at least 10 years; and
5. Able to come online by April 15, 2025 at the latest, such that RCEA can show the online resource in its June 2025 Month Ahead RA Plan. Preference will be given to resources with earlier commercial operation dates that align with the MTR Decision's earlier compliance tranche deadlines in 2023 and 2024;
6. Be from one of the following resource technologies:
  - i. Renewable generation (PCC1 RPS-eligible, with standalone solar and wind resources ineligible due to their limited dispatchability)
  - ii. Renewable generation (PCC1 RPS-eligible) paired with energy storage (co-located or hybrid), or
  - iii. Carbon-free generation; and
7. Be able to generate from 5 pm to 10 pm on a daily basis.

### 4.2 PREFERRED PROJECT CRITERIA

#### **Location**

RCEA's descending order of locational preference is as follows:

1. Humboldt Local Capacity Area
2. Northern California
3. Southern California
4. Outside of California

In all cases, the project must be directly connected, dynamically transferred, or pseudo tied to the CAISO grid.

#### **Development Progress**

Given both the short timeline and risk of project delays and/or non-approvals, RCEA prefers projects that have already achieved the following development milestones:

1. Secured site control for the duration of the offered term;
2. Received their land use and building permits from the governmental authority having jurisdiction; and
3. Signed an interconnection agreement with the transmission and/or distribution operator.

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<sup>3</sup> [https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035\\_baseline\\_gen\\_list.xlsx](https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_baseline_gen_list.xlsx)

## 4.3 PRODUCTS & CAPACITY

RCEA seeks to procure bundled energy, renewable energy certificates, where applicable, and RA through this solicitation. Individual offers between 1 MW and 50 MW will be considered, and offers outside of that minimum and maximum capacity range will be disregarded. For reference, RCEA's procurement obligation for compliance with the CPUC Decision is shown in the following table. As noted previously, this RFO is focused on the CPUC's MTR zero emission (DCPP Replacement) requirement that must be met by 2025, but offers that can also provide general RA compliant with the MTR decision's 2023 and 2024 delivery deadlines will be considered.

RCEA Obligations in net qualifying capacity (NQC) MW by Delivery Deadline	Aug 2023	Jun 2024	Jun 2025
General RA	7	20	5
Zero Emission RA (part of general RA)	8		

## 5 SUBMISSION DETAILS

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### 5.1 RESPONSE SUBMITTAL INSTRUCTIONS

Responses to this RFO are due by September 16, 2022 and must be emailed to **[procurement@redwoodenergy.org](mailto:procurement@redwoodenergy.org)**. The subject line of the email accompanying the response should include only the phrase "RCEA 2022 RFO Submittal". RCEA encourages respondents to be clear and concise in their offers, while still providing enough detail for the review team to adequately evaluate the offering. Offers will be deemed conforming if they are submitted by the deadline, meet the mandatory criteria listed in Sections 4.1 and 4.3, and include a complete submittal package as described in Section 5.3.

### 5.2 SOLICITATION DOCUMENTS

The documents accompanying this solicitation protocol are as follows and are posted on RCEA's contracting opportunities webpage: <https://redwoodenergy.org/contracting/>. Respondents are responsible for familiarizing themselves with and being fully aware of the terms of this solicitation, including each appendix.

- Appendix A Statement of Qualifications (SOQ) Form & Project Details Addendum
- Appendix B Offer Form
- Appendix C Proforma Power Purchase Agreement (PPA)
- Appendix D Exclusivity Agreement

### 5.3 SUBMISSION MATERIALS

Submittal packages will be deemed complete if they include the following materials and are responsive to the instructions below.

- ✓ Single SOQ Form in PDF or Word format (Appendix A)
- ✓ Single or multiple Project Details Addenda in PDF or Word format (Appendix A-2)

- ✓ Single Offer Form in Excel format (Appendix B)
- ✓ Single or multiple Project Maps in PDF format
- ✓ Financial Statements in PDF format (following execution of RCEA's NDA)

### **SOQ Form & Project Details Addendum**

Respondents are required to submit a statement of qualifications and details about the offered project(s) substantially in the form of Appendix A. The respondent can use their own letterhead or standard template but must respond to all prompts in the order shown in RCEA's SOQ Form and Project Details Addendum. Only submit one SOQ Form even if multiple projects are being offered. Please submit a separate Project Details Addendum for each offered project. If multiple unique offers are being submitted for the same facility, only submit one Project Details Addendum for that project.

### **Offer Form**

Respondents are required to submit a single Offer Form using the template provided in Appendix B, including the material commercial terms of all the unique offers they are submitting for consideration. The material commercial terms presented in the offer form are not modifiable once the offer is submitted for evaluation. Follow the instructions in the Instructions Tab of the Offer Form and ensure that all required cells are filled in. If providing multiple offers, do not submit a separate Offer Form for each individual project or unique configuration of terms that is being offered. The instructions specify how multiple unique offers are to be submitted within one Offer Form.

### **Project Map**

Respondents shall submit a map of each offered project showing the site location and key project facilities. The map should include the project boundary, street names or highway names, latitude/longitude, and gen-tie route from the project to the first point of interconnection to the electric grid. The project boundaries should reflect the most recent information available.

### **Financial Statements**

Upon notice from RCEA that the offer is both complete and conforming and no later than 5 business days after such notice, respondents will provide at least two recent years of financial statements. RCEA prefers to receive audited financials but will accept unaudited financials in lieu if the respondent does not have recent audited statements. If the proposed or prospective project is anticipated to be financed by one or more parent companies or affiliates of the respondent, please submit financial statements for all such entities in addition to those of the respondent together with an explanation of the relationship between such entities and the respondent. RCEA will provide a non-disclosure agreement to review financial information at the time it notifies a respondent that it timely submitted an otherwise complete and conforming offer.

## **5.4 SUPPLIER DIVERSITY AND LABOR PRACTICES**

Consistent with the California Public Utilities Code and California Public Utilities Commission policy objectives, RCEA collects information regarding supplier diversity and labor practices from project developers and their subcontractors regarding past, current and/or planned efforts and policies. Pursuant to Public Utilities Code §§ 8281-8286 (through which the CPUC requires RCEA and its commission-regulated subsidiaries and affiliates to submit annual detailed and



verifiable plans for increasing women-owned, minority-owned, disabled veteran-owned and LGBT-owned business enterprises' procurement in all categories), respondents that execute a contract with RCEA will be required to complete a supplier diversity questionnaire at the time of execution, and/or periodically at later dates as specified by RCEA. Respondents that are women, minority, LGBT, and disabled veteran-owned businesses are encouraged to apply for certification by the CPUC's Supplier Diversity Clearinghouse Program<sup>4</sup>. This certification is voluntary and will not be used as a criterion for evaluation. As required by law in California, RCEA as a public agency does not give preferential treatment based on race, sex, color, ethnicity, or national origin; providing such information as part of the offer package will not impact the selection process or good standing of executed contracts.

## 5.5 PUBLIC NATURE OF RESPONSES

All responses to this RFO, as well as records of pre-submittal and post-submittal communications with RCEA, will become the exclusive property of RCEA, subject to disclosure in accordance with the California Public Records Act (Cal. Government Code section 6250 et seq.). Respondents should limit submission of information or documents that they consider proprietary and that they would not want publicly disclosed and should clearly mark such information or documents as confidential. RCEA will consider limited requests for confidentiality on a case-by-case basis, provided that such requests are made at the time of offer submission. All responses will be kept confidential until either all contracts have been awarded or all offers have been rejected.

## 5.6 QUESTIONS ABOUT THIS SOLICITATION

All questions from potential respondents to this solicitation must be emailed to [procurement@redwoodenergy.org](mailto:procurement@redwoodenergy.org) by the deadline listed in the schedule in Section 6. The subject line of the email should include only the phrase "RCEA 2022 RFO Questions." Q&A responding to the questions received will be posted on the RCEA website by the deadline listed in the schedule. RCEA reserves the right to respond to no questions or only a subset of the questions received, or to provide consolidated responses to duplicative questions. RCEA will not hold a respondents' webinar so written questions are the only method of obtaining clarifications regarding the RFO. It is incumbent on the respondent to understand how to provide the required information pertinent to their specific project in advance of the submittal deadline such that their submittal package is complete and responsive.

# 6 SCHEDULE

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The following schedule is subject to change at any time during the solicitation process at the discretion of RCEA. Communications regarding schedule changes will be posted on RCEA's website. Requested submittals are due electronically by 5:00pm PT on each applicable due date.

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<sup>4</sup> <http://www.thesupplierclearinghouse.com/>

<b>Milestone</b>	<b>Date</b>
Issuance of RFO	August 26, 2022
Questions due	September 2, 2022
Q&A and addenda posted on RCEA website	By September 8, 2022
Responses due	September 16, 2022
Interviews	By October 21, 2022
RCEA Board ad hoc committee approval of shortlist	By October 31, 2022
Respondents are notified of shortlist status	By November 4, 2022
Execute exclusivity agreements & collect shortlist deposits	By November 11, 2022
Contract negotiations and RCEA Board approval of final agreements	November 2022 through Q1 2023

RCEA will post Q&A and any addenda on its website: <https://redwoodenergy.org/contracting/>

## 7 EVALUATION AND SELECTION PROCESS

An evaluation committee made up of RCEA staff and consultants will review responses to this solicitation. In accordance with the following process, each offer will be screened for completeness and scored on a weighted criteria basis, and then some respondents may be offered an interview.

### 7.1 CONFORMITY REVIEW

Responses will initially be screened for timely submission, and for conformity with the mandatory project criteria stated in Section 4 and the submittal requirements in Section 5. This screening will be on a pass/fail basis. Each offer that is deemed conforming will then be scored using a weighted scoring criteria process. Non-conforming offers may be rejected at RCEA's discretion.

### 7.2 OFFER SCORING

Criteria for selection will include, but not be limited to, the items listed below. The evaluation committee will score each response on a weighted criteria basis to determine the highest scoring offers. One or more of the highest scoring offers may proceed to the interview phase of the process. The offer will be scored on a scale of zero to five in each criterion with a five being the best score. The offer's total points will be calculated according to each criterion's weight below and the average score assigned by evaluation committee, out of a maximum of 100 points.

## **Weighted Scoring Criteria**

- 30 – Overall price, customer value and compliance value  
RCEA will evaluate compliance value for this RFO using Energy Division's annual probability of exceedance standard<sup>5</sup>, which states that on an annual basis, there is at least a 50% probability that the resource will be able to generate at least 1,825 MWh (5 x 365) during the 5-hour period from 5 pm to 10 pm Pacific Time for every MW of incremental net qualifying capacity claimed by RCEA for its procurement requirement.
- 20 – Respondent experience, qualifications, creditworthiness
- 30 – Development risk including site control, interconnection and permitting
- 10 – Site-specific environmental impact
- 10 – Location (see section 4.2) and community benefit

## **7.3 INTERVIEWS**

Following initial ranking of offers according to the scoring process above, one or more respondents may be offered an opportunity to be interviewed by the evaluation committee. The interviews are generally intended to clarify information presented in the offer documentation, to help the evaluation committee members assess the offeror's compatibility with RCEA as a potential business partner, and to confirm the current development status of individual projects. The interviews are not intended to reveal additional or revised information about an offer that would improve the offer's placement in the initial ranking that resulted from the scoring process. If such information is revealed, it will be disregarded and not considered as part of the offer evaluation. A list of specific guidelines will be circulated upon initiation of an interview, to be adhered to by both the respondent representatives and the RCEA evaluation committee. Interview outcomes may or may not be used as a factor in determining which offers are shortlisted.

## **7.4 SHORTLISTING**

Shortlisted offers will be presented to an RCEA Board of Directors ad hoc offer review committee for approval at a meeting prior to the parties commencing contract negotiations. All respondent(s) will be notified whether or not their offer has been shortlisted by this committee per the above schedule. At that time, respondents with shortlisted offers will be required to sign RCEA's standard Exclusivity Agreement, which is provided as Appendix D, and submit a shortlist deposit within five business days of notification.

The shortlist deposit is intended to secure the offer made by a shortlisted respondent through the contract negotiation period. The shortlist deposit must be in the form of a cash deposit. The respondent is solely responsible for the cost of providing the shortlist deposit. Instructions for submitting the deposit will be provided upon notification of placement on the proposed shortlist. The shortlist deposit will be in the amount specified below.

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<sup>5</sup> See MTR FAQ 1.4.13 <https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035faqv3120220605.pdf>

### **Shortlist Deposit Amounts**

- Standalone generation: \$3.00/kW-AC of offered nameplate capacity
- Hybrid or co-located generation plus storage: \$4.50/kW-AC of offered nameplate capacity of whichever is the larger of the generation and storage resources

Please refer to the RCEA Exclusivity Agreement (Appendix D) for additional details regarding the Exclusivity Deadline (as defined in the Exclusivity Agreement) and return of the shortlist deposit.

In the event that shortlisted respondents are not able to fulfill their offered capacity and price, RCEA may contact respondents who were not initially shortlisted to provide an updated offer. Any offers selected via this process will be subject to re-verification of eligibility and a request for updated pricing, re-approval by the RCEA Board of Directors ad hoc offer review committee, and commitment of the shortlist deposit and project exclusivity.

## **7.5 CONTRACT NEGOTIATIONS**

RCEA has issued its Proforma PPA as Appendix C for use under this RFO. Respondents shall not submit redlines to the Proforma PPA as part of their RFO submittal package. Upon approval of the shortlist by the RCEA Board of Directors ad hoc offer review committee, shortlisted respondents will be notified and expected to submit proposed redlines to the Proforma PPA within a specified time period, indicating what provisions they wish to negotiate. While RCEA will consider limited requests for adjustments and edits to its form agreements, adherence to RCEA's standard contract terms is an important factor in RCEA's evaluative process. Offers that accept RCEA's standard contract terms will be given preference. Respondents should be aware that material changes to RCEA's standard contract terms may result in disqualification of the offer and, if applicable, forfeiture of the shortlist deposit provided under the Exclusivity Agreement. RCEA reserves the right to negotiate modifications to purchase agreements with shortlisted parties to include additional power products not originally offered.

Upon approval of the shortlist by the RCEA Board of Directors ad hoc offer review committee, RCEA will notify all respondents of their status and a regular meeting schedule will be established between RCEA and the shortlisted counterparties. RCEA intends to complete negotiations on an expedited schedule in order to ensure timely project delivery for MTR Decision compliance purposes. Upon completion of negotiations, final agreements will be presented to the RCEA Board of Directors for approval.

## **7.6 RESPONDENT COMMUNICATIONS**

Questions, comments or feedback associated with this RFO must be sent electronically to [procurement@redwoodenergy.org](mailto:procurement@redwoodenergy.org). RCEA will not respond by other means to questions from respondents or prospective respondents on or before the submission due date.

## 7.7 DISCLAIMER FOR ACCEPTANCE OR REJECTION OF OFFERS AND RFO TERMINATION

By participating in RCEA's RFO process, a respondent acknowledges that it has read, understands, and agrees to the terms and conditions set forth in the RFO instructions contained herein. RCEA reserves the right to reject any offer that does not comply with the requirements identified herein, or to waive irregularities, if any in deciding to shortlist a non-conforming offer. RCEA further reserves the right to communicate with individual respondents to ask clarifying questions about their offers prior to determining whether to shortlist an offer. Placement of an offer on the shortlist, does not constitute or indicate acceptance by RCEA of any offer, any term thereof, or any related contract term. RCEA (i) has no obligation, and makes no commitment to enter into a transaction with any respondent, including a respondent with a shortlisted offer, or (ii) to be bound by any term proposed by the respondent. Furthermore, RCEA may, at its sole discretion and without notice, modify, suspend, or terminate the RFO without liability to any organization or individual. Such modification or termination shall be made in the form of addenda to this solicitation. This RFO does not constitute an offer to buy or create an obligation for RCEA to enter into an agreement with any party, and RCEA shall not be bound by the terms of any offer until it has entered into a fully executed agreement. RCEA shall not be responsible for any of the respondent's costs incurred to prepare, submit, negotiate, or to enter into an agreement, or for any other activity related to meeting the requirements established in this solicitation. All submittals shall become the property of RCEA and will not be returned.

The results of this RFO and the information provided therein may be shared with other Community Choice Aggregators, but only with prior written approval from respondents whose offers RCEA wishes to share.

## RCEA ZERO-EMISSION RESOURCES MTR RFO

### STATEMENT OF QUALIFICATIONS FORM

This statement of qualifications may be completed using this template SOQ Form and Project Details Addendum or using the respondent's own letterhead or standard template. Whatever format is used, please respond to all prompts in the order shown in both the SOQ Form and Project Details Addendum.

#### Company Information

Legal Entity Name: \_\_\_\_\_

Describe the financial and legal organizational structure including any subsidiaries.

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#### Key personnel

Please list each of the key personnel for whom you are including résumés or CVs with this SOQ.

Name	Title	Years with Company

#### Developer Experience

Years of relevant utility or non-utility experience with utility scale projects: \_\_\_\_\_

Operational nameplate megawatts under ownership (include only renewable, carbon-free or energy storage resources): \_\_\_\_\_

Nameplate megawatts under development (include only renewable, carbon-free or energy storage resources): \_\_\_\_\_

Describe your relevant experience developing projects of similar scale to the prospective offering. What are the minimum and maximum size projects (in MW or MWh capacity)

your company has developed to date? Please distinguish between experience of the company responding to RCEA's RFO from experience of the company's key personnel with former employers.

Provide at least three professional references for projects of similar scale and technology type to what you intend to develop for RCEA as an off taker, including at least one contact name, email address and phone number for each reference. Indicate any references who are associated with work done by your key personnel while employed at other companies.

### Financing and Creditworthiness

Describe how your company typically finances projects similar in scale and type to the project(s) you are offering RCEA.

Describe any credit issues (e.g. bankruptcy, events of default, etc.) for your company and any partners or subcontractors that would provide Services to the project.

Disclose any past, current, or anticipated future litigation related to projects owned or managed by the company or any of its affiliates in the United States.

### Project Development Process

Describe your company's **site assessment and selection** process, including key considerations for siting and preliminary design work.

Describe your efforts in completed or ongoing projects to ensure the projects are consistent with the local community's priorities, including any changes to projects that have been made in response to community concerns.

Describe your **system design and engineering** process, including how much of this work is performed in-house or outsourced.

Discuss your **equipment procurement** process. Is your company an original equipment manufacturer or supplier? List preferred vendors or special manufacturer/dealer relationships your company has.

What experience does your company have with **project construction**? Do you routinely outsource construction or all EPC services?

Describe your experience with the **operations and maintenance** of energy projects. Does your business model normally call for retaining projects over the life of the contract, or do you routinely assign contracts after the project reaches commercial operation? What experience do you have with remote sensing, monitoring, and control of systems?

What experience does your company have with **decommissioning** projects at end of life?



## **Licenses & Certifications**

Please list any relevant licenses and certifications held by your company or key personnel listed above. Include dates of issuance and where applicable, dates of expiration.

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## **Participant Authorization and Attestation**

Person signing confirms that they are a duly authorized representative of Participant AND that they attest, on behalf of Participant, that all information provided in this Statement of Qualifications and in response to RCEA's RFO is true and correct to the best of Participant's knowledge as of the date such information is provided.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Title: \_\_\_\_\_

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

## **RCEA ZERO-EMISSION RESOURCES MTR RFO**

### **PROJECT DETAILS ADDENDUM**

This form is to be filled out for each individual offered project. If multiple unique offers are being submitted for the same project, only submit one Project Details Addendum for that project.

#### **A. Executive Summary**

Please provide a narrative summary of the offered project (1,000 word max).

#### **B. Site Control**

1. How much of the project's needed site control, including the grid interconnection line route, has been secured and through what mechanism, (e.g. ownership, lease, site option)?
2. Do you have site control for the full duration of the proposed agreement term? If no, please explain.
3. Are any outstanding easements for site access or interconnection required? If yes, please explain.

#### **C. Permitting & Land Use**

1. Please identify the necessary permits, including land use entitlement permit (e.g., Conditional Use Permit (CUP), Application for Certification (AFC), Record of Decision (ROD)) from the lead land use permitting agency and all discretionary permits from other lead, trustee and/or responsible agencies including wildlife agencies. Describe the status of all permits, including planned efforts to obtain these permits, the status of discussions with state and federal wildlife agencies, any recommendations regarding permits from those agencies and applications submitted to date.
2. Please indicate the zoning type(s) of the project site. If the project is located on designated agricultural land or within an agricultural preserve, please indicate the classification (e.g., Prime Farmland, Farmland of Statewide Importance, Unique Farmland, Farmland of Local Importance, or Grazing Land).
3. State whether the project may impact any federal, state, local or other conservation designations or planning efforts. If yes, please describe.
4. Do any of the project properties have a Williamson Act Contract? If yes, describe how the Williamson Act Contract will be cancelled or terminated, as applicable.
5. Please describe current and planned surveys to date, and survey findings.
6. Has the project completed a Phase 1 Environmental Site Assessment?
7. Please describe any onsite efforts that project has made to avoid impacts to protected areas, habitat and habitat linkages (especially for threatened and endangered species) and open space in urbanized areas.
8. Has the project completed a hydrology report and if so what were the findings, specifically regarding site intersection with wetlands and floodplains?
9. Has the project completed a Federal Fish and Wildlife screen, and if available, a state Fish and Wildlife screen and if so, what were the findings?
10. Has the project completed the required screens for Threatened or Endangered Species and if so, what were the findings?

11. Has the project been reviewed for avian issues and if so, what were the findings?
12. Has the project completed the required screens for Architectural or Archaeological Sites and if so, what were the findings?
13. Has the project completed an FAA screen and if so, it is within a Notice Criteria Area?

#### **D. Interconnection**

1. What process type is the project interconnecting to the electric grid through (CAISO, WDAT, etc.)?
2. What is the interconnection queue position and study cluster?
3. What is the status of the interconnection application and study?
4. What is the interconnection agreement execution date?
5. What is the next interconnection milestone in the process and its expected completion date?
6. Are any Reliability Network Upgrades, Local Delivery Network Upgrades or Area Delivery Network Upgrades required for the project? Please describe if so.

#### **E. Financing & Ownership**

1. Provide a description of the project financing plan.
2. Provide a summary of ownership or joint ownership of the resource.
3. Are there any plans for assignment of the contract or change in control?

#### **F. Safety**

1. Describe your communication and emergency response plans for the protection of the health and welfare of all neighbors.
2. List all major equipment suppliers under consideration.
3. Describe any elements of the plant design and layout that are non-standard within the industry.
4. List all hazardous/toxic chemicals that will be stored or generated onsite, and describe associated mitigation plans.
5. Describe all hazards, such as fire, explosion, toxic fumes, etc., and the associated mitigation plans.

#### **G. Community Benefits**

1. Is the project located within a Disadvantaged Community (DAC) or does it benefit DACs in some way? If yes, please describe.
2. Have you conducted outreach to the communities around the project location? If yes or outreach is planned in the future, please describe the outreach effort, including methods, languages in which materials been made available, nature and volume of community response, and any changes to the project that have been made in response to community concerns.
3. Do you believe this project in its current form is consistent with the local community's priorities? If yes, please describe why you believe this. If no, describe any changes you would consider making to bring the project more into alignment with community priorities.

4. Please describe any additional societal, health, economic, water saving, or environmental benefits the project may have beyond the climate and GHG reduction benefits of renewable energy.

#### **H. Labor**

1. Have any community benefit or project labor agreements been secured for the project, or will they be secured in the future? Please describe.
2. Will the project workforce be paid a prevailing hourly wage rate?
3. Estimate the number of new direct construction jobs being created by the project.
4. Estimate the number of new direct permanent jobs being created by the project and please describe the nature of these permanent jobs.
5. Please confirm that the submitted offer does not rely on equipment or resources built with forced labor. Consistent with the business advisory jointly issued by the U.S. Departments of State, Treasury, Commerce and Homeland Security on July 1, 2020, equipment or resources sourced from the Xinjiang region of China are presumed to involve forced labor.

# RENEWABLE PLUS STORAGE POWER PURCHASE AGREEMENT

## COVER SHEET

**Seller:** [XXXX], a [XXXX].

**Buyer:** Redwood Coast Energy Authority, a California joint powers authority.

**Description of Facility:** A [XXXX] MW [*generation technology type*] electric generating facility combined with a [XX] MW / [XX] MWh [*storage technology type*] energy storage facility.

**Development Milestones:**

Milestone	Expected Date for Completion
Demonstrate Site Control	As of the Effective Date
Execute Interconnection Agreement	[MM/DD/YYYY]
Procure Major Equipment	[MM/DD/YYYY]
Obtain Conditional Use Permit	[MM/DD/YYYY]
Expected Construction Start Date	[MM/DD/YYYY]
Expected Commercial Operation Date	[MM/DD/YYYY]
Obtain Full Capacity Deliverability Status	[MM/DD/YYYY]
RA Guarantee Date	[MM/DD/YYYY]

**Delivery Term:** The period for Product delivery will be for [*Number of years*] Contract Years

**Guaranteed Construction Start Date:** [MM/DD/YYYY]

**Guaranteed Interconnection Agreement Date:** [MM/DD/YYYY]

**Guaranteed Commercial Operation Date:** [6/1/2023, 4/1/2024 or 4/1/2025]

**Guaranteed FCDS Date:** [MM/DD/YYYY]

**Expected Energy:**

Contract Year	Expected Energy (MWh)
1	[_____]
2	[_____]
3	[_____]
4	[_____]

Contract Year	Expected Energy (MWh)
5	[_____]
[Through N]	[_____]

**Guaranteed Generation Capacity:** [XXX] MW

**Guaranteed Installed Storage Capacity:** [XXX] MW

**Storage Capacity Default Threshold:** [XXX] MW

**Maximum Round-Trip Efficiency:** [XX]%

**Minimum Round-Trip Efficiency:** [XX]%

**Contract Price:**

The Generation Rate shall be:

Contract Year	Generation Rate
[XXX]	[\$XXX] per MWh

The Storage Rate shall be:

Contract Year	Storage Rate
[XXX]	[\$XXX] per kW-month

**Product:** (select options below as applicable)

- ☒ Energy Generation
- ☒ Discharging Energy
- ☒ Green Attributes (Portfolio Content Category 1)
- ☒ Storage Capacity
- ☒ Capacity Attributes
  - ☒ Full Capacity Deliverability Status

**Scheduling Coordinator:** Buyer or Buyer's Agent

**Security and Damages**

**Development Security:** [To equal \$60/kW of the Generation Facility Capacity and \$90/kW of the Storage Facility Capacity.]

**Performance Security:** *[To equal \$60/kW of the Generation Facility Capacity and \$90/kW of the Storage Facility Capacity.]*

**Damage Payment:** An amount equal to the Development Security

**RA Deficiency Multiplier:**

Month	Multiplier (\$/kW-month)
January	\$3.16
February	\$3.16
March	\$3.16
April	\$3.16
May	\$4.73
June	\$6.31
July	\$9.47
August	\$20.51
September	\$20.51
October	\$7.89
November	\$3.16
December	\$3.16

**Interconnection Agreement Delay Damage Rate:**

- i. \$300/MW/Day for the Generating Facility; and
- ii. \$400/MW/Day for the Storage Facility.

**Compliance Expenditure Cap amount:** \$25,000 per MW of Total Facility Capacity over the Delivery Term.

## TABLE OF CONTENTS

[*TOC to be inserted prior to execution.*]

### **Exhibits:**

Exhibit A	Facility Description
Exhibit B	Facility Construction and Commercial Operation
Exhibit C	Compensation
Exhibit D	Scheduling Coordinator Responsibilities
Exhibit E	Progress Reporting Form
Exhibit F-1	Form of Average Expected Energy Report
Exhibit F-2	Form of Monthly Available Generating Capacity Report
Exhibit G	Guaranteed Energy Production Damages Calculation
Exhibit H	Form of Commercial Operation Date Certificate
Exhibit I	Form of Installed Capacity Certificate
Exhibit J	Form of Construction Start Date Certificate
Exhibit K	Form of Letter of Credit
Exhibit L	Facility Safety Plan and Documentation
Exhibit M	Form of Replacement RA Notice
Exhibit N	Notices
Exhibit O	Storage Capacity Tests and Round-Trip Efficiency Measurements
Exhibit P	Storage Availability
Exhibit Q	Operating Restrictions
Exhibit R	Metering Diagram
Exhibit S	Contribution to Mid-Term Reliability Procurement



# RENEWABLE PLUS STORAGE POWER PURCHASE AGREEMENT

## PREAMBLE

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

## RECITALS

WHEREAS, Seller intends to develop, design, construct, own, and operate a fully integrated [generation technology type] plus [storage technology type] energy storage facility (the “**Facility**,” as more fully defined below); and

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

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

## ARTICLE 1: DEFINITIONS

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

“**AC**” means alternating current.

“**Accepted Compliance Costs**” has the meaning set forth in Section 3.11.

“**Actual Round-Trip Efficiency**” means the measured round-trip efficiency rate of the Storage Facility, as a percentage, measured in accordance with Exhibit O.

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

“**Adjusted Facility Energy**” means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the Charging Energy plus Grid Energy for such period multiplied by the Maximum Round-Trip Efficiency from (ii) the Charging Energy plus Grid Energy for such period.

“**Affiliate**” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there

are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

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

**“Ancillary Services”** means all ancillary services, products and other attributes, if any, associated with the Facility.

**“Approved Forecast Vendor”** means (x) any of AWS Truepower (a division of UL), Reuniwatt, SteadySun, or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).

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

**“Availability Adjustment”** or **“AA”** has the meaning set forth in Exhibit C.

**“Available Generating Capacity”** means the capacity of the Generating Facility, expressed in whole MWs, that is mechanically available to generate Energy.

**“Bankrupt”** means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of ninety (90) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

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

**“Buyer Bid Curtailment”** means the occurrence of all of the following:

(a) the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy or Grid Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time; and

(b) for the same time period as referenced in (a), the notice referenced in (a) results from the manner in which Buyer or the SC schedules or bids the Facility, Facility Energy, Grid Energy, or Ancillary Services, including where the Buyer or the SC for the Facility:

(i) did not submit a Self-Schedule for the MW subject to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice referenced in (a) is solely a result of CAISO implementing the Energy Supply Bid; or

(iii) submitted a Self-Schedule for less than the full amount of Facility Energy and Grid Energy forecasted to be generated by or delivered from the Facility.

**“Buyer Curtailment Order”** means the instruction from Buyer to Seller to reduce delivery of Energy from the Facility by the amount, and for the period of time set forth in such instruction.

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

**“Buyer Default”** means a failure by Buyer (or its agents) to perform any of its obligations hereunder.

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

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

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

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

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

**“CAISO Operating Order”** means the “operating instructions” defined in Section 37.2.1.1 of the CAISO Tariff, as such provision may be modified or amended from time to time.

**“CAISO RA Enhancement”** means a change to the CAISO Tariff that (a) changes the basis for submission and assessment of supply plans from a value reflecting installed capacity (currently, Net Qualifying Capacity) to a value that takes into account historical performance of a facility (such as “Unforced Capacity” or “UCAP,” as referenced in CAISO’s Resource Adequacy Enhancements Draft Final Proposal – Phase 1 and Sixth Revised Straw Proposal dated December 17, 2020), and (b) eliminates or otherwise substantially modifies the application of Resource Adequacy Availability Incentive Mechanism (RAAIM) charges to forced outage periods.

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

**“CAISO VER Forecast”** means the forecast of output provided by CAISO pursuant to Section 4.8.2.1.2 and Appendix Q of the CAISO Tariff, as such provisions may be modified or amended from time to time.

**“California Renewables Portfolio Standard”** or **“RPS”** means the renewable energy program and policies established by California State Senate Bills 1038 (2002), 1078 (2002), 107 (2008), X-1 2 (2011), 350 (2015), and SB 100 (2018) codified in, *inter alia*, California Public Utilities Code Sections 399.11 through 399.33 and California Public Resources Code Sections 25740 through 25751, as such provisions are amended or supplemented from time to time.

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

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

**“CEC Certification and Verification”** means that the CEC has certified (or, with respect to periods before the Commercial Operation Date, that the CEC has pre-certified) that the Generating Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

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

**“CEQA”** means the California Environmental Quality Act, as amended or supplemented from time to time.

**“Change in Tax Law”** means (a) (i) any change in or amendment to the United States Internal Revenue Code of 1986, as amended, (“Tax Code”) or another applicable federal income tax statute; (ii) any change in, or issuance of, or promulgation of any temporary or final regulations by the U.S. Department of the Treasury that would result in any change to the interpretation of the Tax Code or existing temporary or final regulations promulgated by the U.S. Department of the Treasury; (iii) any IRS guidance published in the Internal Revenue Bulletin and/or Cumulative Bulletin, notice, announcement, revenue ruling, revenue procedure, technical advice memorandum, examination directive or similar authority issued by the IRS Large Business and International division, or any published advice, advisory, or legal memorandum issued by IRS Chief Counsel, that applies, advances or articulates a new or different interpretation or analysis of any provision of the Tax Code, any other applicable federal tax statute or any temporary or final Treasury Regulation promulgated thereunder; or (iv) any change in the interpretation of any of the authorities described in clauses (a)(i) through (iii) by a decision of the U.S. Tax Court, the U.S. Court of Federal Claims, a U.S. District Court, a U.S. Court of Appeals or the U.S. Supreme Court, that applies, advances or articulates a new or different interpretation or analysis of federal income tax law, and (b) in the case of (a)(i) through (iv), such change or new or different interpretation, as applicable, occurs after the Effective Date. For avoidance of doubt, a change or amendment to the

Tax Code or another applicable federal income tax statute shall be deemed to have occurred upon that latter of (i) the date that the authorizing legislation is signed into law, or (ii) the expressly-stated effective date of the relevant provisions in the authorizing legislation.

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

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

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

**“Charging Energy”** means the as-available Energy produced by the Generating Facility, less transformation and transmission losses, if any, delivered to the Storage Facility pursuant to a Charging Notice.

**“Charging Notice”** means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to charge at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test shall not be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order, or Curtailment Order.

**“Claim”** has the meaning set forth in Section 16.2.

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

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

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

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

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

**“Compliance Actions”** has the meaning set forth in Section 3.11.

**“Compliance Expenditure Cap”** has the meaning set forth in Section 3.11.

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

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

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

**“Contract Price”** has the meaning set forth on the Cover Sheet and is each of the Generation Rate and the Storage Rate.

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

**“Contract Year”** means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

**“Contracted Storage Capacity”** means the total capacity (in MW) of the Storage Facility initially equal to the Installed Storage Capacity, and as the same may be adjusted from time to time pursuant to Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test, subject to the limit of the Storage Capacity Default Threshold as designated on the Cover Sheet.

**“Costs”** means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys’ fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

**“Cover Sheet”** means the cover sheet to this Agreement.

**“COVID-19”** means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat or mitigate such disease.

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

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

**“Curtailment Order”** means any of the following:

(a) CAISO orders, directs, alerts, or provides notice, including through ADS, to a Party, including a CAISO Operating Order, to curtail deliveries of Discharging Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO’s electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

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

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

**"Curtailment Period"** means the period of time, as measured using current Settlement Intervals, during which generation from the Facility is reduced pursuant to a Curtailment Order; provided that the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

**"Damage Payment"** means the dollar amount that is equal to the Development Security.

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

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

**"Day-Ahead Schedule"** has the meaning set forth in the CAISO Tariff.

**"Deemed Delivered Energy"** means the amount of Energy expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected Energy) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of Energy delivered to the Storage Facility or the Delivery Point during the Buyer Curtailment Period; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during a time period where the CAISO provides notice, including through ADS, to a Party or the Scheduling Coordinator for the Facility, requiring the Party to deliver less Facility Energy from the Facility than the full amount of energy forecasted in accordance with Section 4.3 to be produced from the Facility for a period of time, then the calculation of Deemed Delivered Energy during such period does not include any Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

**"Defaulting Party"** has the meaning set forth in Section 11.1(a).

**"Deficient Month"** has the meaning set forth in Section 4.10(e).

**"Delivery Point"** has the meaning set forth in Exhibit A.

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

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

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

**“Discharging Energy”** means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses, as measured at the Storage Facility Metering Points by the Storage Facility Meter.

**“Discharging Notice”** means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Storage Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

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

**“Electrical Losses”** means all transmission or transformation losses between the Facility and the Delivery Point, including losses associated with (i) delivery of Energy Generation to the Delivery Point, (ii) delivery of Charging Energy to the Storage Facility, (iii) conversion of Charging Energy into Discharging Energy, and (iv) delivery of Discharging Energy to the Delivery Point.

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

**“Energy”** means electrical energy generated by the Generating Facility.

**“Energy Generation”** means that portion of Energy that is delivered directly to the Delivery Point and is not Discharging Energy.

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

**“Environmental Laws”** has the meaning set forth in Section 16.3.

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

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

**“Exigent Circumstance”** means actual or imminent harm to life or safety, public health,



third-party owned property, including the Site, or the environment due to or arising from the Facility or portion thereof.

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

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

**“Expected Energy”** means the quantity of Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year in the quantity specified on the Cover Sheet.

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

**“Facility Energy”** means the sum of Energy Generation and Discharging Energy, minus the amount of any Grid Energy, during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, which Facility Meter will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

**“Facility Meter”** means the CAISO Approved Meter that will measure all Facility Energy.

**“Facility Safety Plan”** means Seller’s written plan that includes the Safeguards and plans to comply with the Safety Requirements, as such Safeguards and Safety Requirements are generally outlined in Exhibit L.

**“Facility Safety Plan Documents”** means the information and documentation listed in Exhibit L.

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

**“Forecasting Penalty”** has the meaning set forth in Section 4.3(f).

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

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

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

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

**“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. Future Environmental Attributes do not include investment tax credits or production tax credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

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

**“Generating Facility”** means the generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) Energy Generation to the Delivery Point, and (ii) Charging Energy to the Storage Facility; provided that the “Generating Facility” does not include the Storage Facility or the Shared Facilities.

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

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

**“Green Attributes”** means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with one (1) MWh of Facility Energy. Green Attributes do not

include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) production tax credits associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or “tipping fees” that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. If the Facility is a biomass or landfill gas facility and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the Facility.

**“Green Tag Reporting Rights”** means the right of a purchaser of renewable energy to report ownership of accumulated “green tags” in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

**“Grid Energy”** means energy used to charge the Storage Facility other than Charging Energy from the Generating Facility.

**“Guaranteed Generation Capacity”** means the total capacity (in MW) of the Generating Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted pursuant to Section (c) of Exhibit C.

**“Guaranteed Commercial Operation Date”** means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

**“Guaranteed Construction Start Date”** means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

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

**“Guaranteed Installed Storage Capacity”** has the meaning set forth on the Cover Sheet.

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

**“Hazardous Materials”** means any substance, material or waste which is (1) defined as a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," or "restricted hazardous waste" under any provision of California law; (2) petroleum or petroleum products; (3) asbestos; (4) polychlorinated biphenyls; (5) radioactive materials; (6) designated as a "hazardous substance" pursuant to Section 311 of the Clean Water Act, 33 U.S.C. section 1251 *et seq.* (33 U.S.C. § 1321) or listed pursuant to Section 307 of the Clean Water Act (33 U.S.C. § 1317); (7) defined as a "hazardous substance" pursuant to the Resource Conservation and Recovery Act, 42 U.S.C. section 6901 *et seq.* (42 U.S.C. § 6903) or its implementing regulations; (8) defined as a "hazardous substance" pursuant to Section 101 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. section 9601 *et seq.* (42

U.S.C. § 9601); or (9) determined by California, federal or local governmental authority to be capable of posing a risk of injury to health, safety or property.

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

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

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

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

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

**“Installed Storage Capacity”** means the maximum dependable operating capability of the Storage Facility to discharge electric energy, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

**“Installed Generation Capacity”** means the actual generating capacity of the Generating Facility, as measured in MW-AC at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

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

**“Interconnection Delay”** means that the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point or to obtain FCDS.

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

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

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

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

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

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

**“Letter(s) of Credit”** means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least BBB+ with an outlook designation of “stable” from S&P or Baa1 with an outlook designation of “stable” from Moody’s, in a form substantially similar to the letter of credit set forth in Exhibit K.

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

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

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

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

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

**“Maximum Round-Trip Efficiency”** has the meaning set forth on the Cover Sheet.

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

“**Minimum Round-Trip Efficiency**” has the meaning set forth on the Cover Sheet.

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

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

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

“**Multiplier**” has the meaning set forth in Section 3.8(b).

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

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

“**Negative LMP**” means, in any Settlement Period or Settlement Interval, the LMP at the Facility’s PNode is less than Zero dollars (\$0).

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

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

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

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

“**Notification Deadline**” in respect of a Showing Month shall be fifteen (15) Business Days before the relevant deadlines for the corresponding RA Compliance Showings for such Showing Month.

“**NP-15**” means the Existing Zone Generation Trading Hub for Existing Zone region NP15 as set forth in the CAISO Tariff.

“**On-Peak Hour**” means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

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

“**Ordering Paragraph 6 Deliverability Requirement**” has the meaning set forth in Section 3.7(e).

**“Participating Transmission Owner”** means an entity that owns transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is [\_\_\_\_\_].

**“Participating Transmission Operator”** means an entity that operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Operator is [\_\_\_\_\_].

**“PTO”** means either Participating Transmission Owner or Participating Transmission Operator, as applicable.

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

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

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

**“Permitted Transferee”** means:

- (i) any Affiliate of Seller; or
- (ii) any entity that has, or is controlled by another Person that satisfies the following requirements:
  - (A) A tangible net worth of not less than one hundred fifty million dollars (\$150,000,000) or a Credit Rating of at least BBB+ from S&P, BBB+ from Fitch, or Baa1 from Moody’s; and
  - (B) At least two (2) years of experience in the ownership and operations of power generation facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

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

**“Planned Outage”** means the removal of the Facility from service to perform work on specific components that will result in an interruption in delivery of Energy to Buyer (e.g., for annual overhaul, inspections or testing).

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

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

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

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

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

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

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

**“Prudent Operating Practice”** means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated storage in the Western United States.

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

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

**“RA Compliance Showing”** means the System RAR compliance or advisory showings (or similar or successor showings an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

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

**“RA Deficiency Multiplier”** has the meaning shown on the Cover Sheet.



**“RA Guarantee Date”** has the meaning shown on the Cover Sheet.

**“RA Shortfall Month”** means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any Showing Month in which either:

(a) the Facility has not achieved FCDS; or

(b) the Net Qualifying Capacity of the Facility for such Showing Month was either (i) not published by or otherwise established with the CAISO by the Notification Deadline for such Showing Month, or (ii) was less than the Qualifying Capacity for the Facility for such Showing Month.

**“RA Shortfall Amount”** has the meaning set forth in Section 3.8(b).

**“Real-Time Forecast”** means any Notice of any change to the Available Generating Capacity, Storage Capacity, or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

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

**“Release”** has the meaning set forth in Section 16.3.

**“Remedial Action Plan”** has the meaning in Section 2.4.

**“Remediation Event”** means the occurrence of any of the following with respect to the Facility or the Site: (a) an Exigent Circumstance (b) a Serious Incident; (c) a change in the nature, scope, or requirements of applicable Laws, Permits, codes, standards, or regulations issued by Governmental Authorities which requires modifications to the Safeguards; (d) a material change to the manufacturer’s guidelines that requires modification to equipment or the Facility’s operating procedures; (e) a failure or compromise of an existing Safeguard; (f) Notice by Buyer pursuant to Section 6.5, in its sole discretion, that the Seller, the Facility Safety Plan, and/or Seller Attestation, as applicable, is not consistent with the Safety Requirements; or (g) any actual condition related to the Facility or the Site with the potential to adversely impact the safe construction, operation, maintenance, or decommissioning of the Facility or the Site.

**“Remediation Period”** means the time period between the first occurrence of the Remediation Event and the resolution of such Remediation Event which period may not exceed a total of ninety (90) days unless extended pursuant to Section 6.5.

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

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

**“Replacement RA”** means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer.

**“Resource Adequacy Benefits”** means the rights and privileges attached to the Facility that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.

**“Resource Adequacy Rulings”** means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 14-06-050, 15-06-063, 16-06-045, 17-06-027, 18-06-030, 18-06-031, 19-02-022, 19-06-026, 19-10-021, 20-01-004, 20-03-016, 20-06-002, 20-06-031, 20-06-028, 20-12-006 and any other existing or subsequent ruling or decision, or any other resource adequacy laws, rules or regulations enacted, adopted or promulgated by any applicable Governmental Authority, however described, as such decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

**“Resource Generation Capability”** has the meaning set forth in Exhibit I.

**“Round-Trip Efficiency Rate Adjustment”** has the meaning set forth in Exhibit C.

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

**“Safeguard”** means any procedures, practices, or actions with respect to the Facility, the Site or Work for the purpose of preventing, mitigating, or containing foreseeable accidents, injuries, damage, release of hazardous material or environmental harm.

**“Safety Remediation Plan”** means a written Notice from Seller to Buyer containing information about a Remediation Event, including (a) the date, time and location of first occurrence, (b) the circumstances surrounding cause, (c) impacts, and (d) detailed information about Seller’s plans to resolve the Remediation Event.

**“Safety Requirements”** means Prudent Electrical Practices, CPUC General Order No. 167, Contractor Safety Program Requirements, and all applicable requirements of Law, the Utility Distribution Company, the Transmission Provider, Governmental Approvals, the CAISO, CARB, NERC and WECC, including, but not limited to, any applicable regulations adopted by the

California Department of Toxic Substances Control relating to the disposal of materials used in the Facility.

“**Schedule**” has the meaning set forth in the CAISO Tariff, and “**Scheduled**” has a corollary meaning.

“**Scheduled Energy**” means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), and/or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

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

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

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

“**Seller**” has the meaning set forth on the Cover Sheet.

“**Seller Permitted Party**” means any actual or potential: (i) Lender, (ii) direct or indirect purchaser of all or any part of Seller or the Facility, (iii) engineering, procurement, and construction contractor, and (iv) operation and maintenance provider.

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

“**Serious Incident**” means a harmful event that occurs on the Site during the term arising out of, related to, or connected with the Facility or the Site that results in any of the following outcomes: (a) any injury to or death of a member of the general public; (b) the death or permanent, disabling injury to operating personnel, subcontractors, Seller’s employees, agents, or consultants, or authorized visitors to the Site; (c) any property damage greater than one hundred thousand dollars (\$100,000.00); (d) release of hazardous material above the limits, or violating the requirements, established by permits, codes, standards, regulations, Laws, or Governmental Authorities; or (e) environmental impacts exceeding those authorized by permits or Law.

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

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

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

**“Shared Facilities”** means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

**“Showing Month”** shall be a calendar month of the Delivery Term, commencing with the Showing Month that contains the RA Guarantee Date, that is the subject of a RA Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly RA Compliance Showing made in June is for the Showing Month of August.

**“Site”** means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller achieves Construction Start.

**“Site Control”** means that Seller or its Affiliate: (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

**“Station Use”** means:

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

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

**“Storage Capacity”** means the maximum dependable operating capability of the Storage Facility to discharge electric energy, and any other products that may be developed or evolve from time to time during the Term that the Storage Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Storage Facility to discharge electric energy.

**“Storage Capacity Default Threshold”** has the meaning set forth on the Cover Sheet.

**“Storage Capacity Test”** means any test or retest of the capacity of the Storage Facility conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

**“Storage Facility”** means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms hereof.

**“Storage Facility Meter”** means the bi-directional revenue quality meter or meters (with an accuracy class between 0.3 and 0.5, as selected by Seller and approved by Buyer, each acting reasonably), along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, (i) the amount of Charging Energy delivered to the Storage Facility Metering Points, (ii) the amount of Grid Energy delivered to the Storage Facility Metering Points, and (iii) the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility will contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

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

**“Storage Product”** means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Storage Facility.

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

**“Stored Energy Level”** means, at a particular time, the amount of electric energy in the Storage Facility available to be discharged as Discharging Energy, expressed in MWh.

**“System Emergency”** means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

**“Tax Benefits”** means any state, local and/or federal tax benefit or incentive, including energy credits determined under Section 45 or 48 of the Internal Revenue Code of 1986, as amended, investment tax credits, production tax credits, depreciation, amortization, deduction, expense, exemption, preferential rate, and/or other tax benefit or incentive associated with the production of renewable energy and/or the operation of, construction, investments in or ownership of the Facility (including any cash payment or grant).

**“Tax Credits”** means the PTC, ITC and any other state, local or federal production tax credit, depreciation benefit, tax deduction or investment tax credit specific to the production of renewable energy or investments in renewable energy facilities or storage facilities.

**“Terminated Transaction”** has the meaning set forth in Section 11.2(a).

**“Termination Payment”** has the meaning set forth in Section 11.3.

**“Test Energy”** means any Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to parallel and (b) ending upon the occurrence of the Commercial Operation Date.

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

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

**“Ultimate Parent”** means [XXX].

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

**“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.

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

**“WREGIS Certificate Deficit”** has the meaning set forth in Section 4.10(e).

**“WREGIS Certificates”** has the same meaning as “Certificate” as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

**“WREGIS Operating Rules”** means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

**1.2 Rules of Interpretation.** In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words “hereof”, “herein”, and “hereunder” and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

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

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

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

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

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

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

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

## ARTICLE 2: TERM; CONDITIONS PRECEDENT

### 2.1 Contract Term.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein (“**Contract Term**”); provided that that subject to Buyer’s obligations in Section 3.6, Buyer’s obligations to pay for or accept any Product are subject to Seller’s completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

**2.2 Conditions Precedent.** The Delivery Term shall not commence until Seller completes each of the following conditions, which must be satisfied and delivered to Buyer by the earlier of forty-five (45) days before the Commercial Operation Date or sixty (60) days before the RA Guarantee Date:

(a) Seller shall have provided to Buyer, by no earlier than ninety (90) days prior to the Commercial Operating Date, updated correct and complete copies of (A) Seller’s most recent annual report, audited consolidated financial statements, and unaudited consolidated financial statements; and (B) Seller’s organizational documents to confirm Seller’s and Seller’s Affiliate’s legal and financial relationship to and authority over the Facility (such as certifications of formation, certifications and articles of incorporation, charters, operating agreements, partnership agreements, bylaws, or similar documents) and any amendments thereto.

(b) Seller shall have delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date.

(c) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(d) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(e) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof that are capable of being satisfied on the Commercial Operation Date shall have been satisfied and shall be in full force and effect;



(f) Seller shall have received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) Seller shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;

(h) Seller shall have submitted to Buyer a Facility Safety Plan;

(i) Seller shall have delivered to Buyer all insurance documents required under Article 17;

(j) Seller shall have submitted to Buyer a Metering Diagram in the form of Exhibit R;

(k) If any applicable Governmental Authority required Seller to develop a decommissioning plan as part of any permitting process for the Facility, then Seller shall have provided such decommissioning plan to Buyer;

(l) Seller shall have delivered the Performance Security to Buyer in accordance with Section 8.8; and

(m) Seller shall have paid Buyer for all amounts owing under this Agreement, if any, including any Commercial Operation Delay Damages.

(n) Seller shall have delivered to Buyer an engineering assessment demonstrating the resource meets the Ordering Paragraph 6 Deliverability Requirement, as described in Section 3.7(e).

**2.3 Progress Reporting.** Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the achievement of Construction Start, and (ii) each calendar month from the first calendar month following the achievement of Construction Start until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any reasonable requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection, procurement and installation of the equipment comprising the Facility.

**2.4 Remedial Action Plan.** If Seller misses three (3) or more Milestones, or misses any one (1) by more than ninety (90) days, except as the result of Force Majeure Event or Buyer

Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan (“**Remedial Action Plan**”), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller’s detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

### **ARTICLE 3: PURCHASE AND SALE**

**3.1 Purchase and Sale of Product.** Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, and/or any Capacity Attributes thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues. Subject to Buyer’s obligation to purchase Capacity Attributes and Storage Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to purchase from Seller any Product for which the associated Facility Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.

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

**3.3 Imbalance Energy.** Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.

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

**3.5 Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.11, in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to alter the Facility unless the Parties have agreed on all necessary terms and conditions relating to such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs; provided that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

**3.6 Test Energy.** No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, but in no case more than seventy-five (75) calendar days prior to the Expected Commercial Operation Date of the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy on an as-available basis. As compensation for such Test Energy, Buyer shall pay Seller an amount equal to fifty percent (50%) of the Generation Rate. For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

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

(a) Throughout the Delivery Term and subject to Section 3.11, Seller grants, pledges, assigns and otherwise commits to Buyer all the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term and subject to Section 3.11, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer, including compliance with D.21-06-035. Throughout the Delivery Term, and subject to Section 3.11, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) Seller acknowledges that Buyer intends to use this Agreement to comply with mandatory procurement obligations for incremental, zero-emissions capacity pursuant to D.21-06-035 as subsequently clarified by the CPUC's Energy Division. In accordance with such

requirements, Seller represents and warrants that the Facility will meet the following requirements throughout the Delivery Term, subject to Section 3.11:

(i) the Product qualifies as incremental capacity pursuant to D.21-06-035 and any applicable public guidance documents issued by Energy Division;

(ii) the Facility is a new resource, which had not achieved Commercial Operation as of the Effective Date of this Agreement;

(iii) the Facility is not a fossil-fueled generation facility and qualifies as a zero-emission resource under D.21-06-035; and

(iv) no load serving entity other than Buyer is permitted to claim any portion of the Product toward D.21-06-035 compliance obligations.

(d) In furtherance of Buyer's compliance and reporting obligations under D.21-06-035 and without limiting Seller's obligations under any other provision of this Agreement, Seller agrees to provide documentation reasonably requested by Buyer in connection with such compliance obligations, including but not limited to the following:

(i) evidence of interconnection, site control, notice to proceed with construction and other evidence of construction status and progress towards Commercial Operation;

(ii) engineering assessments demonstrating that the Facility satisfies the foregoing requirements; and

(iii) any other engineering assessments or contractual support required or requested by the CPUC pursuant to D.21-06-035.

(e) Seller acknowledges that Section 1.4.13 of the *Energy Division Staff's Response to Frequently Asked Questions on Mid-Term reliability Procurement Decision (D.) 21-06-035* (as published on June 6, 2022) requires that for a resource to be compliant with Ordering Paragraph 6 of D.21-06-035, it must demonstrate, on an annual basis, at least a fifty percent (50%) probability of being able to deliver at least five (5) MWh during each daily period for every MW of incremental capacity claimed ("**Ordering Paragraph 6 Deliverability Requirement**"). Prior to the Commercial Operation Date, Seller shall provide Buyer with an engineering assessment demonstrating the resource meets the Ordering Paragraph 6 Deliverability Requirement. The engineering assessment shall include, but is not limited to, consideration of battery charging restrictions, round trip losses, and standard sources of uncertainty including interannual resource variability. If the CPUC develops a standard engineering assessment for demonstrating compliance with the Ordering Paragraph 6 Deliverability Requirement, Seller shall use the CPUC's standard assessment.

### **3.8 Resource Adequacy Failure.**

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer as liquidated damages the RA Deficiency Amount, as set forth in Section 3.8(b), and/or provide Replacement RA, as set forth in Section 3.8(b), as the exclusive remedy for the Capacity Attributes that Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the “**RA Deficiency Amount**”) equal to the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility, minus (ii) the Net Qualifying Capacity of the Facility that may be included in Supply Plans by Buyer (the “**RA Shortfall Amount**”), multiplied by the applicable RA Deficiency Multiplier, as designated on the Cover Sheet; provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of the RA Shortfall Amount for such Showing Month, provided that: (i) any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least seventy-five (75) calendar days before the RA Shortfall Month; and (ii) that such Replacement RA capacity shall be required to comply with the requirements of D.21-06-035, and in addition, meet the same sub-category attributes if contracted for one of the sub-categories of D.21-06-035, only to the extent required for the Product purchased hereunder to be applied towards Buyer’s compliance with its procurement obligations under D.21-06-035 as confirmed through a decision, resolution, publicly issued guidance document, letter from the CPUC Executive Director, or other communication of approval or confirmation mutually agreed to by the Parties. For avoidance of doubt, if the Net Qualifying Capacity has not been published by or otherwise established with the CAISO by the Notification Deadline for such RA Shortfall Month, then the Net Qualifying Capacity shall be deemed to be zero (0) MW.

**3.9 CEC Certification and Verification.** Subject to Section 3.11 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification for the Facility throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor). Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and maintain throughout the remainder of the Delivery Term the final CEC Certification and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller’s application for CEC Certification and Verification for the Facility.

### **3.10 California Renewables Portfolio Standard.**

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility’s electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the

extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6: Non-modifiable] As used in this Section 3.10(a), “certified by the CEC” means the Facility has received CEC Certification and Verification.

(b) Transfer of Renewable Energy Credits. 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. [STC REC-1: Non-modifiable]

(c) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement. [STC REC-2: Non-modifiable]

### **3.11 Change in Law.**

(a) The Parties acknowledge that an essential purpose of this Agreement is to both provide Resource Adequacy Benefits that satisfy the requirements of the Resource Adequacy Rulings, including the requirements of D.21-06-035, and to provide renewable generation that meets the requirements of the California Renewables Portfolio Standard. Governmental Authorities, including the CEC, CPUC, CAISO, and WREGIS, may undertake actions to implement changes in Law. Seller agrees to use commercially reasonable efforts to cooperate with Buyer with respect to any subsequently requested changes, modifications, or amendments to this Agreement needed to satisfy requirements of Governmental Authorities associated with changes in Law, including changes, modifications, or amendments to this Agreement to: (i) amend the definition of Green Attributes and Capacity Attributes, including amendments to this Agreement to reflect any mandatory contractual language required by Governmental Authorities; (ii) require submission of any reports, data, or other information required by Governmental Authorities; or (iii) take any other actions that may be requested by Buyer to assure that the Facility is an Eligible Renewable Energy Resource under the California Renewables Portfolio Standard; provided that Seller shall have no obligation to modify this Agreement, or take other actions not required under this Agreement, if such modifications or actions would materially adversely affect, or could reasonably be expected to have or result in a material adverse effect on, any of Seller’s rights, benefits, risks and/or obligations under this Agreement.

(b) If a change in Law occurring after the Effective Date has increased Seller’s costs to comply with Seller’s obligations in excess of Seller’s known or reasonably expected costs (as of the Effective Date) with respect to obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable), the items listed below (the “**Compliance Actions**”) the maximum amount of out-of-pocket costs and expenses (“**Compliance Costs**”) to be incurred by Seller under this Agreement shall be capped at the Compliance Expenditure Cap amount shown on the Cover Sheet

over the Delivery Term in the aggregate (“**Compliance Expenditure Cap**”):

- (i) CEC Certification and CEC Verification;
- (ii) Green Attributes;
- (iii) WREGIS;
- (iv) Capacity Attributes;
- (v) Eligibility as an Eligible Renewable Energy Resource; and
- (vi) California Renewables Portfolio Standard qualification.

(c) Seller’s internal administrative costs associated with obtaining, maintaining, conveying or effectuating Buyer’s use of (as applicable) any Product are excluded from the Compliance Expenditure Cap. If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

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

(f) Subject to the following sentence, to the extent that a change in Laws (including a CAISO RA Enhancement) occurring after the Effective Date results in a reduction of the Facility’s Net Qualifying Capacity and either (i) Seller has completed the actions required to comply with its obligations under this Agreement, up to the Compliance Expenditure Cap or any Accepted Compliance Costs or (ii) Buyer has waived Seller’s obligations to take any actions required to comply with such change in Laws in accordance with this Section 3.11, then the Net Qualifying Capacity of the Facility shall be automatically deemed to refer to the Net Qualifying Capacity of the Facility that the Facility could reasonably achieve if all such actions were completed. The Parties agree that if (A) the CAISO implements the CAISO RA Enhancement and (B) the otherwise available Capacity Attributes are reduced solely due to Seller’s failure to operate the Facility in accordance with the requirements of this Agreement, then, notwithstanding this Section 3.11, Seller’s obligation to deliver the applicable Contracted Storage Capacity will not be reduced on the basis of such reduction and the automatic adjustments described in the foregoing sentence shall not be implemented.

**3.12 Change in Tax Law.** In the event that as a result of a Change in Tax Law, Seller or the Facility becomes eligible for or entitled to any new Tax Benefits or changes to or extensions of existing Tax Benefits, Seller and Buyer shall share any such realized additional Tax Benefit Amount on a fifty percent (50%)/fifty percent (50%) basis by making an adjustment to the Contract Price for the remainder of the Delivery Term.

**3.13 Facility Configuration.** In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities; provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any unreimbursed expense in connection with such changes, except under terms mutually acceptable to both Parties as set forth in a written agreement.

**3.14 Additional Products.**

(a) Over the Term, new or incremental opportunities may arise for the sale or transfer of additional products from the Facility that are not currently known to or contemplated by the Buyer or Seller, including capacity, reactive power, and ancillary services (collectively, “**Additional Products**”). To the extent that the sale or transfer of these Additional Products accruing during the Settlement Term becomes an option, either Party may notify the other regarding their availability. Buyer may request in writing for Seller to use commercially reasonable efforts, at Buyer’s cost, to monetize such Additional Products on behalf of Buyer (“**Buyer’s Written Request**”); provided that (i) neither the creation, registration, sale or transfer of such Additional Products (A) shall require Seller to make material modifications to the Facility (or the design thereof) or material upgrades or other material modifications to any interconnection or transmission facilities (other than those for which Buyer has agreed to fund) or (B) require Seller to reduce the generation of energy from the Facility and delivery thereof to the interconnection point (or restrict Seller’s flexibility in offering, bidding, planning and scheduling such energy) or (C) interfere with qualification, offering, bidding, planning, scheduling or other disposition of Environmental Attributes; and (ii) the sale or transfer of such Additional Products is permitted by (and capable of being implemented pursuant to) law.

(b) If the CPUC adopts a Slice of Day reform, or another similar type of reform that results in a change in the RA capacity product, these additional attributes will not be considered Additional Products.

## **ARTICLE 4: OBLIGATIONS AND DELIVERIES**

**4.1 Delivery.**

(a) **Energy.** Subject to the provisions of this Agreement, commencing on the Commercial Operation Date through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the



Storage Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges, and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. Buyer shall be responsible for all costs, charges, and penalties, if any, imposed in connection with the delivery of Grid Energy to the Storage Facility. The Facility Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

(b) Green Attributes. All Green Attributes associated with the Test Energy and the Facility during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

#### **4.2 Title and Risk of Loss**

(a) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

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

**4.3 Forecasting**. Seller shall provide the forecasts described below at Seller's sole expense. Seller's capacity forecasts shall include both Available Generating Capacity and Storage Capacity. Seller shall use commercially reasonable efforts to forecast the Available Generating Capacity and Storage Capacity accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC a non-binding forecast of each month's average-day Expected Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F-1, or as reasonably requested by Buyer.

(b) Monthly Forecast of Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the hourly expected Energy, Available Generating Capacity and Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("**Monthly Delivery Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of

(i) Available Generating Capacity and (ii) Storage Capacity and (iii) hourly expected Energy, in each case, for each hour of the immediately succeeding day (“**Day-Ahead Forecast**”). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediate day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller’s best estimate of (i) the Available Generating Capacity and (ii) the Storage Capacity and (iii) the hourly expected Energy. These Day-Ahead Forecasts shall be sent to Buyer’s on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer’s best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in (i) Available Generating Capacity or (ii) Storage Capacity or (iii) hourly expected Energy, in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Available Generating Capacity, Storage Capacity, or hourly expected Energy changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Storage Capacity, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method acceptable to Buyer; provided that Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(d), then Seller shall send such communications by telephone and e-mail to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer’s on-duty Scheduling Coordinator of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from its scheduling activities with respect to Facility Energy during such hour, Seller shall be responsible for a “**Forecasting Penalty**” for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Delivery Forecast, and (ii) the actual Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the

Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Subject to the limitations expressly set forth in Section 3.11, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

#### **4.4 Curtailment**

(a) General. Seller agrees to reduce the amount of Facility Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Generation Rate.

(c) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh of Facility Energy that is delivered by the Facility to the Delivery Point 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 excess MWh and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such 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 Facility as directed by the Buyer in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the 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 4.4(c) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during

the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with methodologies. For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

#### **4.5 Charging Energy Management.**

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy or Grid Energy to the Storage Facility in order to deliver the Storage Product in accordance with the terms of this Agreement, including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy from the Generating Facility or Grid Energy to the Storage Facility.

(b) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided that Buyer's right to issue Charging Notices is subject to the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice. Buyer shall have the right to charge the Storage Facility with Grid Energy rather than Energy from the Generating Facility.

(c) Seller shall not charge the Storage Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority, or as reasonably determined to be necessary for maintenance or repairs consistent with Prudent Operating Practice. If, during the Contract Term, Seller (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order,

Buyer Bid Curtailment or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Procedures.

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

(a) Facility Maintenance.

(i) By no later than October 15, 2022, and by October 15 of each subsequent year, Seller shall provide Buyer with a non-binding written projection of all Planned Outages for the succeeding calendar year (the “**Planned Outage Projection**”). The Planned Outage Projection shall include information concerning all projected Planned Outages during such period, including (A) the anticipated start and end dates of each Planned Outage; (B) a description of the maintenance or repair work to be performed during the Planned Outage; and (C) the anticipated MW of operational capacity of the Facility, if any, during the Planned Outage. Seller shall use commercially reasonable efforts to notify Buyer of any change in the Planned Outage Projection as soon as practicable.

(ii) In addition to the requirements of Section 4.6(a)(i), Seller shall provide Buyer with Notice of each Planned Outage at least one hundred twenty (120) days prior to the occurrence of such Planned Outage, provided that (i) no Notice is required for scheduled maintenance or any changes or extensions thereto which do not result in a shutdown of more than three percent (3%) of the Installed Facility Generation Capacity and three percent (3%) of the Installed Storage Capacity, and (ii) Seller may adjust the dates of any scheduled maintenance with fewer than one hundred and twenty (120) days’ prior Notice to Buyer so long as (X) Seller makes its request more than five (5) Business Days prior to the expected start date of such scheduled maintenance and (Y) the requested alternate date is reasonably acceptable to Buyer. To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof. Subject to the foregoing, Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility, provided that, between June 1 and September 30, Seller shall not schedule non-emergency maintenance unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1 to September 30, (iii) such outage is required in accordance with Prudent Operating Practices, (iv) the Parties agree otherwise in writing, or (v) such outage is required to perform a Storage Capacity Test or measurement of the Actual Round- Trip Efficiency, in each case, performed at Seller’s request (any of the scheduled maintenance permitted by the foregoing Section 4.6(a), a “**Planned Outage**”).

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

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Buyer

Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.

**4.7 Guaranteed Energy Production**. During the Delivery Term, Seller shall be required to deliver to Buyer an amount of Adjusted Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below) in any period of two (2) consecutive Contract Years during the Delivery Term ("**Performance Measurement Period**"). "**Guaranteed Energy Production**" means an amount of Adjusted Facility Energy, as measured in MWh, equal to eighty percent (80%) of the total Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Curtailment Periods, or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy and (2) Energy in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, or Curtailment Periods ("**Lost Output**"). If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer within ninety (90) days after the conclusion of the applicable Performance Measurement Period in the event Seller fails to deliver the Guaranteed Energy Production during such Contract Years (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

#### **4.8 Storage Availability**

(a) During the Delivery Term, the Storage Facility shall maintain a Monthly Storage Availability during each month of no less than ninety-eight percent (98%) (the "**Guaranteed Storage Availability**"), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If, the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Storage Product shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit C).

#### **4.9 Storage Capacity Tests**

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run retests of the Storage Capacity Test in accordance with Exhibit O.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. All other costs of any Storage Capacity Test shall be borne by Seller.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity determined pursuant to a Storage Capacity Test is less than the then current Contracted Storage Capacity, then the actual capacity determined pursuant to a Storage Capacity Test shall become the new Contracted Storage Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement. If, pursuant to this Section 4.9, the Contracted Storage Capacity is changed to a level below the Storage Capacity Default Threshold, such occurrence shall be an Event of Default pursuant to Section 11.1(b)(viii).

**4.10 WREGIS.** Seller shall, at its sole expense, but subject to Section 3.11, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10 (a) through (g) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

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

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

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates

relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A “**WREGIS Certificate Deficit**” means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (“**Deficient Month**”) caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Adjusted Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided that that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Product (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller’s obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.

## **ARTICLE 5: TAXES**

**5.1 Allocation of Taxes and Charges.** Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller’s income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability



with respect to Taxes from which Buyer claims it is exempt.

**5.2 Cooperation.** Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; provided that that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

## **ARTICLE 6: MAINTENANCE OF THE FACILITY**

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

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

**6.3 Shared Facilities.** The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements. Any such agreement is permissible only if it (i) permits Seller to perform or satisfy, and does not purport to limit, its obligations hereunder and (ii) provides for separate metering of the Facility. Without limiting the foregoing, Buyer acknowledges that the Facility may share a transformer with a separate, but neighboring energy generating or storage plant.

**6.4 Decommissioning Facility and Other Costs.** Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility or any environmental or other liability associated with the decommissioning or demolition of the Facility without regard to the timing or cause of the decommissioning or demolition. Seller agrees to indemnify, defend, and hold harmless, Buyer for any costs incurred by Buyer if and to the extent that Seller's actions or inactions causes Buyer to become required, whether statutorily or otherwise, to bear the cost of any decommissioning or demolition of the Facility or any environmental or other liability associated therewith, including, but not limited to, any investigations, actions, suits, claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) associated with clean-up costs and defense costs. The indemnity requirements set forth in this Section shall survive the termination of this Agreement.

## **6.5 Facility Safety Plan.**

(a) Prior to Delivery Term. At least ninety (90) days prior to the Commercial Operation Date, Seller shall submit for Buyer's review a **Facility Safety Plan**, in a format reasonably acceptable to Buyer, which must demonstrate (A) Seller's plans to comply with the Safety Requirements as of and following the Commercial Operation Date and (B) Seller's consideration of the Facility Safety Plan items in Exhibit L. Seller shall submit an attestation with the Facility Safety Plan. In the event Buyer provides Notice to Seller that the Facility Safety Plan or attestation is not acceptable to Buyer, then Buyer will identify the inconsistencies with the Safety Requirements in such Notice and such Notice shall constitute the occurrence of a Remediation Event for purposes of Section 6.5(d).

(b) Delivery Term. Throughout the Delivery Term, Seller shall update the Safeguards and the Facility Safety Plan as required by Safety Requirements or as necessitated by a Safety Remediation Plan. Seller shall provide such updated Facility Safety Plan to Buyer within thirty (30) days of any such updates. Throughout the Delivery Term, Buyer shall have the right to request Seller to provide its Facility Safety Plan, or portions thereof, and demonstrate its compliance with the Safety Requirements within thirty (30) days of Buyer's Notice.

(c) Reporting Serious Incidents. Seller shall provide Notice of a Serious Incident to Buyer within five (5) Business Days of occurrence. The Notice of Serious Incident must include the time, date, and location of the incident, the circumstances surrounding the incident, the immediate response and recovery actions taken, and a description of any impacts of the Serious Incident. Seller shall cooperate and provide reasonable assistance to Buyer with any investigations and inquiries by Governmental Authorities that arise as a result of the Serious Incident.

### **(d) Remediation.**

(i) Seller shall resolve any Remediation Event within the Remediation Period. Within ten (10) days of the date of the first occurrence of any Remediation Event, Seller shall provide a Safety Remediation Plan to Buyer for Buyer's review.

(ii) If the Remediation Event is an occurrence of an Exigent Circumstance with respect to the Facility or the Site, then Seller shall not deliver and Buyer will not accept, Product from the Facility until such Remediation Event is resolved in accordance with this Section 6.5.

(iii) Following the occurrence of any Remediation Event, Seller shall also provide an attestation to Buyer for Buyer's review and acceptance. Seller shall cooperate with Buyer in order for Seller to provide an attestation, in a form and level of detail that is reasonably acceptable to Buyer which incorporates information, analysis, investigations or documentation, as applicable or as reasonably requested by Buyer.

(iv) Seller's failure to resolve a Remediation Event, other than due to the occurrence of a Force Majeure Event as described in this Section 6.5(d)(iv), by obtaining Buyer's written acceptance of the Attestation within the Remediation Period is a material breach of this Agreement; provided that that Seller may request to extend the Remediation Period by up to ninety

(90) days. Buyer shall not unreasonably withhold approval of such extension. Seller may request an additional extension of the Remediation Period of up to ninety (90) days, which Buyer may approve in its sole discretion. Except as the result of a Force Majeure Event, the Remediation Period will not continue for more than two-hundred and seventy (270) days from the first occurrence of the Remediation Event. The number of days of the Buyer Remediation Review Period shall not be included in calculating the number of days of the Remediation Period. The Commercial Operation Date shall not occur during a Remediation Period. If Seller provides Notice to Buyer, in compliance with Section 10.3, demonstrating that a Remediation Event is a Force Majeure Event, and that Seller's ability to resolve the Remediation Event is prevented by the Force Majeure Event, then the Remediation Period shall be extended on a day-for-day basis until Seller is no longer prevented from resolving the Remediation Event by the Force Majeure Event. This Section does not limit, reduce, or otherwise modify any rights of remedies of Buyer under any other provisions of this Agreement.

## **ARTICLE 7: METERING**

**7.1 Metering.** Seller shall measure the amount of Facility Energy using the Facility Meter, which will be operated pursuant to applicable CAISO-approved calculation methodologies and subject to adjustment in accordance with applicable CAISO meter requirements, including to account for Electrical Losses and Station Use. The Facility Meter will be located on the high-voltage side of the final step-up transformer that serves the Facility (subject to Section 6.3). Seller shall measure the Charging Energy, Grid Energy, and the Discharging Energy using the Storage Facility Meters. To the extent not inconsistent with applicable CAISO-approved calculation methodologies or the requirements of this Agreement, all meters will be operated in accordance with Prudent Operating Practices. All meters will be maintained at Seller's cost. All meters shall be programmed to adjust for all losses from such meter to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R. The Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.

**7.2 Meter Verification.** Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate, then it shall be promptly repaired or replaced.

## **ARTICLE 8: INVOICING AND PAYMENT; CREDIT**

**8.1 Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product no sooner than fifteen (15) Business Days after the end of the prior monthly billing period.

Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Energy Generation produced by the Generating Facility as read by the Facility Meter, the amount of Charging Energy delivered to the Storage Facility, the amount of Grid Energy delivered to the Storage Facility, and the amount of Discharging Energy delivered from the Storage Facility, in each case, as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

**8.2 Payment.** Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the “**Interest Rate**”). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

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

**8.4 Payment Adjustments; Billing Errors.** Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided that that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer’s next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer’s

next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

**8.5 Billing Disputes.** A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

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

**8.7 Seller's Development Security.** To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Development Security.

**8.8 Seller's Performance Security.** To secure its obligations under this Agreement,

Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit K. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security.

**8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral.** To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts

owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

**8.10 Seller Financial Information.** If requested by Buyer, Seller shall deliver to Buyer (i) within one hundred twenty (120) days following the end of each of Seller's fiscal years, a copy of Seller's annual report containing unaudited consolidated financial statements for such fiscal year (or audited consolidated financial statements for such fiscal year if otherwise available) and (ii) within sixty (60) days after the end of each of its first three fiscal quarters of each fiscal year, a copy of Seller'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 Seller diligently pursues the preparation, certification and delivery of the statements.

## **ARTICLE 9: NOTICES**

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

**9.2 Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, five (5) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

## **ARTICLE 10: FORCE MAJEURE**

### **10.1 Definition.**

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

of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below. Force Majeure may include delays in performance or inability to perform or comply with the terms and conditions of this Agreement due to delays in obtaining necessary equipment, labor or materials or other issues caused by or attributable to pandemics or epidemics, COVID-19, if the elements of Force Majeure defined in this Section 10.1(a) (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) have been satisfied; provided that that the general existence of COVID-19 shall not be sufficient to prove the existence of a Force Majeure absent a showing of other facts and circumstances which in the aggregate establish that a Force Majeure as defined in the first sentence hereof (other than the requirement that the event or circumstance was not anticipated as of the date the Agreement was agreed to) has occurred.

(b) Notwithstanding the foregoing, the term “**Force Majeure Event**” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy electric energy at a lower price, or Seller’s ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller’s inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller’s inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller’s Affiliates, Seller’s contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; or (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

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



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

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

## **ARTICLE 11: DEFAULTS; REMEDIES; TERMINATION**

**11.1 Events of Default.** An "**Event of Default**" shall mean,

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

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

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1; and except for (1) failure to achieve Full Capacity Deliverability Status by the RA Guarantee Date, the exclusive remedies for which are set forth in Section 3.8, (2) failures related to the Adjusted Energy Production that do not trigger the provisions of Section 11.1(b)(iii), the exclusive remedies for which are set forth in Section 4.7; and (3) failures related to the Monthly Storage Availability that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.2 or 14.3, as appropriate; or

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

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

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

(ii) the failure by Seller to achieve Commercial Operation on or prior to the day that is one hundred twenty (120) calendar days after the Guaranteed Commercial Operation Date;

(iii) if, in any single Contract Year, the Adjusted Energy Production amount (calculated in accordance with Exhibit G) for such period is less than sixty-five percent (65%) of the Expected Energy amount for such period;

(iv) if, in any two consecutive Contract Years, the Monthly Storage Availability is not, on average, at least seventy-five percent (75%);

(v) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;

(vi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

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

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

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

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

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

vii. failure by Seller to maintain a Contracted Storage Capacity that is equal to or exceeds the Storage Capacity Default Threshold.

**11.2 Remedies; Declaration of Early Termination Date.** If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("**Early Termination Date**") that terminates this Agreement (the "**Terminated Transaction**") and ends the Delivery Term effective as of the Early Termination Date;

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

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

(d) to suspend performance; or

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; provided that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto.

**11.3 Termination Payment.** The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties

supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

**11.4 Notice of Payment of Termination Payment.** As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

**11.5 Disputes With Respect to Termination Payment.** 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 five (5) 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 15.

**11.6 Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date.** If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

**11.7 Rights And Remedies Are Cumulative.** Except as set forth in Section 4.8(b) and except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

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

## **ARTICLE 12: LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.**

**12.1 No Consequential Damages.** EXCEPT TO THE EXTENT INCLUDED AS PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, OR PART OF AN ARTICLE 16 INDEMNITY CLAIM, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT.

**12.2 Waiver and Exclusion of Other Damages.** EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE

LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

### **ARTICLE 13: REPRESENTATIONS AND WARRANTIES; AUTHORITY**

**13.1 Seller's Representations and Warranties.** As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a [XXX], duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

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

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

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

(e) Seller is responsible for obtaining all permits necessary to construct and operate the Facility and Seller or an Affiliate will be the applicant on any CEQA documents.

**13.2 Buyer's Representations and Warranties.** As of the Effective Date, Buyer

represents and warrants as follows:

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission.

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

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

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

(e) Buyer is a "local public entity" as defined in Section 6500 of the Government Code of the State of California, and as such any claims against Buyer shall be filed in accordance with the California Government Claims Act (Cal. Gov't Code § 810 et. seq.).

**13.3 General Covenants.** Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

## ARTICLE 14: ASSIGNMENT

**14.1 General Prohibition on Assignments.** Except as provided below, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld. Except as provided in this Article 14, any Change of Control of Seller or direct or indirect change of control of Buyer (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, which consent shall not be unreasonably withheld. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement, including without limitation reasonable attorneys' fees.

**14.2 Collateral Assignment.** Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility.

In connection with any financing or refinancing of the Facility by Seller, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:

(a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; provided that such notice shall be provided to Lender at the time such notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default;

(b) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

(c) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(d) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(e) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender



must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided that, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:

- (i) Cause such Event of Default to be cured, or
- (ii) Not assume this Agreement;

(g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and

(h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(e), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee shall be approved by Buyer, not to be unreasonably withheld.

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

- (i) the assignee is a Permitted Transferee;
- (ii) Seller has given Buyer Notice at least thirty (30) Business Days before the date of such proposed assignment; and
- (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received and accepted by Seller.

## **ARTICLE 15: DISPUTE RESOLUTION**

**15.1 Governing Law.** This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17: Non-modifiable]

**15.2 Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

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

## **ARTICLE 16: INDEMNIFICATION**

### **16.1 Indemnification.**

(a) To the full extent permitted by law, Seller shall indemnify, defend and hold harmless Buyer, and any and all of its employees, officials and agents from and against any liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of, or are in any way attributable to, and/or caused in whole or in part by any negligent or wrongful act, error, or omission of Seller or by any individual or agency for which Seller is legally liable, including officers, agents, employees or subcontractors of Seller.

(b) Buyer shall defend, indemnify and hold harmless the Seller, its officers, agents, and representatives from and against any loss, injury, damage, claim, lawsuit, liability, expense, or damages of any kind or nature arising out of or in connection with (i) Buyer Scheduling Coordinator's performance as Scheduling Coordinator for the Facility, or (ii) the negligent or willful misconduct of such Buyer or by any individual or agency for which such Buyer is legally liable, including officers, agents, or employees of Buyer.

(c) Nothing in this Section 16.1 shall enlarge or relieve Seller or any Buyer of any liability to the other for any breach of this Agreement. No Party shall be indemnified for any

damages resulting from its gross negligence, intentional acts, or willful misconduct or for the gross negligence, intentional acts, or willful misconduct of its Affiliates, directors, officers, employees and agents. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

**16.2 Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, provided that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party's damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

**16.3 Environmental Indemnity.** Seller shall indemnify, defend and hold harmless Buyer, and any and all of its employees, officials and agents from and against any third party liability (including liability for claims, suits, actions, arbitration proceedings, administrative proceedings, regulatory proceedings, losses, expenses or costs of any kind, whether actual, alleged or threatened, including legal counsel fees and costs, court costs, interest, defense costs, and expert witness fees), where the same arise out of, are a consequence of or are in any way attributable to, and or caused by (a) any Release on the Site caused by Seller or Seller's contractors or service providers or (b) any claim or legal proceeding pursuant to Environmental Law by any third party with regard to any violation or alleged violation of any Environmental Laws by Seller or the Seller's contractors or service providers. For the purposes hereof, (A) "**Release**" means any releasing, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, disposing, or dumping into the environment of Hazardous Materials introduced to the Facility by Seller or Seller's contractors or service providers in violation of any Environmental Laws that are required to be investigated, remediated or otherwise cleaned up by a Governmental Authority; and (B) "**Environmental Laws**" shall mean all federal, state, and local laws, statutes, ordinances, and regulations now or hereafter in effect, and in each case as amended, and any binding judicial or administrative interpretation thereof relating to the protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land, surface or subsurface strata, wildlife, aquatic species and vegetation), including laws and regulations relating to Releases of Hazardous Materials or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling

of Hazardous Materials.

## ARTICLE 17: INSURANCE

### 17.1 Insurance.

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

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

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

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

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

(f) Seller's Pollution Liability.

(i) If the scope of Work involves areas of known pollutants or contaminants, pollution liability coverage will be required to cover bodily injury, property damage, including clean-up costs and defense costs resulting from sudden, and accidental conditions, including the discharge, dispersal, release or escape of smoke, vapors, soot, fumes, acids, alkalis, toxic chemicals, hydrocarbons, liquids or gases, waste materials or other irritants, contaminants or pollutants into or upon land, the atmosphere or any water course or body of water.

(ii) The limit will not be less than two million dollars (\$2,000,000.00) each occurrence for bodily injury and property damage.

(iii) The policy will endorse Redwood Coast Energy Authority as an additional insured.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars (\$1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of one million dollars (\$1,000,000) per occurrence. All subcontractors shall include Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

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

(i) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer's remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

## **ARTICLE 18: CONFIDENTIAL INFORMATION**

### **18.1 Confidential Information.**

(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 18.1 shall survive and shall continue to be binding upon the Parties for a period of two (2) years 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 18.1, 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 extent practical and permissible) 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 Buyer shall (i) provide notice to Seller prior to any such disclosure in accordance with Section 18.1(c), (ii) 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 Facility or any engineering drawings, project plans, technical specifications or other similar information regarding the Facility.

(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 Seller of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer and the indemnitees from and against all suits, claims, and causes of action brought against Buyer or any indemnitees for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer and any indemnitees, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer or any indemnitees, through and including any appellate proceedings. Seller's obligations to Buyer and all indemnitees under this indemnification provision shall be due and payable on a Monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer and all indemnitees, as well as all damages or liability of any nature.

(g) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore, each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Article 12.

**18.2 Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.

## **ARTICLE 19: MISCELLANEOUS**

**19.1 Entire Agreement; Integration; Exhibits.** This Agreement, together with the Cover Sheet and Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The

Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

**19.2 Amendments.** This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

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

**19.4 No Agency, Partnership, Joint Venture or Lease.** Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement) and/or, to the extent set forth herein, any Lender and/or Indemnified Party.

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

**19.6 Mobile-Sierra.** Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the “public interest” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

**19.7 Service Contract.** The Parties intend this Agreement to be considered as a service contract for the purposes of Section 7701(e) of the United States Internal Revenue Code of 1986,



as amended.

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

**19.9 Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)). Delivery of an executed counterpart in .pdf electronic version shall be binding as if delivered in the original. The words “execution,” “signed,” “signature,” and words of like import in this Agreement shall be deemed to include electronic signatures or electronic records, each of which shall be of the same legal effect, validity, or enforceability as a manually executed signature or the use of a paper-based record keeping system, as the case may be, to the extent and as provided for in any applicable law.

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

**19.11 Forward Contract.** The Parties acknowledge and agree that this Agreement constitutes a “forward contract” within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are “forward contract merchants” within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

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

**19.13 Further Assurances.** Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

**19.14 Change in Electric Market Design.** If a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set

forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, or constitute, or form the basis of, a Force Majeure Event, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

*[Signatures on following page]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

[SELLER]

[BUYER]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## EXHIBIT A: FACILITY DESCRIPTION

**Site Name:** [\_\_\_\_\_]

**Site includes all or some of the following APNs:** [\_\_\_\_\_]

**County:** [\_\_\_\_\_]

**Type of Generating Facility:** [\_\_\_\_\_]

**Operating Characteristics of Generating Facility:** see Exhibit Q

**Type of Storage Facility:** Lithium-ion Battery Energy Storage Facility

**Operating Characteristics of Storage Facility:**

Maximum Charging Capacity (MW): [\_\_\_\_\_] MW

Maximum Discharging Capacity (MW): [\_\_\_\_\_] MW

Maximum Stored Energy Level (MWh): [\_\_\_\_\_] MWh

**Operating Restrictions of Storage Facility:** see Exhibit Q

**Guaranteed Generation Capacity:** [\_\_\_\_\_] MW AC

**Guaranteed Installed Storage Capacity:** [\_\_\_\_\_] MW AC

**Maximum Output:** The Facility cannot in any event deliver more than an aggregate of [\_\_\_\_\_] MW AC to the Delivery Point at any point in time.

**Delivery Point:** [\_\_\_\_\_]

**Facility Meter:** See Exhibit R

**Storage Facility Meter Locations:** See Exhibit R

**P-node:** [\_\_\_\_\_]

**Participating Transmission Owner:** [\_\_\_\_\_]

## EXHIBIT B: FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

### 1. Construction of the Facility and Interconnection Agreement.

- a. The Parties agree that time is of the essence with respect to a Party's performance of its material obligations under this Agreement, unless such delayed performance has been expressly permitted or excused under this Agreement. For the avoidance of doubt, payment of Construction Start Delay Damages or Commercial Operation Delay Damages shall constitute an express excuse from the foregoing time is of the essence obligation.
- b. **"Construction Start"** will occur following Seller's execution of an EPC Contract related to the Facility and issuance of a Full Notice to Proceed with the construction of the Facility. The date of Construction Start will be evidenced by Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and Buyer's acceptance and written acknowledgement thereof, and the dated certified therein shall be the **"Construction Start Date."** The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- c. If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Construction Start Delay Damages to Buyer on account of such delay. Construction Start Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Construction Start Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Construction Start Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Construction Start Delay Damages set forth in such invoice. Construction Start Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Construction Start Delay Damages shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Section 11.2.
- d. Seller shall execute an Interconnection Agreement with the PTO for the Facility by no later than the date listed in the Cover Sheet (**"Guaranteed Interconnection Agreement Date"**). If Seller fails to execute an Interconnection Agreement with the PTO for the Facility, then Seller shall pay liquidated damages in the form of **Interconnection Agreement Delay Damages** to Buyer in an amount equal to the Interconnection Agreement Delay Damage Rate shown in the Cover Sheet. Buyer shall have the right to draw down the posted Development Security as a means of collecting the Interconnection Agreement Delay Damages. Interconnection Agreement Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B.

### 2. Commercial Operation of the Facility. **"Commercial Operation"** means the condition

existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the “**COD Certificate**”). The “**Commercial Operation Date**” shall be the later of (x) the date that is ninety (90) days before the Expected Commercial Operation Date or (y) the date identified in the COD Certificate as the “Commercial Operation Date”.

- a. Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least thirty (30) days before the anticipated Commercial Operation Date.
- b. If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, ninety-five percent (95%) of all Daily Delay Damages and Interconnection Agreement Delay Damages paid by Seller shall be refunded to Seller. Seller shall include the request for refund of the Daily Delay Damages with the first invoice to Buyer after Commercial Operation.
- c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages for each day following the Guaranteed Commercial Operation Date until the Commercial Operation Date; provided that in no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder.

On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month. The Parties agree that Buyer’s receipt of Commercial Operation Delay Damages shall be Buyer’s sole and exclusive remedy for Seller’s unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer’s right to declare an Event of Default under Section 11.1(b)(ii) and receive a Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2 in the event that such unexcused delay exceeds one hundred twenty (120) calendar days.

3. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date, Guaranteed Interconnection Agreement Date, and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “**Development Cure Period**”) for the duration of any and all delays arising out of the following circumstances:
  - a. A Force Majeure Event occurs;
  - b. Seller has not acquired by the Expected Construction Start Date all material permits, consents, licenses, approvals or authorizations from any Governmental Authority required for Seller to own, construct, interconnect, operate or maintain the Facility and to permit Seller and the Facility to make available and sell Product, despite the exercise of diligent and commercially reasonable efforts by Seller;

- c. The Interconnection Facilities or Network Upgrades, if applicable, are not complete and ready for the Project to connect and sell Product at the Delivery Point by the Expected Initial Delivery Date despite the exercise of commercially reasonable efforts by Seller; or
- d. Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under Section 3 of this Exhibit B shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event. Notwithstanding the foregoing, no extension shall be given if the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines. Seller shall provide prompt written Notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

- 4. **Buyer's Right to Draw on Development Security.** If Seller fails to timely pay any Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.
- 5. **Cap on Seller Liability Prior to Commercial Operation Date.** Seller's aggregate liability prior to the Commercial Operation Date for any Damage Payment, Construction Start Delay Damages, Interconnection Agreement Delay Damages, and/or Commercial Operation Delay Damages shall be capped at an amount equal to one hundred percent (100%) of the Development Security amount. Such cap on Seller Liability shall not limit Seller's obligations under Section 3.8.

## EXHIBIT C: COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this Exhibit C.

(a) **Generation Rate.** Buyer shall pay Seller the Generation Rate for each MWh of Adjusted Facility Energy, plus Deemed Delivered Energy, if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) **Excess Contract Year Deliveries in excess of 115%.** If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, for each additional MWh of Facility Energy (but not Deemed Delivered Energy, for which no additional compensation shall be paid), if any, delivered to Buyer in such Contract Year, the price to be paid shall be the lesser of (i) seventy-five percent (75%) of the Generation Rate or (ii) the Day-Ahead price for the applicable Settlement Interval; provided that if there is a Negative LMP during such Settlement Interval, then the price applicable to all such additional MWh of Facility Energy in such Settlement Interval shall be zero dollars (\$0).

(c) **Excess Settlement Interval Deliveries.** If during any Settlement Interval, Seller delivers Product amounts, as measured by the amount of Facility Energy, in excess of the product of the Guaranteed Generation Capacity and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such excess MWh in such Settlement Interval shall be zero dollars (\$0), and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh ("**Negative LMP Costs**").

(d) **Storage Rate.** All Storage Product shall be paid at the Storage Rate x the current Contracted Storage Capacity x the Availability Adjustment x the Round-Trip Efficiency Rate Adjustment x 1000. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(i) **Availability Adjustment.** The "**Availability Adjustment**" or "**AA**" is calculated as follows:

(A) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

$$AA = 100\%$$

(B) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to 70%, then:

$$AA = 100\% - (98\% - \text{Monthly Storage Availability})$$

(C) If the Monthly Storage Availability is less than 70%, then:

$$AA = 0$$



(ii) Round-Trip Efficiency Rate Adjustment. The “Round-Trip Efficiency Rate Adjustment” is calculated as follows:

(A) If the Actual Round-Trip Efficiency is greater than or equal to the Minimum Round-Trip Efficiency, then:

$$\text{Round-Trip Efficiency Rate Adjustment} = 100\%$$

(B) If the Actual Round-Trip Efficiency is less than the Minimum Round-Trip Efficiency, but greater than or equal to 75%, then:

$$\text{Round-Trip Efficiency Rate Adjustment} = 100\% - [(\text{Minimum Round-Trip Efficiency} - \text{Actual Round-Trip Efficiency}) \times .5]$$

(C) If the Actual Round-Trip Efficiency is less than 75%, then:

$$\text{Round-Trip Efficiency Rate Adjustment} = 0$$

(e) Test Energy. Test Energy is compensated in accordance with Section 3.6.

## EXHIBIT D: SCHEDULING COORDINATOR RESPONSIBILITIES

### Scheduling Coordinator Responsibilities.

(a) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.

(b) Notices. Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, or facsimile transmission to the personnel designated to receive such information.

### (c) CAISO Costs and Revenues.

(i) Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility.

(ii) Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of

the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

(d) CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

## **EXHIBIT E: PROGRESS REPORTING FORM**

Each Progress Report must include the following items, highlighting incremental progress or changes from the previous Progress Report:

1. Executive Summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any material planned changes to the Facility or the site.
5. Gantt chart schedule showing progress on achieving each of the Milestones.
6. Summary of activities during the previous calendar quarter or month, as applicable, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
9. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
10. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
11. Any other documentation reasonably requested by Buyer.

## EXHIBIT F-1: AVERAGE EXPECTED ENERGY

[Average Expected Energy, MWh Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
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SEP																								
OCT																								
NOV																								
DEC																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT F-2: AVAILABLE GENERATING CAPACITY

[Available Generating Capacity, MWh Per Hour] – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

The foregoing table is provided for informational purposes only, and it shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

## EXHIBIT G: GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

$$[(A - B) * (C - D)]$$

where:

A = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

B = the Adjusted Energy Production amount for the Performance Measurement, in MWh

C = Replacement price for the Contract Year, in \$/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus the value of Replacement Green Attributes

D = the Generation Rate for the Contract Year, in \$/MWh

The Parties agree that in the above calculation of Guaranteed Energy Production Damages, if the result of “(C-D)” is less than \$20/MWh, then “(C-D)” will be replaced with \$20/MWh. The Parties also agree that in the above calculation of Guaranteed Energy Production Damages, if the result of “(C-D)” is more than \$50/MWh, the “(C-D)” will be replaced with \$50/MWh.

“**Adjusted Energy Production**” shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

“**Lost Output**” has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

“**Replacement Green Attributes**” means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Performance Measurement Period for which the Replacement Green Attributes are being provided. To establish the value of Replacement Green Attributes, Buyer shall provide Seller with at least one independently-prepared estimate of the value of Replacement Green Attributes based, if available, on the most recently available actual contract and sales information. Seller may provide an alternative estimate based on actual contract and sales information.

“**Replacement Capacity Attributes**” means Capacity Attributes, if any, equivalent to those that would have been provided by the Facility during the Performance Measurement Period for which the Replacement Product is being provided.

**“Replacement Energy”** means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that have the same or comparable value, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

**“Replacement Product”** means (a) Replacement Energy, (b) Replacement Capacity Attributes, and (c) all Replacement Green Attributes.

No payment shall be due if the calculation of  $(A - B)$  or  $(C - D)$  yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.



## EXHIBIT H: FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

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

As of \_\_\_\_\_ [DATE]\_\_\_\_\_, Engineer hereby certifies and represents to Buyer the following:

1. The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Generation Capacity.

3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed Installed Storage Capacity.

4. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five (95%) of the Guaranteed Generation Capacity for the Generating Facility at the Delivery Point, as adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [*peak output in MW*].

5. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Guaranteed Installed Storage Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.

6. Authorization to parallel the Facility was obtained by the Participating Transmission Provider, [Name of Participating Transmission Owner as appropriate] on \_\_\_\_\_ [DATE]\_\_\_\_\_.

7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on \_\_\_\_\_ [DATE]\_\_\_\_\_.

8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on \_\_\_\_\_ [DATE]\_\_\_\_\_.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By:\_\_\_\_\_

Its: \_\_\_\_\_

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

## EXHIBIT I: FORM OF INSTALLED CAPACITY CERTIFICATE

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

I hereby certify the following:

(a) The performance test for the Generating Facility demonstrated peak electrical output of \_\_MW AC at the Delivery Point, as adjusted for ambient conditions on the date of the performance test ("**Installed Generation Capacity**");

(b) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of \_\_MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Storage Capacity**"); and

(c) The sum of (a) and (b) is \_\_MW AC and shall be the "**Installed Capacity**".

(d) As of the date of the performance test, the Facility is capable of producing the average daily generation set forth in Exhibit S ("**Resource Generation Capability**"), and is capable of delivering Discharging Energy to the Delivery Point as set forth in Exhibit S.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[LICENSED PROFESSIONAL ENGINEER]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

## EXHIBIT J: FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by [\_\_\_\_\_] ("Seller") to Redwood Coast Energy Authority, a California joint powers authority ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated \_\_\_\_\_ ("Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the full notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto.
2. the precise Site on which the Facility is located is, which must include some or all of the previously identified APNs (such description shall amend the description of the Site in Exhibit A): \_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the \_\_\_\_ day of \_\_\_\_\_.

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

## EXHIBIT K: FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXXX]

Date:

Bank Ref.:

Amount: US\$[XXXXXXXX]

Expiry Date:

Beneficiary:

[ ]

[ ]

Ladies and Gentlemen:

By the order of \_\_\_\_\_ (“Applicant”), we, [insert bank name and address] (“Issuer”) hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXXX] (the “Letter of Credit”) in favor of [ ] (“Beneficiary”), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_ and as amended (the “Agreement”) between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on \_\_\_\_\_, 201\_.

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

1. the original of this Letter of Credit and its amendments, if any;
2. Your dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein.

We will return the original of this Letter of Credit back to the Beneficiary after our endorsement on this Letter of Credit of our payment of each draft, provided there is balance undrawn under the Letter of Credit.

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

Partial draws are permitted under this Letter of Credit.

It is a condition of this Letter of Credit that it shall be deemed automatically extended without an amendment for a one year period beginning on the present expiry date hereof and upon each anniversary for such date, unless at least ninety (90) days prior to any such expiry date we have sent to you written notice by overnight courier service to the above address that we elect not to extend this Letter of Credit, in which case it will expire on its the date specified in such notice; provided that in no event shall the Letter of Credit be extended beyond the final expiration date referenced in the paragraph below. No presentation made under this Letter of Credit after such expiry date will be honored.

The final expiration date of this Letter of Credit is [XXXXXXXXXX]. Upon this final expiration date, this Letter of Credit shall automatically become null and void whether or not the original of this Letter of Credit has been returned to us for cancellation and presentation made under this Letter of Credit after such date will not be honored.

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

This Letter of Credit is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. If, for any of the reasons specified in Article 36 of the UCP, the Issuer's place for presentation of the Letter of Credit is closed for business on the last day for presentation, the expiry date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

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

[Bank Name]

---

[Insert officer name]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY’S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of [\_\_\_\_], as beneficiary (the “Beneficiary”) of the Irrevocable Letter of Credit No. [XXXXXXX] (the “Letter of Credit”) issued by [insert bank name] (the “Bank”) by order of \_\_\_\_\_ (the “Applicant”), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Renewable Power Purchase Agreement dated as of \_\_\_\_\_, 20\_\_ (the “Agreement”).
2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. \$\_\_\_\_\_ because a Seller Event of Default (as such term is defined in the Agreement) has occurred.
3. The undersigned is a duly authorized representative of [\_\_\_\_] and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to [\_\_\_\_] by wire transfer in immediately available funds to the following account:

[Specify account information]

[\_\_\_\_]

\_\_\_\_\_

Name and Title of Authorized Representative

Date \_\_\_\_\_

## **EXHIBIT L: FACILITY SAFETY PLAN AND DOCUMENTATION**

### **Facility Safety Plan Elements:**

#### **Part One: Safety Requirements and Safety Programs**

Identify the applicable safety-related Codes, Standards, and regulations (CSR) which govern the design, construction, operation, maintenance, and decommissioning of the Facility using the proposed technology.

Describe the Seller's and the Seller's Contractor(s)' safety programs and policies. Describe Seller's compliance with any safety-related industry standards or any industry certifications (American National Standards Institute (ANSI), International Organization for Standardization (ISO), etc.), if applicable.

#### **Part Two: Facility Design and Description**

Describe Seller's safety engineering approach to select equipment and design systems and the Facility to reduce risks and mitigate the impacts of safety-related incidents, including cascading failures, excessive temperatures, thermal runaways, fires, explosions, disk fractures, hazardous chemical releases.

Describe the results of any failure mode effects analyses (FMEA) or similar safety engineering evaluations. In the case of lithium ion batteries, describe the safety-related reasons, including design features and historical safety records, for selecting particular anode and cathode materials and a particular manufacturer.

Provide a Safety Review Report for each product class and a list of major facility components, systems, materials, and associated equipment, which includes but is not limited to, the following information:

- a) Equipment manufacturer's datasheet, model numbers, etc.,
- b) Technical specifications,
- c) Equipment safety-related certifications (e.g. UL),
- d) Safety-related systems, and
- e) Approximate volumes and types of hazardous materials expected to be on Site.

#### **Part Three: Facility Safety Management**

Identify and describe any hazards and risks to life, safety, public health, property, or the environment due to or arising from the Facility. Describe the Seller's applicable site-specific safety plans, risk mitigation, Safeguards and layers of protection, including but not necessarily limited to:

- a) Engineering controls,
- b) Work practices,
- c) Administrative controls,
- d) Personal protective equipment and procedures,
- e) Incident response and recovery plans,



- f) Contractor pre-qualification and management,
- g) Operating procedures,
- h) Emergency plans,
- i) Training and qualification programs,
- j) Disposal, recycle, transportation and reuse procedures, and
- k) Physical security measures.

## EXHIBIT M: FORM OF REPLACEMENT RA NOTICE

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

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information, and hereby certifies the unit is compliant with the requirements of D.21-06-035, and in addition, meets the same sub-category attributes if contracted for one of the sub-categories of D.21-06-035:

### Unit Information

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid (substation or transmission line)	
Path 26 (North or South)	
Local Capacity Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

<b>Month</b>	<b>CAISO Unit NQC (MW)</b>	<b>Unit Contract Quantity (MW)</b>
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[SELLER ENTITY]

By: \_\_\_\_\_

Its: \_\_\_\_\_

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

## EXHIBIT N: NOTICES

<b>Seller</b>	<b>Buyer</b>
<b>All Notices:</b> Attn: Street: City: Attn: Phone: Facsimile: Email:	<b>All Notices:</b> Attn: Street: City: Attn: Phone: Facsimile: Email:
<b>Reference Numbers:</b> Duns: Federal Tax ID Number:	<b>Reference Numbers:</b> Duns: Federal Tax ID Number:
<b>Invoices:</b> Attn: Phone: Facsimile: E-mail:	<b>Invoices:</b> Attn: Phone: E-mail:
<b>Scheduling:</b> Attn: Phone: Facsimile: Email:	<b>Scheduling:</b> Attn: TBD Phone: TBD Email: TBD
<b>Confirmations:</b> Attn: Phone: Facsimile: Email:	<b>Confirmations:</b> Attn: Phone: Facsimile: Email:
<b>Payments:</b> Attn: Phone: Facsimile: E-mail:	<b>Payments:</b> Attn: Phone: E-mail:
<b>Wire Transfer:</b> BNK: ABA: ACCT:	<b>Wire Transfer:</b> BNK: ABA: ACCT:
<b>Credit and Collections:</b> Attn: Phone: Facsimile: E-mail:	<b>Credit and Collections:</b> Attn: Phone: Facsimile: E-mail:

<b>Seller</b>	<b>Buyer</b>
<b>With additional Notices of an Event of Default to:</b> Attn: Phone: Facsimile: Email:	<b>With additional Notices of an Event of Default to:</b> Attn: Phone: Facsimile: Email:
<b>Emergency Contact:</b> Attn: Phone: Email:	<b>Emergency Contact:</b> Attn: Phone: Email:

## **EXHIBIT O: STORAGE CAPACITY TESTS AND ROUND-TRIP EFFICIENCY MEASUREMENTS**

### **Storage Capacity Test Notice and Frequency**

A. Commercial Operation Date Storage Capacity Test. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test prior to the Commercial Operation Date. Such initial Storage Capacity Test shall be performed in accordance with this Exhibit O and shall establish the initial Contracted Storage Capacity and the initial Actual Round-Trip Efficiency hereunder based on the actual capacity and capabilities of the Storage Facility determined during such Commercial Operation Date Storage Capacity Test.

B. Subsequent Storage Capacity Tests. Following the Commercial Operation Date, but not more than twice per Contract Year, upon no less than ten (10) Business Days prior Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the Storage Capacity has varied materially from the results of the most recent Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Storage Capacity and Actual Round-Trip Efficiency. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(c) of the Agreement and Part II(I) below, the actual capacity determined pursuant to a Storage Capacity Test shall become the new Contracted Storage Capacity and Actual Round-Trip Efficiency Rate at the beginning of the day following the completion of the test for calculating the Storage Rate and all other purposes under this Agreement, except that if the actual capacity determined pursuant to a Storage Capacity Test exceeds the Guaranteed Storage Capacity, then the new Contracted Storage Capacity shall be equal to the Guaranteed Storage Capacity.

### **Storage Capacity Test Procedures**

#### **PART I. General.**

Each Storage Capacity Test (including the initial Storage Capacity Test and all re-performances thereof) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a “**SCT**”. Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

PART II. Requirements applicable to all storage capacity tests and round-trip efficiency measurements.

A. Test Elements. Each SCT shall include the following test elements:

- Electrical output at Maximum Discharging Capacity (as defined in Exhibit A) at the Storage Facility Meter and concurrently at the Facility Meter (MW);
- Electrical input at Maximum Charging Capacity (as defined in Exhibit A) at the Storage Facility Meter (MW);
- Amount of time between the Storage Facility's electrical output going from 0 to Maximum Discharging Capacity;
- Amount of time between the Storage Facility's electrical input going from 0 to Maximum Charging Capacity;
- Amount of energy required to go from 0% Stored Energy Level to 100% Stored Energy Level charging at a rate equal to the Maximum Charging Capacity.

B. Parameters. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at ten (10) minute intervals:

- (1) Time;
- (2) Net electrical energy output to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);
- (3) Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter);
- (4) Stored Energy Level (MWh).

C. Site Conditions. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

- (1) Relative humidity (%);
- (2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and
- (3) Ambient air Temperature (°F).

D. Test Showing. Each SCT must demonstrate that the Storage Facility:

- (1) successfully started;
- (2) operated for at least four (4) consecutive hours at Maximum Discharging Capacity;
- (3) operated for at least four (4) consecutive hours at Maximum Charging Capacity;
- (4) has a Storage Capacity of an amount that is, at least, equal to the Maximum Stored Energy Level (as defined in Exhibit A); and
- (5) is able to deliver Discharging Energy to the Delivery Point as measured by the Facility Meter for four (4) consecutive hours at a rate equal to the Maximum Discharging Capacity.

E. Test Conditions.

- (i) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for operation at Maximum Discharging Capacity and Maximum Charging Capacity (as each is defined in Exhibit A).
- (ii) Abnormal Conditions. If abnormal operating conditions that prevent the recordation of any required parameter occur during a SCT [(including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy)] [*For PV technologies only*], Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.
- (iii) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice.

F. Incomplete Test. If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO or the Transmission Provider, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.

G. Final Report. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT, which report shall include:



- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
- (2) the measured data for each parameter set forth in Part II.A through C, including copies of the raw data taken during the test;
- (3) the level of Storage Contract Capacity, Charging Capacity, Discharging Capacity and Stored Energy Level determined by the SCT, including supporting calculations; and
- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

H. Supplementary Storage Capacity Test Protocol. No later than sixty (60) days prior to commencing Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this Exhibit O with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Facility ("**Supplementary Storage Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol. The initial Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Storage Contract Capacity and Actual Round-Trip Efficiency.

(a) The total amount of Discharged Energy delivered to the Delivery Point (expressed in MWh AC) during each of the first four hours of discharge shall be divided by four hours to determine the Contracted Storage Capacity, which shall be expressed in MW AC, and shall be the new Contracted Storage Capacity in accordance with Section 4.9(c) of the Agreement.

(b) The total amount of Discharging Energy above divided by the total amount of Charging Energy, and expressed as a percentage, shall be recorded as the new Actual Round-Trip Efficiency, and shall be used for the calculation of the Efficiency Rate Adjustment in Exhibit C until updated pursuant to a subsequent Capacity Test.

**EXHIBIT P**  
**STORAGE AVAILABILITY**

**Monthly Storage Availability**

(a) Calculation of Monthly Storage Availability. Seller shall calculate the “**Monthly Storage Availability**” in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[\text{MNTHHRS}_m - \text{UNAVAILHRS}_m]}{\text{MNTHHRS}_m}$$

where:

$m$  = relevant month “m” in which availability is calculated;

$\text{MNTHHRS}_m$  is the total number of hours for the month;

$\text{UNAVAILHRS}_m$ , is the total number of hours in the month during which the Storage Facility was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an “**Excused Event**”): a Force Majeure Event, Buyer Bid Curtailment, Buyer Curtailment Orders, Buyer Default, Curtailment Orders, System Emergencies, or the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in  $\text{UNAVAILHRS}_m$  for such month. Any other event that results in unavailability of the Storage Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Storage Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Storage Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Storage Facility in the Real-Time Market, and the Storage Facility is dispatched in the Real-Time Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

## EXHIBIT Q: OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date, provided that the Operating Restrictions (i) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (ii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iii) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols.

1. Buyer shall not issue a Discharging Notice for more than the Storage Contract Capacity at any time during the Contract Term.
2. Buyer shall not issue a Discharging Notice instructing to discharge more Discharging Energy than the Stored Energy Level at the time of the Discharging Notice.
3. Total Discharging Energy for any single day (00:00 to 23:59) shall not exceed [ ] MWh, calculated as the sum of the difference in Stored Energy Level between the start and end of a Discharging Notice for all Discharging Notices within that single day.
4. Total Discharging Energy may not exceed [ ] MWh per Contract Year.
5. Stored Energy Level may not remain above 75% for more than 24 consecutive hours without a Discharging Notice that returns the Stored Energy Level to 5%.
6. Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: 30 minutes prior to the beginning of the applicable Buyer Curtailment Period, unless the curtailment is effectuated through CAISO Automated Dispatch System (ADS), in which case the advanced notification required will match that provided by the CAISO ADS.
7. Minimum Buyer Curtailment Period: 30 minutes (i.e., six (6) consecutive Settlement Intervals).
8. Maximum ramp rate for Buyer Curtailment Periods: ten percent (10%) of the Installed Capacity per minute.
9. Notwithstanding the aggregate of the Guaranteed Generation Capacity and the Guaranteed Installed Storage Capacity, the Facility cannot in any event deliver more than an aggregate of [ ] MW AC to the Delivery Point at any point in time.

**EXHIBIT R: METERING DIAGRAM**

## **EXHIBIT S: CONTRIBUTION TO MID-TERM RELIABILITY PROCUREMENT**

This contract adds incremental capacity that fulfills the CPUC's mid-term reliability procurement order established in D.21-06-035. Details on the designed capability of these incremental resources in satisfying requirements for D.21-06-035 are stated below.

**Installed Generation Annual P50 Energy (Excluding 5:00 – 10:00 p.m. PT):** \_\_\_\_MWh

**Installed Generation Annual P50 Energy (5:00 – 10:00 p.m. PT):** \_\_\_\_MWh

**Installed Generation Capacity:** \_\_\_\_ MW

**Installed Storage Capacity:** \_\_\_\_ MW

**Installed Storage Capacity Duration:** \_\_-hours

**Installed Storage Depth:** \_\_\_\_ MWh

**Actual Round-Trip Efficiency of Storage:** \_\_\_\_%



[Date]

[Company]

Attention: [Contact]

[Department]

[Address]

Subject: Contract Negotiation Exclusivity Agreement for [Project name]

Dear [Company],

Redwood Coast Energy Authority (“**RCEA**”) is pleased to confirm that the offer (the “**Offer**”) submitted by [Company] (“**Respondent**”) for the [Project name] (“**Project**”) in the recent 2022 Request for Offers for Zero-Emission Reliability Resources (“**RFO**”) has been placed on the shortlist for further negotiations. If you wish to proceed with negotiations for a power purchase agreement, energy services agreement, or resource adequacy contract (“**Contracts**”) under the terms and conditions set forth below (the “**Exclusivity Agreement**”), please countersign where provided below and return it to [Procurement@RedwoodEnergy.org](mailto:Procurement@RedwoodEnergy.org) no later than [Date].

## Representations and Warranties

In accepting a position on the shortlist, Respondent hereby makes the following representations and warranties:

- (i) Respondent has not engaged and will not engage in oral, written, or any other form of communication with any other entity submitting an Offer to RCEA in response to the RFO with respect to the terms of Respondent’s Offer or such other entities’ offer(s) in the RFO; and
- (ii) Respondent will promptly notify RCEA of any material change in circumstances that may affect Respondent’s ability to fulfill the terms of its Offer, at any time from Offer submission to RCEA acceptance of the Offer, as evidenced by RCEA execution of Contracts, or Respondent’s withdrawal of the Offer.

Respondent understands and agrees that any breach by Respondent of the above representations and warranties is grounds for immediate disqualification of Respondent from the RFO and forfeit of the Shortlist Deposit.

## Exclusivity

In consideration of its shortlist position, Respondent hereby grants RCEA exclusivity with respect to the Offer beginning on the date of Respondent's execution of this Exclusivity Agreement and continuing until the earlier of the following events (the "**Exclusivity Deadline**"):

- (i) RCEA's termination of negotiations of the Contract;
- (ii) Ninety (90) calendar days after the date of Respondent's execution of this Exclusivity Agreement.

By mutual agreement, the Exclusivity Deadline may be extended by Respondent and RCEA pursuant to a written addendum to this Exclusivity Agreement. Respondent agrees prior to the Exclusivity Deadline it shall not enter into any agreements nor otherwise discuss the sale of output of the Project associated with the Offer with any third party under which it or its affiliates may agree, conditionally or unconditionally, to enter into a Contract for the output of the Project associated with the Offer.

As a condition of RCEA's obligations under this Exclusivity Agreement, Respondent agrees to provide RCEA with a deposit in the form of cash in the amount of [amount] (\$\_\_\_\_\_) Dollars (the "**Shortlist Deposit**") within five (5) business days of Respondent's countersignature of this Exclusivity Agreement. The cash deposit should be sent to:

Redwood Coast Energy Authority  
Attn: Lexie Perez  
633 3<sup>rd</sup> St.  
Eureka, CA 95501

The Shortlist Deposit will be promptly returned to Respondent in its entirety upon the occurrence of one or more of the following conditions: (i) following execution of the Contract and provision of the required security in accordance with the terms of such Contract, (ii) RCEA's rejection of Respondent's Offer following shortlist selection, (iii) written notice that successful conclusion of contract negotiation is not achievable, as determined by RCEA, or (iv) RCEA termination of the RFO process. Notwithstanding the foregoing, Respondent hereby acknowledges and agrees that Respondent will forfeit its Shortlist Deposit and RCEA shall have the right to draw on the Shortlist Deposit in its entirety if (i) it is determined by RCEA that Respondent made any material misrepresentations in the Offer, (ii) Respondent fails to comply with the terms and conditions of this Exclusivity Agreement or the RFO, (iii) Respondent unilaterally withdraws the offer or attempts to materially modify the terms of its offer or qualifications following the respondent's acceptance of shortlist status and submittal of deposit, unless such material modifications are agreed to by RCEA in writing, or (iv) prior to the Exclusivity Deadline, Respondent enters into discussions with any third party under which such third party, or any of such third party's affiliates may agree, conditionally or unconditionally, to enter into a Contract for the capacity of the Project associated with

the Offer. Respondent and RCEA agree that for purposes of this Exclusivity Agreement, the terms and conditions of the Offer are set forth in the signed term sheet provided to RCEA by Respondent.

Respondent agrees that RCEA will not be obligated to enter into any transaction with Respondent until a final negotiated Contract has received approval from the RCEA Board of Directors, and been fully executed by the parties thereto.

The terms of this Exclusivity Agreement may be modified or waived only by a separate writing signed by each of the parties that expressly modifies or waives any such term.

**IN NO EVENT SHALL EITHER PARTY, ITS AFFILIATES AND/OR REPRESENTATIVES BE LIABLE FOR ANY LOST OR PROSPECTIVE PROFITS OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, INDIRECT OR EXEMPLARY DAMAGES UNDER OR IN RESPECT TO THIS AGREEMENT.**

Acknowledged and Agreed:

**REDWOOD COAST ENERGY AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**[COMPANY]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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





# Request for Offers for Zero Emission Resources

Presentation to RCEA Board of Directors  
August 25, 2022



# Background & Objective

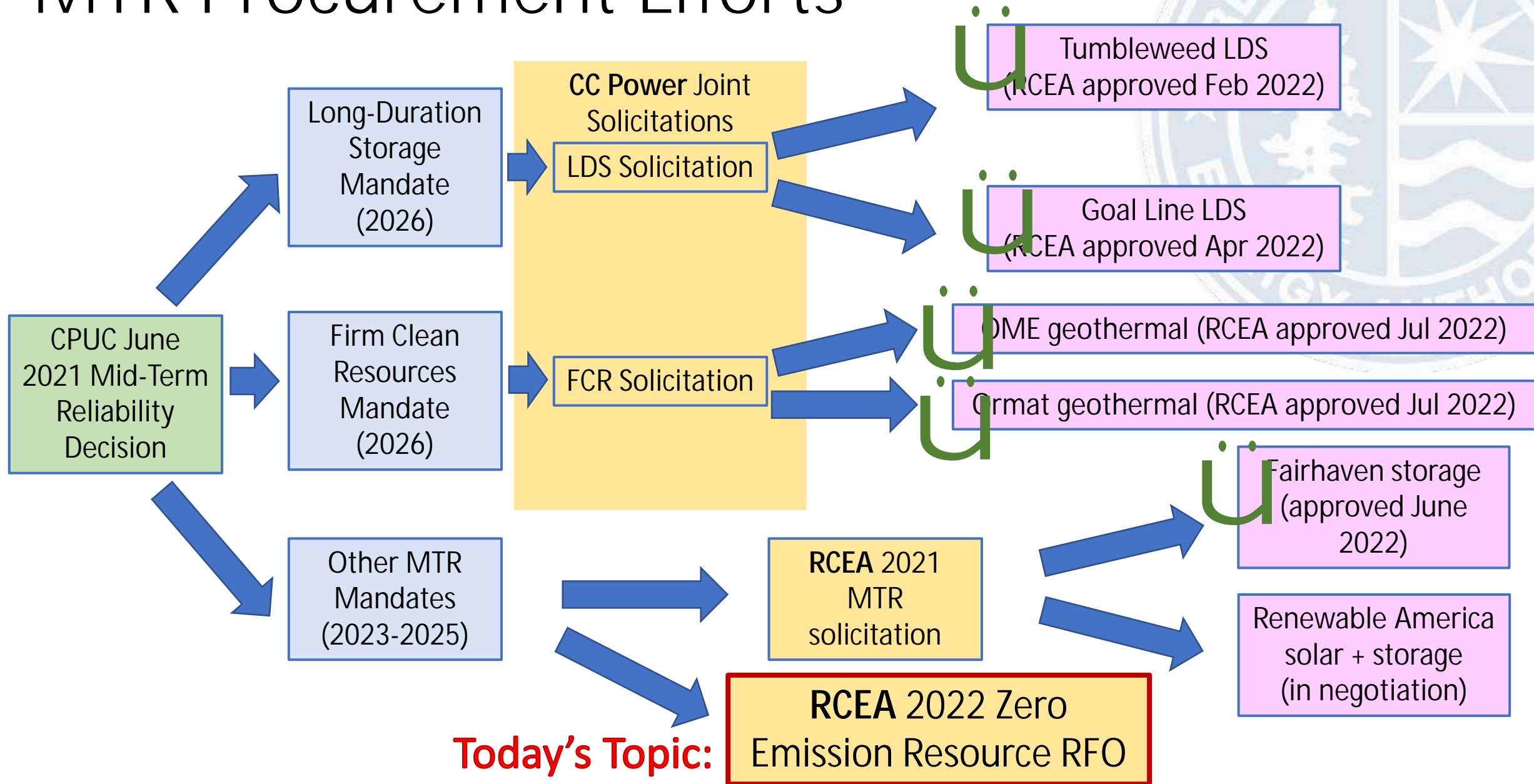
CPUC's June 2021 Decision Requiring Procurement to Address Mid-Term Reliability for 2023-2026

Requirement by Category (in Net Qualifying Capacity MW)	Aug 2023	Jun 2024	Jun 2025	Jun 2026	Total
RCEA total procurement consisting of:	7	20	5	7	39
<i>Diablo Canyon Replacement Capacity</i>	8				8
<i>Other Capacity</i>	24				24
<i>Long Lead Time: Long Duration Storage*</i>				3.5	3.5
<i>Long Lead Time: Clean Firm Resources*</i>				3.5	3.5

RCEA procurement goals:

- Board Resolution for 100% clean and renewable portfolio by 2025
- *RePower Strategic Plan for 100% local renewable portfolio by 2030*

# MTR Procurement Efforts



# What RCEA is soliciting

- Capacity: Offers of 1-50 MW resources to deliver at least 8 MW of Net Qualifying Capacity
- Commercial Operation Date: April 2025 or sooner
- Contract term: 10-20 years
- Technology types:
  - Renewable generation plus energy storage
  - Stand alone renewable or carbon-free generation
- Delivery requirement: Must be able to generate reliably in the evening hours from 5:00 to 10:00 p.m.



# Solicitation documents

The following documents are provided for Board review:

- RFO Protocol
- Statement of Qualifications Form & Project Details Addendum
- Proforma Renewable + Storage Power Purchase Agreement
- Exclusivity Agreement

The following document is excluded from Board review:

- Offer Form





# Evaluation

## Scoring Criteria:

- 30 – Overall price, customer value and compliance value
- 20 – Respondent experience, qualifications, creditworthiness
- 30 – Development risk: site control, interconnection, permitting
- 10 – Site-specific environmental impact
- 10 – Location and community benefit

Interviews: may be conducted following scoring with the intent to clarify questions and/or obtain development status updates



# Shortlisting & Selection

Proposed Board of Directors ad hoc offer review committee to:

- Review summary of offers and evaluation process
- Approve the shortlist
- Authorize staff to engage with shortlisted respondents on exclusivity agreements and deposits
- Review and approve any changes to the shortlist

Final power purchase agreements will be approved by the full RCEA Board of Directors

# RFO Schedule

Milestone	Date
<b>Issuance of RFO</b>	<b>August 26, 2022</b>
Questions due	September 2, 2022
Q&A and addenda posted on RCEA website	By September 8, 2022
<b>Responses due</b>	<b>September 16, 2022</b>
Interviews	By October 21, 2022
<b>RCEA Board ad hoc committee approval of shortlist</b>	<b>By October 31, 2022</b>
Respondents are notified of shortlist status	By November 4, 2022
Execute exclusivity agreements & collect shortlist deposits	By November 11, 2022
<b>Contract negotiations and RCEA Board approval of final agreements</b>	<b>November 2022 through Q1 2023</b>

Subject to change at staff's discretion





**STAFF REPORT**  
**Agenda Item # 7.1**

GENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Matthew Marshall, Executive Director
SUBJECT:	RePower Humboldt Energy Strategic Plan Update

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**BACKGROUND**

Following approximately nine months of analysis and gathering public input, in December of 2019 the RCEA Board adopted an update to the RePower Humboldt Strategic Plan, RCEA's comprehensive action plan for energy. The plan establishes goals and strategies to guide RCEA's work over the 2020-2030 period, and is available online at:

<https://redwoodenergy.org/wp-content/uploads/2020/06/RePower-2019-Update-FINAL-.pdf>

---

**SUMMARY**

Staff intends to provide RePower Humboldt Plan updates every six months to keep the Board informed on implementation progress. At the meeting RCEA department directors will provide a presentation on the current status of plan implementation and related activities. This will include updates on the four focus areas of the plan:

1. Regional Planning and Coordination
2. Integrated Demand Side Management
3. Low-Carbon Transportation
4. Energy Generation and Utility Services.

---

**STAFF RECOMMENDATION**

N/A – Information only.

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**ATTACHMENTS**

Presentation slides will be shared at this meeting.





# **RePower Humboldt Strategic Plan Progress Update August 2022**





# RCEA's RePower Humboldt Strategic Plan

## Updated December 2019 – 4 focus areas:



**Regional  
Planning &  
Coordination**



**Energy  
Generation &  
Utility Services**



**Integrated  
Demand Side  
Management**



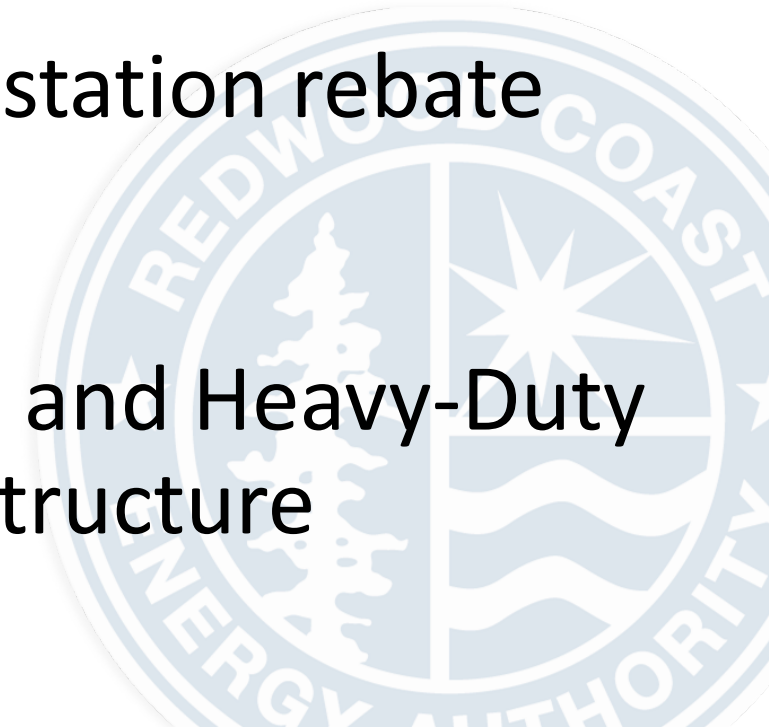
**Low-carbon  
Transportation**



**Low-carbon  
Transportation**

## **Current activities:**

- \$700,000 proposed grant award from CA Energy Commission to install additional public EV charging stations in rural areas
- Electric vehicle and charging station rebate program ongoing
- Continued work on Medium- and Heavy-Duty Zero Emissions Vehicle Infrastructure planning grant





**Integrated  
Demand Side  
Management**

*AKA:*

**Customer  
Energy  
Solutions**

## Current activities:

- Launched heat pump rebate program and expanded customer rebate catalog
- Submitted funding application for State-wide Rural Regional Energy Network program
- Conducted solar/storage training series for local firefighters
  - piloting solar + battery mobile unit with So. Hum. Fire Chiefs Association







**Energy  
Generation &  
Utility Services**

## Current activities:

- Testing and approvals for airport microgrid operating in island mode completed



- Exploring other potential microgrid opportunities, particularly in northeastern Humboldt

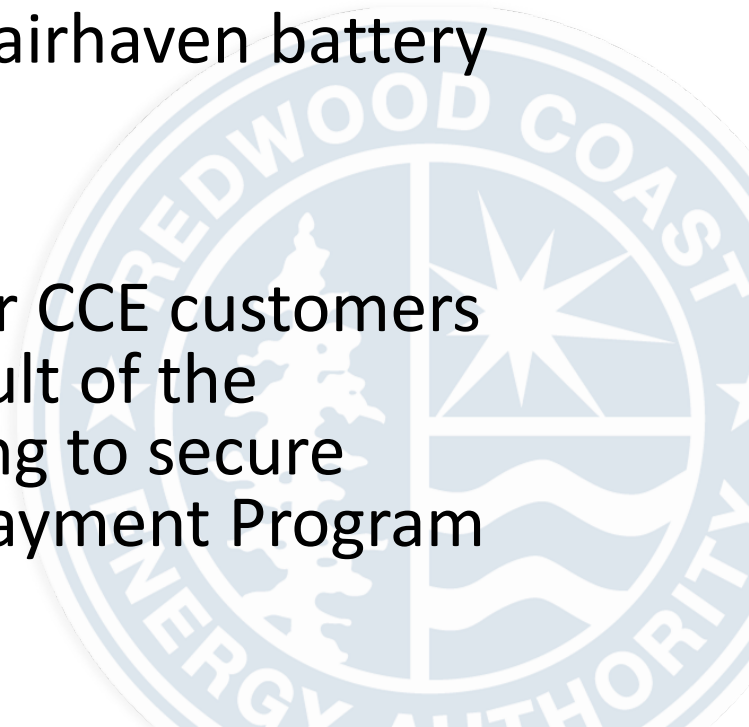




## Energy Generation & Utility Services

### Current activities:

- CA Community Power joint procurement to meet CA Public Utility Commission mandates:
  - 2.5 MW of Tumbleweed long-duration storage project
  - 2.0 MW of Goal Line long-duration storage project
  - 4.36 MW of new baseload geothermal
- Contracted for 17.25 MW with local Fairhaven battery storage project
- Secured \$1.46 million in bill credits for CCE customers who fell behind on payments as a result of the pandemic's economic impacts; working to secure additional funds from CA Arrearage Payment Program

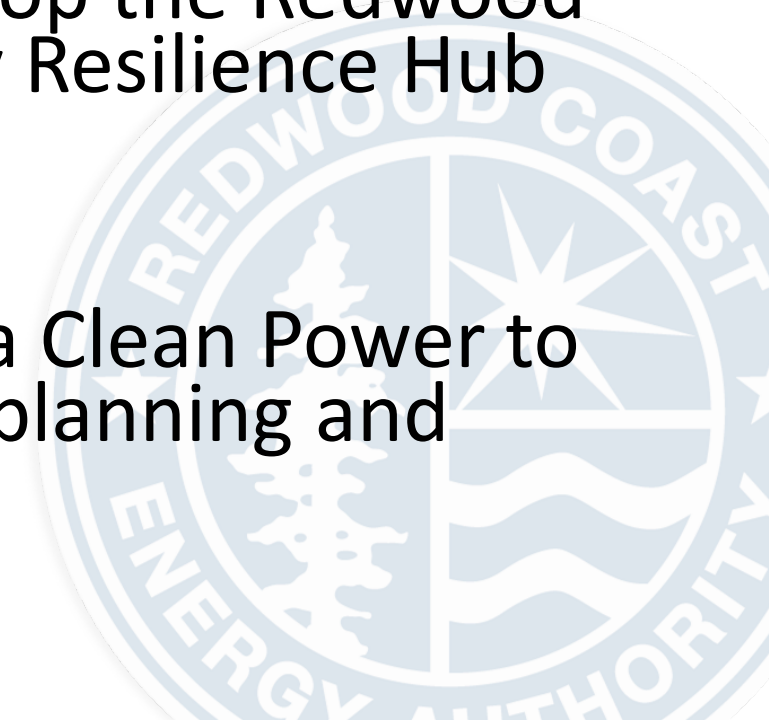




## **Regional Planning & Coordination**

### **Current activities:**

- Humboldt County Regional Climate Action Plan public review draft published in April
- Continuing to work with Humboldt Area Foundation and others to develop the Redwood Region Climate and Community Resilience Hub (CORE Hub)
- Entered into MOU with Sonoma Clean Power to collaborate on regional energy planning and development





A photograph of three offshore wind turbines in the ocean. The turbines are white with yellow bases and are mounted on yellow jackets. The sky is blue with white clouds. The water is dark blue.

# Offshore Wind Update



## **Regional Planning & Coordination**

### **Offshore Wind:**

- Continuing work with development partners and local stakeholders
- With mini-grant from RCEA, Humboldt Fishermen's Marketing Association established joint non-profit: CA Fishermen's Resilience Association
  - Represents the port associations for Crescent City, Trinidad Bay, Humboldt Bay, Shelter Cove, Fort Bragg/Noyo, Bodega Bay and San Francisco.
  - With RCEA funding CFRA developed a template "Fishing Community Benefit Agreement for Offshore Wind Development"
- Contracted with local consulting team "Lost Coast Wind" to support RCEA with Tribal engagement



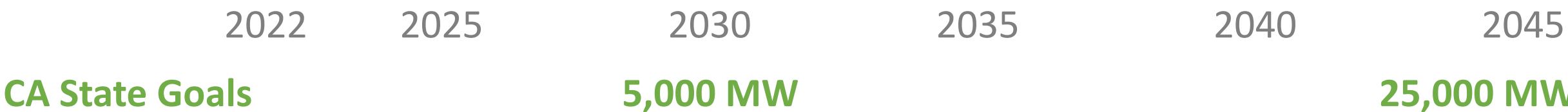
## **Regional Planning & Coordination**

### **Offshore Wind:**

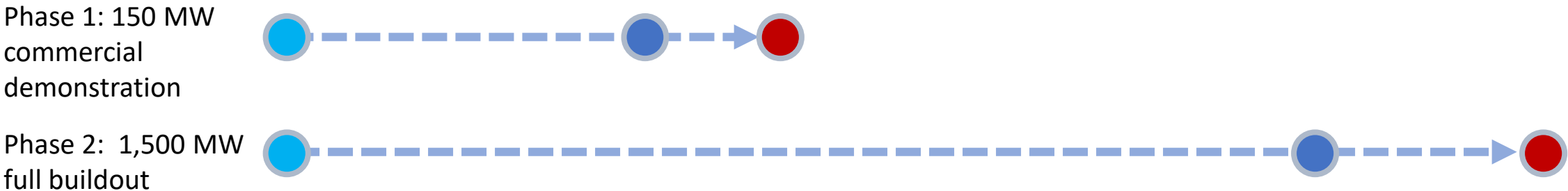
- Bureau of Ocean Energy Management (BOEM) on track for lease auction in the coming months
  - Completed environment assessment
  - Received CA Coastal Commission consistency determination
  - Issued Proposed Sale Notice, completed public comment period
  - Auction can be held as soon as 30 days after publication of the Final Sale Notice.
- On 8/10 the State adopted ambitious target for California offshore wind development



# CA North Coast Offshore Wind Energy Projected Development Timeline



## Humboldt Wind Energy Area (2 leases)



## Del Norte & Mendocino Wind Energy Areas (TBD)

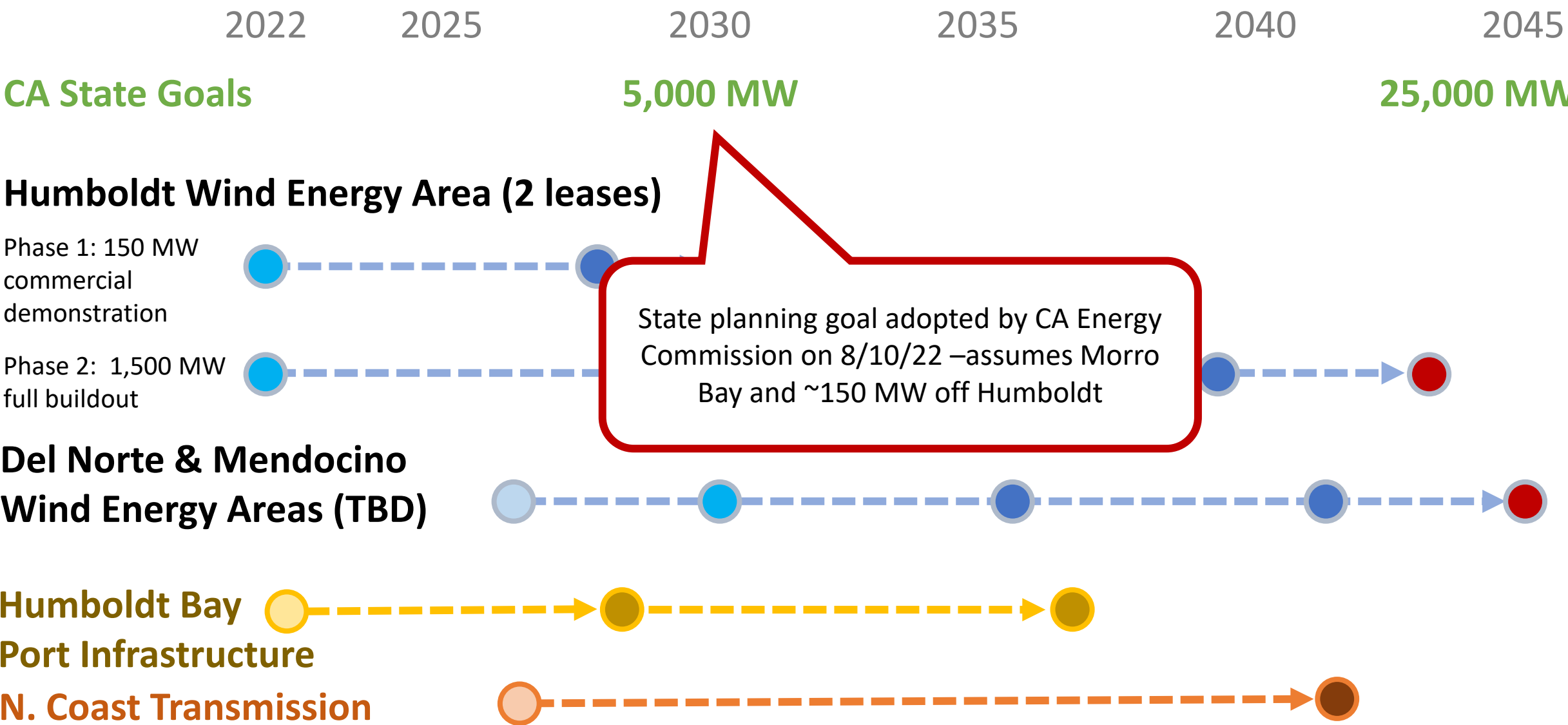


## Humboldt Bay Port Infrastructure

## N. Coast Transmission

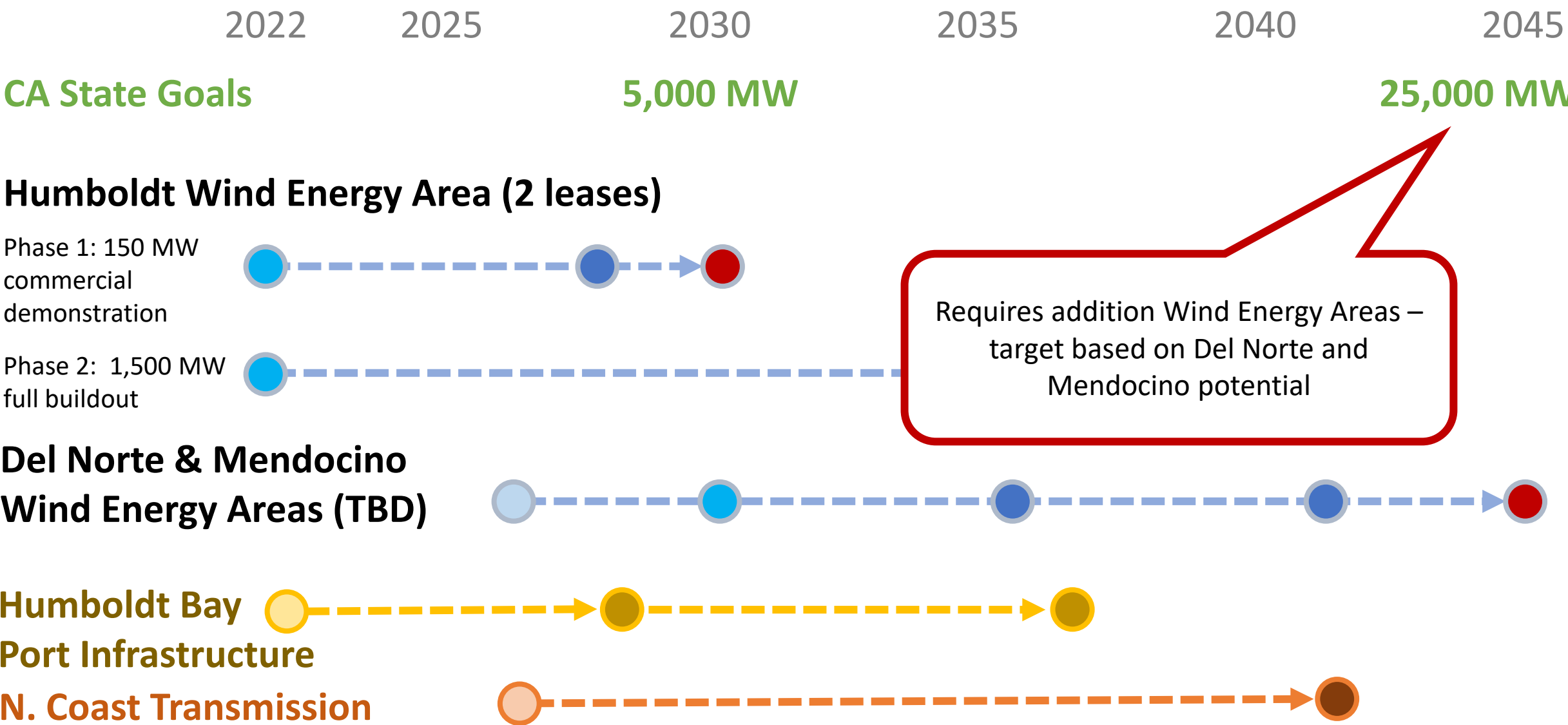


# CA North Coast Offshore Wind Energy Projected Development Timeline

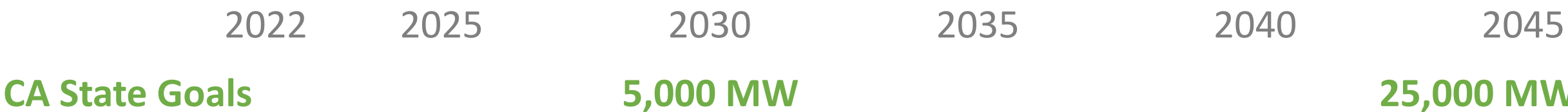




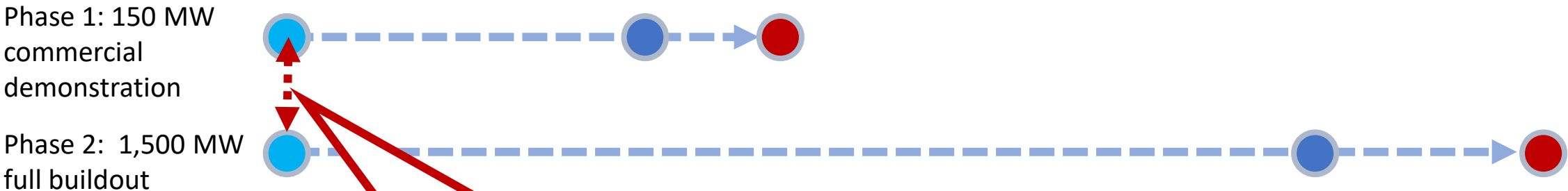
# CA North Coast Offshore Wind Energy Projected Development Timeline



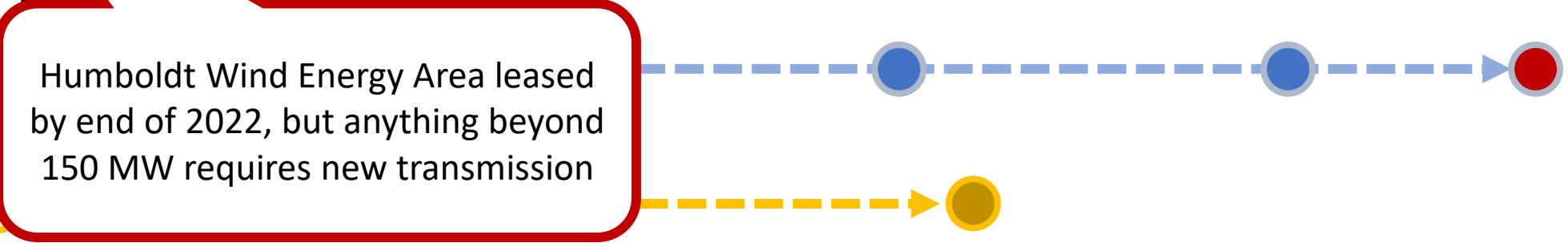
# CA North Coast Offshore Wind Energy Projected Development Timeline



## Humboldt Wind Energy Area (2 leases)



## Del Norte & Men... Wind Energy Area

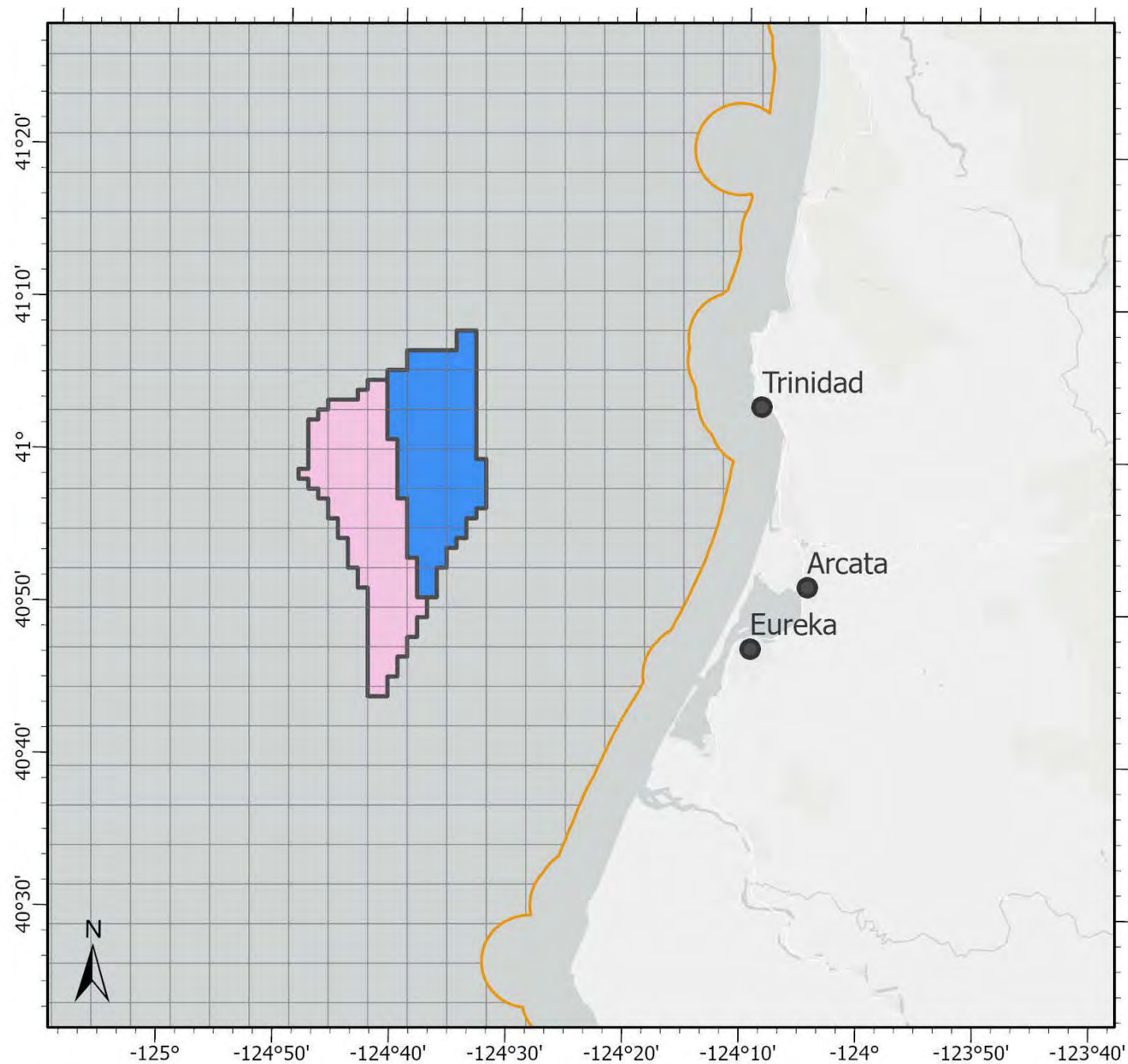


## Humboldt Bay Port Infrastructure

## N. Coast Transmission

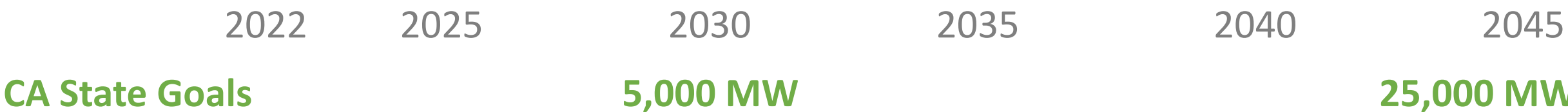


BOEM's  
proposed  
Humboldt  
offshore wind  
lease areas

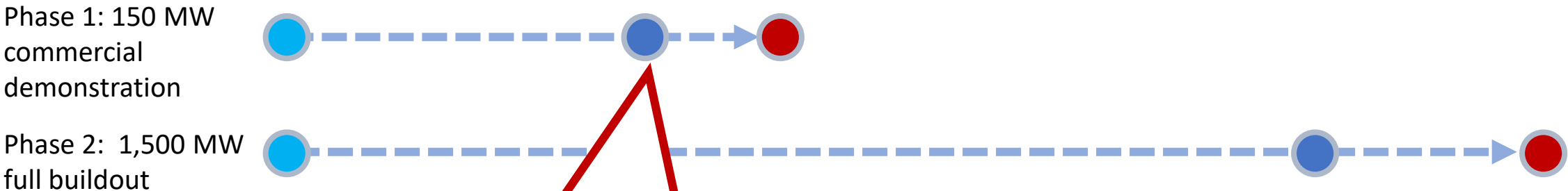




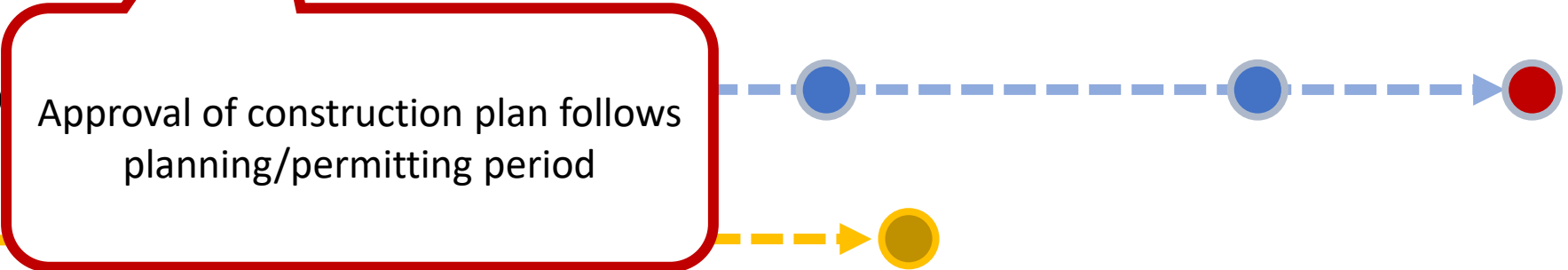
# CA North Coast Offshore Wind Energy Projected Development Timeline



## Humboldt Wind Energy Area (2 leases)

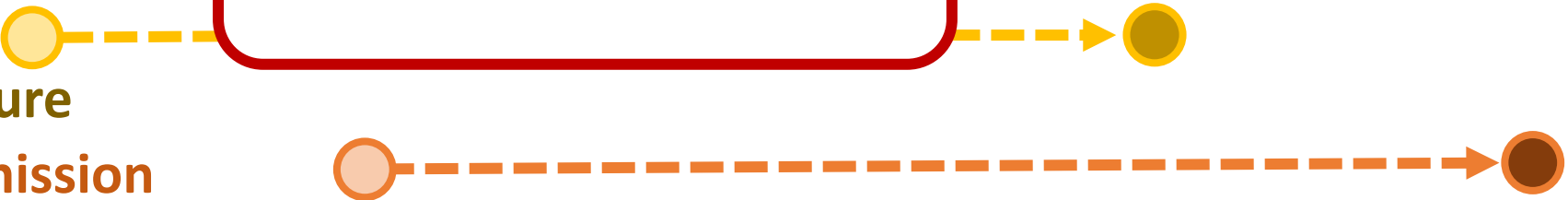


## Del Norte & Mendocino Wind Energy Areas (TBD)

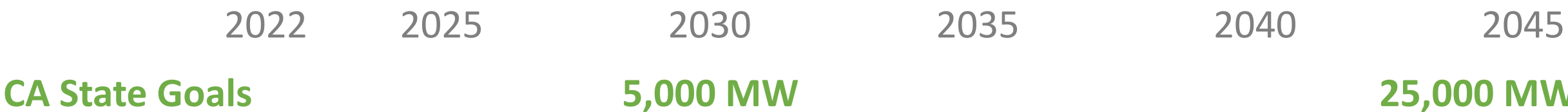


## Humboldt Bay Port Infrastructure

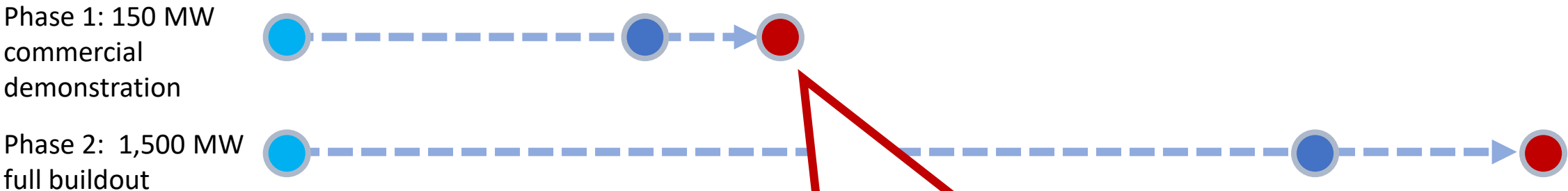
## N. Coast Transmission



# CA North Coast Offshore Wind Energy Projected Development Timeline



## Humboldt Wind Energy Area (2 leases)

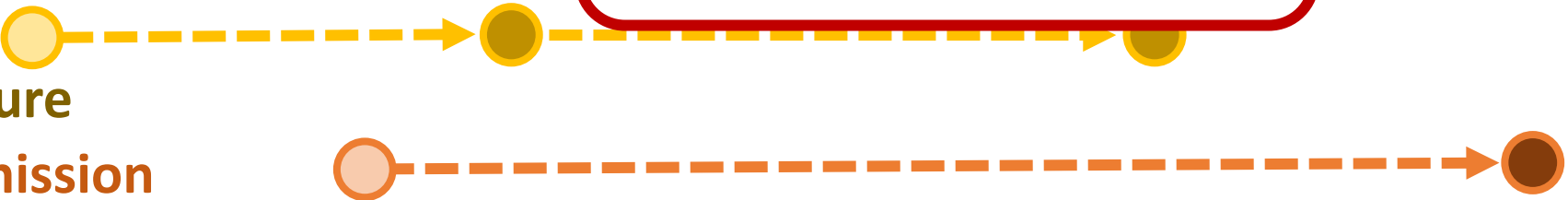


## Del Norte & Mendocino Wind Energy Areas (TBD)



## Humboldt Bay Port Infrastructure

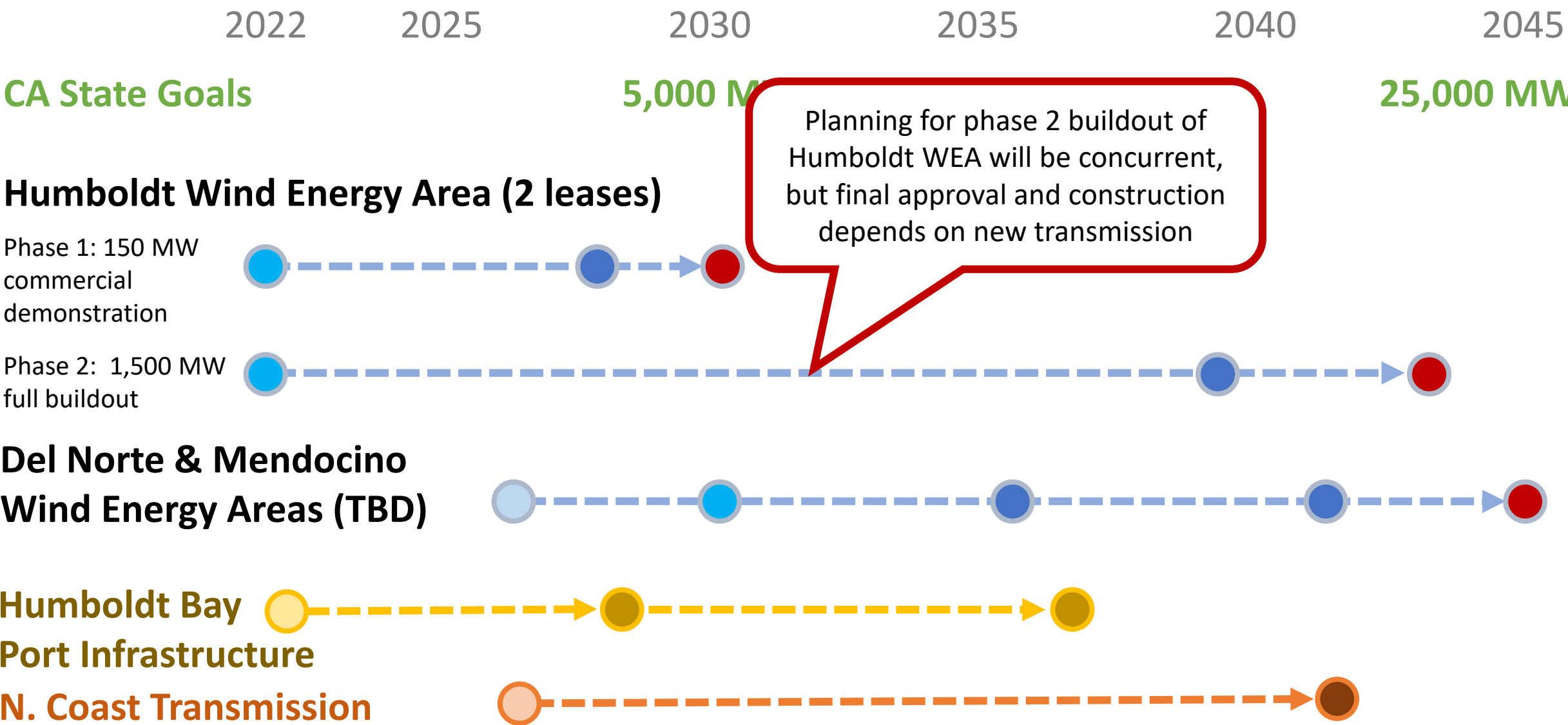
## N. Coast Transmission



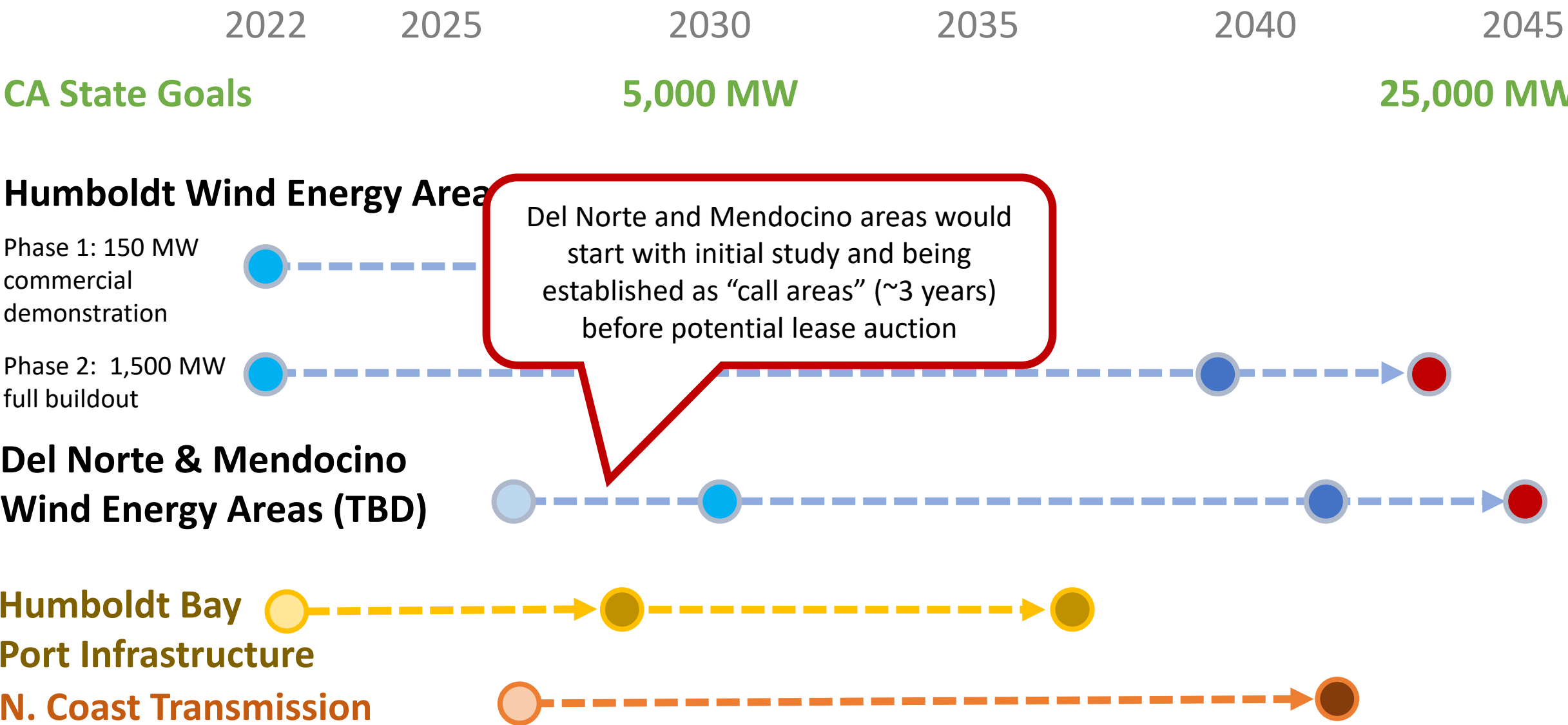
# 150 MW proposed Redwood Coast Offshore Wind Commercial Demonstration Project



# CA North Coast Offshore Wind Energy Projected Development Timeline

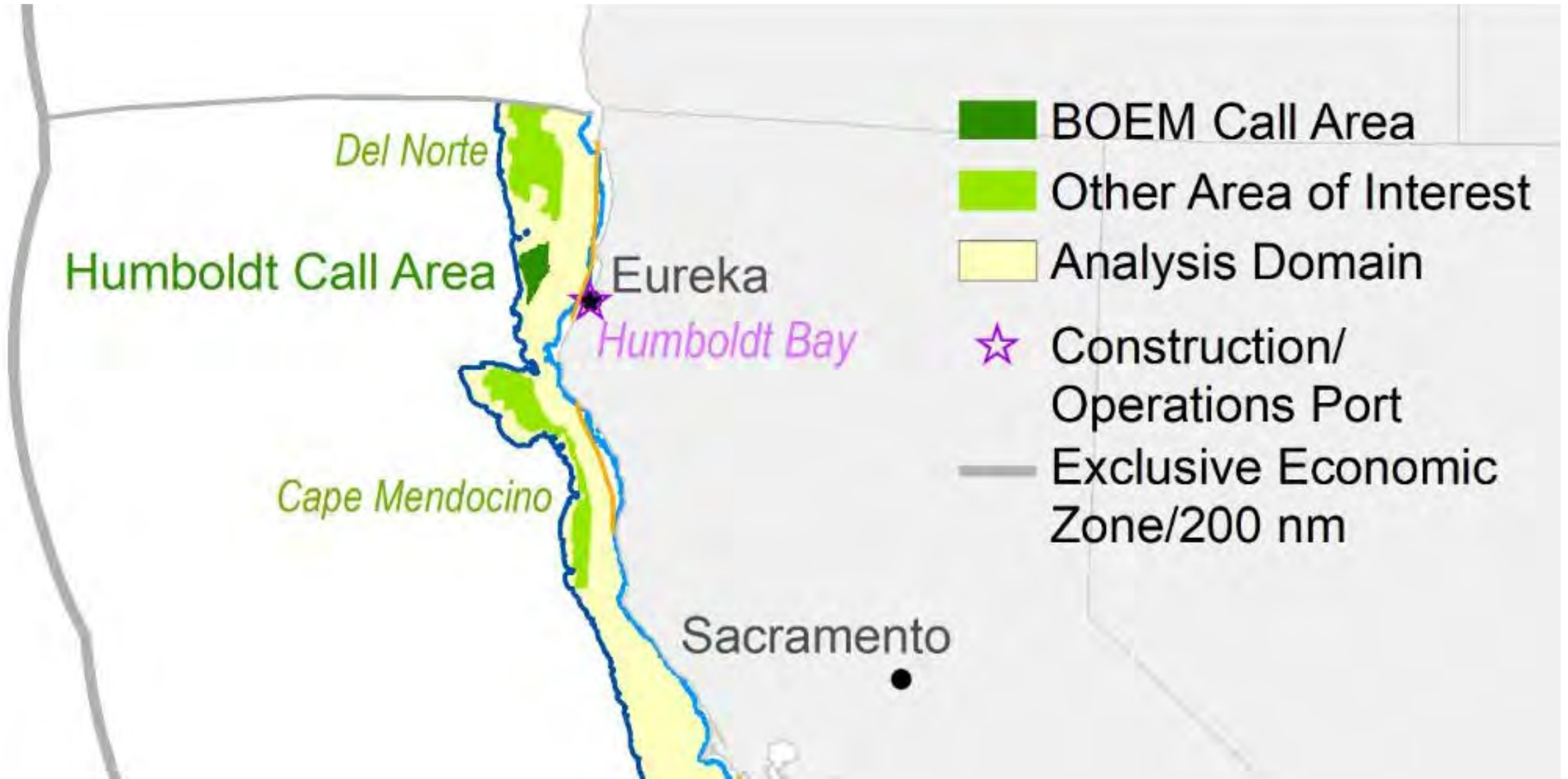


# CA North Coast Offshore Wind Energy Projected Development Timeline

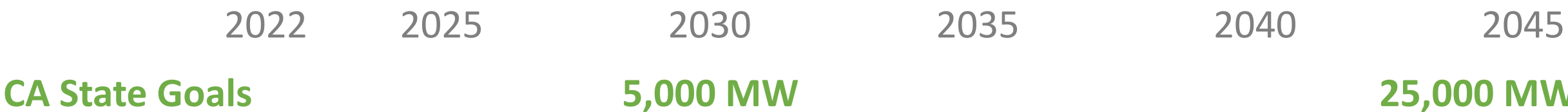




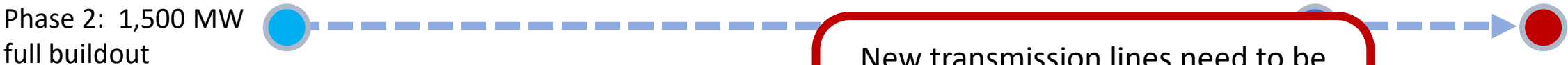
# Assumption behind State 2045 planning goal



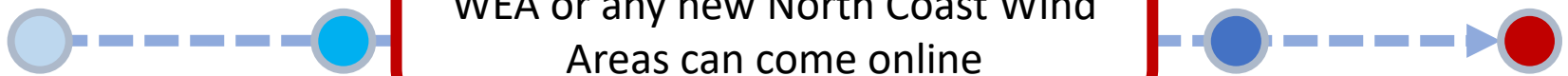
# CA North Coast Offshore Wind Energy Projected Development Timeline



## Humboldt Wind Energy Area (2 leases)

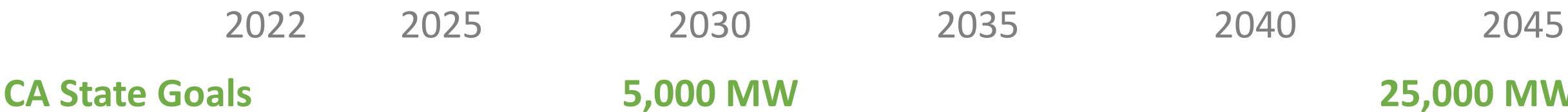


## Del Norte & Mendocino Wind Energy Areas (TBD)

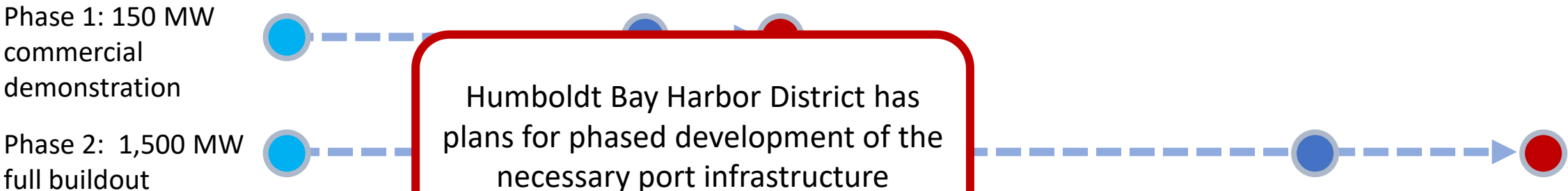


New transmission lines need to be built before phase 2 of Humboldt WEA or any new North Coast Wind Areas can come online

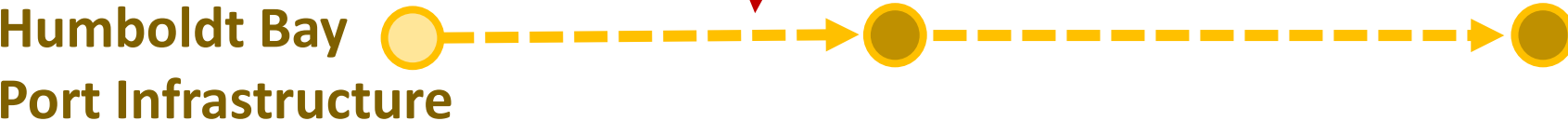
# CA North Coast Offshore Wind Energy Projected Development Timeline



## Humboldt Wind Energy Area (2 leases)



## Del Norte & Mendocino Wind Energy Areas (TBD)







Aker Offshore Wind





REDWOOD COAST  
**EnergyAuthority**



**STAFF REPORT**  
**Agenda Item # 7.2**

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
PREPARED BY:	Matthew Marshall, Executive Director Nancy Diamond, General Counsel Lori Biondini, Director of Business Planning & Finance
SUBJECT:	Offshore Wind Development Cooperative Agreement, Agreement in Principle

**BACKGROUND**

Prior to the launch of RCEA's Community Choice Energy (CCE) program, in 2016 the Board adopted Guidelines for the CCE Program's Launch Period Strategy and Targets after a series of community input-gathering workshops. The resulting guidelines lay out power portfolio goals for near and long term local renewable generation, including the development of offshore wind energy. In pursuit of that objective, RCEA issued a request for qualifications in 2018 to seek project partners that would provide the needed technical and financial resources to develop the local offshore wind resource while maintaining a local stake in planning and potential development off the Humboldt County coastline. This resulted in the Board's selection of a consortium of companies with which RCEA would pursue joint development of a local offshore wind energy project through a public-private partnership, and in November of 2018 RCEA entered into a Cooperation Agreement with Aker Solutions, EDPR Offshore North America, and Principle Power.

The Cooperation Agreement was structured to be an initial step in laying the foundation for future agreements and outlined a phase 1 (pre-lease) during which RCEA's project partners established a project company, Redwood Coast Offshore Wind, LLC ("ROW"), to be the entity that will develop, own, and operate the wind farm. The Cooperation Agreement was intended to be replaced by a subsequent public-private partnership agreement between RCEA and ROW that would govern the joint implementation of the offshore wind project through the full development, operation, and decommissioning phases of the project. The Cooperation Agreement was amended two separate times (December 19, 2019, and January 29, 2021) as RCEA's project partners underwent corporate restructuring, with the resultant parties to the Cooperation Agreement consisting of OW North America LLC ("OW") and Aker Offshore Winds USA LLC ("Aker"). Recently Aker purchased OW's interest in this offshore wind project and the Cooperation Agreement needs to be amended a third time to reflect OW's departure from the Cooperation Agreement.

Separately, RCEA and Aker have continued discussions about the PPP Agreement intended to replace the Cooperation Agreement. The Cooperation Agreement was entered into before the Bureau of Ocean and Energy Management ("BOEM") had completed its analysis of wind energy development potential in the Humboldt County Wind Energy Area. The offshore wind energy project contemplated in the Cooperation Agreement consisted of a 100-150 MW demonstration

scale project, and consistent with this project size, the parties secured an interconnection agreement with the California Independent System Operator (CAISO) to obtain a grid interconnection queue position for an approximately 150 MW project. However, on May 31, 2022, BOEM issued a Proposed Sale Note (“PSN”) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California which proposes greater development than the project envisioned by RCEA and its project partners. This PSN proposes an auction for 2 lease areas off the Humboldt County coast and 3 lease areas off the central California coast at Morro Bay, with each lease area of roughly equal power generation potential and geographical size, and utilizes the entirety of the Humboldt and Morro Bay Wind Energy Areas.

## **SUMMARY**

Because the PSN proposes different offshore wind development potential than is contemplated in the Cooperation Agreement, RCEA and Aker believe that the Cooperation Agreement’s successor agreement or agreements would be better informed if they are not confined by goals contemplated in the Cooperation Agreement. Instead, staff seeks Board approval that would terminate the Cooperation Agreement and replace it with an Agreement in Principle that sets out the primary issues to be negotiated for inclusion in one or more future agreements. These principles of negotiation for inclusion in a future agreement or agreements include the following key points:

1. Off-take arrangements(s) in which RCEA purchases wind energy from ROW;
2. A PPP Agreement to define the relationship between RCEA and ROW during the post-lease phases of project development and operation.
3. Determination of the Interconnection Agreement ownership if ROW is not the successful bidder and does not acquire a lease; and
4. ROW to enter into commitments to the community to demonstrate proactive community and stakeholder outreach for purposes of engaging, educating and involving the local community and key local stakeholders in project development, including, the hiring and training of local skilled labor.

## **STAFF RECOMMENDATION**

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1. Approve Third Amendment to Cooperation Agreement;
2. Approve Termination of Cooperation Agreement;
3. Approve Agreement in Principle;
4. Authorize the Executive Director to execute all such documents.

## **ATTACHMENTS:**

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1. Amendment No. 3 to Cooperation Agreement
2. Termination Agreement
3. Agreement in Principle

THIRD AMENDMENT  
TO THE  
COOPERATION AGREEMENT

This Third Amendment to the Cooperation Agreement (this “Third Amendment”), dated as of August \_\_, 2022, to be effective as of July 27, 2022 (the “Effective Date”), is to that certain Cooperation Agreement, dated as of November 1, 2018, by and among Aker Solutions Inc. (“ASI”), EDPR Offshore North America LLC (“EDPR”), Principle Power, Inc. (“PPI”), and Redwood Coast Energy Authority (“RCEA”), as amended by the First Amendment to the Cooperation Agreement, dated December 19, 2019 (the “First Amendment”), and the Second Amendment to the Cooperation Agreement, dated January 29, 2021 (the “Second Amendment, and collectively the “Cooperation Agreement”). Capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Cooperation Agreement.

WHEREAS, pursuant to the First Amendment, PPI withdrew as a member of the Consortium, and the definition of “Party” and “Parties” were thereby amended to respectively mean each of ASI, EDPR and RCEA individually and collectively.

WHEREAS, pursuant to the Second Amendment, references to EDPR were changed to reflect the name change to OW North America LLC (“OW NA”), and ASI assigned its rights and obligations under the Cooperation Agreement to Aker Offshore Winds USA LLC (“AOW”), and the definition of “Party” and “Parties” in the Cooperation Agreement were amended to respectively mean each of AOW, OW NA, and RCEA individually and collectively.

WHEREAS, pursuant to the Membership Interest Purchase Agreement (“MIPA”), dated July 27, 2022, by and among OW NA, AOW, and Aker Wind West Coast USA Corp., a Delaware corporation (“AWWC” and together with AOW, “Aker”), OW NA sold to Aker, and Aker purchased from OW NA, fifty percent (50%) of the issued and outstanding membership interests in the Project Company (the “Transaction”).

WHEREAS, upon closing of the Transaction, Aker became the owner of one hundred percent (100%) of the issued and outstanding membership interests in the Project Company.

WHEREAS, as a result of the Transaction, the Parties desire to further amend the Cooperation Agreement to reflect OW NA’s withdrawal from the Project Company and any further development of the Project, and the waiver by OW NA of all its rights and a waiver and release of OW NA from its obligations under the Cooperation Agreement, including but not limited to compliance with exclusivity provision in Section 6 of the Cooperation Agreement.

**NOW, THEREFORE**, in consideration of the promises and agreements contained herein and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, and intending to be legally bound, the Parties agree as follows:

1. Definitions.



- (a) The definition of “Party” and “Parties” in the Preamble is hereby deleted in its entirety. The following definition of “Party” and “Parties” shall be added to Section 1 – Definitions:

“*Party*” shall mean each of RCEA and Aker Offshore Wind USA LLC (“**AOW**”), and collectively, the “*Parties*.”

2. Consortium. All references to the term “Consortium” throughout the Cooperation Agreement that relate to rights and obligations of the Consortium that did not accrue or arise as of the Effective Date shall be replaced with “AOW.”

3. Exclusivity. Section 6.1 and 6.2 of the Cooperation Agreement shall be deleted in their entirety and replaced with the following so as to remove references to OW NA:

“6.1 During the Term of this Agreement and for one year thereafter, AOW and RCEA agree that neither they nor any of their respective Affiliates shall directly or indirectly undertake any activities with any third party for the development (or preparation therefor) of an offshore wind project (other than the Project) along the coast off Humboldt County.

6.2 AOW and RCEA agree that they shall be able to undertake activities with third parties to work towards the achievement of the goals of the Project and to spur broader market and/or project development on the West Coast of the United States, so long as such activities are not detrimental to the Project.”

4. Termination, Release and Waiver.

(a) Solely as it relates to OW NA (f/k/a EDPR), the Cooperation Agreement shall be deemed terminated and without any further force or effect, and all rights and obligations of OW NA (f/k/a EDPR) under the Cooperation Agreement shall be null and void and of no further force and effect. Each of RCEA and AOW expressly waive and release OW NA’s compliance with Section 6 – Exclusivity, including any obligation to not compete with the Project in Humboldt County for a period of one-year after termination.

(b) Each of AOW and RCEA on the one hand, and OW NA, on the other hand, releases and forever discharges the other party or parties and their respective Affiliates, and its and their directors, officers, employees and agents of and from all debts, demands, actions, causes of action, suits, accounts, covenants, contracts, agreements, damages, and any and all claims, demands and liabilities whatsoever of every name and nature, both in law and in equity, against each such other party or any of its assigns, which each releasing party has or ever had, which arise out of or relate to events, circumstances or actions taken by each such other party pursuant to the Cooperation Agreement prior to the Effective Date.

5. Entire Agreement. Except as expressly amended hereby, all of the provisions of the Cooperation Agreement shall continue to be and shall remain in full force and effect in accordance with their terms.
6. Interpretation. This Third Amendment shall be construed as supplementing and forming part of the Cooperation Agreement and shall be read accordingly.
7. Governing Law. This Third Amendment shall be construed in accordance with and governed by the laws of the State of California without regard to the conflicts of laws provisions thereof.
8. Severability. The parties acknowledge and agree that this document shall not be construed in favor of or against any one of the parties. If at any time any one or more of the provisions hereof is or becomes illegal, invalid or unenforceable in any respect under the applicable law of any jurisdiction, neither the legality, validity, or enforceability of the remaining provisions hereof, or the legality, validity, or enforceability under the applicable law of any other jurisdiction, shall in any way be affected or impaired thereby.
9. Effectiveness. This Third Amendment shall become effective as of the date written above.
10. Counterparts. This Third Amendment may be executed in counterparts, each of which will be considered an original, but all of which will constitute one and the same agreement. Facsimile and portable document format (pdf) signatures shall be binding as if an original.

*[Signature Page Follows]*

IN WITNESS WHEREOF, the Parties hereto have caused this Third Amendment to be duly executed on the date first above written.

AKER OFFSHORE WIND USA LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

OW NORTH AMERICA LLC

By: \_\_\_\_\_  
Name: Michael Brown  
Title: Chief Executive Officer

REDWOOD COAST ENERGY AUTHORITY

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_



## TERMINATION OF COOPERATION AGREEMENT

**THIS TERMINATION OF COOPERATION AGREEMENT** (this “Agreement”), is made and entered into as of August \_\_, 2022 (the “Effective Date”), by and between Redwood Coast Energy Authority, a local government joint powers authority organized and existing under the laws of the State of California (“RCEA”), and Aker Offshore Wind USA LLC (f/k/a Aker Solutions Inc.), a Delaware limited liability company (“Aker” and, together with RCEA, collectively the “Parties” and each individually a “Party”). Capitalized terms used and not otherwise defined herein shall have the meanings ascribed to such terms in the Cooperation Agreement (as defined below).

### RECITALS

**WHEREAS**, RCEA, Aker, Principal Power, Inc., a Nevada corporation (“PPI”), and OW North America LLC (f/k/a EDPR Offshore North America LLC), a Delaware limited liability company (“OW”), entered into that certain Cooperation Agreement, dated as of November 1, 2018, as amended by those certain (i) First Amendment to the Cooperation Agreement, dated as of December 17, 2019 (“First Amendment”), and (ii) Second Amendment to the Cooperation Agreement, dated as of January 29, 2021 (as amended, modified and revised, the “Cooperation Agreement”), pursuant to which the parties set forth and memorialized certain responsibilities, commitments, terms and conditions governing relating to the development of the Project;

**WHEREAS**, pursuant to the terms of the First Amendment, among other things, PPI was removed as a party to the Cooperation Agreement;

**WHEREAS**, OW recently expressed its desire to no longer be a member of the Project Company or otherwise share in the equity in the Project Company, and pursue the Project, and OW and Aker entered into that certain Membership Interest Purchase Agreement on July 27, 2022, pursuant to which Aker and its wholly owned affiliate, Aker Wind USA West Coast Corp, acquired all of the ownership interests held by OW in the Project Company and became the sole owners of the Project Company (the “OW Withdrawal”);

**WHEREAS**, as a result of the OW Withdrawal, OW is no longer a party to the Cooperation Agreement; and

**WHEREAS**, Aker and RCEA desire to (i) amend the Cooperation Agreement to provide that upon termination, neither Party has any ongoing rights or obligations to the other Party under the Cooperation Agreement including, but not limited to, the removal of the one-year post-termination survival period set forth in Section 6.1 of the Cooperation Agreement, and (ii) terminate the Cooperation Agreement, pursuant to the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the representations, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto, as the sole remaining parties to the Cooperation Agreement, intending to be legally bound, hereby agree as follows:

**1. Amendment to the Cooperation Agreement.**

1.1. In the first sentence of Section 6.1 of the Cooperation Agreement, the phrase “and for one year thereafter” is hereby deleted in its entirety. The Parties acknowledge and agree that, as of the Effective Date of this Agreement, neither Party shall be bound by or subject to any post-termination survival period or exclusivity obligations under the Cooperation Agreement following the earlier termination or expiration of the Term.

**2. Termination of the Cooperation Agreement.**

2.1. The Parties hereby agree to mutually terminate the Cooperation Agreement as of the Effective Date, in accordance with the terms of Section 16 of the Cooperation Agreement, as amended by this Agreement.

2.2. Notwithstanding anything to the contrary in the Cooperation Agreement, the Parties hereby agree and acknowledge that upon termination of the Cooperation Agreement, neither Party shall have any ongoing rights or surviving obligations to the other Party under the Cooperation Agreement, including, without limitation, Section 20 (Indemnification) and Section 23.12 (Survival).

**3. Mutual Release.**

3.1. In consideration of the covenants, agreements, and undertakings of the Parties under this Agreement, each Party, on behalf of itself and its respective present and former parents, affiliates, officers, directors, managers, shareholders, members, successors, and assigns (collectively, “Releasors”) hereby releases, waives, and forever discharges the other Party and its respective present and former, direct and indirect, parents, affiliates, employees, officers, directors, managers, shareholders, members, agents, representatives, permitted successors, and permitted assigns (collectively, “Releasees”) of and from any and all actions, causes of action, suits, losses, liabilities, rights, debts, dues, sums of money, accounts, reckonings, obligations, costs, expenses, liens, bonds, bills, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, extents, executions, claims, and demands, of every kind and nature whatsoever, whether now known or unknown, foreseen or unforeseen, matured or unmatured, suspected or unsuspected, in law, admiralty, or equity (collectively, “Claims”), which any of such Releasors ever had, now have, or hereafter can, shall, or may have against any of such Releasees for, upon, or by reason of any matter, cause, or thing whatsoever from the beginning of time through the Effective Date arising out of or relating to the Cooperation Agreement, except for any Claims relating to rights and obligations created by this Agreement.

3.2. Each Party, on behalf of itself and each of its respective Releasors, understands that it may later discover Claims or facts that may be different than, or in addition to, those that it or any other Releasor now knows or believes to exist regarding the subject matter of the release contained in this Section 3, and which, if known at the time of signing this Agreement, may have materially affected this Agreement and such Party’s decision to enter into it and grant the release contained in this Section 3. Nevertheless, the Releasors intend to fully, finally, and

forever settle and release all Claims that now exist, may exist, or previously existed, as set forth in the release contained in this Section 3, whether known or unknown, foreseen or unforeseen, or suspected or unsuspected, and the release given herein is and will remain in effect as a complete release, notwithstanding the discovery or existence of such additional or different facts. The Releasors hereby waive any right or Claim that might arise as a result of such different or additional Claims or facts. The Releasors have been made aware of, and understand, the provisions of California Civil Code Section 1542 ("Section 1542"), which provides: "**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**" The Releasors expressly, knowingly, and intentionally waive any and all rights, benefits, and protections of Section 1542 and of any other state or federal statute or common law principle limiting the scope of a general release.

#### **4. Miscellaneous.**

4.1. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns. The Parties agree that the terms of this Agreement shall survive the termination of the Cooperation Agreement.

4.2. This Agreement embodies the entire agreement and understanding of the parties hereto in respect of the subject matter contained herein. There are no restrictions, promises, representations, warranties, covenants, or undertakings, other than those expressly set forth or referred to herein. This Agreement supersedes all prior agreements and the understandings between the Parties with respect to such subject matter.

4.3. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the State of California.

4.4. Neither this Agreement, nor any rights or obligations hereunder may be assigned, delegated or conveyed by either Party without the prior written consent of the other Party.

4.5. The Parties agree that a facsimile or electronic (e.g., .pdf) signature of this Agreement will be deemed an original for all purposes and each waives the necessity of providing the original copy of such signature to bind the other Party to this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected hereon as the signatories.

*[The remainder of this page has been intentionally left blank; signature page follows]*

IN WITNESS WHEREOF, the Parties hereto have caused this Termination of Cooperation Agreement to be duly executed as of the Effective Date.

**REDWOOD COAST ENERGY AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AKER OFFSHORE WIND USA LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## AGREEMENT IN PRINCIPLE

**THIS AGREEMENT IN PRINCIPLE** (this “Agreement”), dated as of August \_\_\_, 2022, is entered into by and between Redwood Coast Energy Authority, a local government joint powers authority organized and existing under the laws of the State of California (“RCEA”), Redwood Coast Offshore Wind LLC, a Delaware limited liability company (“ROW”) and Aker Offshore Wind USA LLC, a Delaware limited liability company (“Aker”) with respect to a potential floating offshore wind energy project to be built developed, constructed, operated and maintained by RCOW and its members (the “Project”).

## RECITALS

**WHEREAS**, the Bureau of Ocean Energy Management (“BOEM”) of the Department of the Interior published the Pacific Wind Lease Sale 1 (PACW-1) for Commercial Leasing for Wind Power on the Outer Continental Shelf in California – Proposed Sale Notice as Docket No. BOEM-2022-0017 in Vol. 87, No. 104 of the Federal Register on May 31, 2022 (the “Proposed Sale Notice”). The Proposed Sale Notice set forth the terms and conditions of an auction (the “Auction”) for the sale by BOEM of commercial wind energy leases (each a “Lease”) on the Outer Continental Shelf in the Humboldt Wind Energy Area and Morro Bay Wind Energy Area off the coast of California (each a “Lease Area”);

**WHEREAS**, RCEA, Aker Offshore Wind USA LLC (f/k/a Aker Solutions Inc.), a Delaware limited liability company (“Aker”), Principal Power, Inc., a Nevada corporation (“PPI”), and OW North America LLC (f/k/a EDPR Offshore North America LLC), a Delaware limited liability company (“OW”), entered into that certain Cooperation Agreement, dated as of November 1, 2018, as amended by those certain (i) First Amendment to the Cooperation Agreement, dated as of December 17, 2019 (“First Amendment”), and (ii) Second Amendment to the Cooperation Agreement, dated as of January 29, 2021 (“Second Amendment” and as amended, modified and revised, the “Cooperation Agreement”);

**WHEREAS**, the Cooperation Agreement outlines and memorializes responsibilities, commitments, terms and conditions which govern certain aspects of the pursuit of an unsolicited lease from BOEM in the Humboldt Wind Energy Area and provided guiding principles and commitments for a 100MW to 150MW floating offshore wind energy project that would be jointly developed by the parties to the Cooperation Agreement (the “Legacy Project”);

**WHEREAS**, pursuant to the terms of the First Amendment, among other things, PPI was removed as a party to the Cooperation Agreement;

**WHEREAS**, on or around November 12, 2020, Aker and OW formed a new special purpose vehicle, ROW, which entity was given primary responsibility for the development of the Legacy Project (together with any replacement or successor entities, the “Project Company”);

**WHEREAS**, on or about July 20, 2018, in anticipation of the Legacy Project, EDPR became the customer of record with respect to the California Independent System Operator, Tepona Offshore Wind Project with queue position 1491 (the “Grid Connection”);

**WHEREAS**, on or about November 12, 2020, EDPR and ROW entered into an agreement to assign the Grid Connection to ROW.

**WHEREAS**, OW expressed its desire to no longer be a member of ROW or otherwise share in the equity in ROW, and Aker desired to continue to be a member of ROW and continue to pursue the Legacy Project, and OW and Aker entered into that certain Membership Interest Purchase Agreement on July 27, 2022, pursuant to which Aker and its wholly owned affiliate, Aker Wind USA West Coast Corp, acquired all of the ownership interests held by OW in the Project Company and became the sole owners of the Project Company;

**WHEREAS**, the terms and conditions of the Proposed Sale Notice make it no longer possible to pursue the Legacy Project in the form contemplated within the Cooperation Agreement;

**WHEREAS**, Aker desires to enter into discussions with qualified companies to replace OW as a strategic partner of ROW, and RCEA acknowledges the importance of adding a strategic partner to ROW; and

**WHEREAS**, Aker, ROW and RCEA desire to continue their business relationship under revised terms and conditions, and are entering into this Agreement to outline certain commitments being made by each Party for the future cooperation with respect to a floating offshore wind energy project.

**NOW THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, RCEA, ROW and Aker (each a “Party” and collectively, the “Parties”), as the sole remaining parties of the Cooperation Agreement, agree as follows:

1. Amendment and Termination of the Cooperation Agreement. Simultaneously with the execution of this Agreement, the Parties shall enter into a mutually acceptable termination agreement to the Cooperation Agreement pursuant to which the Parties shall agree that upon termination, neither Party has any ongoing rights or obligations to the other Party under the Cooperation Agreement including, but not limited to the provisions of Section 6.

2. Agreement Principles. In consideration for the termination of the Cooperation Agreement, the Parties agree to negotiate in good faith to enter into the following agreements:

a. Offtake: The Project Company will negotiate in good faith with RCEA to enter into offtake arrangements with RCEA for the purchase of power to be produced by the Project. Any such offtake arrangements will contain commercially reasonable terms at market and bankable competitive parameters and pricing methodologies as mutually agreed to by the Parties, and in any event, subject to senior debt lenders approval.

b. Public-Private Partnership. The Parties agree to negotiate in good faith a public-private partnership agreement to define the relationship between the Parties during the post-site control, development, construction and operation phases of the Project (“PPP Agreement”) to expand upon this Agreement with the intention to keep RCEA and other stakeholders informed on the progress of the project and future activities.

c. Interconnection Agreement. ROW currently holds a ~150MW interconnection agreement (the “Interconnection Agreement”). In the event that Aker or ROW participate in the Auction and do not secure a Site Lease in the Humboldt Wind Energy Area, ROW agrees to grant to RCEA of a right of first refusal or purchase option for RCEA to purchase the Interconnection Agreement based on its fair market value. The Parties agree that the mechanism around RCEA’s rights to acquire the Interconnection Agreement from ROW shall be more specifically defined and agreed in the PPP Agreement.

d. Community Commitments. In furtherance of the Project, ROW (in its capacity as the Project Company) will enter into commitments to the community to demonstrate proactive community and stakeholder outreach for purposes of engaging, educating and involving the local community and key local stakeholders in relevant stages of the Project development process including, but not limited to, hiring and training skilled labor from the immediate and surrounding area of the Project. ROW agrees to comply with all BOEM lease stipulations in relation to PACW-1.

3. Binding Agreement. Notwithstanding anything contained in the Cooperation Agreement or any other agreements between the Parties to the contrary, RCEA acknowledges and agrees that ROW and Aker intend to enter into discussions with third parties in furtherance of the Project (“Third Party Partners”), including for such party to become a member of the Project Company or its successor or replacement special purpose entity. This Section 3 and Section 4 are legally binding upon the Parties hereto.

4. Confidentiality.

a. The Parties shall keep all Confidential Information confidential and shall not disclose any Confidential Information to any other person without the prior written consent of the disclosing Party. If Confidential Information is required to be disclosed by act of law or judicial or other governmental action, the duty to maintain confidentiality of such information shall remain to the extent the disclosure is not subject to the law or specific disclosure demand.

b. Requests for Disclosure Pursuant to the California Public Records Act.

i. Each Party acknowledges that RCEA is a public agency subject to the requirements of the California Constitution, Article 1, Section 3 and the California Public Records Act (Cal. Gov. Code section 6250 et seq. (“PRA”)).

ii. Each Party acknowledges that it may submit to or otherwise provide RCEA with access to materials that a Party considers Confidential Information, which may or may not be exempt from public disclosure under applicable California law.

iii. Where any third party (the “Requestor”) not otherwise authorized to access Confidential Information under this Agreement makes a demand or request to RCEA for access to Confidential Information (the “Request”), RCEA will promptly notify the Parties of the Request before responding to the Requestor and indicate its preliminary analysis of whether the records requested are subject to or exempt from disclosure under the PRA. If the information demanded or requested affects more than one Party, then the affected Parties shall cooperate in their response, including engaging joint counsel if deemed advisable, and share such costs. In the event any Party

disagrees with RCEA's preliminary analysis, such Party shall be solely responsible for taking whatever legal steps such Party deems necessary to prevent release of information to the Requestor (including the release of such information by RCEA). Such Party is responsible for all costs associated with pursuit of any legal steps, including the pursuit of any legal remedies, subject to any sharing of costs in the case more than one Party is affected (e.g. retaining joint counsel).

iv. Each Party understands and acknowledges that the California Public Records Act compels RCEA to respond to Requests within ten (10) calendar days of receipt of a Request (the "RCEA Deadline"). Where RCEA has met its obligation to timely notify the Parties as set forth in Section 4.b.iii and a Party fails to notify RCEA that it will seek a protective order or other legal remedy to bar the disclosure of information that the Party considers Confidential Information prior to RCEA Deadline, RCEA may, without liability hereunder, disclose the Confidential Information that is necessary to be disclosed in response to the Request.

v. Without limiting the more general indemnity terms of this Agreement, each Party will indemnify, defend, and hold harmless RCEA from any claim, costs, or liability arising from such Requests, including RCEA's refusal to disclose information a Party considers to be Confidential Information in response to any Party demand that such information not be disclosed.

c. Exceptions. Notwithstanding the foregoing, "Confidential Information" shall exclude (and a receiving Party shall not be under any obligation to maintain in confidence) any information (or any portion thereof) disclosed by any Party to the extent that such information:

- i. Is in the public domain at the time of disclosure by the disclosing Party; or
- ii. At the time of or following disclosure, becomes generally known or available through no act or omission on the part of any receiving Party; or
- iii. Is known, or becomes known, to the receiving Party from a third-party source that is not under an obligation to the disclosing Party to maintain confidentiality; or
- iv. Is independently developed by a Party without violating any of its obligations under this Agreement or any other agreement between the Parties; or
- v. Is permitted to be disclosed by a formal written agreement executed by and between the receiving Part(ies) and the disclosing Party; or
- vi. Was in the possession of the receiving Party prior to disclosure by the disclosing Party; or
- vii. Is required to be disclosed by law or regulation; provided that, to the extent practicable and legally permissible; the disclosing Party is given prompt notice of such required disclosure so that the disclosing may seek an injunction or other protective order.



d. The Parties agree that a breach of this Section 4 may not be remediable by the payment of damages and that any Party shall therefore be entitled to injunctive relief and other equitable remedies to prevent or remedy a breach of this Section 4, without being required to post a bond or other security.

5. Miscellaneous.

a. This Agreement shall be governed by and construed in accordance with the internal laws of the State of California, without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of laws of any jurisdiction other than those of the state of California.

b. Neither this Agreement, nor any rights or obligations hereunder may be assigned, delegated or conveyed by either Party without the prior written consent of the other Party; provided that the Parties acknowledge that the intent of this Agreement is to provide clarity to Third Party Partners of the commitments of ROW, and such Agreement shall be enforceable by such Third Party Partner upon admittance to ROW as a member.

c. Each of RCEA, ROW and Aker agrees that a facsimile or electronic (e.g., .pdf) signature of this Agreement will be deemed an original for all purposes and each waives the necessity of providing the original copy of such signature to bind the other Party to this Agreement. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original as against any Party whose signature appears thereon and all of which shall together constitute one and the same instrument. This Agreement shall become binding when one or more counterparts hereof, individually or taken together, shall bear the signatures of all of the Parties reflected hereon as the signatories.

*[The remainder of this page has been left intentionally blank]*

**IN WITNESS WHEREOF**, this Agreement is entered into and executed by the undersigned, effective as of the date first set forth above.

**REDWOOD COAST ENERGY AUTHORITY**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**REDWOOD COAST OFFSHORE WIND LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**AKER OFFSHORE WIND USA LLC**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## REDWOOD COAST Energy Authority

### STAFF REPORT Agenda Item # 9.1

AGENDA DATE:	August 25, 2022
TO:	Board of Directors
FROM:	Matthew Marshall, Executive Director
SUBJECT:	Executive Director's Report

#### SUMMARY

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Executive Director Matthew Marshall will provide a brief update on:

- Energy implications of the Federal Inflation Reduction Act,
- RCEA recent activities, and
- Other topics as needed.

#### RECOMMENDED ACTION

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None. (Information only.)

#### ATTACHMENT

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RCEA Monthly Report

# August 2022 News and Updates

## from the Redwood Coast Energy Authority



### Public Safety Power Shutoff (PSPS):

The 2022 Public Safety Power Shutoff (PSPS) season is already upon us, with wildfires threatening communities in northeastern Humboldt County. RCEA staff have readied themselves through participation in meetings and trainings on the PSPS topic hosted by PG&E. This year PG&E's wildfire readiness strategy actually includes three separate responses, each with its own web information portal that RCEA staff have access to: PSPS information, Electric Powerline Safety Shutoff (EPSS) information, and microgrid information.

PSPS events, already familiar to California power users, are pre-planned events where PG&E advises affected customers and partners such as RCEA ahead of time of when power is expected to be cut off, anticipated duration of the outage, and which customers will be affected. EPSS in contrast uses technology that cuts off power to a specific circuit in a fraction of a second in response to events such as tree branches touching a power line. Due to the nature of EPSS events, advance warning to customers and partners is not feasible. PG&E's new microgrid portal was created in response to a CPUC order requiring utilities to help implement the State Emergency Plan. It will provide information on microgrids being deployed by PG&E in high fire threat districts as another strategy to respond to mitigate wildfire risks.

PG&E's ability to "island" most of its Humboldt County circuits using the Humboldt Bay Generating Station as its main power source for the area has allowed for a great reduction in the expected number of PSPS events, as many of these events in the past were actually due to fire threats outside of Humboldt County but nonetheless impacted the power transmission lines connecting us to the rest of the state. In addition, PG&E has been working on "hardening" its transmission lines through vegetation management and other changes, which is also expected to help minimize PSPS events.

In order to help our customers access important safety announcements, RCEA has updated our website and the home page now has an Electricity Grid Alerts window that links to PG&E's PSPS information as well as the Humboldt County Office of Emergency Services and the California Independent System Operator's Flex Alerts page.

### Sandrini Solar Project:

EDPR began preliminary construction activities on Sandrini Sol 1 by issuing limited notices to proceed to their engineering, procurement, and construction contractors in July.

**WE  
ARE  
HIRING!**

### Current Employment Opportunities at RCEA

- Infrastructure Programs Manager
- Human Resources & Workforce Development Manager
- Account Services Associate

See  
our website  
for details

### Rebate totals to date

#### EV Charging Equipment

RCEA REBATE

12  
approved



#### Electric Vehicles

RCEA REBATE

30  
approved



#### Heat Pumps

RCEA REBATE

52  
approved  
9 reserved



#### Equipment & Appliance

RCEA REBATE

5  
approved  
5 in progress

### 2022 totals

#### Residential Services ASSESSMENTS

65  
consultations  
41 res kits



#### Non-Res Services ASSESSMENTS

97  
Completed





## Agency Projects - ongoing

- Arcata School District** - CalSHAPE HVAC project and CO2 monitors project progressing
- Area One Agency on Aging** - lighting project completed
- Burnt Ranch Elementary School** - installing roof-mounted solar array project
- City of Arcata** - outlining an energy efficiency project at Arcata Community Center
- City of Blue Lake** - assisting with how to best utilize OES funding and a possible solar project
- City of Eureka** - installed lighting upgrades at the Water Treatment Plant
- City of Ferndale** - solar and lighting project completed
- City of Rio Dell** - solar and storage installed, generator installation in progress
- City of Trinidad** - solar and storage installed, battery installation in progress
- Coastal Grove Charter School** - CalSHAPE HVAC and CO2 monitors projects in progress
- Eureka City Schools** - solar, storage, and EV bus charger installation project progressing
- Loleta Union Elementary School** - assisting with CalSHAPE program application
- McKinleyville Union School District** - kick-off meeting scheduled for school district benchmarking
- Redway Community Services District** - revisiting possible solar project
- Redwood Coast Montessori School** - CalSHAPE plumbing application submitted
- Yurok Tribe** - benchmarking and making connections for multiple project locations

**Rural REN** - We are going through the CPUC regulatory process and are aiming for 2024 launch

**TECH Quick Start Grant** - We working with customers and contractors to install heat pumps and heat pump water heaters for non-regulated fuel users

**Mobile Home Solar** - We are moving towards a memo of understanding (MOU) with Bear River Rancheria to grant funds for them to implement two to three projects

**Transportation** - We have observed steady growth in the use of our EV charging network over the last five years, despite fluxuations during the pandemic. Gas prices this summer helped to drive up EV charging demand, and despite a tight EV supply market and chip shortages, we expect them to be even more popular in the near future as EVs gain in popularity and availability.

July 2020 - July 2022

