RENEWABLE POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

**Seller:** Clines Corners Wind Farm LLC

**Buyer:** City of San Jose, a California municipality

**Description of Facility:** A 225 MW wind-powered electricity generating facility, in two separately metered phases, as described in Exhibit A, as such facility may be modified under the terms of this Agreement.

**Milestones:**

<table>
<thead>
<tr>
<th>Milestone</th>
<th>Date for Completion</th>
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<tbody>
<tr>
<td>Evidence of Site Control</td>
<td></td>
</tr>
<tr>
<td>Expected PTO Construction Start</td>
<td></td>
</tr>
<tr>
<td>Seller’s receipt of System Impact Study results for Seller’s Interconnection Facilities</td>
<td></td>
</tr>
<tr>
<td>Seller’s receipt of Facilities Study results for Seller’s Interconnection Facilities</td>
<td></td>
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<tr>
<td>Executed Interconnection Agreement</td>
<td></td>
</tr>
<tr>
<td>Financial Close</td>
<td></td>
</tr>
<tr>
<td>Expected Construction Start Date</td>
<td></td>
</tr>
<tr>
<td>Initial Synchronization</td>
<td></td>
</tr>
<tr>
<td>Network Upgrades completed (evidenced by delivery of permission to parallel letter from the PTO)</td>
<td></td>
</tr>
<tr>
<td>Expected Commercial Operation Date for Western Spirit Transmission Line</td>
<td></td>
</tr>
<tr>
<td>Expected Commercial Operation Date</td>
<td></td>
</tr>
</tbody>
</table>

**Delivery Term:** The period for Product delivery will be for fifteen (15) Contract Years.
**Expected Energy:**

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Expected Energy (MWh)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td></td>
</tr>
</tbody>
</table>

**Contract Price:**

The Contract Price of the Product shall be:

<table>
<thead>
<tr>
<th>Contract Year</th>
<th>Contract Price</th>
</tr>
</thead>
<tbody>
<tr>
<td>1 – 15</td>
<td>$MWh (flat) with no escalation</td>
</tr>
</tbody>
</table>

**Product:**

- [x] Delivered Energy
- [x] Green Attributes/Renewable Energy Credit (Portfolio Content Category 1)
- [x] Capacity Attributes
  - [ ] Full Capacity Deliverability Status and Expected FCDS Date: N/A

**Scheduling Coordinator:** Seller/Seller Third Party

**Development Security, Performance Security and Guarantor**

Development Security: $kW of Guaranteed Capacity

Performance Security: $kW of Guaranteed Capacity

Guarantor: [Redacted]
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- Exhibit O  Concentration Limitations
- Exhibit P  Community Investment
RENEWABLE POWER PURCHASE AND SALE AGREEMENT

This Renewable Power Purchase and Sale Agreement ("Agreement") is entered into as of August 31, 2020 (the "Effective Date"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a “Party” and jointly as the “Parties.”

RECATALS

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

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

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

ARTICLE 1
DEFINITIONS

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

“AC” means alternating current.

“Accepted Compliance Costs” has the meaning set forth in Section 3.13.

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

“Affiliate” means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of “Permitted Transferee”, “control” (including, with correlative meanings, the terms “controlled by” and “under common control with”), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.

“Agreement” has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.

“Alternative Delivery Point” means a Scheduling Point, as defined in the CAISO Tariff, other than the Delivery Point.

“Annual Threshold” has the meaning set forth in Section 3.3(a).
“Approved Meter” means a CAISO approved revenue quality meter or meters, or if a
CAISO approved meter is not available consistent with PTO requirements, then a PTO approved
meter, together with a CAISO-approved or PTO-approved, as the case may be, data processing
gateway or remote intelligence gateway, telemetering equipment and data acquisition services
sufficient for monitoring, recording and reporting, in real time, all Energy produced by the Facility
net of Electrical Losses and Station Use.

“Available Capacity” means the capacity from the Facility, expressed in whole MWs, that
is available to generate Energy.

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

“Bankrupt” means with respect to any entity, such entity that (a) files a petition or
otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of
action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition
filed or commenced against it which remains unstayed or undismissed for a period of ninety (90)
days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d)
otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator,
receiver, trustee, conservator or similar official appointed with respect to it or any substantial
portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

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

“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 to Seller or its designee SC for the Facility, if
applicable, that, or by operation of the CAISO Tariff in the absence of a specific notice, Seller is
required to produce less Energy from the Facility than forecasted to be produced from the Facility
for a period of time (absent consideration of any Buyer Bid Curtailment or Buyer Curtailment
Order);

(b) for the same time period as referenced in (a), Seller or its designee SC for the
Facility, if applicable, consistent with Buyer’s Bid instructions or failure to provide Bid
instructions:

(i) did not submit a Self-Schedule or an Energy Supply Bid for the MW subject
to the reduction; or

(ii) submitted an Energy Supply Bid and the CAISO notice or obligation
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 Energy forecasted
to be produced from the Facility (absent consideration of any Buyer Bid Curtailment or Buyer Curtailment Order); and

(c) no other circumstances exist that constitute a planned outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a) that prevents generation of any Energy from the Facility.

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

“Buyer Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to (a) Buyer Bid Curtailment or (b) a Buyer Curtailment Order, and no other circumstances exist that constitute a planned outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period that prevents generation of any Energy from the Facility.

“Buyer’s WREGIS Account” has the meaning set forth in Section 4.8(a).

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

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

“CAISO Operating Instruction” has the same meaning as “Operating Instruction” as defined in the CAISO Tariff.

“CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures, including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and, to the extent subject to approval by FERC, as approved by FERC.

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

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

“Capacity Damages” has the meaning set forth in Exhibit B.
“CEC” means the California State Energy Resources Conservation and Development Commission, also known as the California Energy Commission, or its successor agency.

“CEC Certification and Verification” means that the CEC has certified (or, with respect to periods before the date that is ninety (90) days following the Commercial Operation Date, that the CEC has pre-certified) that the Facility is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Energy generated by the Facility qualifies as generation from an Eligible Renewable Energy Resource.

“City’s Compliance Officer” has the meaning set forth in Section 4.08.020 of the San José Municipal Code.

“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) ____________.

“Compliance Actions” has the meaning set forth in Section 3.13.

“Compliance Expenditure Cap” has the meaning set forth in Section 3.13.

“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.

“Contract Term” has the meaning set forth in Section 2.1.

“Contract Year” means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.

“Costs” means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement, excluding attorneys’ fees.

“Cover Sheet” means the cover sheet to this Agreement, which is incorporated into this Agreement.

“COVID-19” means the pandemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, or 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 Cap” is the quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.

“Curtailment Order” means any of the following:

(a) the CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Instruction, to curtail deliveries of Energy from the Facility 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 a 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 a Transmission Provider due to scheduled or unscheduled maintenance on the Transmission Provider’s transmission facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Energy to the Delivery Point; or

(d) a curtailment in accordance with Seller’s obligations under its Interconnection Agreement with the Participating Transmission Owner.

“Curtailment Period” means the period of time, as measured using current Settlement Intervals, during which Seller reduces generation from the Facility pursuant to a Curtailment Order. Curtailment Period shall not include periods during which Seller reduces generation as a result of a Buyer Bid Curtailment or a Buyer Curtailment Order.

“Daily Delay Damages” means an amount equal to (a) the Development Security amount required hereunder, divided by (b) [blank].

“Damage Payment” means the dollar amount that equals the amount of the Development Security as set forth on the Cover Sheet.

“Day-Ahead LMP” means the LMP in the Day-Ahead Market.

“Day-Ahead Forecast” has the meaning set forth in Section 4.4(d).
“**Day-Ahead Market**” has the meaning set forth in the CAISO Tariff.

“**Deemed Delivered Energy**” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility and delivered to the Delivery Point during a Buyer Curtailment Period, which amount shall be equal to the amount specified in the VER Forecast less the amount of Delivered Energy during the Buyer Curtailment Period; provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

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

“**Deficient Month**” has the meaning set forth in Section 4.8(e).

“**Delivered Energy**” means, in any Settlement Period, the lesser of (a) all Energy produced from the Facility and delivered to the Delivery Point as measured in MWh at the Approved Meter, net of all Electrical Losses (other than Electrical Losses that are reflected in the meter readings) and Station Use and (b) the amount of Energy specified in the E-Tags associated with the Dynamic Schedules. It is the Parties’ expectation that the amounts of Delivered Energy will correspond with the amounts specified in the E-Tags associated with the Dynamic Schedules, after such E-Tags have become final and subject to rounding.

“**Delivery Point**” has the meaning set forth in Exhibit A.

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

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

“**Development Security**” means (a) cash or (b) a Letter of Credit in the amount set forth on the Cover Sheet, as such amount may be increased as set forth in Section 4 of Exhibit B.

“**Dynamic Imports Operating Agreement**” means (a) the agreement referred to in the CAISO Tariff as the “Dynamic Scheduling Host Balancing Authority Operating Agreement” or (b) an alternative agreement, reasonably acceptable to the CAISO and consistent with the CAISO Tariff, governing the terms of dynamic transfers between CAISO and the host Balancing Authority for the Facility and enabling Dynamic Schedules pursuant to this Agreement.

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

“**Dynamic Scheduling Agreement**” has the same meaning at that set forth in the CAISO Tariff for “Dynamic Scheduling Agreement for Scheduling Coordinators”.

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

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

“**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, other than losses that are financially settled by Seller.

“Eligible Intermittent Resource Protocol” or “EIRP” means Appendix Q of the CAISO Tariff or a successor CAISO program for intermittent resources.

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

“Energy” means electrical energy, measured in MWh.

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

“EPC Contract” means Seller’s engineering, procurement and construction contract for the Facility.

“E-Tag” has the meaning set forth in the CAISO Tariff.

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

“Exercise Period” has the meaning set forth in Section 2.6.

“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 (with associated Product) that Seller expects to be able to deliver to Buyer at the Delivery Point during each Contract Year in the quantity specified on the Cover Sheet.

“Facility” means the energy generating facility described on the Cover Sheet and in Exhibit A.

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

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

“Fitch” means Fitch Ratings, Inc., or its successor.

“Floor Price” has the meaning set forth in Section 4.3(b).

“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 making power 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 4.8(a).

“**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 a wind generation facility as opposed to from a conventional generation resource.

“**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 includes the value of Green Attributes and Capacity Attributes.

“**Governmental Authority**” means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and WREGIS; provided, however, that “Governmental Authority,” as such term is used in this Agreement in connection with Seller’s obligations to comply with Law or bear Taxes, shall not include Buyer to the extent that Buyer’s acts or omissions would impose incremental burdens on Seller or Seller’s performance under this Agreement or limit or deprive Seller of any of Seller’s rights or benefits under this Agreement.

“**Green Attributes**” means any and all credits, benefits, emissions reductions, offsets, and allowances, however 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 Energy generated by the Facility. 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.

“Guaranteed Capacity” has the meaning set forth in Exhibit A.

“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.

“Guarantor” means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is an Affiliate of Seller, or other third party reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody’s, (d) has a tangible net worth of at least One Hundred Fifty Million Dollars ($150,000,000), (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

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

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

“Indemnified Party” has the meaning set forth in Section 16.1(a).
“Indemnifying Party” has the meaning set forth in Section 16.1(a).

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

“Installed Capacity” means the actual generating capacity of the Facility at the point of interconnection specified in the Interconnection Agreement, as evidenced by a certificate from a Licensed Professional Engineer 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 Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

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

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

“Lender” means, collectively, any Person (i) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt, 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 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 (a) issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank having a Credit Rating of at least A- with an outlook designation of “stable” from S&P or A3 with an outlook designation of “stable” from Moody’s, and (b) in a form substantially similar to the letter of credit set forth in Exhibit K or as otherwise reasonably acceptable to the Party that is the beneficiary of the Letter of Credit.

“Licensed Professional Engineer” means either (i) the independent engineer retained by the Lenders, or on their behalf under customary terms and conditions, in connection with a financing of the Facility, which engineer, or employee or principal thereof (a) is licensed to practice engineering in New Mexico, (b) has training and experience in the power industry specific to the technology of the Facility, (c) is not a representative of a consultant, engineer, contractor,
designer or other individual involved in the development of the Facility or of a manufacturer or supplier of any equipment installed at the Facility other than as the independent engineer for the Lenders, and (d) is licensed in an appropriate engineering discipline for the required certification being made, or (ii) a person acceptable to Buyer in its reasonable judgment.

“Locational Marginal Price” or “LMP” has the meaning set forth in 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., NYMEX), 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 Exhibit G.

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

“Material Terms” has the meaning set forth in Section 2.6.

“Milestones” means the development activities and dates associated therewith set forth on the Cover Sheet.

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

“MW” means megawatts measured in alternating current.

“MWh” means megawatt-hour measured in alternating current.

“Negative LMP” means, in any Settlement Interval, the LMP at the Facility’s PNode is less than zero dollars ($0).

“Negative LMP Costs” has the meaning set forth in Section 3.3(c).

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

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

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

“Offer Notice” has the meaning set forth in Section 2.6.
“Participating Transmission Owner” or “PTO” means an entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities where the Facility is interconnected. For purposes of this Agreement, the Participating Transmission Owner is set forth in Exhibit A.

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

“Parties” 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 (ii) a Letter of Credit, or (iii) a Guaranty in the amount set forth on the Cover Sheet.

“Permitted Transferee” means an entity that has, or is controlled by another Person that satisfies the following requirements:

(a) A tangible net worth of not less than two hundred million dollars ($200,000,000) or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody’s; and

(b) At least three (3) 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.

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

“Portfolio Content Category 1” 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.

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

“Production Tax Credits” or “PTCs” means production tax credit under Section 45 of the Internal Revenue Code as in effect from time-to-time throughout the Delivery Term or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind or other renewable energy resources for which Seller, as the owner of the Generating Facility, is eligible.

“Progress Report” means a progress report including the items set forth in Exhibit E.
“Prudent Operating Practice” means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

“PTC Amount” means the amount, on a dollar per MWh basis, equal to the Production Tax Credits that Seller would have earned in respect of energy from the Facility at the time, grossed up on an after tax basis at the then-highest marginal combined federal and state corporate tax rate, but failed to earn as a result of Buyer Bid Curtailment or Buyer Curtailment Order, which amount will be calculated by reference to the amount of Deemed Delivered Energy and the number of the Facility’s wind turbines that are eligible to receive Production Tax Credits at the time of determination.

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

“ORE” has the meaning set forth for “Qualified Reporting Entity” in the WREGIS Operating Rules.

“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.

“Remedial Action Plan” has the meaning in Section 2.4.

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

“Renewable Energy Incentives” means: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that are not a Green Attribute or a Future Environmental Attribute.

“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 CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC
ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the Facility.

“ROFR Offer” has the meaning set forth in Section 2.6.

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

“San José Clean Energy” is the City of San Jose’s community choice aggregation program. The San Jose Community Energy Department administers and manages San José Clean Energy.

“Schedule” means the actions of Seller, Buyer and/or their designated representatives, or Scheduling Coordinators, including each Party’s Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO the quantity and type of Product to be delivered on any given day or days at a specified Delivery Point.

“Scheduled Energy” means the Energy that clears under the applicable CAISO market based on the final Schedule developed in accordance with this Agreement, including Section 4.3, the operating procedures developed by the Parties pursuant to this Agreement, and the applicable CAISO Tariff, protocols and Scheduling practices.

“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 8.10.

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

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

“Seller’s WREGIS Account” has the meaning set forth in Section 4.8(a).

“Settlement Amount” means the Non-Defaulting Party’s Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party’s Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party’s Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars ($0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

“Settlement Period” has the meaning set forth in the CAISO Tariff, which as of the Effective Date is the period beginning at the start of the hour and ending at the end of the hour.

“Shared Facilities Agreement” has the meaning set forth in Section 6.3.
“Showing Month” means the calendar month of the Delivery Term that is the subject of Buyer’s compliance with the requirements of the CPUC for Buyer’s resource adequacy requirements. For illustrative purposes only, pursuant to the applicable CPUC decisions in effect as of the Effective Date, the monthly compliance showing made in June is for the Showing Month of August.

“Site” means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Form of Construction Start Date Certificate in Exhibit I to Buyer.

“Site Control” means that, for the Contract Term, Seller (or, prior to the Delivery Term, its Affiliate): (a) owns or has the option to purchase the Site; (b) is the lessee or has the option to lease the Site; or (c) is the holder of an easement or an option for an easement, right-of-way grant, or similar instrument with respect to the Site.

“Station Use” means:

(a) The Energy produced 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 by the Facility that is consumed within the Facility’s electric energy distribution system as losses.

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

“System Emergency” means any condition that: (a) 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, and (b) directly affects the ability of any Party to perform under any term or condition in this Agreement, in whole or in part.

“Tax” or “Taxes” means all U.S. federal, state and local and any foreign taxes, levies, assessments, surcharges, duties and other fees and charges of any nature imposed by a Governmental Authority, whether currently in effect or adopted during the Contract Term, including ad valorem, excise, franchise, gross receipts, import/export, license, property, sales and use, stamp, transfer, payroll, unemployment, income, and any and all items of withholding, deficiency, penalty, additions, interest or assessment related thereto.

“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 the Delivered Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Energy from the Facility 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.

“Third-Party Offer” has the meaning set forth in Section 2.6.

“Third-Party Transaction” has the meaning set forth in Section 2.5.

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

“Transmission System” means the transmission facilities operated by the Transmission Provider(s), now or hereafter in existence, which provide energy transmission service downstream from the Delivery Point.

“Unavailable Delivery Point” has the meaning set forth in Section 4.5(d).

“Variable Energy Resource” or “VER” has the meaning set forth in the CAISO Tariff.

“VER Forecast” means the forecast prepared for the Facility by CAISO, its consultant, or, if approved by CAISO and subject to the advance notice requirement of Section 4.5(e), Seller or Seller’s designee, as part of the EIRP, or a successor established in accordance with Section 4.5(e) for the purpose of determining Deemed Delivered Energy hereunder.

“WECC” means the Western Electricity Coordinating Council or its successor.

“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 4.8(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 word or provision in respect of which such examples are provided;

(h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;

(i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;

(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").

(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, all indemnity obligations shall remain in full force and effect for one (1) year following termination of this Agreement and all audit rights shall remain in full force and effect for three (3) years following the termination of this Agreement.

2.2 Conditions Precedent. The Delivery Term shall not commence until Seller completes to Buyer’s reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H;

(b) A Participating Generator Agreement (as defined in the CAISO Tariff), Dynamic Scheduling Agreement, Dynamic Imports Operating Agreement, and, if applicable, a Meter Service Agreement for CAISO Metered Entities (as defined in the CAISO Tariff) between Seller, Seller’s Scheduling Coordinator or the Balancing Authority for the Facility and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all conditions thereof have been satisfied and shall be in full force and effect;

(e) Seller has received the requisite pre-certification of the CEC Certification and Verification (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than ninety (90) days from the Commercial Operation Date);

(f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements, including the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with
WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system or have completed any other requirements to enable Buyer to fulfill its RPS requirements;

(g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and

(h) Seller has paid Buyer for all Daily Delay Damages and Commercial Operation Delay Damages owing under this Agreement, if any.

Upon request from Seller from time to time, Buyer shall confirm in writing the completion of those of the foregoing conditions that have been completed by Seller as of such request.

2.3 **Progress Reports.** The Parties agree time is of the essence in regard to the Agreement. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such 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.

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 a 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; provided, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. So long as Seller is in compliance with its obligations under this Section 2.4, its failure to meet one or more milestones shall not be a default under this Agreement, except as set forth in Sections 11.1(b)(iii) and (iv).

2.5 **Seller Termination Right For Delay.** If Seller (a) has not issued a full notice to proceed to its primary construction contractor for the construction of the Facility on or before the Expected Construction Start Date or (b) reasonably believes that it will not be able to achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller may terminate this Agreement upon Notice to Buyer, subject to (i) payment to Buyer of any accrued but unpaid Daily Delay Damages or Commercial Operation Delay Damages and (ii) payment to Buyer of an amount equal to the Development Security (or Buyer’s right to retain the Development Security absent such payment), and neither Party will have any further liability to the other under this Agreement;
provided that, for a period of two (2) years from the date of the termination of this Agreement by Seller under this Section 2.5, Seller shall not, and shall cause its Affiliates and any successors or assigns to not, following such termination, directly or indirectly enter into any agreement or consummate any transaction relating to the sale of Delivered Energy and lasting for a term of more than one (1) year with any person other than Buyer (a “Third-Party Transaction”) except in compliance with the terms and conditions of Section 2.6 below.

2.6 Right of First Refusal.

(a) Following a termination by Seller under Section 2.5, if Seller receives a bona fide written offer for a Third-Party Transaction that Seller desires to accept (each, a “Third-Party Offer”), Seller shall immediately notify Buyer in writing (the “Offer Notice”) of, subject to any confidentiality obligations that may apply to Seller, the identity of all proposed parties to such Third-Party Transaction and the material financial and other terms and conditions of such Third-Party Offer (the “Material Terms”). Each Offer Notice shall constitute an offer by Seller to enter into an agreement with Buyer on the same Material Terms of such Third-Party Offer (the “ROFR Offer”).

(b) At any time prior to the expiration of the forty-five (45) day period following Buyer’s receipt of the Offer Notice (the “Exercise Period”), Buyer may accept the ROFR Offer by delivery to Seller of a letter of intent containing the Material Terms and any standard and customary conditions applicable to a transaction of this nature, executed by Buyer; provided, however, that Buyer is not required to accept any non-financial terms or conditions contained in any Material Terms that cannot be fulfilled by Buyer as readily as by any other Person (e.g., an agreement conditioned upon the services of a particular individual or the supply of goods or services exclusively under the control of such third party offeror).

(c) If, by the expiration of the Exercise Period, Buyer has not accepted the ROFR Offer, and provided that Seller has complied with all of the provisions of this Section 2.6, at any time following the expiration of the Exercise Period, Seller may consummate the Third-Party Transaction with the counterparty identified in the applicable Offer Notice, on Material Terms that are the same or more favorable to Seller as the Material Terms set forth in the Offer Notice. If such Third-Party Transaction is not consummated, the terms and conditions of this Section 2.6 will again apply and Seller shall not enter into any Third-Party Transaction without affording Buyer the right of first refusal on the terms and conditions of this Section 2.6.

ARTICLE 3
PURCHASE AND SALE

3.1 Sale of Product. Subject to the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Contract Price, all the Product produced by or associated with the Facility. Such sale by Seller and purchase by Buyer shall be for resale. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer’s obligations to pay for Deemed Delivered Energy, Buyer has no obligation to purchase from Seller any Product that is not or
cannot be delivered to the Delivery Point or Alternative Delivery Point as a result of any circumstance, including, 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 of the Green Attributes attributable to the Delivered Energy produced by the Facility.

3.3 **Compensation.**

(a) During each Contract Year, Buyer shall pay Seller the Contract Price for each MWh of Product delivered hereunder, as measured by the amount of Delivered Energy plus all Deemed Delivered Energy, if any, up to the Annual Threshold. “Annual Threshold” means the amount equal to [Redacted] of the Expected Energy for such Contract Year. In addition, during the period (not to exceed a total of one hundred twenty six (126) consecutive months) in which Seller is receiving PTCs for the Delivered Energy, Buyer shall also pay the PTC Amount for Deemed Delivered Energy until the sum of Delivered Energy plus the amount of Deemed Delivered Energy exceeds the Annual Threshold.

(b) Notwithstanding Section 4.3(c), once the amount of Delivered Energy plus the amount of Deemed Delivered Energy reaches the Annual Threshold in any Contract Year, for the remainder of such Contract Year (i) Seller shall be entitled to retain all revenues associated with delivery of the Delivered Energy to the CAISO in full satisfaction of Buyer’s payment obligation for the Product, including Delivered Energy, in excess of the Annual Threshold and (ii) no further payment shall be due from or to either Party as a result of Deemed Delivered Energy or other reduction of output. Without limiting Seller’s other rights under this Agreement, Seller may reduce output from the Facility when the sum of Delivered Energy plus the amount of Deemed Delivered Energy reaches the Annual Threshold and no payment shall be due from or to either Party as a result of such reduction of output.

(c) If during any Settlement Interval, Seller delivers to Buyer Product amounts in excess of the Guaranteed Capacity, then the price applicable to all such excess MWh in such Settlement Interval shall be [Redacted], and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute amount of the Negative LMP times such excess MWh (“Negative LMP Cost”).

(d) Notwithstanding Section 3.3(a), Seller shall receive no compensation from Buyer, including for the PTC Amount, for (i) Deemed Delivered Energy to the extent that Seller is required to reduce delivery of Delivered Energy or would be required to reduce delivery of Deemed Delivered Energy as a result of any Curtailment Period and (ii) Deemed Delivered Energy in amounts below the Curtailment Cap. Buyer shall pay for Deemed Delivered Energy above the Curtailment Cap at the applicable Contract Price plus the PTC Amount, subject to Sections 3.3(a) and 3.3(b).

3.4 **Imbalance Energy.** Seller shall use commercially reasonable efforts to deliver Energy in accordance with the Scheduled Energy but shall not be required to curtail the Delivered Energy other than pursuant to a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order. Buyer and Seller recognize that from time to time the amount of Delivered Energy will
deviate from the amount of Scheduled Energy. So long as Seller is in compliance with its forecasting obligations under EIRP (if available) and Section 4.4, Buyer shall be responsible for all CAISO costs, and shall be entitled to all CAISO revenues, associated with Imbalance Energy.

3.5 **Ownership of Renewable Energy Incentives.** Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer shall reasonably cooperate with Seller, at Seller’s sole expense, in Seller’s efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.6 **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 3.6(a), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller’s receipt of Notice from Buyer of Buyer’s intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes. Seller shall have no obligation to alter the Facility or its operations unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.6(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, as set forth above; provided, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.7 **Test Energy.** If and to the extent the Facility generates Test Energy, Buyer will purchase Test Energy [REDACTED] of the Contract Price for up to ninety (90) days and Buyer shall be entitled to all Product associated therewith. If the Facility will be generating Test Energy for a period of more than ninety (90) days, Buyer shall have the right but not the obligation to purchase such Test Energy at [REDACTED] of the Contract Price; provided that if Buyer does not exercise such right, Seller may sell any Test Energy and associated Green Attributes not required to be purchased by Buyer to third-party buyers and Seller shall retain all revenues from such sales.
3.8 **Capacity Attributes.**

(a) Throughout the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Capacity Attributes from the Facility.

(b) Throughout the Delivery Term, Seller shall perform all commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits to Buyer.

(c) For the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and execute any and all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement, including, if requested by Buyer, submitting Supply Plans in accordance with CAISO and CPUC requirements. For illustrative purposes only, as of the Effective Date, the applicable compliance deadlines are as follows: (A) forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan; and (B) the last Business Day of October that is prior to commencement of the year for the annual Supply Plan. The Parties acknowledge and agree that such dates may be modified by the CAISO from time to time throughout the Delivery Term.

(d) Buyer acknowledges that it will be required to take action and obtain certain rights at the Delivery Point in order to make use of the Capacity Attributes associated with the Product. Seller makes no representations or warranties that Buyer may be able to utilize Capacity Attributes for Resource Adequacy or other purposes.

3.9 **[Reserved]**

3.10 **CEC Certification and Verification.** 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 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.

3.11 **Eligibility.**

(a) 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 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. As used in this provision: (a) “qualifies under the requirements of the California Renewables Portfolio Standard” means “qualifies under the requirements of the California Renewables Portfolio Standard, including as applicable to
Portfolio Content Category 1” and (b) “not be an Event of Default” means that Seller shall not be
deemed to have made a false or misleading representation or warranty if the Product fails to qualify
under the requirements of the California Renewables Portfolio Standard, including as applicable
to Portfolio Content Category 1, as a result of a change in law if Seller has used commercially
reasonable efforts to comply with such change in law.

(b) 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. As used in this provision: (a) “compliance with the California Renewables Portfolio
Standard” means “compliance with the California Renewables Portfolio Standard, including as
applicable to Portfolio Content Category 1,” and (b) “not be an Event of Default” means that Seller
shall not be deemed to have made a false or misleading representation or warranty if the Product
fails to qualify under the requirements of the California Renewables Portfolio Standard, including
as applicable to Portfolio Content Category 1, as a result of a change in law if Seller has used
commercially reasonable efforts to comply with such change in law.

(c) 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.

3.12 California Renewables Portfolio Standard. Upon request of Buyer, Seller shall
provide records or other information reasonably required to demonstrate that the Product has been
conveyed and delivered in accordance with the terms and conditions of this Agreement, including,
subject to Section 3.13, scheduling or delivery information necessary to meet the requirements of
the California Renewables Portfolio Standard for the Product.

3.13 Compliance Expenditure Cap. If Seller establishes to Buyer’s reasonable
satisfaction that a change in Laws occurring after the Effective Date has increased Seller’s cost
above the cost that could reasonably have been contemplated as of the Effective Date to take all
actions to comply with Seller’s obligations under the Agreement with respect to obtaining,
maintaining, conveying or effectuating Buyer’s use of (as applicable), the items listed below, then
the Parties agree that the maximum amount of costs and expenses Seller shall be required to bear
during the Delivery Term shall be capped at [redacted] per MW of
Guaranteed Capacity in the aggregate over the Delivery Term (“Compliance Expenditure Cap”):

(a) CEC Certification and Verification;
(b) Green Attributes;
(c) WREGIS; and
(d) Capacity Attributes.
Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the “Compliance Actions.”

If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall provide Notice to Buyer of such anticipated out-of-pocket expenses.

Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the “Accepted Compliance Costs”), or (2) waive Seller’s obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.13 within sixty (60) days after Buyer’s receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the Notice and Seller shall have no further obligations to take, and no liability for a failure to take, these Compliance Actions for the remainder of the Term.

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 Buyer 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.

**ARTICLE 4**

**OBLIGATIONS AND DELIVERIES**

4.1 **Delivery.**

(a) **Energy.** Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis. Seller shall effectuate the delivery of Delivered Energy through Dynamic Schedules, and shall be responsible for securing such arrangements with CAISO, the PTO and any other Transmission Provider as are necessary in connection therewith.

(b) **Green Attributes.** Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. 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 Delivered Energy shall pass and transfer from Seller to Buyer at the Delivery Point.
(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 **Scheduling Coordinator Responsibilities**

(a) **Seller as Scheduling Coordinator for the Facility.** Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery of the Product at the Delivery Point. Seller or its designee shall submit Bids to the CAISO in accordance with this Agreement, the operating procedures developed by the Parties pursuant to this Agreement, the applicable CAISO Tariff and protocols (including the EIRP, if applicable), the standing dispatch instructions developed pursuant to Section 4.3(b), and Buyer’s instructions on a day-ahead, hour-ahead, fifteen-minute market or real-time basis; provided that (i) Buyer’s instructions are communicated to Seller or its designee reasonably in advance of the deadlines for submitting such Bids to CAISO and in a form reasonably acceptable to Seller; and (ii) such instructions, and the resulting Bids, are in full compliance with the CAISO Tariff and applicable Law. If there is a conflict between Buyer’s instructions under Section 4.3(a) and the standing dispatch instructions developed pursuant to Section 4.3(b), Buyer’s instructions under Section 4.3(a) will govern. Seller may not change its Bids to CAISO from those developed pursuant to this Agreement, except as may be required by CAISO or applicable Law, in which case Seller shall promptly provide Buyer with notice of any and all changes to its Bids indicating changes from the then-current Bid instructions. Notwithstanding the foregoing, if at any point during a Contract Year Seller has reached the Annual Threshold and is subject to Section 3.3(b), Seller shall not be subject to Buyer’s instructions under this Section 4.3(a) or the requirements of Section 4.3(b) and Seller may submit Bids to the CAISO in its sole discretion.

(b) **Standing Dispatch Instructions.** At least ninety (90) days before the beginning of the Delivery Term, the Parties shall establish mutually acceptable standing dispatch instructions with respect to scheduling, bidding, and conditions for curtailment (e.g., negative pricing). Such standing dispatch instructions shall include at a minimum, (i) a requirement that Seller submit Energy Supply Bids in the Real-Time Market with a floor price (“Floor Price”) that is compliant with the CAISO Tariff and is an amount per MWh, such that there will be no Scheduled Energy in the Real-Time Market if the LMP in the Real-Time Market at the Delivery Point is below the Floor Price and (ii) a requirement that, if Buyer wishes to submit Bids in the Day-Ahead Market, such Bids will reflect no more than the Day-Ahead Forecast. During the Delivery Term, Buyer shall have the right to update such standing dispatch instructions from time to time (but no more frequently than once per week upon three (3) Business Days’ Notice to Seller and Seller’s Scheduling Coordinator (if Seller has designated a third party to act as Scheduling Coordinator), subject to Seller’s approval, which shall not be unreasonably withheld or delayed. Except during any period of a Contract Year during which Seller has reached the Annual Threshold and is subject to Section 3.3(b), if the LMP in the Real-Time Market at the Delivery Point is below the Floor Price, Buyer shall be deemed to have issued a Buyer Curtailment Order.

(c) **CAISO Costs and Revenues.** Except as otherwise expressly set forth herein, Buyer shall be responsible for all CAISO costs (including penalties, Imbalance Energy charges, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance
Energy payments, and other payments), including costs and 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; provided, that, any net costs, charges or revenues assessed by the CAISO which are due to a failure of Seller to perform its obligations hereunder, shall be Seller’s responsibility, including costs associated with (i) Seller not notifying the CAISO and Buyer of outages in a timely manner (in accordance with the CAISO Tariff and as set forth herein), and (ii) any other failure by Seller to abide by the CAISO Tariff. 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 due to the actions or inactions of Seller, the cost of the sanctions or penalties shall be the Seller’s responsibility. Subject to the foregoing, Seller shall pass through to Buyer all CAISO costs and revenues associated with the Facility, which shall be reflected as a credit or debit, as applicable, on the monthly invoices provided to Buyer in accordance with the invoicing and payment provisions of Article 8, including the netting provisions of Section 8.6.

(d) CAISO Settlements. Seller or its designee shall be responsible for all settlement functions with the CAISO related to the Facility. Seller shall render a statement to Buyer showing all CAISO revenues and charges for which each of Buyer and Seller is responsible under this Agreement after settlement information becomes available from the CAISO. Notwithstanding the foregoing, Buyer acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO revenues and charges.

(e) Dispute Costs. Seller or its designee, as SC for the Facility, may be required to dispute CAISO settlements in respect of the Facility. Upon Buyer’s reasonable request, Seller or its designee will dispute, in accordance with the CAISO Tariff, CAISO charges for which Buyer is responsible, or CAISO revenues for which Buyer is entitled, hereunder, provided that Buyer agrees to pay Seller’s or its designee’s costs and expenses (including reasonable attorneys’ fees) associated with Seller’s or its designee’s involvement with such CAISO disputes.

(f) 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 this Facility consistent with this Agreement. Neither Party shall change such data without the other Party’s prior written consent. At least once per Contract Year, Seller shall review and confirm that the data provided for the CAISO’s Master Data File and Resource Data Template (or successor data systems) for this Facility remains consistent with the actual operating characteristics of the Facility and update such data as appropriate.

4.4 Forecasting. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer’s designee). Seller shall use reasonable efforts to provide forecasts that are consistent with the information actually known by Seller at the time the forecasts are submitted and, to the extent not inconsistent with the requirements of this Agreement, shall prepare such forecasts, or cause such forecasts to be prepared, in accordance with
Prudent Operating Practices.

(a) **Annual Forecast of Available Capacity.** No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) the compliance deadline for the annual Supply Plan (which is currently the last Business Day of October that is prior to commencement of the year for the annual Supply Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of each month’s Available Capacity, by hour, for the following calendar year in a form reasonably requested by Buyer.

(b) **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 compliance deadline for the annual Supply Plan (which is currently the last Business Day of October that is prior to commencement of the year for the annual Supply Plan) for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer 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, or as reasonably requested by Buyer.

(c) **Monthly Forecast of Energy and Available Capacity.** No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the compliance deadline for the monthly Supply Plan (which is currently forty-five (45) days prior to the Showing Month covered by the Supply Plan for the monthly Supply Plan) for each Showing Month during the Delivery Term, Seller shall provide to Buyer a non-binding forecast of the hourly expected Energy and Available Capacity for each day of the following month in a form in a form reasonably requested by Buyer (“**Monthly Delivery Forecast**”).

(d) **Daily Forecast of Available Capacity.** 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 Capacity and (ii) if the VER Forecast is not available, 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 Capacity and (ii) if the VER Forecast is not available, the hourly expected Energy.

(e) **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 Capacity or (ii) if the VER Forecast is not available, 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 sixty (60) minutes 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 Capacity or, if applicable, 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 shall contain information regarding the beginning date and time of the event resulting in the change in Available 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 reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer as soon as reasonably practicable 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 reasonably acceptable to Buyer; provided that Buyer specifies the method no later than five (5) Business 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 4.4(e), then Seller shall send such communications by email to Buyer.

4.5 Dispatch Down/Curtailment.

(a) **General.** Subject to Sections 4.5(b) and 4.5(d), Seller agrees to reduce the Facility’s generation by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or Buyer Bid Curtailment.

(b) **Buyer Curtailment.** Subject to Section 4.5(d), Buyer shall have the right to order Seller to curtail deliveries of Energy from the Facility to the Delivery Point for reasons unrelated to Force Majeure Events or Curtailment Orders pursuant to a dispatch notice delivered to Seller, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period in excess of the Curtailment Cap at the applicable Contract Price plus the PTC Amount, subject to Section 3.3(a). In addition, no PTC Amount shall be paid for Deemed Delivered Energy that Seller delivers to an Alternative Delivery Point or sells to a third party under Section 4.5(d). Each Buyer Curtailment Order or Buyer Bid Curtailment shall correspond to the Facility’s operational limitations, as set forth in Exhibit N. Whenever the Real-Time Market LMP at the Delivery Point is below the Floor Price, Buyer shall be presumed to have issued a Buyer Curtailment Order to Seller for the applicable time period.

(c) **Failure to Comply.** If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, subject to Section 4.5(d), for each MWh of Delivered Energy that the Facility generated in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such MWh, and (B) is the Negative LMP, if any, for the Buyer Curtailment Period or Curtailment Period multiplied by the amount of generation in contradiction to the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, and (C) is any penalties or other charges resulting from Seller’s failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(d) **Alternative Delivery Point/Third-Party Sales.** In the event that, and for so long as, Seller is unable to Dynamically Schedule or deliver all or a portion of the Product to Buyer at one or both Delivery Points, but is able to Dynamically Schedule and deliver Product to Buyer at one or more Alternative Delivery Points, such Alternative Delivery Points shall be considered the Delivery Point under this Agreement; provided, however, that Seller shall credit to Buyer against amounts owed to Seller under Article 8 any reduction in CAISO revenues resulting from Seller’s delivery of the Product to Buyer at an Alternative Delivery Point. If Seller is unable to
Dynamically Schedule or deliver all or a portion of the Product to Buyer at only one of the Delivery Points ("Unavailable Delivery Point"), the credit to Buyer shall be based upon the difference between the CAISO revenues at the Alternative Delivery Point(s) and the CAISO revenues that would have been received at the Unavailable Delivery Point. If Seller is unable to Dynamically Schedule or deliver all or a portion of the Product to Buyer at both Delivery Points, the credit to Buyer shall be based upon the difference between the CAISO revenues at the Alternative Delivery Point(s) and the CAISO revenues that would have been received assuming that Seller had delivered [REDACTED] of the Product to Palo Verde and [REDACTED] of the Product to Willow Beach. Subject to the foregoing, Seller may, in its sole discretion, sell and deliver some or all of the Product during any Curtailment Period to one or more third-party buyers to the extent that Seller may do so in compliance with Law and Prudent Operating Practice. During any Buyer Curtailment Period Seller may, and during any Buyer Curtailment Period reasonably expected to last for more than five (5) consecutive days Seller shall use commercially reasonable efforts to, sell Product to one or more third-party buyers at a price above $0.00/MWh. To the extent that Seller makes sales to one or more third-party buyers at a price above $0.00/MWh but below the Contract Price during any Buyer Curtailment Period, Seller shall credit to Buyer (against Buyer’s payment for Deemed Delivered Energy), for any such sales in excess of the Curtailment Cap, an amount equal to the product of (1) the price received by Seller for such third-party sales, less any incremental costs incurred by Seller in making such third-party sales and (2) the amount of Product sold. In the event that the price received by Seller for such third-party sales in excess of the Curtailment Cap, less any incremental costs incurred by Seller in making such third-party sales, equals or exceeds the Contract Price, Seller shall credit to Buyer (against Buyer’s payment for Deemed Delivered Energy) an amount equal to the product of (1) the Contract Price and (2) the amount of Product sold.

(c) **VER Forecasts.** Seller shall promptly provide to Buyer on an ongoing basis the VER Forecast. If Seller determines that an alternative methodology for determining Deemed Delivered Energy is more accurate than the EIRP-based VER Forecast, based upon no less than six months of recorded data comparing the VER Forecast, the results of the alternative methodology and actual Delivered Energy data, such alternative methodology (or such other methodology as agreed to by the Parties) shall, subject to Buyer’s consent (not to be withheld or delayed unreasonably), be considered the VER Forecast and used to determine the Deemed Delivered Energy; provided, that any such successor VER Forecast shall itself be subject to periodic review by the Parties under the foregoing criteria. If Seller, in accordance with and for purposes of the EIRP, wishes to replace the forecast provided by CAISO or CAISO’s consultant as the VER Forecast with a forecast provided by Seller or Seller’s designee, Seller shall provide notice to Buyer prior to proposing such alternative forecast to CAISO.

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.** Seller shall be permitted to reduce deliveries of Product during any period of scheduled maintenance on the Facility previously agreed to between Buyer and Seller.

(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 and 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 such outage.

(c) **System Emergencies and other Events.** Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff or as may be required under a Shared Facilities Agreement.

(d) **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.** Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production (as defined below) in each two (2) consecutive Contract Year period during the Delivery Term (“**Performance Measurement Period**”). “Guaranteed Energy Production” means an amount of Product, as measured in MWh, equal to one-hundred fifty percent (150%) of the average Expected Energy (as set forth on the Cover Sheet) for such period. The calculation will be performed once each Contract Year, beginning with the second anniversary of the Commercial Operation Date. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, Buyer’s failure to perform, Curtailment Periods and Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the Product in the amount it could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, Buyer’s failure to perform, Curtailment Periods, or Buyer Curtailment Periods. 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**.

4.8 **WREGIS.** Seller shall, at its sole expense, but subject to Section 3.13, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy 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 3.11(c), provided that Seller fulfills its obligations under Sections 4.8(a) through (f) below. In addition:

(a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS (“**Seller’s WREGIS Account**”), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using “**Forward Certificate Transfers**” (as described in the WREGIS Operating Rules) from Seller’s WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller (“**Buyer’s WREGIS Account**”). Seller shall be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller’s WREGIS Account, paying WREGIS Certificate issuance and transfer
fees, and transferring WREGIS Certificates from Seller’s WREGIS Account to Buyer’s WREGIS Account.

(b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of 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. WREGIS Certificates must be matched with E-Tags associated with the Dynamic Schedules. WREGIS Certificates without matching E-Tags will be rejected.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by the Facility’s metered data and matching E-Tags associated with the Dynamic Schedules. Subject to delivery of Replacement Product, Seller shall ensure that no WREGIS Certificates associated with the Facility are transferred to Buyer’s WREGIS Account unless they are the result of Delivered Energy and matched with E-Tags associated with the Dynamic Schedules.

(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 4.8. 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 Delivered Energy for the same calendar month (“Deficient Month”). If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer’s payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Performance Measurement Period; provided, however, that such adjustment shall not apply to the extent that Seller provides Replacement Product (as defined in Exhibit G) delivered to Delivery Point as Scheduled Energy within ninety (90) days of the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer. Without limiting Seller’s obligations under this Section 4.8, 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 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer’s WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

4.9 Right to Inspect. Buyer (through any of its employees or consultants) shall have
the right, from time to time during the term of this Agreement, at reasonable times and upon reasonable advance notice, during business hours, to inspect the Seller’s Facility for the purpose of compliance of this Agreement. Buyer agrees to abide by Seller’s health and safety policies provided to Buyer during inspections of the Facility.

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 the Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of the Product that are imposed on Product at and from the Delivery Point (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, however, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefor from the other Party. All Energy delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Energy.

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 M Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility, or suspending the supply of Energy to Buyer.

6.3 Shared Facilities. The Parties acknowledge and agree that certain of the Interconnection Facilities, Seller’s rights and obligations under the Interconnection Agreement and
Seller’s rights and obligations under transmission service agreements with a Transmission Provider, may be subject to certain shared facilities and/or co-tenancy agreements (“Shared Facilities Agreements”) to be entered into among two or more of Seller, the Participating Transmission Owner, Seller’s Affiliates, and/or third parties pursuant to which certain Interconnection Facilities, interconnection service and/or transmission service may be subject to joint ownership and/or shared maintenance and operation arrangements; provided that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7
METERING

7.1 Metering. Seller shall measure the amount of Delivered Energy produced by the Facility using an Approved Meter. The Approved Meter shall be installed on the medium voltage side of the Seller’s substation transformer(s) and maintained at Seller’s cost. If the Approved Meter is inaccurate, Seller will cause such meter to be promptly corrected in accordance with Prudent Operating Practices and CAISO or PTO, as applicable, requirements. Seller will be responsible for any costs, fines or penalties, including imbalance charges as a result of the inaccurate meter. The 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 that 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 or the PTO the meter data applicable to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer, or Seller’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, as applicable.

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 it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 Invoicing. Seller shall make good faith efforts to deliver an invoice to Buyer no sooner than ten (10) Business Days after the end of the prior monthly delivery period. Each invoice shall provide Buyer (a) records of metered data, including metering and CAISO transaction data sufficient to document and verify the amount of Delivered Energy by the Facility for each Settlement Period during the preceding month, including the amount of Delivered Energy as set forth in the first CAISO settlement statement for the prior month that includes meter data from the Approved Meter, the applicable Contract Price, deviations between the Scheduled Energy and the
Delivered Energy, the LMP prices at the Facility PNode and Delivery Point for each Settlement Period, and all CAISO costs and revenues for which Buyer is responsible; (b) a reconciliation of hourly meter data, E-Tag data and associated calculations, including the lesser of each by hour, plus any additional data as may be reasonably required by Buyer for compliance with CPUC reporting obligations, including pursuant to the CPUC’s Energy Division Portfolio Content Category Classification Review Handbook (or successor publication); (c) a statement of the quantity of WREGIS Certificates transferred during the prior month that have been matched with E-Tags associated with the Dynamic Schedules; (d) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (e) be in a format specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 Payment. Buyer shall make payment to Seller 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 Seller, Buyer shall be granted reasonable access to the accounting books and records 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, there is determined to have been a meter inaccuracy sufficient to require a payment adjustment, or if CAISO recalculates amounts due or owing in respect of prior periods. If the required adjustment is in favor of Buyer, Buyer’s 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 non-erring Party received Notice thereof.

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 two (2) 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 upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. 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 **Neting of Payments.** The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to Exhibits B and G, interest, and payments or credits, including pursuant to Section 4.5(c), 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. Upon the earlier of (A) Seller’s delivery of the Performance Security, or (B) 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 its Credit Rating, (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. Seller shall provide prompt Notice to Buyer if the issuer of the outstanding Letter of Credit becomes Bankrupt or fails to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s, but not later than ten (10) Business Days after Seller becomes aware of such development.

8.8 **Seller’s Performance Security.** To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller arising 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 its Credit Rating, or (ii) 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. Seller shall provide prompt Notice to Buyer if the issuer of the outstanding Letter of Credit becomes Bankrupt or fails to maintain a Credit Rating of at least “A-” by S&P or “A3” by Moody’s, but not later than ten (10) Business Days after Seller becomes aware of such development.

8.9 **Financial Statements.**

(a) If a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied. Seller shall provide prompt Notice to Buyer if Guarantor becomes Bankrupt or otherwise fails to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor, but not later than ten (10) Business Days after Seller becomes aware of such development.

(b) Buyer shall provide to Seller unaudited quarterly financial statements on or before December 1 of each year and audited annual financial statements on or before February 15 of each year, in each case including a balance sheet and statements of income and cash flows, all prepared in accordance with generally accepted accounting principles in the United States, consistently applied, from the Effective Date until Buyer obtains a credit rating reasonably satisfactory to Seller.

8.10 **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), assignment of the Development Security or Performance Security, any other cash collateral and cash equivalent collateral posted by Seller 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 8.10):

(a) Exercise any of its rights and remedies with respect to the Development Security or Performance Security, as applicable, 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, as applicable; 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.

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 M or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice.** Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including email or other electronic means), 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. In addition, for any Notice sent pursuant to (a), (b) or (d) above, the Party sending such Notice shall send a courtesy copy by email to the email address provided in Exhibit M.

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.
(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic, or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term “Force Majeure Event” does not include (i) economic conditions that render a Party’s performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy at a lower price, or Seller’s ability to sell Energy generated by the Facility at a higher price, than the Contract Price); (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; (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; (vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) Seller’s inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date; it being understood and agreed, for the avoidance of doubt, that the occurrence of a Force Majeure Event may give rise to a Development Cure Period.

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, however, that a Party’s failure to give timely Notice shall not affect such Party’s ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event.** If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Party claiming Force Majeure Event, save and except for those obligations specified in Section 2.1(b).

**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 five (5) 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) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) failure by such Party to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8, as applicable, including the failure by Seller to replenish the 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;

(v) such Party becomes Bankrupt;

(vi) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.1, 14.2 or 14.3, as appropriate; or

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

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

(ii) if the Facility fails to deliver, and such failure is not excused by a Force Majeure Event, Buyer Default, Buyer Curtailment Period, Curtailment Period at least \( \text{[insert percentage]} \) of the Expected Energy in a single Contract Year or (b) \( \text{[insert percentage]} \) of the Expected Energy in any two consecutive Contract Years; provided however that it shall not be an Event of Default if (1) the failure to deliver resulted from the failure of the Facility’s interconnection or a major component of the Facility (including the Facility’s main transformer) or a serial defect affecting more than \( \text{[insert percentage]} \) of Facility’s wind turbines, (2) Seller delivers to Buyer (A) a certificate from a Licensed Professional Engineer attesting to a reasonable expectation that such failure or defect can reasonably be expected to be remedied within eighteen (18) months of the failure or defect and (B) an undertaking by an officer or authorized representative of Seller that Seller will attempt to remedy or cause to be remedied such failure or defect within such eighteen-month period, and (3) Seller uses commercially reasonable efforts to remedy such failure or defect and accomplishes such remedy within eighteen (18) months of the failure or defect;

(iii) the failure by Seller to achieve Construction Start within \( \text{[insert number]} \) days after the Guaranteed Construction Start Date;

(iv) the failure by Seller to achieve Commercial Operation within \( \text{[insert number]} \) days after the Guaranteed Commercial Operation Date;

(v) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;

(C) the Guarantor becomes Bankrupt;

(D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
(E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or

(F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or

(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 five (5) Business Days after Seller receives Notice of the occurrence of any of the following events:

(A) the issuer of the outstanding Letter of Credit shall fail to maintain a Credit Rating of at least “A+” by S&P or “A3” by Moody’s;

(B) the issuer of such Letter of Credit becomes Bankrupt;

(C) the issuer of the outstanding Letter of Credit shall fail to comply with or perform its obligations under such Letter of Credit and such failure shall be continuing after the lapse of any applicable grace period permitted under such Letter of Credit;

(D) the issuer of the outstanding Letter of Credit shall fail to honor a properly documented request to draw on such Letter of Credit;

(E) the issuer of the outstanding Letter of Credit shall disaffirm, disclaim, repudiate or reject, in whole or in part, or challenge the validity of, such Letter of Credit;

(F) such Letter of Credit fails or ceases to be in full force and effect at any time; or

(G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

11.2 Remedies; Declaration of Early Termination Date. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("Non-Defaulting Party") shall have the following rights:

(a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) days after such Notice is deemed to be received, as an early termination date of this Agreement ("Early Termination Date") that
terminates this Agreement (the “Terminated Transaction”) and ends the Delivery Term effective as of the Early Termination Date;

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment (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; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement;

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party’s sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto; and, provided further that if Buyer is the Defaulting Party, any remedy is a limited obligation payable solely from the Designated Fund. Notwithstanding any other provision of this Agreement, Seller’s aggregate liability under or arising out of a termination of this Agreement by Buyer pursuant to Section 11.1(b)(iii) or 11.1(b)(iv) prior to the Commercial Operation Date shall be limited to an amount equal to the Damage Payment, plus any accrued but unpaid Daily Delay Damages or Commercial Operation Delay Damages.

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 the Non-Defaulting Party 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; provided, however, that any lost Capacity Attributes and Green Attributes shall be deemed direct damages covered by this Agreement. 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 Termination Payment described in this Section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this Section 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 Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

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 **Rights And Remedies Are Cumulative.** 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.

11.7 **Mitigation.** Any Non-Defaulting Party shall use commercially reasonable efforts 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 PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, 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, UNDER ANY INDEMNITY PROVISION OR OTHERWISE.

12.2 **Waiver and Exclusion of Other Damages.** 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 THE PARTIES’ LIMITATION OF LIABILITY AND THE PARTIES’ WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO “FAIL OF THEIR ESSENTIAL PURPOSE” OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR
MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR’S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR’S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER’S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 4.7, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B AND EXHIBIT G, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREBE 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 limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller’s performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly
authorized by all necessary corporate action on the part of Seller and does not and will not require
the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other
party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the
transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions
of this Agreement will not conflict with or constitute a breach of or a default under any Law
presently in effect having applicability to Seller, subject to any permits that have not yet been
obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed
of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or
instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This
Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its
terms, except as limited by laws of general applicability limiting the enforcement of creditors’
rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) The Facility is located in the State of New Mexico.

(f) As of the Effective Date, Seller further represents and warrants as follows:-

(i) Nondiscrimination/Non-Preference. Seller shall not, and shall not
cause or allow its subcontractors to, discriminate against or grant preferential treatment to any
person on the basis of race, sex, color, age, religion, sexual orientation, actual or perceived gender
identity, disability, ethnicity or national origin. This prohibition applies to recruiting, hiring,
demotion, layoff, termination, compensation, fringe benefits, advancement, training,
apprenticeship and other terms, conditions, or privileges of employment, subcontracting and
purchasing. Seller will inform all subcontractors of these obligations. This prohibition is subject
to the following conditions: (i) the prohibition is not intended to preclude Seller from providing a
reasonable accommodation to a person with a disability; (ii) the City’s Compliance Officer may
require Seller to file, and cause any Seller’s subcontractor to file, reports demonstrating
compliance with this section. Any such reports shall be filed in the form and at such times as the
City’s Compliance Officer designates. They shall contain such information, data and/or records
as the City’s Compliance Officer determines is needed to show compliance with this provision.

(ii) Conflict of Interest. Seller represents that it is familiar with the local
and state conflict of interest laws, and agrees to comply with those laws in performing this
Agreement. Seller certifies that, as of the Effective Date, it was unaware of any facts constituting
a conflict of interest or creating an appearance of a conflict of interest. Seller shall avoid all
conflicts of interest or appearances of conflicts of interest in performing this Agreement. Seller
has the obligation of determining if the manner in which it performs any part of this Agreement
results in a conflict of interest or an appearance of a conflict of interest, and shall immediately
notify the Buyer in writing if it becomes aware of any facts giving rise to a conflict of interest or
the appearance of a conflict of interest. Seller’s violation of this subsection (ii) is a material breach.

(iii) Environmentally Preferable Procurement Policy. Seller shall
perform its obligations under this Agreement in conformance with San José City Council Policy
1-19, entitled “Prohibition of City Funding for Purchase of Single serving Bottled Water,” and San José City Council Policy 4-6, entitled “Environmentally Preferable Procurement Policy,” as those policies may be amended from time to time. The Parties acknowledge and agree that in no event shall a breach of this Section 13.1(f) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle Buyer to terminate this Agreement.

(iv) Gifts Prohibited. Seller represents that it is familiar with Chapter 12.08 of the San José Municipal Code, which generally prohibits a City of San José officer or designated employee from accepting any gift. Seller shall not offer any City of San José officer or designated employee any gift prohibited by Chapter 12.08. Seller’s violation of this subsection (iv) is a material breach.

(v) Disqualification of Former Employees. Seller represents that it is familiar with Chapter 12.10 of the San José Municipal Code, which generally prohibits a former City of San José officer and former designated employee from providing services to the City of San José connected with his/her former duties or official responsibilities. Seller shall not use either directly or indirectly any officer, employee or agent to perform any services if doing so would violate Chapter 12.10.

13.2 Buyer’s Representations and Warranties. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a California municipality and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in the City of San Jose. All persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the applicable Law.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer’s performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.
(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors’ rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, or (4) execution or enforcement of any judgment.

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 any contracts to which it is a party and in material compliance with any Law.

13.4 Prevailing Wage. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform work or provide services at the Site are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable New Mexico law, if any. Nothing herein shall require Seller, its contractors and subcontractors to comply with, or assume liability created by other inapplicable provisions of any New Mexico labor laws.

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 written consent of the other Party, which consent shall not be unreasonably withheld. Any direct or indirect change of control of a Party (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of the other Party, except as provided in Section 14.3. 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 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, and must include, among others, the following provisions; provided that Buyer shall not be required to consent to any additional terms or conditions beyond those set forth below:

(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;

(b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender to provide to Buyer a report concerning:

(i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;

(ii) Impediments to the cure plan or its development;

(iii) If a cure plan has been adopted, the status of the cure plan’s implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and

(iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

Seller or Lender must provide the report to Buyer within ten (10) Business Days after Notice from Buyer requesting the report. Buyer will have no further right to require the report with respect to a particular Event of Default after that Event of Default has been cured;

(c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the end of any cure period indicating Lender’s intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement; **provided**, such cure period may, in Buyer’s sole discretion, be extended by no more than an additional one hundred eighty (180) days;

(d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;

(e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;

(f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender
must assume all of Seller’s obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); provided, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date 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) If this Agreement is rejected in Seller’s Bankruptcy or otherwise terminated in connection therewith and 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), 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.

14.3 Permitted Assignment by Seller. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement: (a) to an Affiliate of Seller, provided that, in connection with an actual assignment by Seller to an Affiliate (and not one that is deemed from a direct or indirect change of control of Seller), Seller has provided Buyer a written agreement signed by the Affiliate to which Seller wishes to assign its interests that provides that such Affiliate will assume all of Seller’s obligations and liabilities under this Agreement upon such transfer or assignment (b) in connection with a direct or indirect change of control associated with a tax equity financing, or (c) in connection with any other direct or indirect change of control or to any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law) unless such transfer would cause Buyer to be in violation of (i) any conflict of interest Law applicable to Buyer, including without limitation the Political Reform Act, (Cal. Gov. Code section 81000 et seq.) and regulations thereto, and Cal. Government Code section 1090, or (ii) be a breach of Seller’s covenant in Section 13.1(f)(ii) or (iii) would exceed the concentration limitations set forth in Exhibit Q. In addition, an assignment or transfer under Section 14.3(c) shall not be effective unless the following requirements are satisfied:

A. the assignee is a Permitted Transferee; and

B. Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment and certifies that the assignee meets the definition of a Permitted Transferee.

No more frequently than three (3) times in each Contract Year, Seller may request that Buyer evaluate one or more potential assignees for compliance with the requirements of Section 14.3. If
Buyer requires additional information to evaluate Seller’s request, Buyer shall request such information within ten (10) Business Days after Seller’s request and may request additional information thereafter only as reasonably necessary. Subject to Seller providing Buyer with any reasonably requested information necessary to evaluate such potential assignee, Buyer shall respond within ten (10) Business Days following receipt of any reasonably required information about such potential assignee, as to whether such potential assignee(s) is a Permitted Transferee and meets the other requirements of this Section 14.3, including in respect of conflicts of interest or concentration limitations. Provided that there are no adverse changes to such potential assignee that would cause such potential assignee to no longer qualify as a Permitted Transferee, Seller may rely on such response from Buyer for a period of ninety (90) days. If Buyer, in good faith, does not agree that Seller’s assignee meets the definition of a Permitted Transferee, then such transfer or assignment shall be void unless either Seller agrees in writing to remain financially responsible under this Agreement, or Seller’s assignee provides payment security in an amount and form reasonably acceptable to Buyer.

**ARTICLE 15**

**DISPUTE RESOLUTION**

15.1 **Applicable 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. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Agreement shall be brought in the federal courts of the United States or, if such federal courts refuse jurisdiction notwithstanding the Parties’ agreement, then in the courts of the State of California, in either case sitting in County of Santa Clara, California.

15.2 **Dispute Resolution.** In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, either Party may seek any and all remedies available to it at Law or in equity, subject to the limitations set forth in this Agreement.

**ARTICLE 16**

**INDEMNIFICATION**

16.1 **Indemnification.**

(a) Each Party (the “**Indemnifying Party**”) agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees, attorneys, representatives and agents (collectively, the “**Indemnified Party**”) from and against all third-party claims, demands, losses, liabilities, penalties, and expenses and expert witness fees (collectively “**Indemnifiable Event**”), to the extent such Indemnifiable Event arises out of, results from, or is caused by any of the following: (a) the negligent act or omission, recklessness or willful
misconduct of the Indemnifying Party, its Affiliates, its or their directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by the Indemnifying Party or any of its subcontractors or anyone that they control; or (b) any violation of applicable Law by the Indemnifying Party. Upon the Indemnified Party’s written request, the Indemnifying Party, at its own expense, must defend any suit or action that is subject to the Indemnifying Party’s indemnity obligations. The Parties’ indemnification obligations survive the expiration or termination of this Agreement until the relevant statute of limitations.

(b) Nothing in this Section 16.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its sole negligence, intentional acts or willful misconduct. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Claims.** Promptly after receipt by a Party of any claim or Notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 16 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and reasonably satisfactory to the Indemnified Party, provided, however, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party’s expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, provided that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party’s counsel that such claim is meritorious or warrants settlement. Except as otherwise provided in this Article 16, in the event that a Party is obligated to indemnify and hold the other Party and its successors and assigns harmless under this Article 16, the amount owing to the Indemnified Party will be the amount of the Indemnified Party’s damages net of any insurance proceeds received by the Indemnified Party following a reasonable effort by the Indemnified Party to obtain such insurance proceeds.

**ARTICLE 17**

**INSURANCE**

17.1 **Insurance.**

(a) **General Liability.** Seller shall maintain, or cause to be maintained at its sole expense, commercial general liability insurance, including products and completed operations and personal injury insurance, with a limit of One Million Dollars ($1,000,000) per occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), including contractual liability covering Seller’s obligations under this Agreement and naming Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller).
(b) **Employer’s Liability Insurance.** Seller, if it has employees, shall maintain Employers’ Liability insurance of One Million Dollars ($1,000,000) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) **Workers Compensation Insurance.** Seller, if it has employees, shall maintain at all times during the Contract Term workers’ compensation and employers’ liability insurance coverage in accordance with applicable requirements of the law of the state in which the work is being performed.

(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) **Umbrella Liability Insurance.** Seller shall maintain or cause to be maintained an umbrella liability policy with a limit of liability of Ten Million Dollars ($10,000,000) per occurrence and in the aggregate. Such insurance shall be excess of the General Liability, Employer’s Liability, and Business Auto Insurance coverages and shall contain standard cross-liability and severability of interest provisions. Seller may choose any combination of primary and excess or umbrella liability policies to meet the insurance limits required under Sections 17.1(a), 17.1(b) and 17.1(d) above.

(f) **Construction All-Risk Insurance.** Seller shall maintain or cause to be maintained during the construction of the Facility equipment and prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods.

(g) **Pollution Legal Liability.** Seller shall maintain or cause to be maintained during the construction of the Facility prior to the Commercial Operation Date, Sudden and Accidental Pollution Legal Liability Insurance in the amount of Two Million Dollars ($2,000,000) per occurrence and in the aggregate, naming Buyer as additional insured, which may be provided by the combination of primary General Liability and excess policies.

(h) **Property Insurance.** On and after the Commercial Operation Date, Seller shall maintain or cause to be maintained insurance against loss or damage from all causes under standard “all risk” property insurance coverage in amounts that are not less than the actual replacement value of the Facility, provided, however, with respect to property insurance for natural catastrophes, such coverage shall be in amounts required by Seller’s Lender.

(i) **Subcontractor Insurance.** Seller shall require all of its major subcontractors to carry the same levels of insurance as Seller, with the exception of the insurance required pursuant to Sections 17.1(e) (Umbrella limit shall be commensurate with each subcontractor’s scope of work), 17.1(f), 17.1(g) and 17.1(h). All subcontractors shall name Seller as an additional insured to commercial general liability insurance.
(j) 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 Seller coverage under Sections 17.1(a) through 17.1(h), with the exception of Construction All-Risk Insurance, Pollution Legal Liability Insurance, and Property Insurance. Certificates of insurance evidencing Construction All-Risk Insurance and Pollution Legal Liability Insurance shall be provided prior to the commencement of any physical construction on Site and evidence of Property Insurance shall be provided prior to the Commercial Operation Date and at every renewal thereafter. These policies shall specify that Buyer shall be given at least thirty (30) days prior Notice by insurer in the event of any cancellation or termination of coverage, except if such cancellation or termination of coverage is due to non-payment of premium, in which case insurer shall provide Buyer with ten (10) days prior Notice, however in the event any insurer is not willing or able to provide such notice to Buyer then the responsibility for providing such notice shall be borne by Seller. 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. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(k) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 17, Seller, among other things and without restricting Buyer’s remedies under the Law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and Affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 17 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 Definition of Confidential Information. The following constitutes "Confidential Information," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) pricing and other commercially-sensitive or proprietary information provided to Buyer in connection with the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction.
against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality.** Except as permitted in this Article 18, neither Party shall disclose Confidential Information to a third party, except upon the written consent of the Disclosing Party. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient (the “Receiving Party”) if and to the extent such disclosure is required (a) to be made by any requirements of Law, (b) pursuant to an order of a court or (c) in order to enforce or implement this Agreement. If the Receiving Party becomes legally compelled (by interrogatories, requests for information or documents, subpoenas, summons, civil investigative demands, or similar processes or otherwise in connection with any litigation or to comply with any applicable law, order, regulation, ruling, regulatory request, accounting disclosure rule or standard or any exchange, control area or independent system operator rule) to disclose any Confidential Information of the disclosing Party (the “Disclosing Party”), Receiving Party shall provide Disclosing Party with prompt notice so that Disclosing Party, at its sole expense, may seek an appropriate protective order or other appropriate remedy. Each party hereby acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California Public Records Act (Government Code Section 6250 et seq.).

18.3 **Irreparable Injury: Remedies.** Receiving Party acknowledges that its obligations hereunder are necessary and reasonable in order to protect Disclosing Party and the business of Disclosing Party, and expressly acknowledges that monetary damages would be inadequate to compensate Disclosing Party for any breach or threatened breach by Receiving Party of any covenants and agreements set forth herein. Accordingly, Receiving Party acknowledges that any such breach or threatened breach will cause irreparable injury to Disclosing Party and that, in addition to any other remedies that may be available, in law, in equity or otherwise, Disclosing Party will be entitled to obtain injunctive relief against the threatened breach of this Agreement or the continuation of any such breach, without the necessity of proving actual damages.

18.4 **Permitted Disclosures.** Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by either Party to such Party’s counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, Affiliates or actual or prospective owners, investors, lenders, directors, underwriters, contractors, suppliers or others involved in the construction, operation and financing transactions and arrangements for a Party or its affiliates, or any of its or their agents, consultants or trustees, so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 18 to the same extent as if it were a Party, or is bound by substantially similar confidentiality requirements, including but not limited to the requirements of Section 18.2 related to the California Public Records Act, as applicable.

18.5 **Press Releases.** Neither Party shall issue (or cause its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement unless both Parties have agreed upon the contents of any such public statement.
ARTICLE 19
MISCELLANEOUS

19.1 Entire Agreement; Integration; Exhibits. This Agreement, together with the Cover Sheet and Exhibits attached hereto, constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of the Cover Sheet or any Exhibit, the provisions of first the Cover Sheet, and then this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 Amendments. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; provided, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

19.3 No Waiver. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

19.4 No Agency, Partnership, Joint Venture or Lease. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, 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).

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

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19.7 **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

19.8 **Electronic Delivery.** This Agreement may be duly executed and delivered by a Party by execution and electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

19.9 **Binding Effect.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

19.10 **Designated Fund; Limited Obligations.**

(a) **Designated Fund.** Buyer is a municipal corporation and is precluded under the California State Constitution and applicable law from entering into obligations that financially bind future governing bodies without an appropriation for such obligation, and, therefore, nothing in the Agreement shall constitute an obligation of future legislative bodies of the City to appropriate funds for purposes of the Agreement; provided, however, that (i) Buyer has created and set aside a designated fund (the “Designated Fund”) for payment of its obligations under the Agreement and (ii) subject to the requirements and limitations of applicable law and taking into account other available money specifically authorized by the San José City Council and allocated and appropriated to the San José Clean Energy’s obligations, Buyer agrees to establish San José Clean Energy rates and charges that are sufficient to maintain revenues in the Designated Fund necessary to pay its obligations under this Agreement and all of Buyer’s payment obligations under its other contracts for the purchase of energy for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the San José Clean Energy Designated Fund during the Term.

(b) **Limited Obligations.** Buyer’s payment obligations under the Agreement are special limited obligations of the Buyer payable solely from the Designated Fund and are not a charge upon the revenues or general fund of the City of San José or upon any non- San José Clean Energy moneys or other property of the Community Energy Department or the City of San José.

19.11 **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.

Clines Corners Wind Farm LLC, a Delaware limited liability company

By: **Andrew Murray**
   Andrew Murray (Aug 31, 2020 5:43 PM PDT)
Name: **Andrew Murray**
Title: **Authorized Signatory**

CITY OF SAN JOSE, a California municipality

By: **Lori Mitchell**
   Lori Mitchell (Aug 31, 2020 12:36 PM PDT)
Name: **Lori Mitchell**
Title: **Director of Community Energy**

Approved as to form:

By: **Luisa Elkins**
Name: **Luisa Elkins**
Title: **Senior Deputy City Attorney**
EXHIBIT A

FACILITY DESCRIPTION

The Facility Description provided herein reflects Seller’s expectation for the Facility and the Site as of the Effective Date. Seller may, by Notice to Buyer prior to the Construction Start Date, modify the Site Name and Site Location within the APNs set forth below. Except as otherwise provided in the Agreement, Seller shall not make any alteration or modification to the Facility which results in a change to the Guaranteed Capacity or the anticipated output of the Facility without Buyer’s prior written consent.

Site Name: Clines Corners Wind Farm

Site includes all or some of the following APNs (as of the Effective Date and to be finalized as of the Commercial Operation Date):

Torrance County:

LT Lewis Tax ID – [REDACTED]
Berlier Tax ID – [REDACTED]

Guadalupe County:

Berlier – [REDACTED]

Site Location: Torrance or Guadalupe (or both) County, New Mexico

Technology: Wind turbines

Guaranteed Capacity: 225 MW

Nameplate Capacity: Up to 240 MW

Delivery Point: Palo Verde and Willow Beach

P-node: APN - PALOVRDEASN_APND and APN – WILOWBCH_6_ND001

Participating Transmission Owner: Western Spirit Transmission LLC prior to the transfer of the Western Spirit Transmission Line to Public Service Company of New Mexico, and thereafter Public Service Company of New Mexico.
EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION


   a.  “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 date certified therein shall be the “Construction Start Date.” The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b.  If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until the earlier of (i) Seller reaches Construction Start of the Facility or (ii) the Daily Delay Damages equal the amount of the Development Security. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer’s receipt of Daily 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 Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

2.  Commercial Operation of the Facility. “Commercial Operation” means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved. The “Commercial Operation Date” shall be the later of (x) the Expected Commercial Operation Date or (y) the date on which Commercial Operation is achieved.

   a.  Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

   b.  If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily 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. Solely for purposes of this Section 2(b), Seller’s extension of the Guaranteed Commercial Operation Date by
increasing the Development Security pursuant to Section 4 of this Exhibit B shall not be taken into account for determining whether Seller is entitled to a refund of Daily Delay Damages.

c. If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day the Facility has not been completed and is not ready to produce and deliver Energy generated by the Facility to Buyer as of the Guaranteed Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer until the earlier of (i) the Commercial Operation Date or (ii) the aggregate of any Daily Delay Damages paid by Seller plus any Commercial Operation Delay Damages paid by or due from Seller equals the amount of the Development Security required to be posted by Seller as provided in the Cover Sheet, as such amount may be increased in accordance with Section 4 of this Exhibit B. 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 and, within ten (10) Business Days following Seller’s receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer’s receipt of Commercial Operation 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 Damage Payment upon exercise of Buyer’s default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation.** If the Facility has not achieved Commercial Operation within ninety (90) days after the Guaranteed Commercial Operation Date, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(iv) and 11.2.

4. **Extension of the Guaranteed Dates.** The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the “Development Cure Period”) for the following delays:

   a. a Force Majeure Event occurs;

   b. the Interconnection Facilities are not complete and ready for the Facility to connect at the point of interconnection specified in the Interconnection Agreement and deliver Product to the Delivery Point by the Expected Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

   c. a delay in commercial operation date of the Western Spirit Transmission Line.

Subject to the last sentence of this paragraph, the cumulative extensions granted under clauses 4(a), 4(b), and 4(c) of the Development Cure Period shall not exceed [redacted] days for any reason, including a Force Majeure Event; except that such [redacted] day period shall be extended on a day-for-day basis (up to an
additional [REDACTED] for each day of delay that is due to a Force Majeure Event related to COVID-19; provided, that the total of cumulative extensions granted under Section 4(a), 4(b) and 4(c) under the Development Cure Period (including for a Force Majeure Event related to COVID-19) shall not exceed [REDACTED]. No extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide Notice to Buyer as required in the next sentence. Seller shall provide prompt Notice to Buyer of a delay, but in no case more than [REDACTED] days after Seller became aware of such delay, except that in the case of a delay occurring within [REDACTED] of the Expected Commercial Operation Date, or after such date, Seller must provide Notice within [REDACTED] Business Days of Seller becoming 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. Notwithstanding the foregoing, Seller, at its option, may extend the Guaranteed Commercial Operation Date by an additional [REDACTED] days by increasing the Development Security to an amount equal to $[REDACTED] of Guaranteed Capacity, provided, that Buyer must receive the additional Development Security before the initial Guaranteed Commercial Operation Date (as extended by the Development Cure Period).

5. **Failure to Reach Guaranteed Capacity.** If, at Commercial Operation, one hundred percent (100%) of the Guaranteed Capacity has not been completed and is not ready to produce and deliver Product to Buyer, Seller shall have ninety (90) days after the Commercial Operation Date to install additional capacity and/or network upgrades such that the Installed Capacity is equal to the Guaranteed Capacity. In the event that Seller fails to construct the Guaranteed Capacity by such date, Seller shall pay “Capacity Damages” to Buyer, in an amount equal to [REDACTED] ($[REDACTED]) for each MW that the Guaranteed Capacity exceeds the Installed Capacity and the Guaranteed Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
EXHIBIT D

[RESERVED]
EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive summary.
2. Facility description.
3. Site plan of the Facility.
4. Description of any 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 month, including any OSHA labor hour reports.
7. Forecast of activities scheduled for the current calendar quarter.
8. Written description about the progress relative to Seller’s Milestones, including whether Seller has met or is on target to meet the Milestones.
9. List of issues that could potentially affect Seller’s Milestones.
10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.
11. Progress and schedule of all agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.
12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.
13. Any other documentation reasonably requested by Buyer.
EXHIBIT F

AVERAGE EXPECTED ENERGY (MWh)

The foregoing table (i) 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, and (ii) reflects expected P50 delivered volumes taking into account estimated X% physical losses from the Facility to the Delivery Point.
EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

In accordance with Section 4.7, if Seller fails to achieve the Guaranteed Energy Production during any Contract Year, a liquidated damages payment shall be due from Seller to Buyer, calculated as follows:

\[(A - B) \times (C - D)\]

where:

\(A\) = the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh

\(B\) = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh

\(C\) = Replacement price for the Performance Measurement Period, in $/MWh, which is the sum of (a) the simple average of the Integrated Forward Market hourly price for all the hours in the Performance Measurement Period, as published by the CAISO, for the Existing Zone Generation Trading Hub (as defined in the CAISO Tariff) for the Delivery Point, plus (b) the lesser of (i) the market value of Replacement Green Attributes or (ii) $2.30 MWh.

\(D\) = the Contract Price, in $/MWh

“Adjusted Energy Production” shall mean the sum of the following: Delivered Energy + Lost Output.

“Lost Output” means the sum of electric energy in MWh that would have been generated and delivered, but was not, on account of Force Majeure Event, Buyer Default, Buyer Curtailment Period, Curtailment Order. The additional MWh comprising Lost Output shall be calculated in the same manner as Deemed Delivered Energy.

“Replacement Green Attributes” means Renewable Energy Credits meeting the requirements of Portfolio Content Category 1 of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility during the Contract Year for which the Replacement Green Attributes are 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 and (b) Replacement Green Attributes provided pursuant to Section 4.8(e).
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 Contract Year.
EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification (“Certification”) of Commercial Operation is delivered by the undersigned, a licensed professional engineer and duly authorized representative of ___________ in its capacity as independent engineer (“Engineer”), to City of San Jose, a California municipality (“Buyer”), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase Agreement dated _______ (“Agreement”) by and between Clines Corners Wind Farm LLC (“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.

Engineer hereby certifies and represents to Buyer the following:

(1) Wind turbines with a nameplate capacity at least equal to 95% of the Guaranteed Capacity have been installed.

(2) Testing and commissioning of each such wind turbine has been completed in accordance with the turbine supply agreement and each wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.

(3) Authorization to parallel the Facility was obtained by the Participating Transmission Owner on ______[DATE]______.

(4) The Participating Transmission Owner has provided documentation supporting full unrestricted release for Commercial Operation on ______[DATE]______.

EXECUTED on this _______ day of ____________, 20__.

Sincerely,

__________________________

By: _______________________________
[NAME], P.E.
[TITLE]
New Mexico License No. [#]  
Exp. [DATE]

Exhibit H - 1
EXHIBIT I
FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("Certification") of Installed Capacity is delivered by the undersigned, a licensed professional engineer and duly authorized representative of ____________ in its capacity as independent engineer ("Engineer"), to City of San Jose, a California municipality ("Buyer"), pursuant to the [agreement between Seller and Engineer] and in connection with that certain Renewable Power Purchase Agreement dated ____________ ("Agreement") by and between Clines Corners Wind Farm I, LLC ("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.

[____] wind turbines with a nameplate capacity of [____] ("Installed Capacity") have been installed, and testing and commissioning of each such wind turbines has been completed in accordance with the turbine supply agreement and each such wind turbine has delivered electricity to the Point of Interconnection specified in the Interconnection Agreement.

EXECUTED on this ________ day of ____________, 20__.  

Sincerely,

__________________________________

By: __________________________________
[NAME], P.E.  
[TITLE]  
New Mexico License No. [#]  
Exp. [DATE]
EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("Certification") is delivered by ________________ ("Seller") to City of San Jose, a California municipality ("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) the EPC Contract related to the Facility was executed on ____________;

(2) the full notice to proceed with the construction of the Facility was issued on ____________ (attached) (the "Construction Start Date");

(3) the Construction Start Date has occurred;

(4) the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site:

__________________________________________

(such description shall amend the description of the Site in Exhibit A).

IN WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Seller as of the ___ day of _______.

__________________________________________

By: ______________________________________

Its: ______________________________________

Date: ____________________________

Exhibit J - 1
EXHIBIT K

FORM OF LETTER OF CREDIT

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [●]
DATE: [●]

BENEFICIARY:
CITY OF SAN JOSÉ
ATTN: DEPUTY DIRECTOR, POWER RESOURCES
200 E. SANTA CLARA STREET, TOWER 14
SAN JOSÉ, CA 95113

APPLICANT:
[NAME, ADDRESS, CONTACT]

EXPIRATION DATE: [●]

AMOUNT/CURRENCY: [●]

AT THE REQUEST OF AND FOR THE ACCOUNT OF APPLICANT, WE, [INSERT BANK NAME AND ADDRESS] (“ISSUER”), HEREBY ESTABLISH IN YOUR FAVOR IN RESPECT OF OBLIGATIONS OF APPLICANT OUR IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] (“LETTER OF CREDIT”) IN FAVOR OF CITY OF SAN JOSE, A CALIFORNIA MUNICIPALITY (“BENEFICIARY”), 200 E. SANTA CLARA STREET, TOWER 14, SAN JOSE, CA 95113, WHEREBY, SUBJECT TO THE TERMS AND CONDITIONS CONTAINED HEREIN, BENEFICIARY IS HEREBY AUTHORIZED TO DRAW ON US, BY SIGHT, BY ITS DRAWING STATEMENT AS PROVIDED HEREIN, FOR AN AGGREGATE AMOUNT UP TO BUT NOT EXCEEDING [●] (THE "FACE AMOUNT").

WE ARE ADVISED THIS LETTER OF CREDIT IS IRREVOCABLE AND IS ESTABLISHED AS DEVELOPMENT SECURITY PURSUANT TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF __________, 2020 BETWEEN APPLICANT AND BENEFICIARY (THE “AGREEMENT”).

THIS LETTER OF CREDIT SHALL BE EFFECTIVE IMMEDIATELY AND SHALL EXPIRE ON [●], WHICH IS ONE YEAR AFTER THE ISSUE DATE OF THIS LETTER OF CREDIT, OR ANY EXPIRATION DATE EXTENDED IN ACCORDANCE WITH THE TERMS HEREOF (THE “EXPIRATION DATE”).
IT IS A CONDITION OF THIS LETTER OF CREDIT THAT IT SHALL BE AUTOMATICALLY EXTENDED WITHOUT AMENDMENT FOR ADDITIONAL TWELVE (12) MONTH PERIODS FROM THE PRESENT OR EACH FUTURE EXPIRATION DATE, BUT IN NO EVENT TO AN EXPIRATION DATE LATER THAN [●], UNLESS AT LEAST NINETY (90) DAYS PRIOR TO THE EXPIRATION DATE WE SEND NOTICE IN WRITING TO YOU VIA HAND DELIVERY OR OVERNIGHT COURIER AT THE ABOVE ADDRESS, THAT WE ELECT NOT TO AUTOMATICALLY EXTEND THIS LETTER OF CREDIT FOR ANY ADDITIONAL PERIOD.

ON OR BEFORE THE EXPIRATION DATE OF THIS LETTER OF CREDIT YOU MAY DRAW ON US HEREBUNDER FOR UP TO THE FULL UNUTILIZED AMOUNT AVAILABLE AS OF THE DATE OF DRAWING ON THIS LETTER OF CREDIT.

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED UNDER THIS LETTER OF CREDIT (PROVIDED THAT THE CUMULATIVE AGGREGATE AMOUNT THAT MAY BE DEMANDED UNDER THIS LETTER OF CREDIT SHALL NOT EXCEED THE FACE AMOUNT), AND THIS LETTER OF CREDIT SHALL REMAIN IN FULL FORCE AND EFFECT WITH RESPECT TO ANY CONTINUING BALANCE.

FUNDS UNDER THIS LETTER OF CREDIT SHALL BE AVAILABLE TO THE BENEFICIARY UPON PRESENTATION TO US OF A DATED DRAWING CERTIFICATE IN THE FORM OF EXHIBIT A HERETO (WHICH IS AN INTEGRAL PART OF THIS LETTER OF CREDIT) PURPORTEDLY SIGNED BY THE BENEFICIARY’S DULY AUTHORIZED REPRESENTATIVE.

THE DRAWING CERTIFICATE MAY BE PRESENTED BY (A) PHYSICAL DELIVERY, (B) AS A PDF ATTACHMENT TO AN EMAIL TO [BANK EMAIL ADDRESS] OR (C) FACSIMILE TO [BANK FAX NUMBER [XXX-XXX-XXXX]] CONFIRMED BY [EMAIL TO [BANK EMAIL ADDRESS]] TRANSMITTAL. BY FACSIMILE OR EMAIL SHALL BE DEEMED DELIVERED WHEN RECEIVED.

ALL PAYMENTS MADE UNDER THIS LETTER OF CREDIT SHALL BE MADE WITH ISSUER’S OWN IMMEDIATELY AVAILABLE FUNDS BY MEANS OF WIRE TRANSFER IN IMMEDIATELY AVAILABLE UNITED STATES DOLLARS TO BENEFICIARY’S ACCOUNT AS INDICATED BY BENEFICIARY IN ITS DRAWING CERTIFICATE OR IN A COMMUNICATION ACCOMPANYING ITS DRAWING CERTIFICATE.

WE HEREBY AGREE THAT THE DRAWING DOCUMENTS DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT WILL BE DULY HONORED BY US UPON DELIVERY OF THE ABOVE SPECIFIED DRAWING CERTIFICATE, IF PRESENTED ON OR BEFORE THE EXPIRATION DATE AS SPECIFIED HEREIN. THE ORIGINAL OF THIS LETTER OF CREDIT (AND ALL AMENDMENTS, IF ANY) IS NOT REQUIRED TO BE PRESENTED IN CONNECTION WITH ANY PRESENTMENT OF A DRAWING CERTIFICATE BY BENEFICIARY HEREBUNDER IN

\[\text{\footnotesize{\textdagger}}\] Highlighted language subject to review by issuer in accordance with issuer’s standard practice.
ORDER TO RECEIVE PAYMENT. 2

AS STIPULATED HEREIN, "BUSINESS DAY" SHALL MEAN ANY DAY OTHER THAN A SATURDAY, SUNDAY OR A DAY ON WHICH BANKING INSTITUTIONS IN THE STATE OF ___________ ARE AUTHORIZED OR REQUIRED BY LAW TO CLOSE. IF ANY DRAWING OR THE DOCUMENTATION PRESENTED IN CONNECTION THEREWITH, DOES NOT CONFORM TO THE TERMS AND CONDITIONS HEREOF, WE WILL ADVISE YOU OF THE SAME BY TELEPHONE OR FACSIMILE AND GIVE THE REASONS FOR SUCH NON-CONFORMANCE.

THIS LETTER OF CREDIT IS ISSUED SUBJECT TO THE RULES OF THE ‘INTERNATIONAL STANDBY PRACTICES 1998’, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 (‘ISP98’) AND AS TO MATTERS NOT ADDRESSED BY ISP98 SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE TO THE LAWS OF STATE OF ___________.

NOTWITHSTANDING ANY REFERENCE IN THIS LETTER OF CREDIT TO ANY OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS (OTHER THAN AS SET FORTH IN THE IMMEDIATELY PRIOR PARAGRAPH), THIS LETTER OF CREDIT CONTAINS THE ENTIRE AGREEMENT BETWEEN BENEFICIARY AND ISSUER RELATING TO THE OBLIGATIONS OF ISSUER HEREUNDER.

OTHER THAN AS PROVIDED HEREIN, COMMUNICATIONS WITH RESPECT TO THIS LETTER OF CREDIT SHALL BE IN WRITING, SHALL SPECIFICALLY REFER TO BENEFICIARY AND TO OUR LETTER OF CREDIT NO. [●], AND SHALL BE ADDRESSED TO: [●]

ALL NOTICES TO BENEFICIARY SHALL BE IN WRITING AND ARE REQUIRED TO BE SENT BY CERTIFIED LETTER, OVERNIGHT COURIER OR DELIVERED IN PERSON TO: CITY OF SAN JOSE, ATTN: DEPUTY DIRECTOR OF POWER RESOURCES, 200 E. SANTA CLARA ST., 14TH FLOOR, SAN JOSE, CA 95113. ONLY NOTICES TO BENEFICIARY MEETING THE REQUIREMENTS OF THIS PARAGRAPH SHALL BE CONSIDERED VALID. ANY NOTICE TO BENEFICIARY WHICH IS NOT IN ACCORDANCE WITH THIS PARAGRAPH SHALL BE VOID AND OF NO FORCE OR EFFECT.

ALL PARTIES TO THIS LETTER OF CREDIT ARE ADVISED THAT THE U.S. GOVERNMENT HAS IN PLACE CERTAIN SANCTIONS AGAINST CERTAIN COUNTRIES, TERRITORIES, INDIVIDUALS, ENTITIES, AND VESSELS. ISSUER ENTITIES, INCLUDING BRANCHES AND, IN CERTAIN CIRCUMSTANCES, SUBSIDIARIES, ARE/WILL BE PROHIBITED FROM ENGAGING IN TRANSACTIONS OR OTHER ACTIVITIES WITHIN THE SCOPE OF APPLICABLE SANCTIONS.

__________

2 Highlighted language subject to review by issuer in accordance with issuer's standard practice.
EXHIBIT
"A"

DRAWING CERTIFICATE

TO: [ISSUING BANK]

RE: IRREVOCABLE STANDBY LETTER OF CREDIT NUMBER [●] ISSUED BY [ISSUING BANK] TO CITY OF SAN JOSÉ (“LETTER OF CREDIT”); CAPITALIZED TERMS USED BUT NOT DEFINED IN THIS DRAWING CERTIFICATE HAVE THE MEANINGS ASCRIBED TO THEM IN THE LETTER OF CREDIT)

THIS IS A DRAWING CERTIFICATE UNDER THE ABOVE-MENTIONED LETTER OF CREDIT.

I, ______________________, AN AUTHORIZED REPRESENTATIVE OF CITY OF SAN JOSÉ, DO HEREBY CERTIFY THAT:

APPLICANT AND BENEFICIARY ARE PARTY TO THAT CERTAIN RENEWABLE POWER PURCHASE AND SALE AGREEMENT DATED AS OF __________, 2020 (THE “AGREEMENT”).

[CHOOSE ONLY ONE OF THE FOLLOWING]

(1) BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. $__________, BECAUSE A SELLER EVENT OF DEFAULT (AS SUCH TERM IS DEFINED IN THE AGREEMENT) HAS OCCURRED OR OTHER OCCasion PROVIDED FOR IN THE AGREEMENT WHERE BENEFICIARY IS AUTHORIZED TO DRAW ON THE LETTER OF CREDIT HAS OCCURRED.

(2) BENEFICIARY IS MAKING A DRAWING UNDER THIS LETTER OF CREDIT IN THE AMOUNT OF U.S. $__________, WHICH EQUALS THE FULL AVAILABLE AMOUNT UNDER THE LETTER OF CREDIT, BECAUSE APPLICANT IS REQUIRED TO MAINTAIN THE LETTER OF CREDIT IN FORCE AND EFFECT BEYOND THE EXPIRATION DATE OF THE LETTER OF CREDIT BUT HAS FAILED TO PROVIDE BENEFICIARY WITH A REPLACEMENT LETTER OF CREDIT OR OTHER ACCEPTABLE INSTRUMENT WITHIN SIXTY (60) DAYS PRIOR TO SUCH EXPIRATION DATE.

IN ACCORDANCE WITH THE TERMS OF THE AGREEMENT, [BENEFICIARY] IS ENTITLED TO AND HEREBY DEMANDS PAYMENT OF USD ________, SUCH AMOUNT TO BE PAID TO [BENEFICIARY] BY WIRE TRANSFER IN IMMEDIATELY

Exhibit K - 4
AVAILABLE FUNDS TO: (INSERT WIRE INSTRUCTIONS), WHICH, CITY OF SAN JOSÉ CERTIFIES IT IS ENTITLED TO UNDER THE AGREEMENT.

COMMUNICATIONS TO ME CONCERNING THIS DRAWING CERTIFICATE MAY BE MADE AT FOLLOWING TELEPHONE AND FACSIMILE NUMBERS: __________; __________.

IN WITNESS WHEREOF, [BENEFICIARY] THROUGH ITS AUTHORIZED REPRESENTATIVE HAS EXECUTED AND DELIVERED THIS DRAWING CERTIFICATE THIS ___________ DAY OF __________, 20__.

CITY OF SAN JOSÉ

BY: __ __ __ __ __ __ __

NAME: __ __ __ __ __ __ __

TITLE: __ __ __ __ __ __ __

Exhibit K - 5
EXHIBIT L

FORM OF GUARANTY

This Guaranty (this “Guaranty”) is entered into as of [_____] (the “Effective Date”) by and between [______], a [_______] (“Guarantor”), and City of San Jose, a California municipality (together with its successors and permitted assigns, “Buyer”).

Recitals

A. Buyer and ______________________, a ______________________ (“Seller”), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the “PPA”) dated as of [______], 20__.  

B. Guarantor is entering into this Guaranty as Performance Security to secure Seller’s obligations under the PPA, as required by Section 8.8 of the PPA.

C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.

D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.

Agreement

1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the full, complete and prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the “Guaranteed Amount”), provided, that Guarantor’s aggregate liability under or arising out of this Guaranty shall not exceed ________ Dollars ($______). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor’s maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment and performance, and not of collection, of the Guaranteed Amount, and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. Demand Notice. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to the PPA for five (5) Business Days following Seller’s receipt of Buyer’s written notice of such failure (the “Demand Notice”), then Buyer may elect to exercise its rights under this Guaranty and
may make a demand upon Guarantor (a “Payment Demand”) for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

3. **Scope and Duration of Guaranty.** This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:

(i) the extension of time for the payment of any Guaranteed Amount, or

(ii) any amendment, modification or other alteration of the PPA, or

(iii) any indemnity agreement Seller may have from any party, or

(iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or

(v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller’s obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statute or regulation, in each such event in any such proceeding, or

(vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or

(vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or

(viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of the PPA, or (C) Seller’s inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

(ix) any other event or circumstance that may now or hereafter constitute a defense to
payment of the Guaranteed Amount, including, without limitation, statute of frauds and accord and satisfaction;

provided that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer (except for such defenses, setoffs or counterclaims that may be asserted by Seller with respect to the PPA, but that are expressly waived under any provision of this Guaranty).

4. Waivers by Guarantor. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:

(i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;

(ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;

(iii) (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or

(iv) the failure by Buyer or any other person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any person.

5. Subrogation. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.

6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate limited liability company powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors’ rights or general principles of equity, (c) the execution, delivery and performance of this Guaranty does not and will not contravene Guarantor’s organizational documents, any applicable law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting

Exhibit L - 3
Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or governmental authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

7. Notices. Notices under this Guaranty shall be deemed received if sent to the address specified below: (i) on the day received if served by overnight express delivery, and (ii) four business days after mailing if sent by certified, first class mail, return receipt requested. If transmitted by facsimile, such notice shall be deemed received when the confirmation of transmission thereof is received by the party giving the notice. Any party may change its address or facsimile to which notice is given hereunder by providing notice of the same in accordance with this Paragraph 8.

If delivered to Buyer, to it at

[___]
Attn: [___]
Fax: [___]

If delivered to Guarantor, to it at

[___]
Attn: [___]
Fax: [___]

8. Governing Law and Forum Selection. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States sitting in the County of Santa Clara, California.

9. Miscellaneous. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer’s successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by
electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

10. WAIVER OF JURY TRIAL; JUDICIAL REFERENCE.

(a) JURY WAIVER. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTY HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

(b) JUDICIAL REFERENCE. IN THE EVENT ANY LEGAL PROCEEDING IS FILED IN A COURT OF THE STATE OF CALIFORNIA (THE “COURT”) BY OR AGAINST ANY PARTY HERETO IN CONNECTION WITH ANY CONTROVERSY, DISPUTE OR CLAIM DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS GUARANTY OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY) (EACH, A “CLAIM”) AND THE WAIVER SET FORTH IN THE PRECEDING PARAGRAPH IS NOT ENFORCEABLE IN SUCH ACTION OR PROCEEDING, THE PARTIES HERETO AGREE AS FOLLOWS:

(i) ANY CLAIM (INCLUDING BUT NOT LIMITED TO ALL DISCOVERY AND LAW AND MOTION MATTERS, PRETRIAL MOTIONS, TRIAL MATTERS AND POST-TRIAL MOTIONS) WILL BE DETERMINED BY A GENERAL REFERENCE PROCEEDING IN ACCORDANCE WITH THE PROVISIONS OF CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 638 THROUGH 645.1. THE PARTIES INTEND THIS GENERAL REFERENCE AGREEMENT TO BE SPECIFICALLY ENFORCEABLE IN ACCORDANCE WITH CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 638.

(ii) UPON THE WRITTEN REQUEST OF ANY PARTY, THE PARTIES SHALL SELECT A SINGLE REFEREE, WHO SHALL BE A RETIRED JUDGE OR JUSTICE. IF THE PARTIES DO NOT AGREE UPON A REFEREE WITHIN TEN (10) DAYS OF SUCH WRITTEN REQUEST, THEN, ANY PARTY MAY REQUEST THE COURT TO APPOINT A REFEREE PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTION 640(B).

(iii) THE PARTIES RECOGNIZE AND AGREE THAT ALL CLAIMS RESOLVED IN A GENERAL REFERENCE PROCEEDING PURSUANT HERETO WILL BE DECIDED BY A REFEREE AND NOT BY A JURY.

[Signature on next page]
IN WITNESS WHEREOF, the undersigned has caused this Guaranty to be duly executed and delivered by its duly authorized representative on the date first above written.

GUARANTOR:

[_____]

By: ________________________________

Printed Name: ______________________

Title: ______________________________

BUYER:

[_____]

By: ________________________________

Printed Name: ______________________

Title: ______________________________

By: ________________________________

Printed Name: ______________________

Title: ______________________________
## EXHIBIT M

### NOTICES

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<tr>
<th>CLINES CORNERS WIND FARM LLC</th>
<th>CITY OF SAN JOSE, a California municipality</th>
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<tr>
<td>Street: 1088 Sansome St.</td>
<td>Street: 200 East Santa Clara Street, Tower 14</td>
</tr>
<tr>
<td>City: San Francisco, CA</td>
<td>City: San Jose, CA 95113</td>
</tr>
<tr>
<td>Attn: General Counsel</td>
<td>Attn: Deputy Director of Power Resources</td>
</tr>
<tr>
<td>Phone:</td>
<td>Phone: (408) 535-4999</td>
</tr>
<tr>
<td>Email:</td>
<td>Email: <a href="mailto:rfo@sanjosecleanenergy.org">rfo@sanjosecleanenergy.org</a></td>
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With a copy to:

<table>
<thead>
<tr>
<th>Office of the City Attorney</th>
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<tbody>
<tr>
<td>Attn. Deputy City Attorney, Community Energy</td>
</tr>
<tr>
<td>200 East Santa Clara Street, 16th Floor Tower</td>
</tr>
<tr>
<td>San Jose, CA 95113-1905</td>
</tr>
<tr>
<td>Direct: (408) 535-1900</td>
</tr>
<tr>
<td>Email: <a href="mailto:cao.main@sanjoseca.gov">cao.main@sanjoseca.gov</a></td>
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and an additional email copy to:

<table>
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<tr>
<th>Hall Energy Law PC</th>
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<tbody>
<tr>
<td>Attn: Stephen Hall</td>
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<tr>
<td>Phone:</td>
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<td>Phone: (408) 535-4999</td>
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<tr>
<td>Phone:</td>
<td>Email: <a href="mailto:invoices@sanjosecleanenergy.org">invoices@sanjosecleanenergy.org</a></td>
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<td>Attn: NCPA Pre-Scheduling Desk</td>
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<td>Phone:</td>
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</table>
| **CLINES CORNERS WIND FARM LLC**  
| **CITY OF SAN JOSE, a California municipality**  
| **(“Seller”)**  
| **(“Buyer”)**  
| **Confirmations:**  
| **Attn:**  
| **Phone:**  
| **Email:**  
| **Confirmations:**  
| **Attn:** Deputy Director of Power Resources  
| **Phone:**  
| **Email:**  
|-  
| **-and-**  
| **Attn:** Kelly Morris  
| **Phone:**  
| **Email:**  
| **Payments:**  
| **Attn:**  
| **Phone:**  
| **Email:**  
| **Payments:**  
| **Attn:** Accounts Receivable  
| **Phone:** (408) 535-4999  
| **Email:** invoices@sanjosecleanenergy.org  
| **Wire Transfer:**  
| **BNK:**  
| **ABA:**  
| **ACCT:**  
| **Wire Transfer:**  
| **BNK:** Wells Fargo Bank  
| **With additional Notices of an Event of Default to:**  
| **Attn:** Deputy Director of Power Resources  
| **200 East Santa Clara Street, Tower 14**  
| **San Jose, CA 95113**  
| **Phone:** (408) 535-4999  
| **Email:** rfo@sanjosecleanenergy.org  
| **and**  
| **Attn:** Director of Finance  
| **200 East Santa Clara Street, Tower 13**  
| **San Jose, CA 95113**  
| **Phone:**  
| **Email:**  
| **Emergency Contact:**  
| **Attn:** 24/7 Operations Control Center  
| **Phone:**  
| **Email:**  
| **Emergency Contact:**  
| **Attn:** Principal Power Resources Specialist  
| **Phone:** (408) 535-4999  
| **Email:** rfo@sanjosecleanenergy.org
EXHIBIT N

BUYER BID CURTAILMENT AND BUYER CURTAILMENT ORDERS

Operational characteristics of the Project for Buyer Bid Curtailment and Buyer Curtailment Orders, are as follows.

- Pmax of the Project: 225 MW
- Minimum operating capacity: 0.0 MW
- Maximum number of hours annually for Buyer Curtailment Periods: 8,760 hours
- Advance notification required for a Buyer Bid Curtailment or Buyer Curtailment Order: Not greater than the shortest Dispatch Interval in the Real-Time Market (as defined in the CAISO Tariff). As of the Effective Date, this is five minutes.
- Maximum number of start-ups per calendar day (if any such operational limitations exist): N/A
- Maximum number of Buyer Bid Curtailment and Buyer Curtailment Orders per calendar day (if any such operational limitations exist): N/A
- Ramp Rate: 22.5 MW/minute
- Minimum Down Time: N/A
EXHIBIT O

CONCENTRATION LIMITATIONS

The concentration limitations applicable to a Permitted Assignment pursuant to Section 19.1 are the following:

- No more than thirty percent (30%) of the total outstanding power supply agreements ("Covered Portfolio") to any one counterparty (calculated as the dollar value of the outstanding commitments to a counterparty divided by the total dollar value committed within the Covered Portfolio, times one hundred (100)),

- No more than thirty percent (30%) of the total expected annual budget for power supply to any one counterparty in any one fiscal year (calculated as the dollar value of the outstanding commitments to a counterparty in a given fiscal year divided by the total expected annual budget for power supply for the fiscal year, times one hundred (100)).
EXHIBIT P

COMMUNITY INVESTMENT

Seller agrees to provide a one-time payment of $[Redacted] for workforce development and community investment activities. These funds shall be transferred within sixty (60) days after Financial Close and will be utilized for workforce development or community investment activities, subject to mutual agreement by the Parties, which shall not be unreasonably withheld.

Additionally, Seller will work with the Buyer to develop a further initiative to benefit San Jose’s disadvantaged communities in a manner that promotes clean energy. Seller and Buyer will work together in good faith to develop the terms of such an initiative prior to COD, and the Parties shall implement the terms of the mutually-agreed initiative in the time frame reasonably agreed to between them. The initiative may be that Seller or an Affiliate of Seller would participate in the San Jose Works project, or a similar subsequent project placing disadvantaged youths in internships, by making available 2 internships per year for the first 10 years of the PPA at Pattern’s Bay Area facilities or offices, including if feasible by remote participation.

If Buyer and Seller cannot reasonably agree on this component of Seller’s community investment commitment, Seller shall be deemed to have discharged its responsibilities if it makes commercially reasonable efforts to make the internships referenced above available to San Jose Works, or a similar subsequent project.

Seller will not be required to contribute or invest any workforce development and community investment funds if such contribution or investment adversely affects Seller or the development or financing of the Facility, or conflicts with or violates Law, Prudent Operating Practice, or the business practices, bylaws, charter documents or other agreements of Buyer or Seller.
"SJCE - Clines Corners_Execution Version_8-31-2020[5]" History

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2020-08-31 - 9:00:04 PM GMT
**CERTIFICATE OF LIABILITY INSURANCE**

**PRODUCER:**  Beecher Carlson Insurance Services  
75 State Street, Suite 1710  
Boston, MA 02109  
www.beecher.carlson.com

**INSURED:**  Clines Corners Wind Farm LLC  
c/o Pattern Energy Group LP  
1088 Sansome Street  
San Francisco CA 94111

**INSURER(S) AFFORDING COVERAGE:**  
INSURER A  ACE American Insurance Company  
22667

**COVERAGES**  
CERTIFICATE NUMBER: 57405970

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### INSURED LIABILITIES

<table>
<thead>
<tr>
<th>INSURED LiABILITIES</th>
<th>TYPE OF INSURANCE</th>
<th>LIMITS</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>COMMERCIAL GENERAL LIABILITY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>Sudden &amp; Accidental Pollution Liability</td>
<td>$10,000,000</td>
</tr>
<tr>
<td></td>
<td>GENERAL AGGREGATE</td>
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</tr>
<tr>
<td></td>
<td>S&amp;A Pollution</td>
<td>$1,000,000</td>
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<tr>
<td></td>
<td>OTHER</td>
<td>$1,000,000</td>
</tr>
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</table>

### AUTOMOBILE LIABILITY

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<th>LIMITS</th>
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<tbody>
<tr>
<td>A</td>
<td>OWNED AUTOS ONLY</td>
<td>$1,000,000</td>
</tr>
<tr>
<td></td>
<td>HIRENED AUTOS ONLY</td>
<td>$10,000,000</td>
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<tr>
<td></td>
<td>NON-OWNED AUTOS ONLY</td>
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### EXCESS LIABILITY

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<th>LIMITS</th>
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</thead>
<tbody>
<tr>
<td>B</td>
<td>OCCUR</td>
<td>$10,000,000</td>
</tr>
</tbody>
</table>

**DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES:**

General Liability and Auto Liability policies evidenced herein are primary and non-contributory. Certificate Holder will receive 30 days notice of cancellation (10 days for non-payment of premium). Umbrella Liability policy follows General Liability and Auto Liability policy forms.

---

**CERTIFICATE HOLDER:**

City of San Jose  
200 East Santa Clara Street, Tower 14  
San Jose CA 95113

**CANCELLATION:**

SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS.

**AUTHORIZED REPRESENTATIVE:**

Geraldine Kerrigan

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ADDITIONAL INSURED – DESIGNATED PERSON OR ORGANIZATION

This endorsement modifies insurance provided under the following:

COMMERCIAL GENERAL LIABILITY COVERAGE PART

SCHEDULE

<table>
<thead>
<tr>
<th>Name Of Additional Insured Person(s) Or Organization(s):</th>
</tr>
</thead>
<tbody>
<tr>
<td>As required by written contract signed by both parties prior to a loss.</td>
</tr>
<tr>
<td>Information required to complete this Schedule, if not shown above, will be shown in the Declarations.</td>
</tr>
</tbody>
</table>

A. Section II – Who Is An Insured is amended to include as an additional insured the person(s) or organization(s) shown in the Schedule, but only with respect to liability for "bodily injury", "property damage" or "personal and advertising injury" caused, in whole or in part, by your acts or omissions or the acts or omissions of those acting on your behalf:

1. In the performance of your ongoing operations; or
2. In connection with your premises owned by or rented to you.

However:

1. The insurance afforded to such additional insured only applies to the extent permitted by law; and
2. If coverage provided to the additional insured is required by a contract or agreement, the insurance afforded to such additional insured will not be broader than that which you are required by the contract or agreement to provide for such additional insured.

B. With respect to the insurance afforded to these additional insureds, the following is added to Section III – Limits Of Insurance:

If coverage provided to the additional insured is required by a contract or agreement, the amount of insurance:

1. Required by the contract or agreement; or
2. Available under the applicable Limits of Insurance shown in the Declarations; whichever is less.

This endorsement shall not increase the applicable Limits of Insurance shown in the Declarations.
# City of San José Contract/Agreement Transmittal Form

<table>
<thead>
<tr>
<th>Route Order</th>
<th>Attached / Completed</th>
<th>Electronically Signed</th>
</tr>
</thead>
</table>
| TO: □ City Attorney<br> □ City Manager<br> ✓ City Clerk OR Return to Dept. (circle one) | □ Insurance Certificates / Waivers<br> □ Business Tax Certificate<br> □ Contacted Clerk re: Form 700<br> □ Supplemental Memorandums (if applicable): Select one | □ Electronically Signed: Select one<br> ☑ Audit Trail Attached (if applicable)<br> □ Scanned Signature Authorization |}

Type of Document: New Contract  
Type of Contract: Other  

**REQUIRED INFORMATION FOR ALL CONTRACTS:**  
Existing GILES # 666446-000  

Contractor: Cline’s Corners Wind Farm LLC  
Address:  
Phone: _________________________________  
Email: __________________________________  

Contract Description: Contract ID: 19-108-12 Master PPA  

Term Start Date: 8/31/2020  
Term End Date: 12/31/2036  
Extension: Select one  

Method of Procurement: Select one  
RFB, RFP or RFQ No.: _____________  
Date Conducted: _______

Agenda Date (if applicable): _____________  
Resolution No.: _____________  
Original Contract Amount: _____________  
Option #: ___ of ___  
Option Amount: _____________  
Amount of Increase/Decrease: _____________  
NTE/Updated Contract Amount: _____________  

Fund/Appropriation: __________________________  
Form 700 Required (Selection mandatory for processing): Select one  
Revenue Agreement: Select one  
Tax Certificate No.: _____________  
Expiration Date: _____________  

Department: Community Energy  
Department Contact: Jeannette Mestaz-Romero/x53828  
Customer (Finance Only): __________________________  

Notes:  

Department Director Signature: __________________________  
Date  
Office of the City Manager Signature: __________________________  
Date

Updated October 2019
Pricing information within this Contract is confidential and may not be subject to disclosure under the California Public Records Act, and has been redacted.

Unredacted versions of Power Supply Contracts and Energy Confirmations are with the Community Energy Department. For additional information, contact the Community Energy Department at:

For additional information, contact the Community Energy Department at:

- Email: Invoices@sanjosecleanenergy.org
- Phone: (408) 535-4898