Execution Version

ENERGY STORAGE SERVICES AGREEMENT

COVER SHEET

Seller: Yellow Pine Solar III, LLC, a Delaware limited liability company

Buyer: City of San José, a California municipal corporation, doing business as San José Clean Energy

Description of Facility: A [redacted] battery energy storage system, located in Clark County, Nevada.

Milestones:

Milestone	Date for Completion
Evidence of Site Control	Completed
Execute Interconnection Agreement	[redacted]
Obtain Federal and State Discretionary Permits	
Network Upgrades Completed	
Procure Major Equipment	
Expected Construction Start Date	
Expected Commercial Operation Date	
Expected CAISO certification of Ancillary Services	
Full Capacity Deliverability Status Obtained	Commercial Operation Date + 60 days

Delivery Term: The period commencing on the Commercial Operation Date and continuing through the end of the twentieth (20th) Contract Year after the Commercial Operation Date.

Storage Contract Capacity: [redacted]

Storage Contract Output: [redacted]

Guaranteed Efficiency Rate: The Guaranteed Efficiency Rate is set forth below.

Contract Year	Guaranteed Efficiency Rate
1	[redacted]
2	
3	
4	

Contract Year	Guaranteed Efficiency Rate
5	[redacted]
6	[redacted]
7	[redacted]
8	[redacted]
9	[redacted]
10	[redacted]
11	[redacted]
12	[redacted]
13	[redacted]
14	[redacted]
15	[redacted]
16	[redacted]
17	[redacted]
18	[redacted]
19	[redacted]
20	[redacted]

Maximum Facility cycles per Contract Year: [redacted] (which shall be included in the Operating Restrictions)

Delivery Point: Facility [redacted]

Storage Rate: The Storage Rate shall be [redacted] with no escalation.

Storage Product:

- ☑ Discharging Energy
- ☑ Storage Capacity
- ☑ Capacity Attributes (select options below as applicable)
  - ☐ Energy Only Status
  - ☑ Full Capacity Deliverability Status and Expected FCDS Date: 60 days after Commercial Operation Date
- ☑ Ancillary Services

Scheduling Coordinator: Buyer or Buyer's agent

Development Security: [redacted]

Performance Security: [redacted]

TABLE OF CONTENTS

Page

ARTICLE 1 DEFINITIONS 1

1.1 Contract Definitions 1
1.2 Rules of Interpretation 16

ARTICLE 2 TERM; CONDITIONS PRECEDENT 17

2.1 Contract Term. 17
2.2 Conditions Precedent 18
2.3 Development; Construction; Progress Reports 18
2.4 Remedial Action Plan 19

ARTICLE 3 PURCHASE AND SALE 19

3.1 Purchase and Sale of Storage Product 19
3.2 Intentionally Omitted. 19
3.3 Imbalance Energy. 19
3.4 Ownership of Incentives. 19
3.5 Intentionally Omitted. 20
3.6 Pre-Commercial Operation. 20
3.7 Capacity Attributes. 20
3.8 Resource Adequacy Failure 20
3.9 Intentionally Omitted. 20
3.10 CPUC Mid-Term Reliability Requirements. 21
3.11 Intentionally Omitted. 21
3.12 Compliance Expenditure Cap. 21

ARTICLE 4 OBLIGATIONS AND DELIVERIES 22

4.1 Delivery 22
4.2 Title and Risk of Loss 22
4.3 Forecasting 22
4.4 Dispatch Down/Curtailment. 24
4.5 Charging Energy Management 25
4.6 Reduction in Delivery Obligation 26
4.7 Intentionally Omitted 27
4.8 Storage Availability 27
4.9 Storage Capacity Tests 27
4.10 Interconnection Capacity 27
4.11 Station Use 28
4.12 Facility Operations and Maintenance 28
4.13 Intentionally Omitted 28

ARTICLE 5 TAXES 28

5.1 Allocation of Taxes and Charges. 28
5.2 Cooperation. 28

ARTICLE 6 MAINTENANCE OF THE FACILITY 29

6.1 Maintenance of the Facility. 29

6.2 Maintenance of Health and Safety. 29
6.3 Shared Facilities 29
ARTICLE 7 METERING 29
7.1 Metering. 29
7.2 Meter Verification. 30
ARTICLE 8 INVOICING AND PAYMENT; CREDIT 30
8.1 Invoicing. 30
8.2 Payment 30
8.3 Books and Records. 31
8.4 Payment Adjustments; Billing Errors. 31
8.5 Billing Disputes. 31
8.6 Netting of Payments. 31
8.7 Seller's Development Security. 32
8.8 Seller's Performance Security 32
8.9 First Priority Security Interest in Cash or Cash Equivalent Collateral 32
8.10 Seller Financial Statements. 33
8.11 Buyer Financial Statements 33
ARTICLE 9 NOTICES 34
9.1 Addresses for the Delivery of Notices 34
9.2 Acceptable Means of Delivering Notice 34
ARTICLE 10 FORCE MAJEURE 34
10.1 Definition 34
10.2 No Liability If a Force Majeure Event Occurs 35
10.3 Notice 35
10.4 Termination Following Force Majeure Event 36
ARTICLE 11 DEFAULTS; REMEDIES; TERMINATION 36
11.1 Events of Default 36
11.2 Remedies; Declaration of Early Termination Date. 39
11.3 Termination Payment 39
11.4 Notice of Payment of Termination Payment 40
11.5 Disputes With Respect to Termination Payment 40
11.6 Rights And Remedies Are Cumulative 40
11.7 Seller Pre-COD Liability Limitations 40
11.8 Seller PPA Termination Right 40
11.9 Intentionally Omitted 41
ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES 41
12.1 No Consequential Damages. 41
12.2 Waiver and Exclusion of Other Damages. 42
ARTICLE 13 REPRESENTATIONS AND WARRANTIES; AUTHORITY 42
13.1 Seller's Representations and Warranties. 42

13.2 Buyer's Representations and Warranties 43
13.3 General Covenants 44
13.4 Community Investment 45
13.5 Additional Seller Covenants 45

ARTICLE 14 ASSIGNMENT 46

14.1 General Prohibition on Assignments 46
14.2 Collateral Assignment 46
14.3 Permitted Assignment by Seller 46
14.4 Seller Change of Control 47
14.5 Buyer Limited Assignment Right. 47

ARTICLE 15 DISPUTE RESOLUTION 48

15.1 Governing Law. 48
15.2 Judicial Reference. 48
15.3 Venue. 48
15.4 Dispute Resolution. 48

ARTICLE 16 INDEMNIFICATION 48

16.1 Mutual Indemnity 48
16.2 Notice of Claim. 49
16.3 Failure to Provide Notice. 49
16.4 Defense of Claims 49
16.5 Subrogation of Rights 50
16.6 Rights and Remedies are Cumulative 50

ARTICLE 17 INSURANCE 50

17.1 Insurance 50

ARTICLE 18 CONFIDENTIAL INFORMATION 51

18.1 Definition of Confidential Information 51
18.2 Duty to Maintain Confidentiality 52
18.3 Irreparable Injury; Remedies 52
18.4 Disclosure to Lenders, Etc. 52
18.5 Press Releases 52

ARTICLE 19 MISCELLANEOUS 53

19.1 Entire Agreement; Integration; Exhibits 53
19.2 Amendments 53
19.3 No Waiver 53
19.4 No Agency, Partnership, Joint Venture or Lease 53
19.5 Severability 53
19.6 Mobile-Sierra 53
19.7 Counterparts; Electronic Signatures. 54
19.8 Electronic Delivery 54
19.9 Binding Effect 54
19.10 City of San José Designated Fund and Limited Obligations. 54

19.11 Forward Contract 54
19.12 Further Assurances..... 55

Exhibits:

Exhibit A Facility Description
Exhibit B Facility Construction and Commercial Operation
Exhibit C Compensation
Exhibit D Scheduling Coordinator Responsibilities
Exhibit E Progress Reporting Form
Exhibit F Monthly Forecast
Exhibit G Intentionally Omitted
Exhibit H Form of Commercial Operation Date Certificate
Exhibit I Form of Installed Capacity Certificate
Exhibit J Form of Construction Start Date Certificate
Exhibit K Form of Letter of Credit
Exhibit L Form of Guaranty
Exhibit M Form of Replacement RA Notice
Exhibit N Notices
Exhibit O Storage Capacity Tests
Exhibit P Facility Availability
Exhibit Q Operating Restrictions
Exhibit R Metering Diagram
Exhibit S Community Investment

ENERGY STORAGE SERVICES AGREEMENT

This Energy Storage Services Agreement ("**Agreement**") is entered into as of the last dated signature on the signature page hereto (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, Seller intends to develop, design, permit, 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 Storage Product.

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

ARTICLE 1
DEFINITIONS

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

"**AC**" means alternating current.

"**Accepted Compliance Costs**" has the meaning set forth in Section 3.12.

"**AD/CVD**" means antidumping and/or countervailing duty.

"**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 Transfer" and "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. Notwithstanding the foregoing, with respect to Seller, Affiliate shall include NextEra Energy Partners, LP ("**NEP**"), NextEra Energy Operating Partners, LP ("**NEOP**"), and NextEra Energy Capital Holdings, Inc. ("**NEECH**"), and their respective direct or indirect subsidiaries.

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

"**Ancillary Services**" means all ancillary services, products and other attributes, if any, associated with the Facility.

"**Availability Adjustment**" has the meaning set forth in Exhibit P.

"**Available Storage Capacity**" means the Facility's then current Net Qualifying Capacity.

"**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.

"**BESS Equipment**" means batteries, battery modules, onboard sensors, control components, inverters, or any of their components.

"**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**" means City of San José, a municipal corporation, doing business as San José Clean Energy.

"**Buyer Default**" means a failure by Buyer (or its agents) to perform Buyer's obligations hereunder, and includes an Event of Default of Buyer.

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

"**CAISO Approved Meter**" means a CAISO approved revenue quality meter or meters, metering scheme, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, Charging Energy and Discharging Energy.

"**CAISO Grid**" has the same meaning as "CAISO Controlled Grid" as defined in the CAISO Tariff.

"**CAISO Operating Order**" means the Operating Instruction or Dispatch 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 approved by FERC.

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

"**Capacity Damages**" has the meaning set forth in Exhibit B.

"**Change of Control**" means, except in connection with public market transactions of equity interests or capital stock of Seller's Ultimate Parent, any circumstance in which Ultimate Parent ceases to own, directly or indirectly through one or more intermediate entities, more than fifty percent (50%) of the outstanding equity interests in Seller; provided that in calculating ownership percentages for all purposes of the foregoing:

(a) any ownership interest in Seller held by Ultimate Parent indirectly through one or more intermediate entities shall not be counted towards Ultimate Parent's ownership interest in Seller unless Ultimate Parent directly or indirectly owns more than fifty percent (50%) of the outstanding equity interests in each such intermediate entity; and

(b) ownership interests in Seller owned directly or indirectly by any Lender (including any cash equity or tax equity provider) or assignee or transferee thereof shall be excluded from the total outstanding equity interests in Seller;

provided, further, that a Change of Control shall not be deemed to have occurred as a result of a Permitted Transfer.

"**Charging Energy**" means the grid energy, net of Station Use, delivered to the Facility pursuant to a Charging Notice as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, as such meter readings are adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

"**Charging Notice**" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to charge with Charging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction shall be in accordance with the Operating Procedures. For the avoidance of doubt, any Buyer request to initiate a Storage Capacity Test consistent with Section 4.9 shall not be considered a Charging Notice.

"**Claim**" has the meaning set forth in Section 16.2(a).

"**COD Certificate**" has the meaning set forth in Exhibit B.

"**COD Delay Damages**" means an amount equal to [redacted] per day.

"**Commercial Operation**" has the meaning set forth in Exhibit B.

"**Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Compliance Actions**" has the meaning set forth in Section 3.12.

"**Compliance Expenditure Cap**" has the meaning set forth in Section 3.12.

"**Confidential Information**" has the meaning set forth in Section 18.1.

"**Construction Delay Damages**" means an amount equal to [redacted] per day, not to exceed [redacted].

"**Construction Start**" has the meaning set forth in Exhibit B.

"**Construction Start Date**" has the meaning set forth in Exhibit B.

"**Consent to Collateral Assignment**" has the meaning set forth in Section 11.2.

"**Contract Term**" has the meaning set forth in Section 2.1.

"**Contract Year**" means a period of twelve (12) consecutive months, with the first Contract Year beginning on the Commercial Operation Date, and each successive Contract Year beginning on each 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 Non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged or financed its obligations or entering into new arrangements which replace this Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating this Agreement.

"**Cover Sheet**" means the cover sheet to this Agreement, which is incorporated into this Agreement.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff.

"**CPUC**" means the California Public Utilities Commission or any successor agency performing similar statutory functions.

"**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, Fitch or Moody's.

"**Curtailment Order**" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, to curtail deliveries of Discharging Energy for the following reasons: (i) any System Emergency, or (ii) any warning of an anticipated System Emergency, or warning of an imminent condition or situation, which jeopardizes CAISO's electric system integrity or the integrity of other systems to which CAISO is connected;

(b) a curtailment ordered by the Participating Transmission Owner 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 Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected;

(c) a curtailment ordered by CAISO or the Participating Transmission Owner due to scheduled or unscheduled maintenance on the Participating Transmission Owner's transmission;

(d) facilities that prevent (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or

(e) a curtailment in accordance with the obligations applicable to the Facility under the Interconnection Agreement with the Participating Transmission Owner or distribution operator.

"**Damage Payment**" has the meaning set forth in Exhibit B.

"**Day-Ahead Forecast**" has the meaning set forth in Section 4.3(c).

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

"**Day-Ahead Schedule**" has the meaning set forth in the CAISO Tariff.

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

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

"**Delivery Term**" has the meaning set forth on the Cover Sheet.

"**Designated Fund**" has the meaning set forth in Section 19.10.

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

"**Development Security**" means (i) cash or (ii) a Letter of Credit in the amount set forth on the Cover Sheet.

"**Discharging Energy**" means all energy delivered to the Delivery Point from the Facility, net of Station Use, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, adjusted pursuant to CAISO requirements for any applicable Electrical Losses. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Facility as Charging Energy.

"**Discharging Notice**" means the operating instruction, and any subsequent updates, given by Buyer to Seller, directing the Facility to discharge Discharging Energy at a specific MW rate to a specified Stored Energy Level, provided that any such operating instruction or updates shall

be in accordance with the Operating Procedures. For the avoidance of doubt, any Discharging Notice shall not constitute a Curtailment Order.

"**DOC**" means the U.S. Department of Commerce.

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

"**Efficiency Rate**" means the measured round-trip efficiency rate of the Facility, expressed as a percentage, calculated pursuant to a Storage Capacity Test in accordance with Exhibit O.

"**Effective Date**" has the meaning set forth on the Preamble.

"**Electrical Losses**" means all transmission or transformation losses between (i) the Facility Meter and the Delivery Point, and (iii) the Facility Meter and the Delivery Point, calculated in accordance with CAISO approved methodologies applicable to revenue metering.

"**Energy Supply Bid**" has the meaning set forth in the CAISO Tariff.

"**Event of Default**" has the meaning set forth in Section 11.1.

"**Executed Interconnection Agreement Milestone**" means the date for completion of execution of the Interconnection Agreement by Seller (or Seller's Affiliate) and the PTO as set forth on the Cover Sheet.

"**Expected FCDS Date**" means the date set forth in the Cover Sheet which is the date the Facility is expected to achieve Full Capacity Deliverability Status.

"**Facility**" means the energy storage facility described on the Cover Sheet and in Exhibit A (including the operational requirements of the energy storage facility), located at the Site and including mechanical equipment and associated facilities and equipment required to deliver Storage Product (but excluding any Shared Facilities), and as such storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

"**Facility Energy**" means the Discharging Energy during any Settlement Interval or Settlement Period, net Station Use, as measured by the Facility Meter in accordance with CAISO metering requirements and Prudent Operating Practices, adjusted pursuant to CAISO requirements for any applicable Electrical Losses.

"**Facility Meter**" means the bi-directional revenue quality meter or meters (with a 0.3 accuracy class) as shown in Exhibit R, along with a compatible data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, the amount of Charging Energy and the amount of Discharging Energy.

"**FERC**" means the Federal Energy Regulatory Commission or any successor government agency.

"**Fitch**" means Fitch Ratings Ltd., or its successor.

"**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 that prevents Seller from receiving Charging Energy or making Discharging Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"**Full Capacity Deliverability Status**" has the meaning as such term is defined in the CAISO Tariff.

"**Full Capacity Deliverability Status Finding**" means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

"**Gains**" means, with respect to any Non-Defaulting 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 Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term.

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO; *provided*, *however*, that "Governmental Authority" shall not in any event include Buyer acting solely in its capacity as the administrator of San José Clean Energy.

"**Guaranteed Efficiency Rate**" means the guaranteed Efficiency Rate of the Facility throughout the Delivery Term, as set forth on the Cover Sheet.

"**Guaranteed RA Amount**" is equal to the Qualifying Capacity of the Facility, as may be in effect and modified by the CPUC or CAISO from time to time during the Contract Term, multiplied by ninety-seven percent (97%).

"**Guaranteed Commercial Operation Date**" has the meaning set forth in Exhibit B.

"**Guaranteed Construction Start Date**" has the meaning set forth in Exhibit B.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 4.8.

"**Guarantor**" means, with respect to Seller, (a) NextEra Energy Capital Holdings, Inc., (b) an Affiliate of Seller with an Investment Grade Credit Rating, or (c) any Person reasonably acceptable to Buyer, that (i) has an Investment Grade Credit Rating, (ii) has a tangible net worth of at least [redacted], (iii) is incorporated or organized in

a jurisdiction of the United States and is in good standing in such jurisdiction, and (iv) 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.

"**Imbalance Energy**" means the amount of energy in MWh, in any given Settlement Period or Settlement Interval, by which the amounts of Charging Energy or Discharging Energy deviates from the amount of Scheduled Energy.

"**Incentives**" means: (a) all Tax Credits and other federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the Facility (including Production Tax Credits, ITCs, and other 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; and (c) any other form of incentive relating in any way to the Facility.

"**Indemnifiable Loss(es)**" has the meaning set forth in Section 16.1.

"**Indemnified Group**" has the meaning set forth in Section 16.1.

"**Installed Battery Capacity**" means the maximum dependable operating capability of the Facility to discharge electric energy, not to exceed the Storage Contract Capacity, as measured in MW(ac) at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto.

"**Interconnection Agreement**" means that certain Large Generator Interconnection Agreement associated with CAISO Queue position Q1654 among Seller (or Seller's Affiliate), the CAISO, and the Participating Transmission Owner, pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which the 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 accordance with the Interconnection Agreement.

"**Interest Rate**" has the meaning set forth in Section 8.2.

"**Interim Deliverability Status**" has the meaning set forth in the CAISO Tariff.

"**Inter-SC Trade**" or "**IST**" has the meaning set forth in the CAISO Tariff.

"**Investment Grade Credit Rating**" means a Credit Rating of BBB- or higher by S&P or Fitch or Baa3 or higher by Moody's.

"**ITC**" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.

"**Law**" means any applicable law, statute, rule, regulation, decision, writ, order, decree or judgment, 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, or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any Person providing financing or refinancing for the Facility, and any trustee or agent or similar representative acting on their behalf, (ii) providing Interest Rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

"**Letter(s) of Credit**" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch, having assets of at least $10 Billion, and with such bank having a Credit Rating of at least A- from S&P or A3 from Moody's, in a form substantially similar to the letter of credit set forth in Exhibit K.

"**Licensed Professional Engineer**" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California or Nevada.

"**Limited Assignee**" has the meaning set forth in Section 14.5.

"**Local Capacity Area Resources**" has the meaning set forth in the CAISO Tariff.

"**Locational Marginal Price**" or "**LMP**" has the meaning set forth in the CAISO Tariff.

"**Losses**" means, with respect to any Non-Defaulting 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 Non-Defaulting Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, as applicable, and must include the value of Incentives.

"**Master File**" has the meaning set forth in the CAISO Tariff.

"**Maximum Charging Capacity**" has the meaning set forth in in Exhibit A.

"**Maximum Discharging Capacity**" has the meaning set forth in in Exhibit A.

"**Milestones**" means the development activities for significant permitting, interconnection, financing and construction milestones set forth on the Cover Sheet.

"**Monthly Forecast**" has the meaning set forth in Section 4.3(b).

"**Monthly Storage Availability**" has the meaning set forth in Exhibit P.

"**Moody's**" means Moody's Investors Service, Inc., or its successors.

"**MW**" means megawatts in alternating current, unless expressly stated in terms of direct current.

"**MWh**" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.

"**NEECH**" has the meaning set forth in the definition of Affiliate.

"**NEER**" means NextEra Energy Resources, LLC.

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the Day-Ahead Market or Real-Time Market at the Facility's PNode is less than Zero dollars ($0).

"**NEOP**" has the meaning set forth in the definition of Affiliate.

"**NEP**" has the meaning set forth in the definition of Affiliate.

"**NEPA**" means the National Environmental Policy Act.

"**NERC**" means the North American Electric Reliability Corporation or any successor entity performing similar functions.

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

"**Network Upgrades**" has the meaning set forth in the CAISO Tariff.

"**New BESS Trade Measure Event**" means any of the following events, during the period while the applicable ruling request, inquiry, rulemaking, or other filing or proceeding remains pending or subject to appeal before the DOC or other applicable Governmental Authority:

i. Filing of any anti-circumvention ruling request alleging that manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment;

ii. Initiation of any anti-circumvention inquiry into whether manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment or issuance in any such inquiry of any finding or ruling that manufacturers or importers are circumventing any AD/CVD orders on BESS Equipment; or

iii. Filing or initiation of any rulemakings, adjudications, or other proceedings to increase, extend, or expand application of, or impose any new, tariffs, including but not limited to AD/CVD, or other trade measures on BESS Equipment.

"**Non-Defaulting Party**" has the meaning set forth in Section 11.2.

"**Non-Merchant Agreement**" means any agreement to sell any Storage Product from the Facility, each as applicable, over a term that is longer than one (1) year.

"**Notice**" shall, unless otherwise specified in this Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (email).

"**Notice of Claim**" has the meaning set forth in Section 16.2.

"**Off-Peak Hour**" means any hour that is not an On-Peak Hour.

"**On-Peak Hour**" means any hour from hour-ending 0700 to hour-ending 2200 (i.e., 6:00 AM to 9:59 PM) on Monday through Saturday, Pacific Prevailing Time, excluding North American Electric Reliability Council (NERC) holidays.

"**Operating Procedures**" or "**Operating Restrictions**" means those rules, requirements, and procedures set forth on Exhibit Q.

"**Participating Transmission Owner**" or "**PTO**" means an entity that owns, operates and maintains transmission or distribution lines and associated facilities 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**" or "**Parties**" has the meaning set forth in the Preamble.

"**Performance Security**" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty in the amount set forth on the Cover Sheet.

"**Permitted Transfer**" has the meaning set forth in Section 14.3.

"**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.

"**Planned Outage**" has the meaning set forth in Section 4.6(a).

"**Post-Signing Exhibits**" has the meaning set forth in Section 2.1(c).

"**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 storage of energy resources for which Seller, as the owner of the Facility, is eligible.

"**Progress Report**" means a progress report including the items set forth in Exhibit E.

"**Prudent Operating Practice**" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility industry during the relevant time period with respect to grid-interconnected, utility-scale battery energy storage facilities in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale battery energy storage facilities in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the criteria, rules and standards promulgated in the National Electric Safety Code and the National Electrical Code, as they may be amended or superseded from time to time, including the criteria, rules and standards of any successor organizations.

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

"**RA Deficiency Amount**" means the liquidated damages payment that Seller shall pay to Buyer for an applicable RA Shortfall Month as calculated in accordance with Section 3.8(b).

"**RA Guarantee Date**" means 60 days after the Commercial Operation Date.

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month during the Delivery Term during which there is an RA Shortfall Amount.

"**Real-Time Forecast**" means any Notice of any change to the Storage Capacity delivered by or on behalf of Seller pursuant to Section 4.3(d).

"**Real-Time Market**" has the meaning set forth in the CAISO Tariff.

"**Real-Time Price**" means the Resource-Specific Settlement Interval LMP as defined in the CAISO Tariff. If there is more than one applicable Real-Time Price for the same period of time, Real-Time Price shall mean the price associated with the smallest time interval.

"**Remedial Action Plan**" has the meaning in Section 2.4.

"**Replacement RA**" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which an RA Deficiency Amount is due to Buyer.

"**Required Credit Rating**" means, with respect to any Person, if such Person has only one Credit Rating, then one of the following, or if such Person has two or more Credit Ratings, at least two of the following: a Credit Rating of BBB- or higher by S&P; Baa3 or higher by Moody's; and BBB- by Fitch.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and includes any local, zonal or otherwise locational attributes associated with the Facility, in addition to flex attributes (subject to the Operating Restrictions set forth in Exhibit Q).

"**Resource Adequacy Rulings**" means CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-04-040, 06-06-064, 06-07-031 06-07-031, 07-06-029, 08-06-031, 09-06-028, 10-06-036, 11-06-022, 12-06-025, 13-06-024 and any other existing or subsequent ruling or decision, or any other resource adequacy Law, however described, as such decisions, rulings or Laws may be amended or modified from time-to-time throughout the Delivery Term.

"**ROFO Agreement**" has the meaning set forth in Section 11.8(b).

"**ROFO Exercise Period**" has the meaning set forth in Section 11.8(b).

"**ROFO Negotiation Period**" has the meaning set forth in Section 11.8(b).

"**ROFO Offer**" has the meaning set forth in Section 11.8(b).

"**San José Clean Energy**" is the City of San José's community choice aggregation program. The San José Community Energy Department administers and manages San José Clean Energy.

"**S&P**" means the Standard & Poor's Financial Services, LLC (a subsidiary of S&P Global Inc.) or its successor.

"**Schedule**" has the meaning set forth in the CAISO Tariff, and "**Scheduled**" has a corollary meaning.

"**Scheduled Energy**" means the Charging Energy and Discharging Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), or any other financially binding Schedule, market instruction or dispatch for the Facility for a given period of time implemented in accordance with the CAISO Tariff.

"**Scheduling Coordinator**" or "**SC**" means an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff for the purposes of undertaking the functions specified in "Responsibilities of a Scheduling Coordinator," of the CAISO Tariff, as amended from time to time.

"**Security Interest**" has the meaning set forth in Section 8.8.

"**Self-Schedule**" has the meaning set forth in the CAISO Tariff.

"**Seller**" has the meaning set forth on the Cover Sheet.

"**Seller Termination Payment**" has the meaning set forth in Section 11.8(b).

"**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; provided, that the Parties agree that the value of Incentives are direct damages to be accounted for as specified in the definitions of Losses and Gains.

"**Settlement Interval**" has the meaning set forth in the CAISO Tariff.

"**Settlement Period**" has the meaning set forth in the CAISO Tariff.

"**Shared Facilities**" means the gen-tie lines, transformers, substations, or other equipment, permits, contract rights, and other assets and property (real or personal), in each case, as necessary to enable delivery of energy from the Facility (which is excluded from Shared Facilities) to the point of interconnection, including the Interconnection Agreement itself, that are used in common with third parties.

"**Showing Month**" means the calendar month of the Delivery Term that is the subject of the Compliance Showing, as set forth in the Resource Adequacy Rulings and outlined in the CAISO Tariff. For illustrative purposes only, pursuant to the CAISO Tariff and Resource Adequacy Rulings in effect as of the Effective Date, the monthly 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.

"**Site Control**" means that Seller: (a) owns or has the option to purchase the Site, including through an ownership interest in an Affiliate that owns the Site; (b) is the lessee or has the option to lease the Site; (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; or (d) has rights through ownership, lease, right-of-way grant or similar instrument, as the managing partner or other entity authorized to act in all manners relating to the control and operation of the Site.

"**SP-15**" means the Existing Zone Generation Trading Hub for Existing Zone region SP-15 as set forth in the CAISO Tariff.

"**Station Use**" means energy (including produced or discharged by the Facility) that is used within the Facility to power the lights, motors, cooling equipment, control systems and other electrical loads that are necessary for operation of the Facility except during periods in which the Facility is charging or discharging pursuant to a Charging Notice or Discharging Notice.

"**Storage Capacity**" means (a) the maximum dependable operating capability of the Facility to discharge electric energy that can be sustained for four (4) consecutive hours and (b) any other products that may be developed or evolve from time to time during the Term that the Facility is able to provide as the Facility is configured on the Commercial Operation Date and that relate to the maximum dependable operating capability of the Facility to discharge electric energy.

"**Storage Capacity Test**" means any test or retest of the capacity of the Facility and/or Efficiency Rate conducted in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

"**Storage Contract Capacity**" means the total capacity (in MW) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

"**Storage Contract Output**" means the total output (in MWh) of the Facility initially equal to the amount set forth on the Cover Sheet, as the same may be adjusted from time to time pursuant to Section 5(a) of Exhibit B or Section 4.9 and Exhibit O to reflect the results of the most recently performed Storage Capacity Test.

"**Facility Rebalancing Dispatch**" has the meaning set forth in Section 4.9.

"**Storage Product**" means (a) Discharging Energy, (b) Capacity Attributes, if any, (c) Storage Capacity, and (d) Ancillary Services (as defined in the CAISO Tariff), if any, in each case arising from or relating to the Facility.

"**Storage Rate**" has the meaning set forth on the Cover Sheet.

"**Stored Energy Level**" means, at a particular time, the amount of electric energy in the Facility available to be discharged as Discharging Energy, expressed in MWh.

"**Subject Event**" has the meaning set forth in Exhibit B.

"**System Emergency**" means any condition that requires, as determined and declared by CAISO or the PTO, automatic or immediate action to (i) prevent or limit harm to or loss of life or property, (ii) prevent loss of transmission facilities or generation supply in the immediate vicinity of the Facility, or (iii) to preserve Transmission System reliability.

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

"**Tax Credits**" means Production Tax Credits, ITCs, Renewable Energy Tax Abatements (as defined under Nevada law), and any other state, local or federal production or other tax credit,

depreciation benefit, tax deduction or investment tax credit specific to the production, sale or storage of energy from, or the operation or the ownership of, the Facility or any part thereof.

"**Terminated Transaction**" has the meaning set forth in Section 11.2(a).

"**Termination Payment**" has the meaning set forth in Section 11.3.

"**Third-Party Offer**" has the meaning set forth in Section 10.5(a).

"**Third-Party Transaction**" has the meaning set forth in Section 10.4.

"**Transmission Provider**" means any entity or entities transmitting or transporting the Facility Energy on behalf of Seller or Buyer to or from the Delivery Point.

"**Transmission System**" means the transmission facilities operated by the CAISO, now or hereafter in existence, which provide energy transmission service within the CAISO grid from the Delivery Point.

"**Ultimate Parent**" means NextEra Energy, Inc., NextEra Energy Resources, LLC, NEP, NEOP, or NEECH, and includes any combination thereof.

"**WRO Restraint**" means any withhold release order or other import restraint issued by U.S. Customs and Border Protection or other applicable Governmental Authority, including under the Uyghur Forced Labor Prevention Act and/or the Hoshine Silicon Industry Withhold Release Order, that prevents or delays the import or release of any BESS Equipment into the United States and such order prevents or delays the delivery of such BESS Equipment to Seller for incorporation into the Facility.

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 means such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment,

supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

(f) a reference to a Person includes that Person's successors and permitted assigns;

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

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

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

(j) references to any amount of money shall mean a reference to the amount in United States Dollars;

(k) 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

(l) each Party acknowledges that it was represented by counsel in connection with this Agreement and that it or its counsel reviewed this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement.

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

(a) The term of this Agreement shall commence on the Effective Date and shall remain in full force and effect until the conclusion of the Delivery Term, subject to any early termination provisions and any contract term extension provisions set forth herein ("**Contract Term**"); provided, however, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Storage Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality

obligations of the Parties under Article 18 and all indemnity and audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement.

(c) Within thirty (30) days after the Effective Date, the Parties shall agree upon the forms and information to be included in this Agreement as Exhibit K (Form of Letter of Credit), Exhibit L (Form of Guaranty), Exhibit O (Storage Capacity Tests), and Exhibit R (Metering Diagram) (collectively, "**Post-Signing Exhibits**"). The Parties shall exchange written confirmation acknowledging and accepting the Post-Signing Exhibits, and upon receipt of each Party's written confirmation all agreed upon Post-Signing Exhibits shall be deemed to be incorporated into this Agreement and this Agreement shall be automatically amended to include such Post-Signing Exhibits.

2.2 **Conditions Precedent**. The Delivery Term shall not commence as to the Facility until Seller completes each of the following conditions:

(a) Seller has delivered to Buyer (i) a completion certificate from a Licensed Professional Engineer substantially in the form of Exhibit H-1 and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I-1 setting forth the Installed Battery Capacity on the Commercial Operation Date;

(b) A Participating Generator Agreement and a Meter Service Agreement between Seller and CAISO shall have been executed and delivered and be in full force and effect, and a copy of each such agreement delivered to Buyer;

(c) An Interconnection Agreement between Seller (or Seller's Affiliate) 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 required regulatory authorizations, approvals and permits for the operation of the Facility have been obtained and all required conditions thereof have been satisfied and shall be in full force and effect;

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

(f) Seller has paid Buyer for all amounts owing under this Agreement, if any, including Construction Delay Damages and COD Delay Damages.

2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Expected Construction Start Date, and (ii) each month thereafter, Seller shall provide a Progress Report until the occurrence of the Commercial Operation Date that (a) describes the progress towards meeting the Milestones; (b) identifies any missed Milestones, including the cause of the delay; and (c) provides a detailed description of Seller's corrective actions to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date. The form of the Progress Report is set forth in Exhibit E. Seller agrees to regularly scheduled meetings between representatives of Buyer and Seller to review the Progress Reports and discuss Seller's construction progress. 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 from Buyer. For the avoidance of doubt, as between Seller and Buyer, Seller is solely responsible for the design and construction of the Facility, including the location of the Site, obtaining all permits and approvals to build the Facility, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller misses three (3) or more Milestones, or misses any one (1) Milestone by more than ninety (90) days, except as the result of Force Majeure Event or Buyer Default, Seller shall submit to Buyer, within ten (10) Business Days of such missed Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay, if known (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; 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 in accordance with the terms of this Agreement. Subject to the provisions of Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Storage Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase all of the Storage Product produced by or associated with the Facility at the Storage Rate and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Storage Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term resell or use for another purpose all or a portion of the Storage Product, provided that no such resale or use shall relieve Buyer of any obligations hereunder or modify any of Seller's obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, or otherwise submit the Storage 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.

3.2 **Intentionally Omitted**.

3.3 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period there may be Imbalance Energy. To the extent there is any Imbalance Energy, any payments related to such Imbalance Energy shall be for the account of Buyer.

3.4 **Ownership of Incentives**. Seller shall have all right, title and interest in and to all Incentives. Buyer acknowledges that any Incentives belong to Seller. If any Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such 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 Incentives.

3.5 **Intentionally Omitted**.

3.6 **Pre-Commercial Operation**. Prior to the Commercial Operation Date, Seller has the right to sell all capacity, energy and ancillary services from the Facility into the CAISO's markets and to retain all resulting revenues for Seller's own account.

3.7 **Capacity Attributes**. Seller shall request Full Capacity Deliverability Status in the CAISO generator interconnection process. As between Buyer and Seller, Seller shall be responsible for the cost and installation of any Network Upgrades associated with obtaining such Full Capacity Deliverability Status.

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

(b) Throughout the Delivery Term, Seller shall use commercially reasonable efforts to maintain eligibility for Full Capacity Deliverability Status or Interim Deliverability Status for the Facility from the CAISO and shall perform all actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Seller. 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 administrative actions, including complying with all applicable registration and reporting requirements, and executing all documents or instruments necessary to enable Buyer to use all of the Capacity Attributes committed by Seller to Buyer pursuant to this Agreement.

3.8 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages or provide Replacement RA, in each case, as the sole remedy for the Capacity Attributes Seller failed to convey to Buyer.

(b) RA Deficiency Amount Calculation. Commencing on the RA Guarantee Date, for each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the difference, expressed in kW, of (i) Guaranteed RA Amount, minus (b) the lowest amount of Available Storage Capacity eligible to be qualified as System RA and, if applicable, Local RA by both the CPUC and CAISO for such month, (such difference, the "**RA Shortfall**"), multiplied by (i) [redacted] (ii) [redacted] In addition, as an alternative to paying RA Deficiency Amounts, Seller may provide Replacement RA in the amount of the RA Shortfall Amount, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable CPUC Showing Month. Seller's payment of the RA Deficiency Amount shall be Buyer's sole and exclusive remedy for any RA Shortfall.

3.9 **Intentionally Omitted**.

3.10 **CPUC Mid-Term Reliability Requirements**. The Parties acknowledge that Buyer is entering into this Agreement to satisfy a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decision ("**D**.") 21-06-035. For compliance purposes of CPUC D.21-06-035, Buyer is required to demonstrate compliance of the Facility on a 5-hour (rather than 4-hour) basis. Upon Buyer's written request received by Seller no later than thirty (30) days before such engineering assessment is required to be submitted to the CPUC, Seller shall cooperate with Buyer to provide an engineering assessment as required pursuant to CPUC D.21-06-035 demonstrating the 5-hour capability of the Facility. In addition, Seller represents and warrants to Buyer that:

(a) The Storage Product includes the exclusive right to claim the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035;

(b) Seller has not and will not sell, assign or transfer the right to claim procurement of the Capacity Attributes of the Facility as an incremental resource for purposes of CPUC Decision 21-06-035 to any other person or entity during the Delivery Term; and

(c) Seller will provide additional information and documentation to Buyer if necessary to enable Buyer to demonstrate that the Storage Product meets the procurement mandates set forth in CPUC Decision 21-06-035.

3.11 **Intentionally Omitted**.

3.12 **Compliance Expenditure Cap**.

(a) If a change of law occurs after the Effective Date that affects the Storage Product's eligibility to qualify for or maintain Resource Adequacy, then Seller shall use commercially reasonable efforts to comply with such change of law as necessary to maintain the Storage Product eligibility described above, subject to the following sentence. Notwithstanding anything to the contrary, the Parties agree that the maximum out-of-pocket costs and expenses ("**Compliance Costs**") Seller shall be required to bear during the term of this Agreement to comply with all of such obligations shall be capped at $25,000 per MW of Storage Contract Capacity (the "**Compliance Expenditure Cap**"). Seller's internal administrative costs association with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) the Storage Product are excluded from the Compliance Expenditure Cap.

(b) Any actions required for Seller to comply with its obligations set forth in the immediately preceding paragraph, the Compliance Costs of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**."

(c) If Seller reasonably anticipates the need to incur Compliance Costs in excess of the Compliance Expenditure Cap in order to take any Compliance Action Seller shall provide Notice to Buyer of such anticipated Compliance Costs.

(d) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the Compliance Costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted**

Compliance Costs"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller.

(e) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties and Buyer shall reimburse Seller for Seller's actual costs to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller.

(f) If Buyer does not pay the Compliance Costs in excess of the Compliance Expenditure Cap, or if it is not possible for Seller to achieve compliance with a change in law through the payment or incurrence of costs, then in each case (i) Seller shall be excused from the corresponding Compliance Actions under this Agreement, (ii) Buyer shall continue to pay Seller under this Agreement without any reduction in revenues that otherwise would result from the change in law, and (iii) with respect to Resource Adequacy, the Guaranteed RA Amount shall be adjusted downward to reflect the effect of the change in law.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**. Subject to the provisions of this Agreement, commencing on the first day of the Delivery Term through the end of the Contract Term, Seller shall supply and deliver the Storage Product to Buyer at the Delivery Point, and Buyer shall take delivery of the Storage Product at the Delivery Point in accordance with the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Discharging Energy to the Delivery Point, including without limitation, Station Use, Electrical Losses, any costs associated with delivering the Charging Energy to the Facility, and any operation and maintenance charges imposed by the Transmission Provider directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Discharging Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The Charging Energy and Discharging Energy will be scheduled to the CAISO by Buyer (or Buyer's designated Scheduling Coordinator) in accordance with Exhibit D.

4.2 **Title and Risk of Loss**. Title to and risk of loss related to the Discharging Energy shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Storage Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

4.3 **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 accurate 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) Intentionally Omitted.

(b) Monthly Forecast of Storage Capacity. No less than thirty (30) days before the Commercial Operation Date, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the Storage Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F ("**Monthly Forecast**").

(c) Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of Storage Capacity 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 the Storage Capacity. These Day-Ahead Forecasts shall be sent to Buyer. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW or more in Storage Capacity, whether due to Forced Facility Outage, Force Majeure or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting Schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the Storage Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must 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 Storage Capacity, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. With respect to any Forced Facility Outage, Seller shall use commercially reasonable efforts to notify Buyer of such outage within ten (10) minutes of the commencement of the Forced Facility Outage. Seller shall inform Buyer of any developments that will affect either the duration of such outage or the availability of the Facility during or after the end of such outage. These Real-Time Forecasts shall be communicated in a method reasonably acceptable to Buyer and Seller; provided that Buyer specifies the method no later than twenty (20) 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 4.3(d), then Seller shall send such communications by telephone and email to Buyer.

(e) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer of Forced Facility Outages and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.

(f) Forecasting Penalties. Unless excused by a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure with respect to Charging Energy or Discharging Energy during such hour, Seller shall be responsible for a Forecasting Penalty for

each such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(g) CAISO Tariff Requirements. Seller shall comply with all applicable CAISO Tariff requirements, procedures, protocols, rules and testing as necessary for Buyer to submit Energy Supply Bids for the electric energy charged and discharged by the Facility. In addition, to the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Discharging Energy produced by the Facility, by the amount and for the period set forth in any Curtailment Order, provided that Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order is inconsistent with the limitations of the Facility set out in the Operating Restrictions.

(b) Intentionally Omitted.

(c) Failure to Comply. If Seller fails to comply with a Curtailment Order, then, for each MWh of Discharging Energy that is delivered by the Facility to the Delivery Point in contradiction of the Curtailment Order, Seller shall pay Buyer for each such MWh at an amount equal to the sum of (A) + (B), where: (A) is the sum, for all Settlement Intervals with a Negative LMP during the Curtailment Period, of the absolute value of the product of such excess MWh in each Settlement Interval and the Negative LMP for such Settlement Interval, and (B) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Curtailment Order.

(d) Seller Equipment Required for Curtailment Instruction Communications. Seller shall acquire, install, and maintain such facilities, communications links and other equipment, and implement such protocols and practices, as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, to operate the Facility as reasonably directed by the Buyer in accordance with this Agreement or a Governmental Authority, including to implement a Curtailment Order in accordance with the then-current methodology used to transmit such instructions as it may change from time to time. If at any time during the Delivery Term Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies, Seller shall take the steps necessary to become compliant as soon as reasonably possible. Seller shall be liable pursuant to Section 4.4(c) for failure to comply with a Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with then-current methodologies. For the avoidance of doubt, a Curtailment Order communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication.

4.5 **Charging Energy Management**.

(a) Upon receipt of a valid Charging Notice, Seller shall take any and all action necessary to deliver the Charging Energy to the Facility in order to deliver the Storage Product in accordance with the terms of this Agreement (including the Operating Restrictions), including maintenance, repair or replacement of equipment in Seller's possession or control used to deliver the Charging Energy to the Facility.

(b) Buyer will have the right to charge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Prudent Operating Practice and the requirements and limitations set forth in this Agreement, including the Operating Restrictions and the provisions of Section 4.5(a). Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) Seller shall not charge the Facility during the Term other than pursuant to a valid Charging Notice, or in connection with a Storage Capacity Test or Facility Rebalancing Dispatch, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority. If, during the Contract Term, Seller (a) charges the Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice or (b) charges the Facility in violation of the first sentence of this Section 4.5(c), then (x) Seller shall be responsible for all energy costs associated with such charging of the Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.

(d) Buyer will have the right to discharge the Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this Agreement, including the Operating Procedures. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

(e) Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, CAISO Operating Orders, and Curtailment Orders applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Operating Order, Curtailment Order or other instruction or direction from a Governmental Authority or the PTO or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any CAISO Operating Order, or Curtailment Order consistent with the Operational Procedures.

(f) The Facility is capable of receiving Charging Energy in the form of grid energy; provided, that Buyer will be responsible for all costs relating to the charging of the Facility, including the cost of energy used to charge the Facility.

(g) The Facility will be able to provide the full suite of ancillary services in CAISO markets (to the extent any such services are available in the CAISO markets as of the Effective Date) and Seller will dispatch the Facility in response to signals from the Buyer or Buyer's Scheduling Coordinator, subject to the Operating Restrictions. These ancillary services include Frequency Regulation, Spinning Reserve, Ramp Support, Frequency Response, Voltage Control, VAR Dispatch, and Power Factor Correction.

4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1:

(a) Facility Maintenance. Between June 1st and September 30th, Seller shall not schedule non-emergency maintenance that reduces the storage capability of the Facility by more than ten percent (10%), unless (i) such outage is required to avoid damage to the Facility, (ii) such maintenance is necessary to maintain equipment warranties and cannot be scheduled outside the period of June 1st to September 30th, (iii) such outage is required in accordance with Prudent Operating Practices, or (iv) the Parties agree otherwise in writing (each scheduled maintenance permitted under this clause (a) and each of the foregoing outages described in foregoing clauses (a)(i) – (a)(iv), a "**Planned Outage**"). To the extent notice is not already required under the terms hereof, Seller shall notify Buyer as soon as practicable of any extensions to scheduled maintenance and expected end dates thereof.

(i) If Seller schedules non-emergency maintenance (including non-emergency maintenance associated with the addition or replacement of batteries to maintain the Storage Contract Capacity) that reduces the storage capability of the Facility by more than ten percent (10%) during June 1st and September 30th, the Availability Adjustment corresponding to such non-emergency maintenance period shall be doubled.

(ii) Seller shall not replace existing batteries unless for critical maintenance purposes or increase the capacity of the Facility without the prior consent of Buyer; provided, however, that Seller may also add or replace batteries in order to maintain the Storage Contract Capacity.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Storage Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.

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

(d) Force Majeure Event. Seller shall be permitted to reduce deliveries of Storage Product during any Force Majeure Event.

(e) Health and Safety. Seller shall be permitted to reduce deliveries of Storage Product as necessary to maintain health and safety pursuant to Section 6.2.

4.7 **Intentionally Omitted**.

4.8 **Storage Availability**.

(a) During the Delivery Term, the Facility shall maintain a Monthly Storage Availability of no less than [redacted] (the "**Guaranteed Storage Availability**"), which Monthly Storage Availability shall be calculated in accordance with Exhibit P.

(b) If, the Monthly Storage Availability during any month is less than the Guaranteed Storage Availability, then Buyer's payment for the Storage Product shall be calculated by reference to the Availability Adjustment (as determined in accordance with Exhibit P).

4.9 **Storage Capacity Tests**.

(a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O. Additionally, subject to Buyer's consent, which shall not be unreasonably withheld, Seller shall have the right to charge and discharge the Facility during Off-Peak Hours to rebalance the levels of stored energy in the Facility as Seller deems necessary following outages, derates, or other events affecting the Facility ("**Facility Rebalancing Dispatch**"); provided that: (i) Seller shall provide prior written notice to Buyer for any Facility Rebalancing Dispatch; (ii) Seller shall restore the Facility at the end of any Facility Rebalancing Dispatch to the level of stored energy (but rebalanced among all inverters) as existed prior to the Facility Rebalancing Dispatch; (iii) Seller shall schedule all Facility Rebalancing Dispatch in coordination with Buyer's Scheduling Coordinator to minimize Buyer's potential loss of revenue; (iv) Seller shall reimburse Buyer for all net CAISO costs incurred by Buyer as a result of the Facility Rebalancing Dispatch; and (v) such Facility Rebalancing Dispatch shall not reduce the number of cycles available to Buyer under this Agreement.

(b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. Except as otherwise specified in Exhibit O, all other costs or revenues associated with any Storage Capacity Test shall be borne by, or accrue to, Seller, as applicable.

(c) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. The Storage Contract Capacity and Efficiency Rate determined pursuant to a Storage Capacity Test determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity and/or Efficiency Rate, at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

4.10 **Interconnection Capacity**. Seller shall ensure that throughout the Delivery Term (a) the Facility will have an Interconnection Agreement providing for interconnection capacity

available or allocable to the Facility that is no less than the Storage Contract Capacity and (b) Seller shall have sufficient interconnection capacity and rights under such Interconnection Agreement to interconnect the Facility with the CAISO-Controlled Grid, to fulfill Seller's obligations under the Agreement, including with respect to Resource Adequacy, and to allow Buyer's dispatch rights of the Facility to be fully reflected in the CAISO's market optimization and not result in CAISO market awards that are not physically feasible. Seller shall hold Buyer harmless from any penalties, imbalance energy charges, or other costs from CAISO or under the Agreement resulting from Seller's inability to provide the foregoing interconnection capacity.

4.11 **Station Use**. Seller will be responsible for procuring and paying for, or reimbursing Buyer for (to the extent Buyer pays for any Station Use), all Station Use. Seller shall indemnify and hold harmless Buyer from any and all costs, penalties, charges or other adverse consequences that result from energy supplied for Station Use by any means other than retail service from the applicable utility, and shall take any additional measures to ensure Station Use is supplied by the applicable utility's retail service if necessary to avoid any such costs, penalties, charges or other adverse consequences.

4.12 **Facility Operations and Maintenance**. Buyer shall at all times during the Delivery Term retain dispatch control of the Facility and be responsible for dispatching and coordinating charging of the Facility, in each case through the issuance of Charging Notices and Discharging Notices. Seller shall at all times during the Delivery Term retain all other aspects of operation and maintenance of the Facility in accordance with Prudent Operating Practice and applicable Law and adhering to all operational data, interconnection and telemetry requirements applicable to the Facility.

4.13 **Intentionally Omitted**.

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 Storage Product to Buyer, that are imposed on Storage Product prior to its delivery to Buyer at 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 Storage Product that are imposed on Storage Product at and after its delivery to Buyer at the Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees), if any. 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 Storage 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 Storage Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Storage Product.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the sale of Storage 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 Notice to Buyer's emergency contact identified on Exhibit N of such condition. Such action may include, to the extent reasonably necessary, disconnecting and removing all or a portion of the Facility, or suspending the supply of energy or Discharging Energy to Buyer.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and 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 and a separate CAISO resource ID for the Facility.

ARTICLE 7
METERING

7.1 **Metering**. Seller shall measure the amount of Charging Energy and Discharging Energy using the Facility Meter; all of which will be subject to adjustment in accordance with applicable CAISO meter requirements and Prudent Operating Practices, including to account for Electrical Losses and Station Use. All meters will be operated pursuant to applicable CAISO-approved calculation methodologies and maintained as Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Electrical Losses and Station Use in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Seller shall obtain and maintain a single CAISO resource ID dedicated exclusively to the Facility. Seller shall not obtain additional CAISO resource IDs for the Facility without the prior written consent of Buyer, which shall not be unreasonably withheld. In addition, upon the reasonable request of Buyer, Seller shall obtain one or more additional CAISO resource IDs, provided that any out-of-pocket costs associated with obtaining such additional CAISO resource IDs incurred by Seller shall be reimbursed by Buyer. Metering will be consistent with the Metering

Diagram set forth as Exhibit R, a final version of which shall be provided to Buyer at least thirty (30) days before the Commercial Operation Date. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and calibration data and reports. Seller and Buyer shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface – Settlements (MRI-S) (or its successor) or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall test the meter. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall make good faith efforts to deliver an invoice to Buyer for Storage Product within ten (10) days after, but not prior to, the end of each month of the Delivery Term. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Storage Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of Charging Energy charged by the Facility and the amount of Discharging Energy delivered from the Facility to the Delivery Point, in each case, as read by the Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), and the Storage Rate Price applicable to such Storage Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement.

8.2 **Payment**. Buyer shall make payment to Seller for Storage Product by wire transfer or ACH payment to the bank account designated by Seller in Exhibit N, which may be updated by Seller by Notice hereunder; provided, however, that changes to the invoices, payment, and wire transfer information set forth in Exhibit N must be made in writing and delivered via certified mail or by a regularly scheduled next business day delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, and shall include contact information for an authorized person who is available by telephone to verify the authenticity of such requested changes. 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 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 ten (10) Business Days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement. Seller acknowledges that in accordance with California Government Code Section 8546.7, Seller may be subject to audit by the California State Auditor with regard to Seller's performance of this Agreement because the compensation under this Agreement exceeds $10,000.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO; provided, however, that there shall be no adjustments to prior invoices based upon meter inaccuracies. If the required adjustment is in favor of Buyer, Buyer's next monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

8.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned via adjustments in accordance with Section 8.4. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 8.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period. If an invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Storage 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 P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect. Upon the earlier of (i) Seller's delivery of the applicable Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.

8.8 **Seller's Performance Security**. To secure its obligations under this Agreement, Seller shall deliver the 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 of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect until the following have occurred: (i) the Delivery Term has expired or terminated early; and (ii) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Within five (5) Business Days after any draw by Buyer on the Performance Security, Seller shall replenish the amount drawn from the Performance Security so that such Performance Security is restored to the applicable amount; provided that the total amount of any replenishments shall not exceed two times the amount of the original Performance Security, and provided, further, that the limit on number of replenishments is not a cap on Seller's liability under this Agreement. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (A) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (B) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the end of the Delivery Term, or (C) 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 may at its option exchange one permitted form of Development Security or Performance Security for another permitted form of Development Security or Performance Security, as applicable.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, to the extent provided in the form of cash, and any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or

proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence and continuation of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

(a) Exercise any of its rights and remedies with respect to the Development Security and Performance Security, including any such rights and remedies under Law then in effect;

(b) Draw on any outstanding Letter of Credit issued for its benefit and retain any cash held by Buyer as Development Security or Performance Security; and

(c) Liquidate all Development Security or Performance Security (as applicable) then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

Buyer shall apply the proceeds of the collateral realized upon the exercise of any such rights or remedies to reduce Seller's obligations under this Agreement (Seller remains liable for any amounts owing to Buyer after such application), subject to Buyer's obligation to return any surplus proceeds remaining after these obligations are satisfied in full.

8.10 [redacted]

ARTICLE 9
NOTICES

9.1 **Addresses for the Delivery of Notices**. Except as provided in Exhibit D, any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth on Exhibit N or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) and if concurrently with the transmittal of such electronic communication the sending Party provides a copy of such electronic Notice by hand delivery or express courier, at the time indicated by the time stamp upon delivery without any bounce back or rejection; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(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; quarantine; 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; any restraint or restriction imposed by applicable Law or any directive from a Governmental Authority including without limitation a WRO Restraint or a New BESS Trade Measure Event; a failure of the Facility's final step-up transformer so long as it is maintained by Seller in accordance with Prudent Operating

Practice; a delay caused by the Transmission Provider (e.g., CAISO) or Transmission Owner (e.g., GridLiance), an interconnection delay, or a delay in receipt of permits/government approvals. For the avoidance of doubt, so long as the event, despite the use of reasonable efforts, cannot be avoided by, and is beyond the reasonable control of (whether direct or indirect) and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include the impacts of and efforts to combat or mitigate the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof ("**COVID-19**").

(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 Storage Rate unprofitable or otherwise uneconomic (including Buyer's ability to buy components of the Storage Product at a lower price, or Seller's ability to sell the Storage Product, or any component thereof, at a higher price, than under this Agreement); (ii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iii) a Curtailment Order; (iv) 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; (v) 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; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event or as relates to the failure of the Facility's final step-up transformer; or (vii) Seller's inability to achieve Construction Start following the Guaranteed Construction Start Date, or Commercial Operation following the Guaranteed Commercial Operation Date, in each case due to a Force Majeure Event; 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. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. 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. Notwithstanding the foregoing, the occurrence and continuation of a Force Majeure Event shall not (a) suspend or excuse the obligation of a Party to make any payments due hereunder, (b) suspend or excuse the obligation of Seller to achieve the Guaranteed Storage Construction Start Date or Guaranteed Commercial Operation Date beyond the extensions provided in Exhibit B, or (c) limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(i) or Section 11.1(b)(iii) and receive a Damage Payment upon exercise of Buyer's default rights pursuant to Section 11.2.

10.3 **Notice**. Within five (5) Business Days of reasonably becoming aware of the commencement of a Force Majeure Event, the claiming Party shall provide the other Party with oral notice of the event of Force Majeure, and within two (2) weeks of reasonably becoming aware of the commencement of the Force Majeure Event, the claiming Party shall provide the other Party

with Notice in the form of a letter describing in detail the particulars of the occurrence giving rise to the Force Majeure claim, including the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, all as known or estimated in good faith by the affected Party. Failure to provide Notice within such time periods shall not constitute a waiver of a Force Majeure Event unless the delay in giving Notice materially prejudices the other Party. The suspension of performance due to a claim of Force Majeure must be of no greater scope and of no longer duration than is required by the Force Majeure.

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, for a consecutive twelve (12) month period, then either Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b) and this Section 10.4, and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

11.1 **Events of Default**. An "**Event of Default**" shall mean,

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

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default set forth in this Section 11.1), and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14; or

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

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

(i) The failure of Seller to achieve Construction Start within one hundred twenty (120) days after the Guaranteed Construction Start Date;

(ii) Intentionally Omitted;

(iii) The failure of Seller to achieve Commercial Operation within one hundred twenty (120) days after the Guaranteed Commercial Operation Date;

(iv) if, in any two (2) consecutive Contract Year period, the average Monthly Storage Availability over the two-year Contract Year period is less than [redacted];

(v) Intentionally Omitted;

(vi) if, except to the extent excused by any Force Majeure Event, Seller fails to maintain an average Actual Round Trip Efficiency of at least [redacted] over a rolling 12-month period;

(vii) if, except to the extent excused by any Force Majeure Event, Seller fails to maintain a Storage Capacity equal to at least [redacted] of the Storage Contract Capacity for longer than three hundred sixty (360) consecutive days;

(viii) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not discharged by the Facility, except for Replacement Product;

(ix) [redacted]

(x) [redacted]

(A) [redacted]

(B) [redacted]

(C) [redacted];

(D) [redacted]

(E) [redacted]

(F) [redacted]

(xi) with respect to any outstanding Letter of Credit provided for the benefit of Buyer that is not then required under this Agreement to be canceled or returned, the failure by Seller to provide for the benefit of Buyer either (1) cash, or (2) a substitute Letter of Credit from a different issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:

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

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

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

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

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

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

(xii) 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, including an Event of Default under Section 11.1(b)(i) or Section 11.1(b)(iii), subject to the limitations in Section 11.7), or (ii) the Termination Payment calculated in accordance with Section 11.3 below (in the case of any other Event of Default by either Party);

(c) to withhold any payments due to the Defaulting Party under this Agreement;

(d) to suspend performance; or

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

provided, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for the Terminated Transaction and the Event of Default related thereto.

11.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for the Terminated Transaction shall be the aggregate of all Settlement Amounts plus any or all other amounts due to or from the Non-Defaulting Party (as of the Early Termination Date) netted into a single amount. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from the termination of this Agreement, the net Settlement Amount shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with the Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is

a reasonable and appropriate approximation of such damages, and (c) the Damage Payment or Termination Payment described in Section 11.2 or this Section 11.3 (as applicable) is the exclusive remedy of the Non-Defaulting Party in connection with the Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether, in the case of a Termination Payment, 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 an express and exclusive remedy or measure of liquidated damages is provided, 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. Any Non-Defaulting Party shall be obligated to mitigate its Costs, Losses and damages resulting from or arising out of any Event of Default of the other Party under this Agreement.

11.7 **Seller Pre-COD Liability Limitations**. Notwithstanding anything to the contrary in this Agreement, Seller's total liability prior to Seller's achievement of the Commercial Operation Date shall not exceed two (2) times the Development Security.

11.8 **Seller PPA Termination Right**.

(a) Notwithstanding anything to the contrary in this Agreement, if Seller reasonably determines that it will not be feasible to cause the Commercial Operation Date to occur on or prior to the Guaranteed Commercial Operation Date, then, subject to payment of the Seller Termination Payment, Seller may terminate this Agreement in its entirety as to both the Facility by providing Notice of termination to Buyer at any time prior to the Construction Start.

(b) If this Agreement is terminated by Seller pursuant to the preceding paragraph (a):

(i) Seller shall pay Buyer a termination payment in an amount equal to two (2) times the amount of the Development Security less any Construction Delay Damages and COD Delay Damages already paid to Buyer prior to termination (the "**Seller Termination Payment**"), which upon Buyer's receipt of such Seller Termination Payment, shall be Seller's

limit of liability under this Agreement and Buyer's sole and exclusive remedy in respect of such termination, except for the right of first offer specified in subpart (ii) below. Within ten (10) Business Days of the later of such termination or of Buyer's receipt of the Seller Termination Payment, Buyer shall return the Development Security to Seller, subject to any amounts drawn in accordance with this Agreement (with any such drawn amounts for clarification purposes counting towards the amount of the Seller Termination Payment). Following the return of the Development Security to Seller (to the extent Seller determines not to have either applied as part of the Seller Termination Payment) or any remaining portions thereof, neither Party shall have any obligation or liability to the other by reason of such termination, subject to the obligations in the following paragraph.

(ii) Seller shall not enter into any Non-Merchant Agreement to sell any Storage Product from the Facility within two (2) years after the effective date of such termination without first having provided Notice to Buyer of an offer to purchase such Storage Product (a "**ROFO Offer**"). Buyer shall have thirty (30) days to consider and respond to such ROFO Offer (the "**ROFO Exercise Period**"). If Buyer provides notice to Seller accepting the ROFO Offer within the ROFO Exercise Period, then the Parties shall negotiate in good faith to enter into a binding agreement (the "**ROFO Agreement**"), within ninety (90) days after Seller's receipt of Buyer's notice of acceptance (the "**ROFO Negotiation Period**"), for purchase and sale of the Storage Product in accordance with the price and non-price commercial terms of the ROFO Offer and otherwise substantially in the form of this Agreement. If Buyer does not provide notice accepting the ROFO Offer within the ROFO Exercise Period, or if the Parties fail to enter into the ROFO Agreement within the ROFO Negotiation Period, then Seller shall have the right to enter into any Non-Merchant Agreement, within one hundred eighty (180) days after the end of the ROFO Exercise Period or ROFO Negotiation Period, as applicable, to sell such Storage Product to any third parties, so long as the prices under such Non-Merchant Agreement are equal to or greater than the respective prices under the ROFO Offer. If Seller does not enter into such a Non-Merchant Agreement within such one hundred eighty (180) day period, then Seller shall be required again to first provide a ROFO Offer to Buyer, and comply with the related obligations under this provision, with respect to any Non-Merchant Agreement to sell any Storage Product from the Facility that Seller enters into within two (2) years after the termination of this Agreement pursuant to the provisions of the preceding paragraph (a).

11.9 **Intentionally Omitted**.

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, OR INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR ARISING FROM FRAUD OR INTENTIONAL MISREPRESENTATION, 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.

12.2 **Waiver and Exclusion of Other Damages**. EXCEPT AS EXPRESSLY SET FORTH HEREIN, THERE IS NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ANY AND ALL IMPLIED WARRANTIES ARE DISCLAIMED. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE PARTIES' WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, INCLUDING UNDER SECTIONS 3.8, 4.8, 11.2, 11.3, 11.7, AND 11.8, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, AND EXHIBIT P, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEST SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.

ARTICLE 13
REPRESENTATIONS AND WARRANTIES; AUTHORITY

13.1 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a 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 the state of California and each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

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

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

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

(e) Seller shall comply with all applicable federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation those related to employment discrimination and prevailing wage, non-discrimination and non-preference, and conflict of interest.

(f) Seller shall maintain Site Control throughout the Delivery Term.

(g) Seller shall obtain any and all applicable permits and approvals, including without limitation, environmental clearance under the applicable environmental laws, from the local jurisdiction where the Facility will be constructed. Seller acknowledges that Buyer is purchasing the Storage Product under this Agreement and does not intend to be the lead agency for the Facility.

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

(a) Buyer is a municipal corporation 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 José. 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 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, 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 (provided that such court is limited within a venue permitted in law and under this Agreement), (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment; provided, however that nothing in this Agreement shall waive the obligations or rights set forth in the California Tort Claims Act (Government Code Section 810 et seq.).

13.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in California and 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, approvals and permits necessary for the operation of the Facility and for Seller to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and in material compliance with any Law.

13.4 **Community Investment**. Seller shall perform the obligations related to community investment set forth in Exhibit S.

13.5 **Additional Seller Covenants**.

(a) 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.

(b) 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 Section 13.6(b) is a material breach.

(c) 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 13.6(c) be a material breach of this Agreement or otherwise give rise to an Event of Default or entitle Buyer to terminate this Agreement.

(d) 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 of the San José Municipal Code. Seller's violation of this Section 13.6(d) is a material breach.

(e) 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 of the San José Municipal Code.

(f) The Seller shall obtain a City business tax certificate or exemption, if qualified, and will maintain such certificate or exemption for the Delivery Term.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall pay Buyer's reasonable expenses, including attorneys' fees, incurred to provide consents, estoppels, or other required documentation in connection with financing for the Facility. Buyer shall cooperate with Seller or any Lender or financing party to execute or arrange for the delivery of any consents, estoppels, and other documents reasonably requested by Seller, Lender, or the financing party to consummate any financing or refinancing, including in connection with a financing in which the membership interests of Seller or its direct or indirect parent are collaterally assigned in lieu of an assignment of this Agreement.

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, or a consent reasonably requested by a Lender or financing party in connection with a financing in which the membership interests of Seller or its direct or indirect parent are collaterally assigned in lieu of an assignment of this Agreement (each, a "**Consent to Collateral Assignment**").

14.3 **Permitted Assignment by Seller**. Seller may, without the prior written consent of Buyer:

(a) make an assignment to an Affiliate of Seller or undergo a direct or indirect change of control that does not result in a change to Seller's Ultimate Parent;

(b) make an assignment or undergo a direct or indirect change of control through merger, consolidation or sale other than to an Affiliate of Seller (1) of all or substantially all of the stock, interests or assets of Seller or Seller's Ultimate Parent, (2) of the entire asset, renewable, solar, or storage portfolio of Seller or Seller's Ultimate Parent, or (3) if Seller or an Affiliate maintains an economic interest and following such transfer the entity that operates the Facility is, or contracts with, either a third-party entity with at least three years of experience in the ownership and operations of facilities similar to the Facility and commercially reasonable creditworthiness, or an Affiliate of Seller; or

(c) assign, collaterally assign or pledge its interest in this Agreement or in the Facility, or undergo a pledge of Seller's membership interests or the membership interests of its direct or indirect owner, to a financing party including in connection with a portfolio financing

(each of the foregoing in subsections (a) through (c), a "**Permitted Transfer**"). Seller shall provide Buyer at least thirty (30) days' Notice to Buyer of a Permitted Transfer.

14.4 **Seller Change of Control**. Any Change of Control of Seller (whether voluntary or by operation of law) will be deemed an assignment and will require the prior written consent of Buyer, which will not be unreasonably withheld, conditioned or delayed; provided, however, that a Change of Control of Seller shall not require Buyer's consent if it is a Permitted Transfer or if it is a Change of Control of Seller's Ultimate Parent. For avoidance of doubt, Seller's issuance or sale of equity interests in the Seller or a parent to a financing party pursuant to any tax equity investment or other equity financing investment, and, in connection with any such equity investment transaction, shall not constitute an assignment or Change of Control.

14.5 **Buyer Limited Assignment Right**. Subject to the terms and conditions of this Section 14.5, Buyer may from time to time make a limited assignment in connection with a municipal prepayment transaction to an entity ("**Limited Assignee**") that has, or provides a parent guaranty in form and substance reasonably acceptable to Seller from an entity with, a Required Credit Rating, of Buyer's right to receive certain Storage Product and Buyer's obligation to make payments to the Seller. The limited assignment shall not introduce, or purport to convey or otherwise allege, any right of Buyer or Limited Assignee to make any prepayment to Seller under this Agreement or to file or impose any lien on the Facility, or otherwise modify any provision of this Agreement and shall be expressly subject to the Limited Assignee's timely payment of amounts due under this Agreement. Buyer shall pay Seller for any payments not timely made by the Limited Assignee, and Buyer shall remain obligated to perform all of its obligations under this Agreement notwithstanding the limited assignment, including without limitation any credit-related requirements, and payments of any amounts owing under any invoice. Any failure by the Limited Assignee to make payments to Seller when due hereunder shall be a Buyer Event of Default if not cured within the applicable cure period specified herein. Subject to the foregoing, Buyer may make such assignment upon not less than thirty (30) days' advance written notice by delivering to Seller a written request for Seller's consent to such assignment and a proposed form of limited assignment agreement in form and substance reasonably acceptable to Seller that complies with this Section 14.5, and provided that Seller shall not be required to agree to any terms or conditions which are reasonably expected to have an adverse effect on Seller or the Facility's financing parties. Notwithstanding anything to the contrary in connection with such limited assignment, if (1) the assignment, transfer or conveyance of the assigned Storage Product pursuant to the limited assignment agreement, or (2) Seller's performance of any obligation under the limited assignment agreement fails to meet any requirement of this Agreement, then Seller shall not be deemed to be in breach of such requirements under this Agreement, including without limitation any related representation or warranty herein. Buyer shall reimburse Seller for its out-of-pocket costs and expenses, including reasonable attorneys' fees, incurred in connection with any such assignment, or requested assignment consistent with this provision, including in connection with obtaining required consents from its lenders or other financing parties. Limited Assignee and Buyer shall comply with all reasonable requests received by Seller or any lender or investor of Seller or in connection with the Facility in connection with such limited assignment, including providing any requested acknowledgments with respect to any Consent to Collateral Assignment.

ARTICLE 15
DISPUTE RESOLUTION

15.1 **Governing Law**. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of Law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

15.2 **Judicial Reference**. Each of the Parties hereto hereby consents to the adjudication of all claims pursuant to judicial reference as provided in California Code of Civil Procedure Section 638, and the judicial referee shall be empowered to hear and determine all issues in such reference, whether fact or law. Each of the Parties hereto represents that each has reviewed this waiver and consent and each knowingly and voluntarily waives its jury trial rights and consents to judicial reference following consultation with legal counsel on such matters. In the event of litigation, a copy of this Agreement may be filed as a written consent to a trial by the court or to judicial reference under California Code of Civil Procedure Section 638 as provided herein.

15.3 **Venue**. 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 the courts of the State of California sitting in Santa Clara County, California.

15.4 **Dispute Resolution**. In the event of any dispute arising under this Agreement, within ten (10) days following the receipt of a written Notice from either Party identifying such dispute, the Parties shall meet, negotiate and attempt, in good faith, to resolve the dispute quickly, informally and inexpensively. If the Parties are unable to resolve a dispute arising hereunder within the earlier of either thirty (30) days of initiating such discussions, or within forty (40) days after Notice of the dispute, then 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 **Mutual Indemnity**.

(a) Each Party (the "**Indemnifying Party**") agrees to defend, indemnify and hold harmless, the other Party, its Affiliates, directors, officers, agents, attorneys, employees and representatives (each an "**Indemnified Party**" and collectively, the "**Indemnified Group**") from and against all claims, demands, losses, liabilities, penalties, and expenses, including reasonable attorneys' and expert witness fees, for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the following: (i) the negligent act or omission, recklessness or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees, agents, subcontractors, and anyone directly or indirectly employed by either the Indemnifying Party or any of its subcontractors or anyone that they control; (ii) any infringement of the patent rights, copyright, trade secret, trade name, trademark, service mark or any other proprietary right of any person(s) caused by the Indemnified

Party's sale or use of the Storage Product, deliverables or other items provided by the of the Seller pursuant to the requirements of this Agreement, or (iii) any breach of this Agreement (collectively, "**Indemnifiable Losses**").

(b) The Indemnifying Party's indemnity obligations apply to the maximum extent allowed by Law, subject to limitations on consequential and similar damages set forth in Article 12 herein, and includes defending the Indemnified Party which if the Indemnified Party is Buyer includes the City, its officers, employees and agents as set forth in Section 2778 and 2782.8 of the California Civil Code, if applicable. 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.

(c) Nothing in this Article 16 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 obligations to pay claims consistent with the provisions of a valid insurance policy.

16.2 **Notice of Claim**. Subject to the terms of this Agreement and upon obtaining knowledge of an Indemnifiable Loss for which it is entitled to indemnity under this Article 16, the Indemnified Party will promptly Notify the Indemnifying Party in writing of any damage, claim, loss, liability or expense which Indemnified Party has determined has given or could give rise to an Indemnifiable Loss under Section 16.1 ("**Claim**"). The Notice is referred to as a "**Notice of Claim**". A Notice of Claim will specify, in reasonable detail, the facts known to Indemnified Party regarding the Indemnifiable Loss.

16.3 **Failure to Provide Notice**. A failure to give timely Notice or to include any specified information in any Notice as provided in this Section 16.3 will not affect the rights or obligations of any Party hereunder except and only to the extent that, as a result of such failure, any Party which was entitled to receive such Notice was deprived of its right to recover any payment under its applicable insurance coverage or was otherwise materially damaged as a direct result of such failure and, provided further, Indemnifying Party is not obligated to indemnify any member of the Indemnified Group for the increased amount of any Indemnifiable Loss which would otherwise have been payable to the extent that the increase resulted from the failure to deliver timely a Notice of Claim.

16.4 **Defense of Claims**. If, within ten (10) Business Days after giving a Notice of Claim regarding a Claim to Indemnifying Party pursuant to Section 16.2, Indemnified Party receives Notice from Indemnifying Party that Indemnifying Party has elected to assume the defense of such Claim, Indemnifying Party will not be liable for any legal expenses subsequently incurred by Indemnified Party in connection with the defense thereof; provided, however, that if Indemnifying Party fails to take reasonable steps necessary to defend diligently such Claim within ten (10) Business Days after receiving Notice from Indemnifying Party that Indemnifying Party believes Indemnifying Party has failed to take such steps, or if Indemnifying Party has not undertaken fully to indemnify Indemnified Party in respect of all Indemnifiable Losses relating to the matter, Indemnified Party may assume its own defense, and Indemnifying Party will be liable for all reasonable costs or expenses, including attorneys' fees, paid or incurred in connection therewith.

Without the prior written consent of Indemnified Party, Indemnifying Party will not enter into any settlement of any Claim which would lead to liability or create any financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder; provided, however, Indemnifying Party may accept any settlement without the consent of Indemnified Party if such settlement provides a full release to Indemnified Party and no requirement that Indemnified Party acknowledge fault or culpability. If a firm offer is made to settle a Claim without leading to liability or the creation of a financial or other obligation on the part of Indemnified Party for which Indemnified Party is not entitled to indemnification hereunder and Indemnifying Party desires to accept and agrees to such offer, Indemnifying Party will give Notice to Indemnified Party to that effect. If Indemnified Party fails to consent to such firm offer within ten (10) calendar days after its receipt of such Notice, Indemnified Party may continue to contest or defend such Claim and, in such event, the maximum liability of Indemnifying Party to such Claim will be the amount of such settlement offer, plus reasonable costs and expenses paid or incurred by Indemnified Party up to the date of such Notice.

16.5 **Subrogation of Rights**. Upon making any indemnity payment, Indemnifying Party will, to the extent of such indemnity payment, be subrogated to all rights of Indemnified Party against any Third Party in respect of the Indemnifiable Loss to which the indemnity payment relates; provided that until Indemnified Party recovers full payment of its Indemnifiable Loss, any and all claims of Indemnifying Party against any such Third Party on account of said indemnity payment are hereby made expressly subordinated and subjected in right of payment to Indemnified Party's rights against such Third Party. Without limiting the generality or effect of any other provision hereof, Buyer and Seller shall execute upon request all instruments reasonably necessary to evidence and perfect the above-described subrogation and subordination rights.

16.6 **Rights and Remedies are Cumulative**. Except for express remedies already provided in this Agreement, the rights and remedies of a Party pursuant to this Article 16 are cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

ARTICLE 17
INSURANCE

17.1 **Insurance**.

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including sudden and accidental pollution coverage, products and completed operations and personal injury insurance, with a minimum amount of Two Million Dollars ($2,000,000) per occurrence, and an annual aggregate of not less than Five Million Dollars ($5,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller; and (ii) an umbrella insurance policy in a minimum amount of liability of Ten Million Dollars ($10,000,000). Defense costs shall be provided as an additional benefit and not included with the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions. Insurance may be evidenced through primary and excess policies.

(b) Employer's Liability Insurance. Employers' Liability insurance shall be One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of California Law.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of this Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major equipment as arrived at the Facility, prior to the Commercial Operation Date, construction all-risk form property insurance covering the Facility during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Reserved.

(g) Subcontractor Insurance. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller. All subcontractors shall include Seller as an additional insured to (i) comprehensive general liability insurance; (ii) workers' compensation insurance and employers' liability coverage; and (iii) business auto insurance for bodily injury and property damage. All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).

(h) Evidence of Insurance. Prior to the Effective Date and upon annual renewal of required insurance coverage thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage as is required to be in effect at the times specified above. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer.

ARTICLE 18
CONFIDENTIAL INFORMATION

18.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) the terms and conditions of, and proposals and negotiations related to, this Agreement, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a

result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

18.2 **Duty to Maintain Confidentiality**. 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 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. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party is not required to defend against such request and shall be permitted to disclose such Confidential Information of the Disclosing Party, with no liability for any damages that arise from such disclosure. Each Party hereto acknowledges and agrees that information and documentation provided in connection with this Agreement may be subject to the California 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 **Disclosure to Lenders, Etc.**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or any of its Affiliates, and Seller's actual or potential agents, consultants, contractors, 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.

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 Party as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

19.2 **Amendments**. Except as specified in Section 2.1(c) with respect to Post-Signing Exhibits, this Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

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

19.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy seller and energy purchaser, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the Facility or any business related to the Facility. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement or, to the extent set forth herein, any Lender) or Indemnified Party.

19.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

19.6 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party shall be the

"public interest" standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable law.

19.7 **Counterparts; Electronic Signatures**. 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. The Parties may rely on electronic or scanned signatures as originals.

19.8 **Electronic Delivery**. Delivery of an executed signature page of this Agreement by electronic format (including portable document format (.pdf)) shall be the same as delivery of an original executed signature page.

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 **City of San José Designated Fund and 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 this Agreement shall constitute an obligation of future legislative bodies of Buyer to appropriate funds for purposes of this Agreement; provided, however, that (i) Buyer has created and set aside a designated fund for San José Clean Energy as further described in Section 4.80.4050 of the City of San José Municipal Code (the "**Designated Fund**") for payment of its obligations under this Agreement, (ii) as set forth in Section 4.80.4060 of the City of San José Municipal Code, all monies derived from the operation of San José Clean Energy, including revenues for sale of electricity, payment from other entities, and any financing proceeds associated with San José Clean Energy's obligation will be deposited in the Designated Fund, and (iii) 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 and related products for San José Clean Energy. Buyer shall provide Seller with reasonable access to account balance information with respect to the Designated Fund during the Term.

(b) Limited Obligations. Buyer's payment obligations under this Agreement are special limited obligations of 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 **Forward Contract**. The Parties intend that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability

of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. §366 or another provision of 11 U.S.C. § 101-1532.

19.12 **Further Assurances**. Each of the Parties hereto agree to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed as of the Effective Date.

YELLOW PINE SOLAR III, LLC, a Delaware limited liability company

By: Matthew Handel (Jan 24, 2023 21:58 EST)
Name: Matthew S. Handel
Title: Senior Vice President
Date: Jan 24, 2023

CITY OF SAN JOSÉ, a California municipal corporation

By: Lori Mitchell (Jan 24, 2023 19:40 PST)
Name: Lori Mitchell
Title: Director, Community Energy Department
Date: Jan 24, 2023

APPROVED AS TO FORM:

By: Enrique Fernandez
Name: Enrique Fernandez
Title: Deputy City Attorney
Date: Jan 24, 2023

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Yellow Pine III

Site includes all or some of the following APNs: [redacted]

County: Clark County, NV

NEPA Lead Agency: Bureau of Land Management

Type of Storage Facility: Lithium-Ion

Energy Management Software: Seller must provide remotely operable, 2-4 second timestamps, data historian (at least 5 years of storage), SCADA/AGC communication and operability.

Applications/Modes:

- Dynamic Voltage Support
- Shifting
- Regulation
- Flexible Ramp
- Spinning Reserve
- ITC compliance

Operating Characteristics of Facility:

Maximum Stored Energy Level at COD (MWh): [redacted]

Maximum Charging Capacity at COD: [redacted]

Maximum Discharging Capacity at COD: [redacted]

Operating Restrictions of Facility: See Exhibit Q

Storage Contract Capacity: See definition in Section 1.1

Maximum Output: [redacted]

Delivery Point: Facility PNode

Facility Meter Locations: See Exhibit R

Facility Interconnection Point: GridLiance Trout Canyon 230 kV substation on the Pahrump – Sloan Canyon 230 kV line.

Facility PNode: To be established prior to the prior to the Commercial Operation Date. Seller shall promptly notify Buyer following establishment of the PNode.

Participating Transmission Owner: GridLiance

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Facility Construction**.

(a) "**Construction Start**" will occur following Seller's execution of an engineering, procurement and construction (EPC) contract related to the Facility and issuance of a full notice to proceed with the construction of the Facility under the EPC contract, mobilization to the Site by Seller and/or its designees, and includes the physical movement of soil at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein by Seller shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

(b) The "**Guaranteed Construction Start Date**" means the Expected Construction Start Date, subject to extensions on a day-for-day basis for the Development Cure Period.

(c) In the event that Seller fails to achieve Construction Start on or before the Guaranteed Construction Start Date, Seller shall pay delay damages to Buyer for each day of delay in achieving Construction Start up to [redacted] days in the amount of the Construction Delay Damages. The Construction Delay Damages shall be refundable to Seller if, and only if, Seller achieves Commercial Operation within fifteen (15) days of the Guaranteed Commercial Operation Date.

(d) Construction Delay Damages shall be paid to Buyer in arrears on a monthly basis. Buyer shall invoice Seller for Construction 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 Construction Delay Damages set forth in such invoice.

(e) The Parties agree that Buyer's receipt of Construction Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Guaranteed Construction Start Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default pursuant to Section 11.1(b)(i) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

2. **Commercial Operation of the Facility**.

(a) "**Commercial Operation**" means the condition existing when (i) Seller has fulfilled all of the conditions precedent in Section 2.2 of this Agreement and (ii) Seller has confirmed to Buyer in writing that Commercial Operation has been achieved by providing Notice to Buyer substantially in the form of Exhibit H (the "**COD Certificate**"). 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. Seller shall notify Buyer at least sixty (60) days before the anticipated Commercial Operation Date.

(b) The "**Guaranteed Commercial Operation Date**" means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis for the Development Cure Period. Seller shall cause the Commercial Operation Date to occur no later than the Guaranteed Commercial Operation Date.

(c) If Seller does not achieve Commercial Operation by the Guaranteed Commercial Operation Date, Seller shall pay COD Delay Damages to Buyer for each day of delay up to [redacted] days until Seller achieves the Commercial Operation Date. COD Delay Damages shall be paid for each day of delay and shall be paid to Buyer in arrears on a monthly basis. On or before the tenth (10^{th}) day of each month, Buyer shall invoice Seller for COD 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 COD Delay Damages set forth in such invoice.

(d) The Parties agree that Buyer's receipt of COD Delay Damages shall be Buyer's sole and exclusive remedy for Seller's unexcused delay in achieving the Commercial Operation Date on or before the Guaranteed Commercial Operation Date, but shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Section 11.1 and (y) not limit Buyer's right to declare an Event of Default under Section 11.2(b)(iii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.

3. **Termination for Failure to Achieve Commercial Operation**. [redacted]

4. **Extension of the Guaranteed Dates**. "**Development Cure Period**" means, collectively, permitted extensions for delays due to (a) [redacted]

[redacted]

5. **Failure to Reach Storage Contract Capacity**. If Seller has not installed one hundred percent (100%) of the Storage Contract Capacity within [redacted] after the Commercial Operation Date, Seller shall pay Capacity Damages to Buyer for each MW that the Storage Contract Capacity exceeds the Installed Battery Capacity, and the Storage Contract Capacity and other applicable portions of this Agreement shall be adjusted accordingly. "**Capacity Damages**" means an amount equal to [redacted]) per MW.

.

EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Storage Product in accordance with this Exhibit C.

(a) Storage Rate. All Storage Product shall be paid on a monthly basis at the Storage Rate *multiplied by* 1,000, *multiplied by* the Storage Capacity for such month, as adjusted for the most recent Storage Capacity Test, *multiplied by* the Availability Adjustment for such month (as determined under Exhibit P). Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Storage Capacity is adjusted pursuant to a Storage Capacity Test on any day other than the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Storage Capacity is applicable.

(b) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate applicable to such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall be calculated by *multiplying* (i) the total Charging Energy for such month, *by* (ii) the percentage amount by which such applicable Efficiency Rate is less than the Guaranteed Efficiency Rate, *by* (iii) a rate equal to the simple average of the Day-Ahead Market locational marginal price for all the hours in which Charging Energy was provided in the applicable month, as published by the CAISO, for the Delivery Point, provided, that if the foregoing calculation results in a negative value, then no liquidated damages amount shall be owed by either Party. Any such amounts shall be credited by Seller against amounts owed by Buyer in the applicable monthly invoice.

(c) Tax Credits. The Parties agree that the Storage Rate is not subject to adjustment or amendment if Seller fails to receive any Tax Credits, or if any Tax Credits expire, are repealed or otherwise cease to apply to Seller or the Facility in whole or in part, or Seller or its investors are unable to benefit from any Tax Credits. Seller shall bear all risks, financial and otherwise, throughout the Contract Term, associated with Seller's or the Facility's eligibility to receive Tax Credits or to qualify for accelerated depreciation for Seller's accounting, reporting or Tax purposes. The obligations of the Parties hereunder, including those obligations set forth herein regarding the purchase and price for and Seller's obligation to deliver Storage Product, shall be effective regardless of whether the sale of Storage Product is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

(a) Buyer as Scheduling Coordinator for the Facility. Upon the Commercial Operation Date, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of the Storage Product at the Delivery Point. At least thirty (30) days prior to the Commercial Operation Date, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Commercial Operation Date, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Commercial Operation Date. On and after the Commercial Operation Date, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and scheduling practices for Storage Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer. Prior to the Commercial Operation Date, Seller shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility.

(b) Notices. Beginning on the Commercial Operation Date, Buyer (as the Facility's SC) shall provide Seller with access to a web-based system through which Seller shall submit to Buyer and the CAISO all notices and updates required under the CAISO Tariff regarding the Facility's status, including, but not limited to, all outage requests, forced outages, forced outage reports, clearance requests, or must offer waiver forms. Seller will cooperate with Buyer to provide such notices and updates. If the web-based system is not available, Seller shall promptly submit such information to Buyer and the CAISO (in order of preference) telephonically, by electronic mail, transmission to the personnel designated to receive such information.

(c) CAISO Costs and Revenues. Except as otherwise set forth below, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties and other charges) and shall be entitled to all CAISO revenues (including credits and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Storage Product Scheduled or delivered from the Facility during the Delivery Term. Seller shall assume all liability and reimburse Buyer for any and all costs, charges or sanctions (i) due to Seller's failure to perform its obligations under this Agreement, (ii) incurred by Buyer as a result of Seller's failure to adhere to its obligations under the CAISO Tariff or any CAISO directive, including due to outages for which notice has not been provided as required, or (iii) associated with Resource Adequacy Capacity (as defined in the CAISO Tariff) from the Facility (including Non-Availability Charges (as defined in the CAISO Tariff)). Any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and any Non-Availability Charges are the responsibility of Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has

implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or any CAISO directive, or to perform in accordance with this Agreement, including with respect to the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be Seller's responsibility.

(d) CAISO Settlements. Starting on the Commercial Operation Date and continuing throughout the Delivery Term, Buyer (as the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility. Buyer shall render a separate invoice to Seller for any CAISO payments, charges or penalties ("**CAISO Charges Invoice**") for which Seller is responsible under this Agreement. CAISO Charges Invoices shall be rendered after settlement information becomes available from the CAISO that identifies any CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices for which Seller is responsible under this Agreement within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.

(e) Dispute Costs. Buyer (as the Facility's SC) may be requested by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.

(f) Terminating Buyer's Designation as Scheduling Coordinator. At least thirty (30) days prior to expiration of this Agreement or as soon as reasonably practicable upon an earlier termination of this Agreement, the Parties will take all actions necessary to terminate the designation of Buyer as Scheduling Coordinator for the Facility as of 11:59 p.m. on such expiration date.

(g) Master Data File and Resource Data Template. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master Data File and Resource Data Template (or successor data systems) for the Facility consistent with this Agreement. Neither Party shall change such data without the other Party's prior written consent. 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.

(h) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate

reasonably with Seller to the extent necessary to enable Seller to comply, and for Seller to demonstrate Seller's compliance with, NERC reliability standards. This cooperation shall include the provision of information in Buyer's possession that Buyer (as Scheduling Coordinator) has provided to the CAISO related to the Facility or actions taken by Buyer (as Scheduling Coordinator) related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

4. Description of any material planned changes to the Facility or the site.

5. Gantt chart schedule showing progress on achieving each of the Milestones.

6. Summary of activities during the previous calendar quarter, including any OSHA labor hour reports.

7. Forecast of activities scheduled for the current calendar quarter or month as applicable.

8. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.

9. List of issues that are likely to 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. The utilization of union labor by Seller's principal EPC contractor.

12. Progress and schedule of all major agreements, contracts, permits, approvals, technical studies, financing agreements and major equipment purchase orders showing the start dates, completion dates, and completion percentages.

13. 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.

14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

MONTHLY FORECAST

The following table is provided for informational purposes only, and shall not constitute, or be deemed to constitute, an obligation of any of the Parties to this Agreement.

Storage Capacity, MW Per Hour – [*Insert Month*]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
Day 1																								
Day 2																								
Day 3																								
Day 4																								
Day 5																								
[insert additional rows for each day in the month]																								
Day 29																								
Day 30																								
Day 31																								

EXHIBIT G

INTENTIONALLY OMITTED

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by [*licensed professional engineer*] ("**Engineer**") to City of San José, a municipal corporation ("**Buyer**") in accordance with the terms of that certain Energy Storage Services Agreement dated [*Date*] by and between Yellow Pine Solar III, LLC ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

As of [*Date*], Engineer hereby certifies and represents to Buyer the following:

1. The Facility is fully operational, interconnected, fully integrated and synchronized with the Transmission System.

2. Seller has installed equipment for the Facility with a nameplate capacity of no less than [redacted] of the Storage Contract Capacity.

3. Seller has commissioned all Facility equipment in accordance with its respective manufacturer's specifications.

4. Seller has demonstrated functionality of the Facility's communication systems and automatic generation control (AGC) interface to operate the Facility as necessary to respond and follow instructions, including an electronic signal conveying real time and intra-day instructions, directed by the Buyer in accordance with the Agreement and/or the CAISO.

5. The Facility is fully capable of charging, storing and discharging energy up to no less than [redacted] of the Storage Contract Capacity and receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.

6. Authorization to parallel the Facility was obtained from the Participating Transmission Owner.

7. The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation of the Facility.

8. The CAISO has provided notification supporting Commercial Operation of the Facility (which for avoidance of doubt shall not require certification including CAISO certification of ancillary services with respect to the Facility), in accordance with the CAISO Tariff.

9. Seller shall have caused the Facility to be included in the Full Network Model and has the ability to offer Bids into the CAISO Day-Ahead and Real-Time markets in respect of the Facility.

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of Installed Capacity is delivered by [*licensed professional engineer*] ("**Engineer**") to City of San José, a municipal corporation ("**Buyer**") in accordance with the terms of that certain Energy Storage Services Agreement dated [*Date*] by and between Yellow Pine Solar III, LLC ("**Seller**") and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

1. The Storage Capacity Test demonstrated a maximum dependable operating capability that can be sustained for four (4) consecutive hours to discharge electric energy of __ MW AC to the Delivery Point, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Battery Capacity**").

2. [Reserved].

EXECUTED by [LICENSED PROFESSIONAL ENGINEER]

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER]

By: _____

Printed Name: _____

Title: _____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by Yellow Pine Solar III, LLC ("**Seller**") to City of San José, a municipal corporation ("**Buyer**") in accordance with the terms of that certain Energy Storage Services Agreement dated [*Date*] by and between Seller and Buyer ("**Agreement**"). All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, and a copy of the notice to proceed that Seller issued to its contractor as part of Construction Start is attached hereto;

2. the Construction Start Date occurred on _____ (the "**Construction Start Date**"); and

3. the precise Site on which the Facility is located is, which must be within the boundaries of the previously identified Site: _____.

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

[SELLER ENTITY]

By: _____

Printed Name: _____

Title: _____

EXHIBIT K

FORM OF LETTER OF CREDIT

EXHIBIT L

FORM OF GUARANTY

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by Yellow Pine Solar III, LLC ("**Seller**") to City of San José, a municipal corporation ("**Buyer**") in accordance with the terms of that certain Energy Storage Services Agreement dated _____ by and between Seller and Buyer ("**Agreement**"). All capitalized terms used in this Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Pursuant to Section 3.8(b) of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

Name	
Location	
CAISO Resource ID	
Unit SCID	
Prorated Percentage of Unit Factor	
Resource Type	
Point of Interconnection with the CAISO Controlled Grid ("substation or transmission line")	
Path 26 (North or South)	
LCR Area (if any)	
Deliverability restrictions, if any, as described in most recent CAISO deliverability assessment	
Run Hour Restrictions	
Delivery Period	

Month	Unit CAISO NQC (MW)	Unit Contract Quantity (MW)
January		
February		
March		
April		
May		
June		
July		
August		
September		
October		
November		
December		

[1] To be repeated for each unit if more than one.

[SELLER ENTITY]

By:_____

Its:_____

Date:_____

EXHIBIT N

NOTICES

Yellow Pine Solar III, LLC	**City of San José, a municipal corporation**
All Notices: Street: 700 Universe Blvd. City: Juno Beach, FL 33408 Attn: Business Management Phone: [redacted] Email: [redacted]	**All Notices:** Standard Mail 200 East Santa Clara Street San José, CA 95113 Shipping/courier 88 South 4th Street, Suite 130 San José, CA 95112 Attn: Deputy Director, Power Resources Phone: [redacted] Email: procurement@sanjosecleanenergy.org **With a copy to**: Office of the City Attorney Attn. Deputy City Attorney, Community Energy 200 East Santa Clara Street, 16th Floor Tower San José, CA 95113-1905 Direct: (408) 535-1900 Email: cao.main@sanjoseca.gov **and an additional email copy to**: [redacted]
Reference Numbers: Duns: Federal Tax ID Number:	**Reference Numbers:** Duns: 06-354-1874 Federal Tax ID Number: 94-6000419
Invoices: Attn: Business Management; Colin Smith Phone: [redacted] Email: [redacted]	**Invoices:** Attn: Division Manager, Risk Management, Contracts, & Administration Phone: [redacted] Email: [redacted]

Yellow Pine Solar III, LLC	**City of San José, a municipal corporation**
Scheduling: [TBD] Attn: Phone: Email:	**Scheduling:** Attn: NCPA Pre-Scheduling Desk Phone: [redacted] **Alternative:** Attn: NCPA Scheduling Coordination Desk Phone: [redacted] Email: [redacted]
Confirmations: [TBD] Attn: Phone: Email:	**Confirmations:** Attn: Deputy Director of Power Resource Phone: [redacted] Email: procurement@sanjosecleanenergy.org
Payments: Attn: Business Management; Colin Smith Phone: (561) 694-4771 Email: [redacted]	**Payments:** Attn: Accounts Receivable Phone: [redacted] Email: [redacted]
Wire Transfer: BNK: [TBD] ABA: [TBD] ACCT: [TBD]	**Wire Transfer:** BNK: Wells Fargo Bank ABA: [redacted] ACCT: [redacted]
Credit and Collections: Attn: Business Management; Colin Smith Phone: [redacted] Email: [redacted]	**Credit and Collections:** Attn: Division Manager, Budget & Financial Planning Phone: [redacted] Email: [redacted]

Yellow Pine Solar III, LLC	**City of San José, a municipal corporation**
With additional Notices of an Event of Default to: Attn: Business Management; Colin Smith Phone: [redacted] Email: [redacted]	**With additional Notices of an Event of Default to:** [redacted] **and to:** Attn: Director of Finance 200 East Santa Clara Street San José, CA 95113 Phone: [redacted] Email: [redacted] **and to:** Office of the City Attorney Attn. Deputy City Attorney, Community Energy 200 East Santa Clara Street, 16th Floor Tower San José, CA 95113-1905 Direct: (408) 535-1900 Email: cao.main@sanjoseca.gov

EXHIBIT O

STORAGE CAPACITY TESTS

EXHIBIT P

FACILITY AVAILABILITY

Monthly Storage Availability

(a) Calculation of Monthly Storage Availability. Seller shall calculate the "**Monthly Storage Availability**" in a given month using the formula set forth below:

$$\text{Monthly Storage Availability (\%)} = \frac{[MNTHHRS_m - UNAVAILHRS_m]}{[MNTHHRS_m]}$$

where:

m = relevant month "m" in which availability is calculated;

$MNTHHRS_m$ is the total number of On-Peak Hours for the month;

$UNAVAILHRS_m$, is the total number of On-Peak Hours in the month during which the Facility was unavailable to deliver Storage Product for any reason other than the occurrence of any of the following (each, an "**Excused Event**"): a Force Majeure Event, Curtailments, Buyer Default, Storage Capacity Tests, System Emergencies, or Planned Outage [redacted]) or the Operating Restrictions in Exhibit Q. To be clear, hours of unavailability caused by any Excused Event will not be included in $UNAVAILHRS_m$ for such month. Any other event that results in unavailability of the Facility for less than a full hour will count as an equivalent percentage of the applicable hour(s) for this calculation. Additionally, if during any applicable hour the Facility is available, but for less than the full amount of the then effective Storage Contract Capacity, the $UNAVAILHRS_m$ for such hour shall be calculated as an equivalent percentage of such hour in proportion to the amount of available Storage Contract Capacity.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour, and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour by 5:00 a.m. of the morning Buyer schedules or bids the Facility in the Day-Ahead Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

If the Facility or any component thereof was previously deemed unavailable for an hour or part of an hour and Seller provides a revised Notice indicating the Facility is available for that hour or part of an hour at least sixty (60) minutes prior to the time the Buyer is required to schedule or bid the Facility in the Real-Time Market, and the Facility is dispatched in the Real-Time Market, the Facility will be deemed to be available to the extent set forth in the revised Notice.

Availability Adjustment

The applicable "**Availability Adjustment**" or "**AA**" is calculated as follows:

(i) If the Monthly Storage Availability is greater than or equal to the Guaranteed Storage Availability, then:

AA = [redacted]

(ii) If the Monthly Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to [redacted] then:

AA = [redacted] Monthly Storage Availability) x [redacted]

(iii) If the Monthly Storage Availability is less than [redacted], but greater than or equal to [redacted] then:

AA = [redacted] - [[redacted] x [redacted] – [([redacted] – Monthly Storage Availability) ×[redacted]

(iv) If the Monthly Storage Availability is less than [redacted], then:

AA = [redacted]

EXHIBIT Q

OPERATING RESTRICTIONS

In addition to the Operating Restrictions set forth below, the Parties shall cooperate prior to the Commercial Operation Date to create appropriate operating procedures, which may include Facility scheduling and communications protocols (the "**Operating Procedures**").

Technology:	**Lithium-ion**
Storage Unit Name:	**Yellow Pine Solar III, LLC**
A. Contract Capacity	
Guaranteed Capacity (MW):	[redacted]
Effective Capacity (MW):	[redacted]
Interconnection Capacity Limit (MW):	[redacted]
B. Total Unit Dispatchable Range Information	
Interconnect Voltage (kV)	230
Maximum State of Charge (SOC) during Charging	100%
Minimum State of Charge (SOC) during Discharging	0%
Maximum Storage Level (MWh):	[redacted]
Minimum Storage Level (MWh):	0
Maximum Charging Capacity (MW):	[redacted]
Minimum Charging Capacity:	[redacted]
Maximum Discharging Capacity (MW):	[redacted]
Minimum Discharging Capacity	[redacted]
Maximum Time at Minimum Storage Energy Level:	24 hours
Response Time:	4 seconds plus the ramp rate to respond to a CAISO dispatch
C. Daily/Monthly/Annual Cycles	
Daily Dispatch Limit: Charging (Full or Partial)	[redacted]
Daily Dispatch Limit: Discharging (Full or Partial)	[redacted]
Annual Average State of Charge	[redacted]
D. Charge and Discharge Rates	
Mode	**Ramp Rate (MW/minute)**
Energy (Charge):	[redacted]
Energy (Discharge):	[redacted]
E. Ancillary Services	
Frequency regulation is included:	yes
Spinning reserve is included:	yes
Non-spinning reserve is included:	yes
Regulation up is included:	yes

Regulation down is included:	yes
Dynamic Voltage support is included:	yes

EXHIBIT R

METERING DIAGRAM

EXHIBIT S

COMMUNITY INVESTMENT

Seller agrees to provide a one-time payment of [redacted] ("**Workforce Development and Community Investment Funds**") for workforce development and community investment activities. These funds shall be transferred within [redacted] days after the Commercial Operation Date. The Workforce Development and Community Investment Funds will be utilized by Buyer for workforce development and community investment activities.

Seller will make commercially reasonable efforts to have its principal EPC contractor utilize union workforce for construction of the Facility.