Attachment I – Planning Documentation

Proposed Project in the Final EIR

GENERIC ZONING SETBACKS

PER COUNTY OF SAN DIEGO, PLANNING & DEVELOPMENT SERVICES, SETBACKS FORS SOLAR PROCESS. TO BE EVALUATED DURING MUJE MUJE MOLOTICATION PROCESS.

FRONT: 3 FT EXTERIOR SIDE: 3 FT INTERIOR SIDE: 3 FT REAR: 3 FT

SURVEY NOTE

COORDINATE SYSTEM: SEE ALTA
DATUM: SEE ALTA
ZONE: SEE ALTA
GEOID: SEE ALTA
GEOID: SEE ALTA
VERTICAL DATUM: SEE ALTA
ORIGINATING BEVICAMARR: SEE ALTA

SENCHMARK NOTE

ELEYATIONS FOR THIS SURVEY ARE BASED UPON NGS BENCHMARK "M1282" PID DC0157, BEING A VERTICAL CONTROL DISC AS DESCRIBED PER THE NGS DATASHEET.

ELEVATION: 2872.21 FEET DATUM: NAVD88

BASIS OF BEARINGS NOTE

THE BASE OF BEARDERS CAPE RESIDENCE TO THE COUNTRY COORDINATE SYSTEM SAT, ZONE G. AVADA, EPOCH 20100A. ST. EFTERAMED LOCALLY BY A LINE BETWEN CONTINUOUS OFFRAING RETERMENT STANDARS (CORS) POWER AND POTHY BENK NATIONAL COEDITION SHOWN (CORS) POWER AND POTHY BENK NATIONAL COEDITION SHOWN (CORS) TO ADMINIST SAT, THE REQUIREMENTS OF THE OLD/FORMA PUBLIC RESOURCES CODE.

ZONING

EXISTING ZONE	APN	
	660-150-07	
	660-150-08	
	660-150-10	
S-80 (MAJOR USE PERMIT REQUIRED)	660-150-16	
	660-150-21	
	660-140-06	
	660-140-08	
S-88 (LIMITED USES AFTER ADOPTION OF SPECIFIC PLAN)	REMAINING APN LISTING	
RL-40 - RURAL LANDS	661-010-02	

ASSESSOR PARCEL NUMBERS

661-010-15 661-010-26 661-010-27 661-010-30		
660-020-05 660-020-06 661-060-12 661-060-22 661-010-02		LABERTI LABORATES WE DESTROY PARK LIGHT STATE AND TON KARMAN AKE, SUITE 1050 WINE. CO. 82614 STATE AND TON KARMAN AKE ELEN E. LANDRAM WINGOMERTAL WORK COLONER 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 766-4201 197 767 767 767 767 767 767 767 767 767 7
660-150-17 660-150-18 660-150-21 660-140-06 660-140-08		CREENT LAND, OWNERS, 1999, 199
660-150-07 660-150-08 660-150-10 660-150-14 660-150-14	EAM	PERFORMED MAN DEFINANCE VERY PROPERTY OF A STATE OF A S
614-110-04 614-100-20 614-100-21 660-170-09 660-150-04	PROJECT TEAM	ELECTRICAL AND TREE LIMINAS DESIGNAR AND TREE CIVILOR ELECTRICAL ENGINEER OF THE CORPORATION FOR THE CORPORATION FOR THE CORPORATION FOR THE CORPORATION FOR THE COMMENT OF

ABBREVIATIONS

AMERICAN LAND TITLE ASSOCIATION SURVEY	CONTINUOUS OPERATING REFERENCE STATIONS	ENVIRONMENTAL IMPACT REVIEW	JACUMBA COMMUNITY SERVICES DISTRICT	METEOROLOGICAL	MAJOR USE PERMIT	NATIONAL GEODETIC SURVEY	PHOTOVOLTAIC	SAN DIEGO GAS AND ELECTRIC (CO.)	PRELIMINARY TITLE REPORT	PERMANENT IDENTIFIER	ON CENTER
ALTA	CORS	EIR	CSD	MET	MUP	NGS	2	SDG&E	PTR	E G	8
ASSESSOR'S PARCEL NUMBER	CENTERLINE	EXISTING	EDGE OF PAVEMENT	MINIMUM	NOT TO SCALE	PROPOSED	PROPERTY LINE	RIGHT-OF-WAY	TO BE DETERMINED	TYPICAL	VARIES
APN	ರ	(E)	EOP	Z	NTS	<u>a</u>	చ	ROW	TBD	Ł	VAR

MAJOR USE PERMIT

JVR ENERGY PARK

COUNTY OF SAN DIEGO, CA PDS2018-MUP-18-022

GROSS (PROPERTY) AREA: 1,355.84 ACRES

MUP BOUNDARY ("DEVELOPED") AREA: 623.02 ACRES

FENCED AREA (INCLUDES PROJECT COLLECTOR SUBSTATION AND SWITCHYARD): 547.21± ACRES GENERAL PLAN: PUBLIC AGENCY LANDS, VILLAGE RESIDENTIAL (VR-2), RURAL COMMERCIAL

REGIONAL CATEGORY: VILLAGE AND RURAL TOPOGRAPHIC SOURCE: VIMLEY-HORN FIELD SURVEY NOTE, LETT)

ASSOCIATED REQUESTS: NONE

WATER DISTRICT: JACUMBA COMMUNITY SERVICES DISTRICT FIRE DISTRICT: SAN DIEGO COUNTY FIRE AUTHORITY

THE APPROVAL OF THIS MAJOR USE PERMIT (MUP) AUTHORIZES THE FOLLOWING. CONSTRUCTION, MERCHARTION, AND MAINTENANCE OF A PHOTOROLIZAIC (PV) SOLAR FARM PURSUANT TO SECTION 6952 OF THE SAN DIEGO COUNTY ZONING OFFINIANCE.

HIES PAM IS PROMEDE TO ALLOW FOR FILLI, AMP DÉCIDATE DESCRIPONARY PEREW OF A PROPOSED DEPLOYMENT FRONCE, THE PROPERTY OWING ACKNOWINGESS THAT ACCIDENANCE OR APPROVAL OF HIS PLAN DOES NOT OCONSTITUET, AM APPROVAL TO PEFFORM ANY CADAING SOWN HEREON AND AGREES TO OBTIAN VALID GRADING PERMISSIONS BEFORE COMMENCING SLOCK ACTIVITY.

12. ALL SOLAR EQUIPMENT STRUCTURES TO BE CONSTRUCTED OF NON-COMBUSTIBLE MATERAL (CONDERSE, BLOCK, MATERAL STRUCTUR AND PAINTED EARTH TONE COLORS AS EXPLICITLY REQUIRED BY THE CONDITIONS OF APPROVA.

13. LIGHTING FOR MANTENANCE AND SECURITY PURPOSES ONLY. SHELDED LIGHTING LOCATED AT BEFORDE GATES AND INVERTER TANSFORMER PADS AND SHALL COMFORM TO COUNTY OF SAN DECO COLDOROR LIGHTING RECUREDISTS.

14. PHASING - PROJECT MAY BE IMPLEMENTED IN SEVERAL PHASES WITHOUT REGARD TO SEQUENCE.

15. ALL DISTURBED AREAS SHALL BE COVERED WITH ORGANIC MULCH OR APPROVED EQUAL TO REDUCE DUST, SEEDED, AND WATERED REGULARLY AND PERMANENTLY DURING CONSTRUCTION.

16. SEE PRELIMINARY GRADING PLANS FOR PROPOSED GRADING.

17. SEE EROSION AND SEDIMENT CONTROL. PLANS FOR PRELIMINARY LAYOUT OF TEMPORARY AND PERMANENT BEST MANAGEMENT PRACTICES, LAYDOWN, STAGING, AND CONSTRUCTION MANAGEMENT PREAS.

18. SITE ACCESS CATE(S) TO BE EQUIPPED WITH FIRE DEPARTMENT APPROVED STROBE LIGHT ACTIVATION AND KNOX KEY-OPERATED SWITCH.

19. Stour Retails FALLIFE (PARELS, RADONE, ELETINACA, DONECTIONS, INTERPTEMPASCHURER MAGE, SWITCHGER, WEI STATION, FEDORO AND INTERNAL ACCESS, ETC.) SHOWN ON THE FLOTE THAN MACH BITTLE ADMINISTRATION, FEDORO AND THE INTERTUTE OF THIS WHEN TO NO TO CONFIDENCE. MACH BITTLE ADMINISTRATION OF PERSONS APPROVIL.

INVERTER /TRANSFORMER LOCATIONS CAN BE RELOCATED/RECONFIGURED WITHOUT REQUIREMENT OF MINNOR DEVIATION. THE INVERTER/PRAIS/PORMER MUST COMPLY WITH THE NOISE ORDINANCE AND MUST BE ELENATED 1 ABOVE PLOOD ELEVATION.

THE 20' FIRE ACCESS DRIVE WIDTHS MAY BE REDUCED ADMINISTRATELY WITH THE APPROVAL OF THE COUNTY AND FIRE AUTHORITY HAVING JURISDICTION OVER THE PROJECT. 22. A SYSTEM IDENTIFICATION SIGN SHALL BE LOCATED AT ALL GATE ENTRANCES, SIGN SHALL BE 12" X 18" MIN, SIGN SHALL LIST NAME OF SITE AND CONTACT INFORMATION AS PROVIDED BY SDGE. 23. PRIVATE PROPERTY MO TRESPASSING AND HIGH VOLTAGE SIGNS SHALL BE LOCATED AT ALL GATE RETRANCES AND EVERY TO MINIMUM ON THENDE, THE SIGN SHALL BE 10 T 14" MISCELLANEOUS INTERIOR DIRECTIONAL AND SAFETY SIGNAGE AND PERMITTED.

24. LOFFING ORDINANCE CORRUNCE. BY COMEN TO CARRY WITH THE COUNT LUCHTING, CREMANE SHALL FOUND LORDING CREMANES STATE OF THE CARRY LUCHTING, CREMANES SHALL FOR STATE OF THE CONTINUENCE STATE OF THE CONTINUENCE STATE OF THE CONTINUENCE SHALL FROM THE CONTINUENCE SHALL FROM THE CREMANING SHALL FROM THE CREMANING SHALL FROM THE CREMANING SHALL FROM THE CREMANING SHALL FROM THE CONTINUENCE SHALL FROM THE CREMANING SHALL CONTINUENCE SHALL CONTIN

25. METEOROLOGICAL (MET) STATIONS SHALL BE LOCATED ADJACENT TO THE INVERTER/EQUIPMENT PADS AS SHOWN ON THE PLANS.

ADDITIONAL ABBREVIATIONS

ASPHALT CONCRETE OVERHEAD POLE OVERHEAD

GEOTECHNICAL
WINN & MONOR ECCITCHNICAL &
DAVINGWARNIAL SCENCES CONSULTANTS
WISSA MINIOR OF
STATE NO CAN SETZ3
(SSG) 576-1000

SURVETON PLS. P.E. MICHEL NAME NO. P.LS., P.E. NAMEL-HOND NO. ASSOCIATES, INC. AD 18 STREET, SUITE 800 SAN DIEGO, CA 92101 (619) 744–0142 MICHAELNAM PONDARIMEY—HORN.COM

ALUCP ASTM VNSE VNSE NAGE BC NEC STSD

		NODK STIS	SILE WORK	DESCRIPTION	FENCED SDG&E SWTCHYARD AREA	SDG&E SMTCHYARD AREA BEYOND FENCING	TOTAL SWITCHYARD EASEMENT AREA	FENCED SDG&E SWTCHYARD AREA	FENCED PV ARRAY FIELD	FENCED PROJECT SUBSTATION	TOTAL FENCED AREA	LANDSCAPED AREA	PUBLIC DRIVEWAYS AND ACCESS TO PV ARRAY FIELD ONLY	UTILITY DRIVEWAYS TO PROJECT	TOWERS	GRADING (BEYOND ABOVE)	ADDITIONAL MUP BOUNDARY AREA
MEDION VOLINGE	LOW VOLTAGE											~		0	00		T
44	ΓΟ ΓΑ											8	Œ		47,000		
E	5			ILITY PLAN	NG AND MATERIALS	COMMENTS	OFERINGENES					APPROX. FLOOR	AREA (SF)			75,124	7,859
OVERNICAD I VILL	OVERHEAD	ASPHALT CONCRETE	EXISTING	AIRPORT LAND USE COMPATIBILITY PLAN	AMERICAN SOCIETY FOR TESTING AND MATERIALS	WATER SURFACE ELEVATION	PECINING OF CLIBAT	NATIONAL FLECTRICAL CODE	STATION SUB-DISTRIBUTION			ON-SITE	STRUCTURES	TO REMAIN	TO BE REMOVED	BATTERY STORAGE CONTAINERS	INVERTER SKID
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SHEET INDEX

BayWa r.e.

HEET NUMBER	SHEET TITLE
101	COVER SHEET
02	TILE REPORT
00	OVERALL PLOT PLAN
10	ENLARGED PLOT PLAN
02	ENLARGED PLOT PLAN
03	ENLARGED PLOT PLAN
	ENLARGED PLOT PLAN
10:	DETAILS
02	DETAILS
103	DETAILS
104	DETAILS
505	DETAILS
907	DETAILS
000	AVIATION COMPATIBILITY PLAN
100	AVIATION COMPATIBILITY PROFILE
001	BEST MANAGEMENT PRACTICES
000	OVERALL CONCEPTUAL LANDSCAPE PLAN
100	CONCEPTUAL LANDSCAPE ENLARGEMENT A AND SECTIONS
202	CONCEPTUAL LANDSCAPE ENLARGEMENT B AND SECTIONS
503	CONCEPTUAL LANDSCAPE ENLARGEMENT C AND SECTIONS
904	CONCEPTUAL LANDSCAPE ENLARGEMENT D AND SECTIONS

D 2020 KIMEY—HON MAD ASSOCIATES, INC. 785 THE CITY DRIVE, SUITE 200, CRANCE, CA 92868 PHONE: 714,321,020 FAZ 714,338,9468 WWW.XMLT*—HORICOM

Kimley » Horr

LEGEND

TOWN TO JO

EXISTING STRUCTURES



STEINFORMATION PROJECT MANAGER









ACREAGE

DESCRIPTION DESCRIPTION ACREAGE PROPOSATI FERBACK ACREAGE ACR		
MO C	BORDER SETBACK EN	NCROACHMENT
WO .		CREAGE
MOS C	APPROXIMATE ENCROACHMENT OF PROPOSED FENCED SITE AREA INTO 90'	
WORTH DOLG OF THE ROOSENELT PUBLIC RESERVE. SETEMA. APPROXIMATE ENCRANGENET OF ROOSESTET FAILED STATE OF SETEMA WAS RECOVERED. ROOSESTET FAILED STATE OF SETEMA WE SETEMA OF	MO	#
RESERVE SETBACK PREPODMATE TROUGNOCHMENT OF PROPOSED FENCED SITE AREA INTO 60' PROSCREET PUBLIC PRESENCE STETBACK MANCH BERNICH STETRIC STETBACK MANCH SERVICE AND STETRIC STETBACK MANCH SERVICE AND STETRIC STETRIC STETRIC	NORTH EDGE OF THE ROOSEVELT PUBLIC	
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PROPOSED FENCED SITE AREA INTO 60' 0 ROOSEVELT PUBLIC RESERVE SETSIRACK, WHICH DEFINES A THE HEA ALKNOW DEPORTS	APPROXIMATE ENCROACHMENT OF	
ROOSEVELT PUBLIC RESERVE SETBACK,	PROPOSED FENCED SITE AREA INTO 60'	
WHICH BEGINS AT THE HEALMENCO BOBBED	ROOSEVELT PUBLIC RESERVE SETBACK,	
MINOR DEGINE AT THE CONTINUENCE DONDER	WHICH BEGINS AT THE USA-MEXICO BORDER	

50' DRAINAGE FEATURE BUFFER

Ϋ́
USE PERM
JORL

COVER SHEET

DRAWING 001

LEGAL DESCRIPTION PER TITLE REPORT

P.T.R. NO. 01180-286185

THE NORTHWEST QUARTER, AND THE NORTH HALF OF THE SOUTHWEST OFFICENCY 22 IN TOWNSHIPT TO SOUTH, RANGE 8 EAST, SAN BERNARDING BASE AND MERDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF. THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS:

AND AND WAS EXCEPTING THAT PORTION THEREOF CONVEYED BY WILLIAM II, RUBY / JOHN ANN THE SAM BEGOOD NATIONS ARRIVANY COMPANY CORPORATION BY THAT CERTAIN DEED DATED JAMBORET 4, 1918. THAT CERTAIN DEED DATED JAMBORET 4, 1918. THE PERCORED JAMBORET 38, 1918 IN OF DEEDS. MICH SAM DEED IN RE-RECORD JAMBORET 31, 1918 IN OF DEEDS.

ALSO EXCEPTING ALL THAT PORTION LYND NORTHERLY OF THE SOUTHERLY SURVARY OF STAFF HIGHWAY N. SEG-88. AS DESCRIBED IN THAT CERTAIN FINAL, CREBR. OF CONDENNATION RECORDED, NOVEMBER 19, 1965 AS INSTRUMENT NO. 210946 OF OFFICIAL RECORDS.

614-100-20 APN:

THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS:

HE SCHMERGE OURTER OF STORY 32 TOWNED TO SOME SHEED SEED. SOME SHEED SHE

SECTION 20, AND FROM SECURIORS OF THE SECTION AS THOSE POSTUDIOS OF THE SECTION AS THOSE POSTUDOS UNION UNION MEMORY OF THE SCOTHMERSTRAY, AND SCOTHERY UNISE OF STATE HIGHWAY ALSO-BA SECREDIANCE THE SECTION OF THE SECRETARY AND SCOTHERY AN

RECORDED A AS ROAD ALSO EXCEPTING THEREFROM THAT PORTION LYING WITHIN 102 FO OF LAND DESCHBED IN DEED TO THE COUNTY OF SAN DIEGO R MARCH 3, 1867 CAS FILE NO. 29320 OF OFFICIAL RECORD KNOWN SURVEY NO. 635-66.

614-100-21, 660-020-06, 661-010-15, 661-010-26 APN:

NO. 01180-286187

har Perrior of the Southwest Courter of the Southwest courters
of scribin 33, Township 17 South, Rwide B. 651, Swi Berhamon
best And Delegans, in He Courter, Gers Southwest Courtership,
Southwestern of the Southwest Courtership, Southwestern of Southwestern of State Helenan, Walder Southwestern of State Helenan, Stockholm, Roccordon Noncherr 19, 1965 AS HE Not Zhong Or O'FFICH, Richards THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS:

APN: 614-110-04

NO. 01180-286190

THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS: THE NORTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 8 IN WOMSHIP 18 SOUTH, RANGE 8 EAST, SAN BERNARDING BASE AND MERDIAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF.

EXCEPTING FROM SAID THE NORTHEAST QUARTER OF THE SOUTHEAST WARTER THAT PORTION THEEDEC CONVECTED BY BESSIE FOSTER, A WIDOW TO JOHN, A ELIBAMK BY DEED DATED JULY 28, 1921 AND RECORDED IN BOOK 857 PAGE 184 OF DEEDS DESCRIBED AS FOLLOWS.

ERRONNIO, AT THE NORTHWEST CORREST OF THE NORTHEST OLARITED OF ESTIMA B. TOWNSHIP IS SOUTH RANGE. STATEMENT OF RESTIMA B. TOWNSHIP IS SOUTH RANGE OF THE COMPANIES AND A RESTIMA DISCUSSION ALMON IN AN OFFICE OFFIC

ALSO EXCEPTING THEREFROM ANY PORTION, IF ANY, LYING NORTH OF THE SCENTER LINE OF THE STATE HIGHWAY AS THE SAME IS CONSTRUCTED ACROSIS THE PROPERTY.

APN: 660-150-04

NO. 01180-286191

THE LAND REFERED TO HEREIN IS STUATED IN THE STATE OF CALIFORNIA, COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS: LOTS 5, 6 AND 7 IN SECTION 8 IN TOWNSHIP 18 SOUTH, RANGE 8 EAST SEASH BERWARING BASE AND WEIGHDIAN IN THE COUNTY OF SAN DIEGO STAIN OF CALIFORNIA ACCORDING TO OFFICIAL PLAT THEREOF. EXCEPTING FROM LOT 7 THAT PORTION THEREOF DESCRIBED AS FOLLOWS: FEET NORTH OF BEGINNING AT A POINT OF THE WEST LINE 380

SOUTHWEST CORNER; THENCE EAST 200 FEET PARALLEL WITH THE NORTH THEMES, THENCE NORTH PARALLEL WITH THE WEST LINE TO THE NORTH LINE; THENCE SOUTH TO THE POINT OF BEGINNING.

EXCEPTING THEREFROM THE SOUTHERLY 60 FEET.

APN: 660-150-07, 660-150-08, 660-150-10 NO. 01180-286196

THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS:

THE NORTHEAST QUARTER, AND THE NORTHEAST OF THE NORTHWEST QUARTER OF SECTION 8 IN TOWNSHIP IS SOUTH, RANGE 8 EAST, SAN BERNARONO BASE AND MERIDAN, IN THE COUNTY OF SAN DIEGO, STATE OF CALLEGANIA, ACCORDING TO OFFICIAL PLAT THEREOF.

EXCEPTING THEREFROM THOSE PORTIONS LYING WITH THE RAILWAY RIGHT OF WAY OF THE SAN DIEGO AND ARIZONA EASTERN RAILWAY COMPANY. APN: 660-150-14, 660-150-17, 660-150-18

NO. 01180-286197

THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CAUFORNIA, COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS:

LOT 35 IN BLOCK 1 OF JACUMBA, IN THE COUNTY OF SAN DIEGO, STATE CALIFORNIA, ACCORDING TO MAP HEREOF ON 1707, FILED IN THE OFF THE COUNTY MARCH 10, 1953. APN: 660-170-09

NO. 01180-286200 P.T.R.

THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS:

PARCEL HALF OF THE SOUTHWEST QUARTER OF SECTION 4 AND THE THE WEST HALF OF THE SOUTHEAST QUARTER OF SECTION 5. ALL IN TOWNSHIP IS SOUTH, RANGE 8 EAST, SAN BERNARDING BOSE AND MERDAN, IN THE COUNTY OF SAM DEGO, STATE OF CALFORNIA, ACCORDING TO OFFICIAL QUART THEREOF.

LOT 2, MAN THE SOUTHWEST QUARTER OF THE WORTHEAST QUARTER AND THE SOUTH-STST QUARTER OF SECTION 5. TOWNSHIP, 18 SOUTH, RANGE B. LOSTS, SAN BERNARDING DASK AND TOWNSHIP, 18 SOUTH, RANGE B. LOSTS, SAN BERNARDING DASK AND TO SEND SOUTH OF SAN LOSCO, STATE OF CLARGONAL ACCORDING TO SPECIAL SETS.

EXCEPTING THAT PORTION THEREOF INCLUDED WITHIN THE 200 FOOT STRIP TAND CAND. AND AMMENT TO SAN DIEGO AND ARZONA RAILWAY COMPANY, A COPPORATION, BY DEED DATED MAY 24, 1917, RECORDED IN BOOK 722 PAGE 309 OF DEEDS.

ALSO EXCEPTING THAT PORTION OF SAID SOUTHWEST QUARTER OF THE SOUTHERS OF SOUTHER OF THE SOUTHER OF T

PARCEL C: THE SOUTHEAST QUARTER OF SECTION 5, TOWNSHIP 18 THE WEST HALF OF THE SOUTH, RANGE 8 EAST, SAN BERNARDING BASE OF MERGIDIA, IN THE COUNTY OF SAN DIEGO, STATE OF CALLFORNIA, ACCORDING TO OFFICIAL PART THEREOF.

DECEMBER AND REST, NAME OF REQUIREDES CREATED & SECTION S. INHAT PERSON. CONVEXTOR PELLIZIERTE ESSENÇE, COCURIEN, MOI DECEMBER AND RESEARCH SECTIONS. OF SECTION S. OF SECTION OF SECTION S. OF SECTIO

APN: 660-020-05

THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS: P.T.R. NO. 01180-286201

THAT PREVIOUS OF LOT 3 (THE WORTHEAST QUARTER OF THE MORTHWEST MORTHWEST) OF SECULOR 4. TOWNEST IN SOUTH WARROW E BEST, SAN BERNARDING WERDAM, IN THE COLNIY OF SAN DECO, STATE OF THE SOUTHWESTRY LINE OF STATE HOMMY ASSUDED. THE SOUTHWESTRY LINE OF STATE HOMMY ASSUDED NOVEMBER 19, 1965 AS INSTRUMENT NO, OF STATE HOMMY ASSUDED.

PARCEI HALF OF THE SOUTHWEST QUARTER. THE NORTHWEST QUARTER OF THE SOUTH-SEAT CHARTER, AND THE SOUTH-SEAT CHARTER OF SECTION 4 IN TOWNSHIP SOUTH, RANGE B. EAST, SAM BERNARION, MERDIAN, IN THE COUNTY OF SAM DECO, STATE OF CALIFORNIA, ACCORDING TO OFFICIAL PLAT THEREOF.

EXCEPTING THAT PORTION OF SAID SOUTHEAST QUARTER OF THE WORTHAREY TO STATE HOHMAY NORTHAREY OF STATE HOHMAY NS-SD-8 AS DESCRIBED IN THAT CERTAIN FINAL ORDER OF CONDEMANTON THAT CERTAIN FINAL ORDER OF CONDEMANTON THAT CERTAIN FINAL ORDER OF OFFICIAL PROPERTY OF SAID SOUTHEAST TO STORM

AGE DECEMBER AND PORTION OF SAID SOUTH-ACT OUAPER OF THE WORNMASTELLY DECEMBER LINKS NORTH-ACTEDITY OF THE LICCATION AND NORTH-ACTEDITY OF THE LICCATION AND INCEPTED PRODUCED ACT OF THE COLVEY OF TH

SOUTHEAST P OF LAND D MARCH 3, N AS ROAD ALSO EXCEPTING FORM SAID NORTHWEST QUARTER OF THE SY OWNERTER THAT PORTION, LIVEN WHAIN SAID 102 FROT STRIP DESCRIBED IN DEED TO THE COUNTY SAND DIEGO RECORDED THE AS DOCUMENT NO. 2932O OF OFFICIAL RECORDS, KNOWN SURVEY NO. 6353—66.

ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND AS DESCRIBED IN A DEED TO BAHLASHALLAL. A WIDOW RECORDED DECEMBER 5, 2011 AS INSTRUMENT NO. 2011-0649937 OF OFFICIAL RECORDS.

PARCEL PORTIONS OF THE SQUIPMEST QUARTER OF THE NORTHEAST OLIVETER AND OF THE SQUIPMEST QUARTER OF THE NORTHEAST OLIVETER OF THE ORDER OF THE OF THE ORDER ORDER OF THE ORDER ORDE

EXCEPTING THAT PORTION LYING WITHIN SAID 102 FOOT STRIP OF LAND DESCRIBED IN THE DEED TO THE COUNTY OF SAND DIEGO RECORDED MARCH 3, 1967 AS FILE NO. OF OFFICIAL RECORDS, KNOWN AS ROAD SURVEY NO 853-66 ALSO EXCEPTING THEREFROM THAT PORTION OF SAID LAND IN A DEED RFAGAN SHALLAL, A SINGLE MAN RECORDED MARCH 16, 2012 RFAGAN STOML-20156124 OF OFFICIAL RECORDS.

APO: 661-010-30

P.T.R. NO. 01180-286202

THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS:

PARCEL WEST HALF OF TH ENORTHWEST QUARTER OF SECTION 9, TOWNISHIP SOUTH, RANGE 8 EAST, SAN BERNARDING BASE AND MERGINAN, IN 1 SCOUNT, RANGE 8 EAST, SAN BERNARDING BASE AND MERGINAN, LOUR SAN DEGO, STATE OF CALLFORNIN, ACCORDING TO GFFO

SECTION 9, TOWNSHIP 18 AND MERIDIAN, IN THE ACCORDING TO OFFICIAL PARCEL BY THE FOR THE NORTHWEST QUARTER OF S
SOUTH, RANGE 8 EAST, SAN BERNARDING BASE
COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, I
PERCOP.

P.T.R. NO. 01180-286203 APN: 661-060-12

THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS:

1.07 A:
10.18 OF SECTION 9, TOWNSHIP 18 SOUTH, RANGE 8 EAST, SAN
BERNARDING BASE AND MERIDIAN IN THE COUNTY OF SAN DIEGO, STATE OF
CALIFORNIA ACCORDING TO OFFICIAL PLAT THEREOF.

LOTE:

THE NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SECTION 9, THE NORSHIP IS SOUTH, RANGE 8 EAST, SAN BERNARING BASE AND MERGIAN IN THE THE COUNTY OF SAN DIEGO, STATE OF CALIFORNIA ACCORDING TO PERSON ACCORDING TO EXCEPT THAT PORTION OF SAID NORTHWEST QUARTER OF THE SOUTHWEST QUARTER OF LINIO WITHIN A STRIBL POF LAND AGOOD FEET WIDE, CYNICA 200,00 FEET ON EACH SIDE OF THE FOLLOWING SCENTER LINE.

COMMENDOR, IT THE NORMERS AND MORPHWEST ONARTHER THEORY OF THE SOUTHWEST ONARTHER. THEORY SOUTH OF THE SOUTHWEST ONARTHER, THEORY SOUTHWEST ONARTHER, THEORY SOUTHWEST ONARTHER, THE SOUTHWEST ONARTHER, AND THE MODIFIES OF THE MODIFIES OF THE SOUTHWEST ONARTHER, THE SOUTHWEST ONARTHER, THE SOUTHWEST ONARTHER, THE SOUTHWEST ONARTHER OF THE MORPHWEST OF SOUTHWEST ONARTHER OF THE MORPHWEST ON OUNHERS OF THE MORPHWEST OF SOUTHWEST ON THE WEST ON THE WEST OF THE MORPHWEST ON THE SOUTHWEST ON THE WEST ON THE WEST ON THE WEST OF THE MORPHWEST ON THE MORPHWEST ON THE MORPHWEST ON THE MORPHWEST ON THE WEST OF THE WEST OF

661-060-22

P.T.R. NO. 01180-286204

THE LAND REFERED TO HEREIN IS SITUATED IN THE STATE OF CALIFORNIA COUNTY OF SAN DIEGO UNINCORPORATED AND DESCRIBED AS FOLLOWS: THE NORTHEAST QUARTER OF THE SOUTHWEST QUARTER OF SECTION WINSHIP 18 SOUTH, RANGE 8 EAST, SAN BERNARDING MERIDIAN, IN COUNTY OF SAN DIEGO, STATE OF CALIFORNIA, ACCORDING TO THE OFFICI PLAT THEREOF.

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P.T.R. NO. 18000480409 APN: 661-010-02

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660-140-06, 660-140-08,



BayWa r.e. Solar Projects LLC 1790 1 Von Karman Ave, Suite 1050 Invine, CA 92614 Phone: 949.398.3915 | Fax: 949.396.3 www.bayws-re.us

D 2020 KIMEY—HON MAD ASSOCIATES, INC. 785 THE CITY DRIVE, SUITE 200, CRANCE, CA 92868 PHONE: 714,321,020 FAZ 714,338,9468 WWW.XMLT*—HORICOM Kimley » Horr



ENERGY PARK

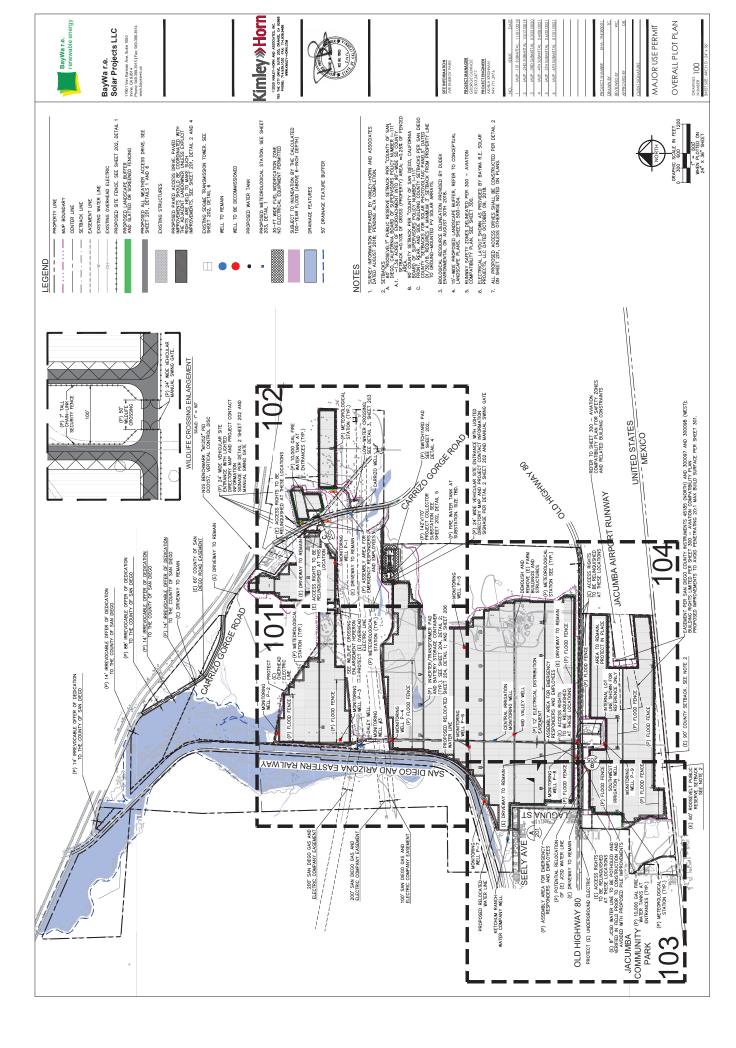
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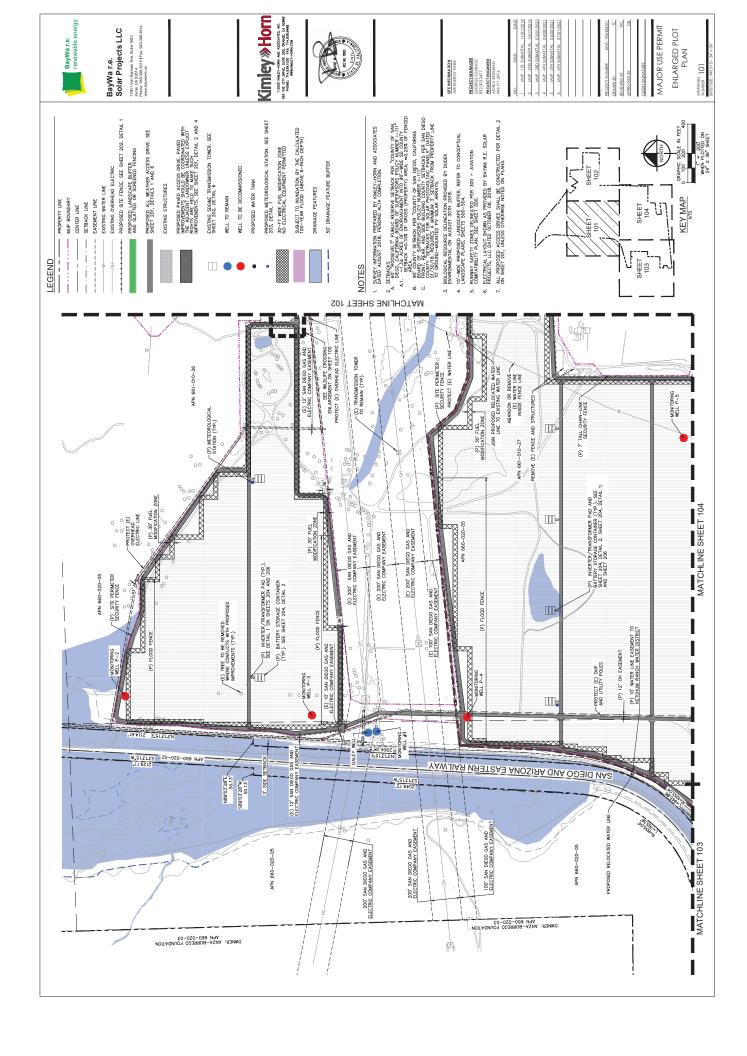
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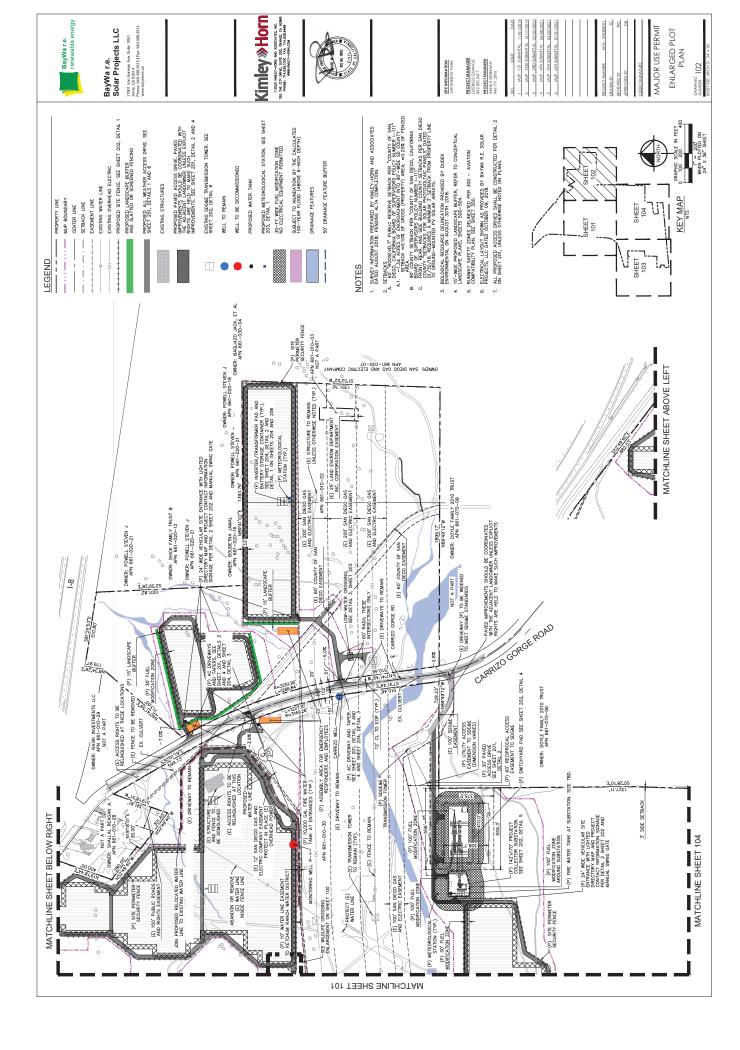
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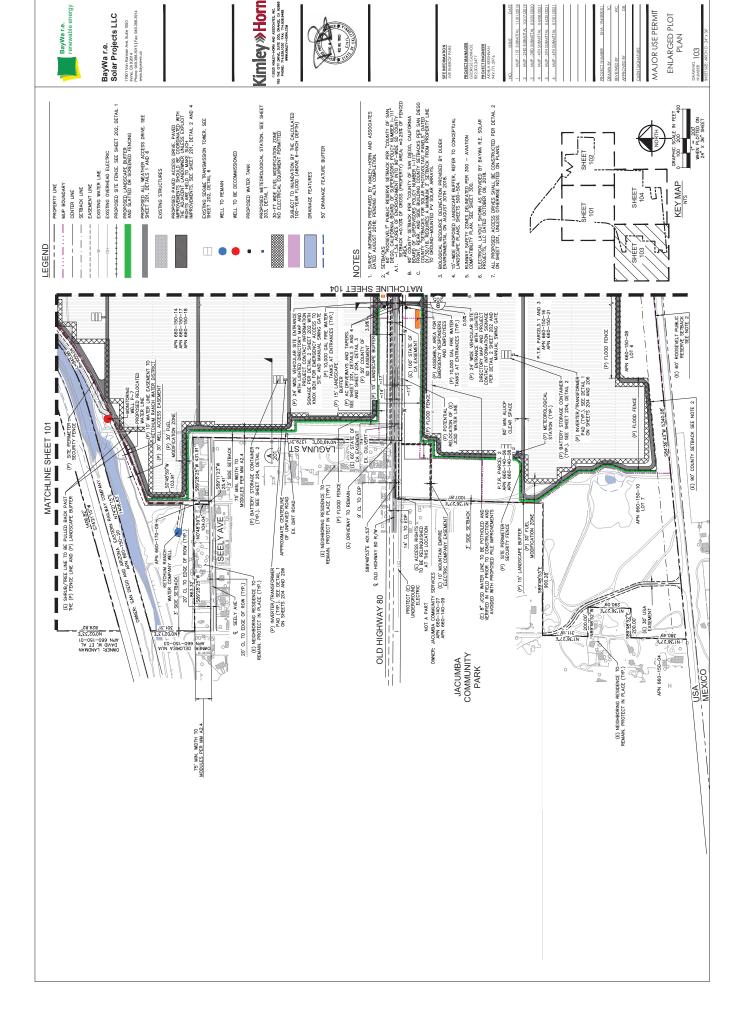
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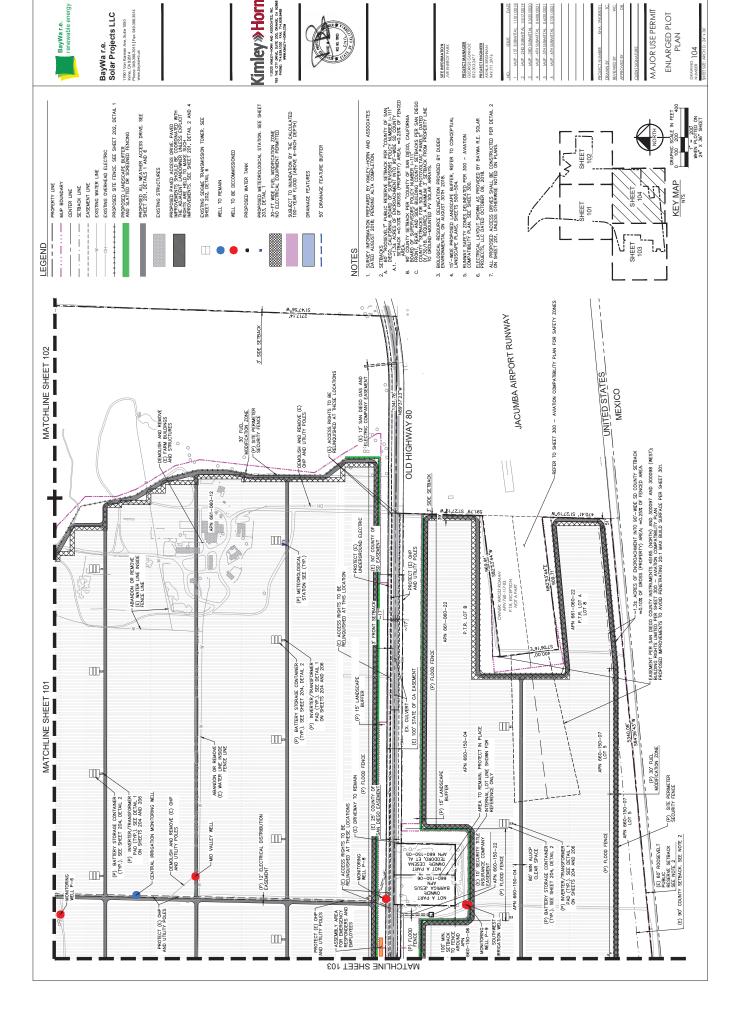
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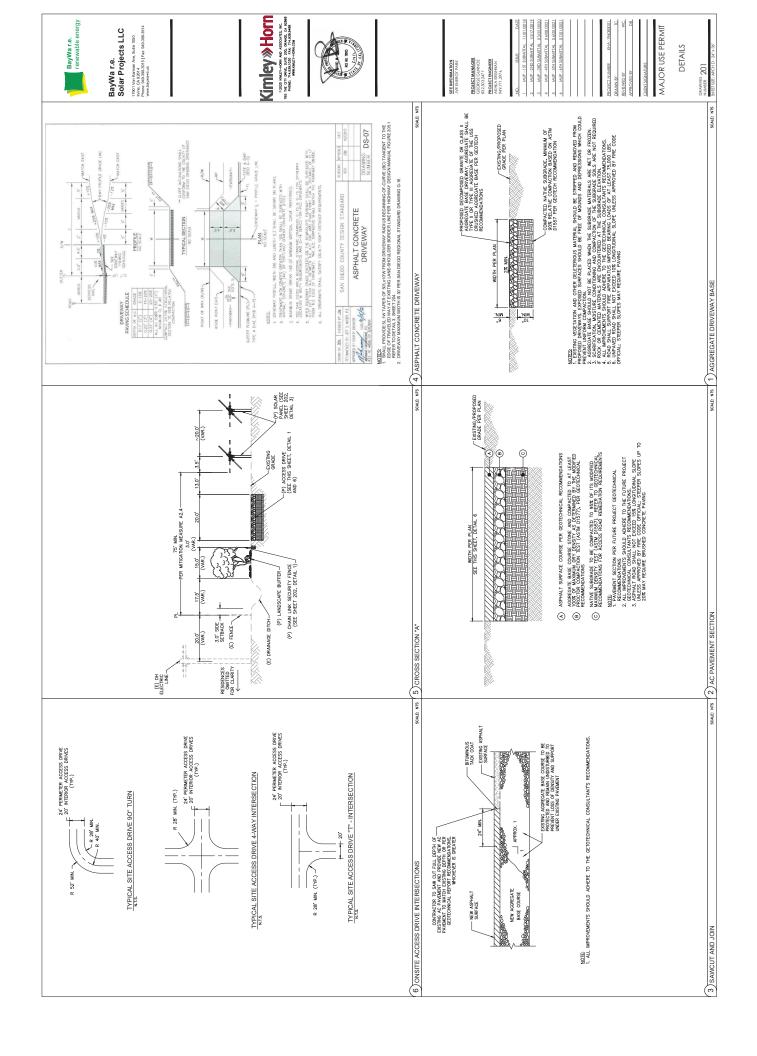


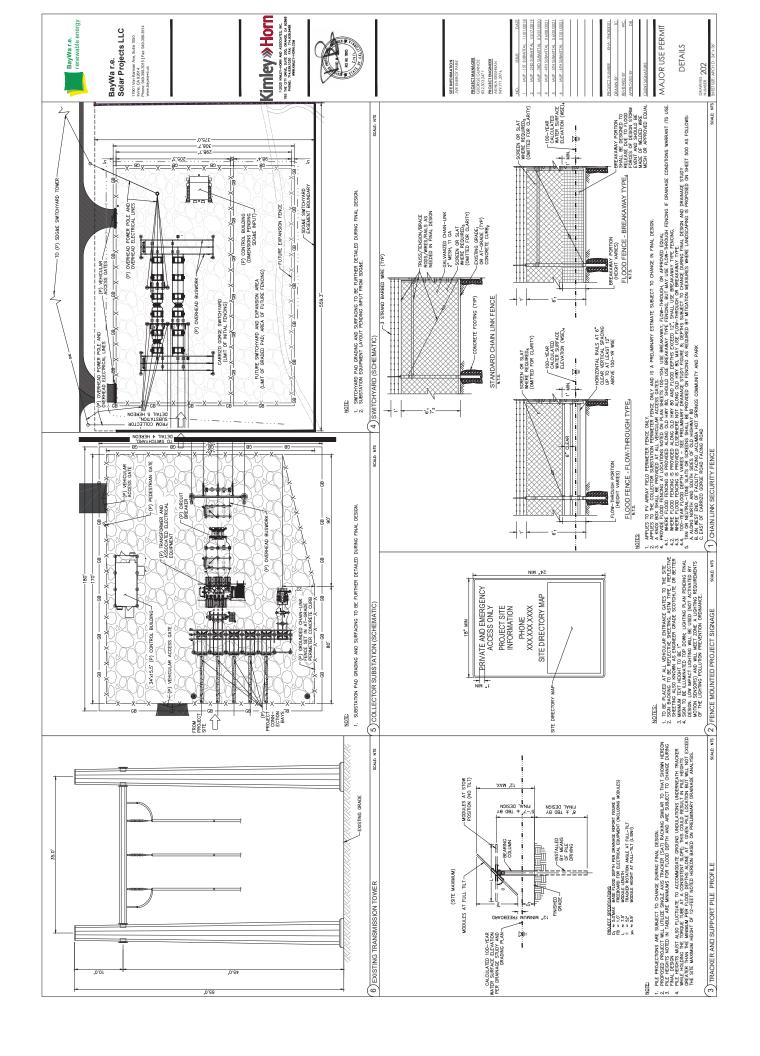


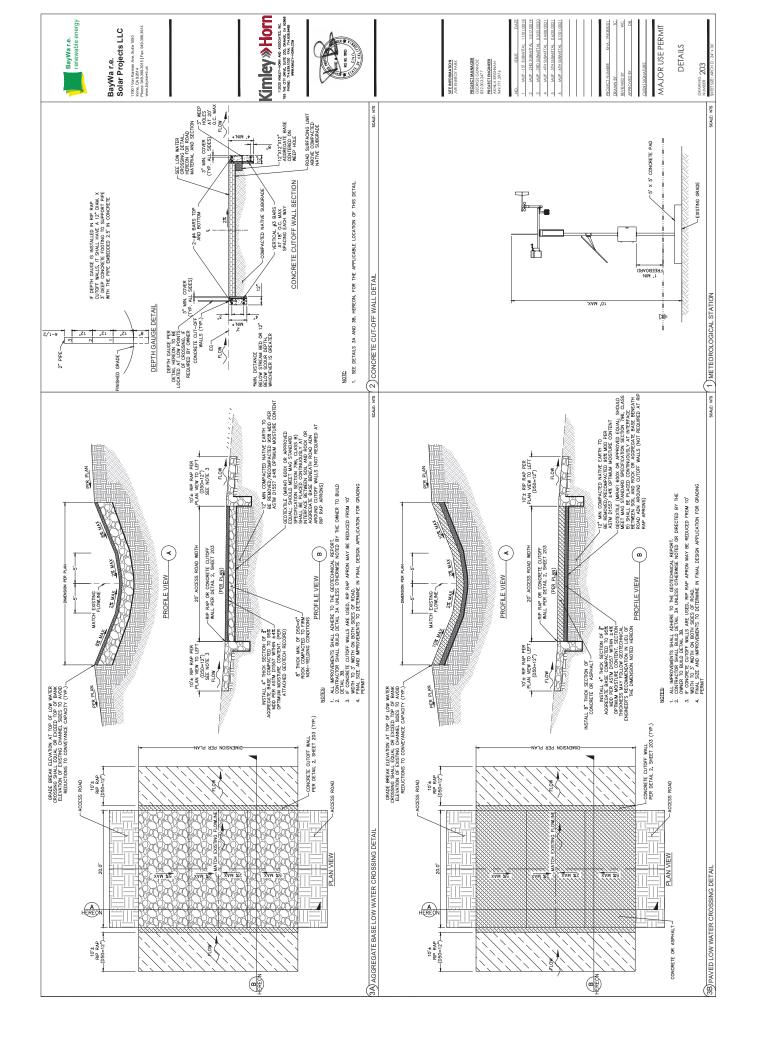


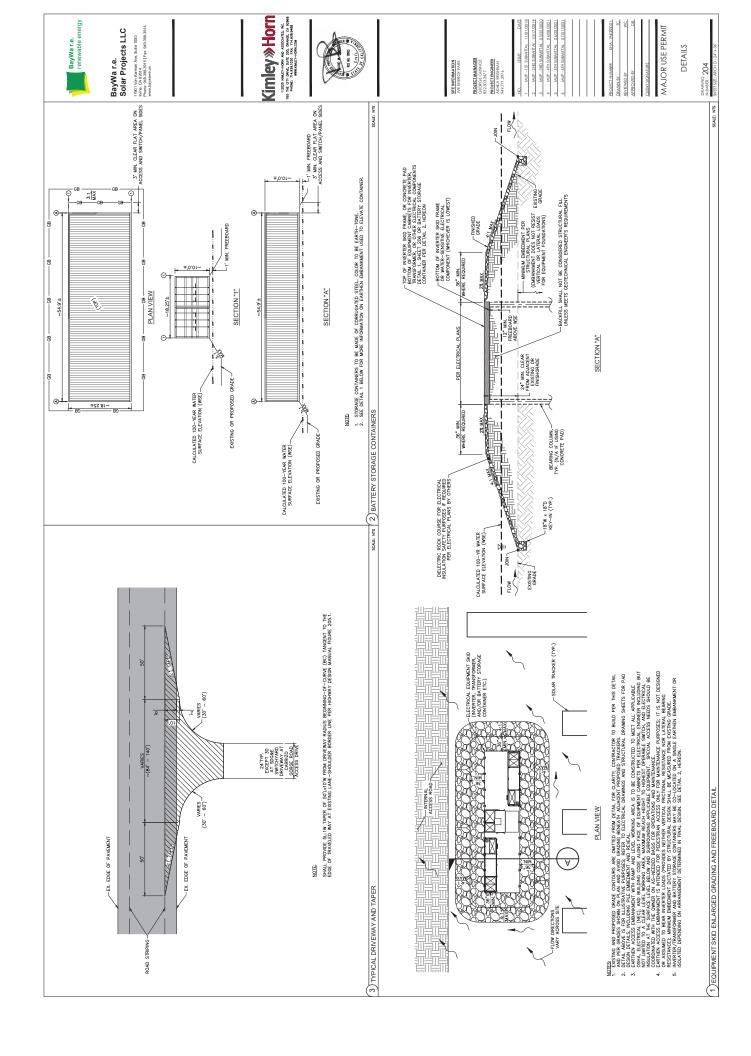


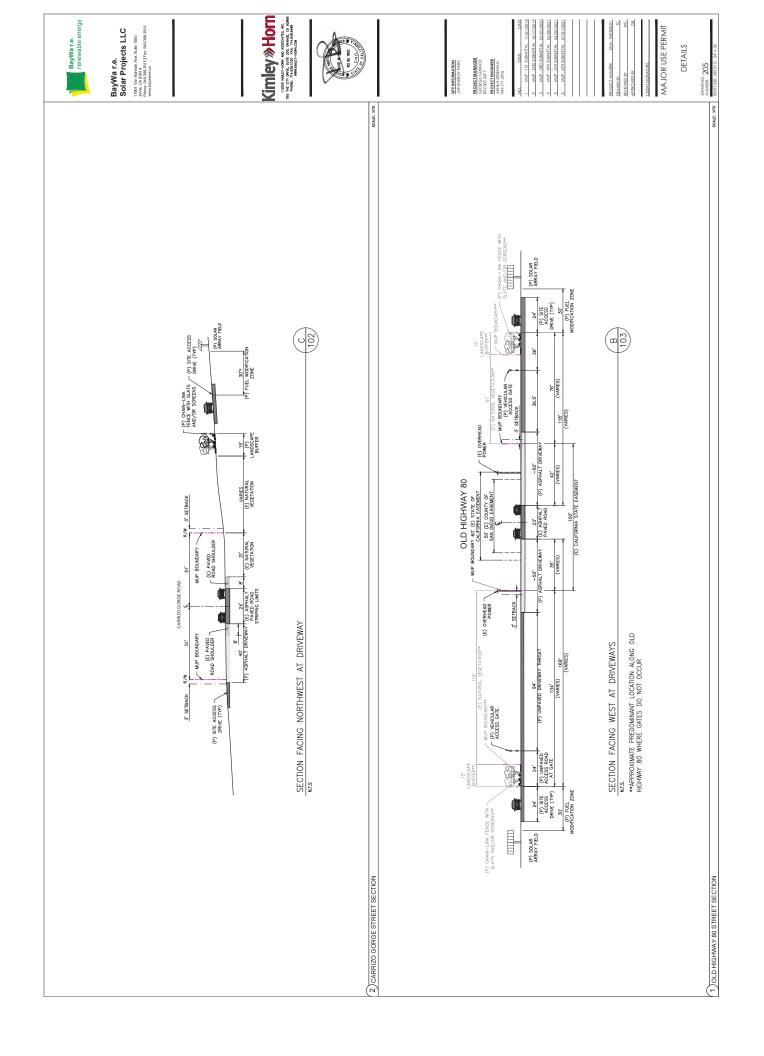


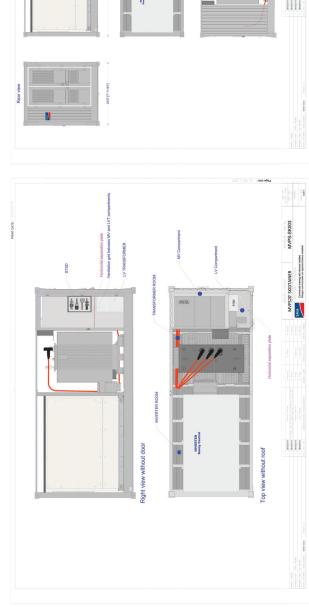


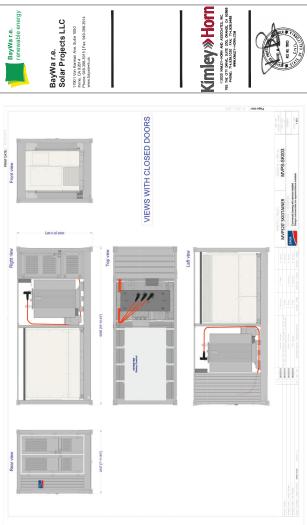








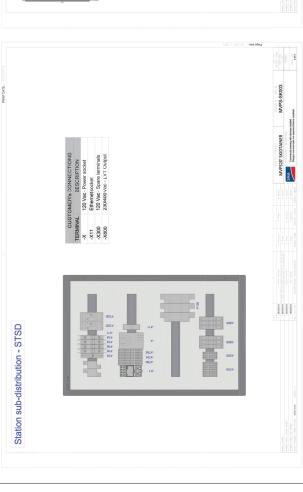




BayWa r.e. renewable energy

BayWa r.e. Solar Projects LLC 17901 Von Karman Ave, Suite 1050 Invine, CA 92614 Phone: 949.398.3915 | Fax: 949.398.3 www.baywa-e.us





(1) SMA SKIDTAINER (OR APPROVED EQUAL)

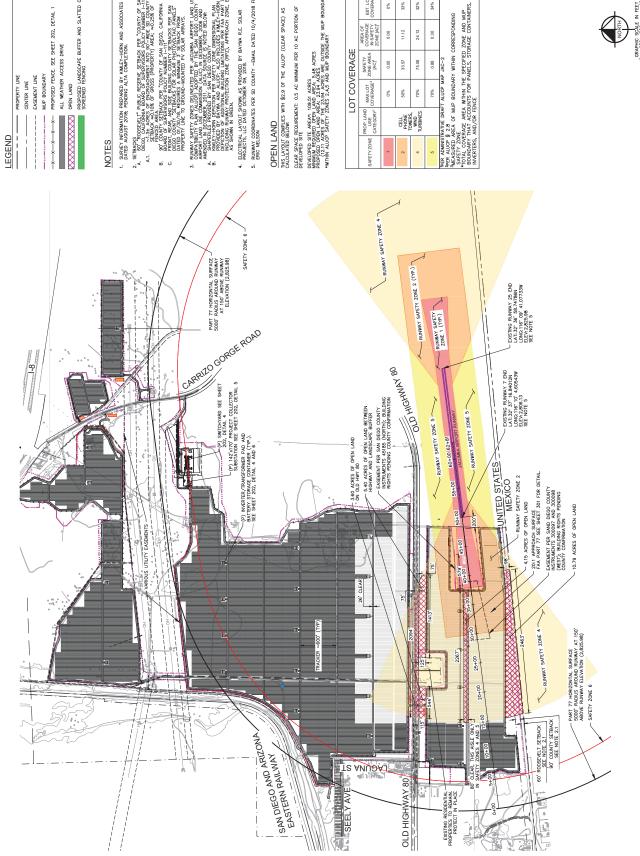


JVR ENERGY PARK

MAJOR USE PERMIT

DETAILS

DRAWING 206





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1790 1 Von Karman Ave, Suite 1050 Ilvine, CA 92614 Phone: 949.398.3915 | Fax: 949.396.3 www.baywa-e.us

PROPOSED LANDSCAPE BUFFER AND SLATTED OR SCREENED FENCING PROPOSED FENCE. SEE SHEET 202, DETAIL 1 ALL WEATHER ACCESS DRIVE EASEMENT LINE MUP BOUNDARY CENTER LINE OPEN LAND

SURVEY INFORMATION PREPARED BY KIMLEY—HORN AND ASSOCIATES DATED AUGUST 2018; PENDING ALTA COMPLETION.

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5. RUNWAY COORDINATES PER SD COUNTY -EMAIL DATED 10/4/2018 FROM FROM FRIC NELSON ELECTRICAL LAYOUT SHOWN AS PROVIDED BY BAYWA R.E. SOLAR PROJECTS, LLC DATED OCTOBER 09, 2018.

D2020 IOMET-HORN AND ASSOCIATES, INC.
795 THE CITY DRIVE, SUITE 200, ORANGE, CA 92868
PHONE: 774,839,630 FAN: 774,838,9488
WWW.KMLEY-HORN.COM Kimley » Horn

OPEN LAND

THIS LAYOUT COMPLES WITH \$2.9 OF THE ALUCP (CLEAR SPACE) AS CALCULATED BELOW: CLEAR SPACE REQUIREMENT: 0.5 AC MINIMUM PER 10 AC PORTION OF DEVELOPED SITE

THE CALL OF THE CA

DEVELOPED SITE AREA** 109-51 ACRES
MINNIUM RECURED OPEN LAND AREA. 5-44 ACRES
MINNION RECURED OPEN LAND AREA. 53-4 ACRES
MINNION RECURED OPEN LAND AREA. 53-4 ACRES
(CLTI AREA OF THE SAME CONTROLLED THE MUP BOUNDARY)
WITHIN ALLOPS SAFETY ZONES 24,44 AND WIP BOUNDARY

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	EST. LOT COVERAGE	%0	33%	32%	%#	
	AREA OF COVERAGE IN SAFETY ZONE (AC)	0.00	11.12	24.13	0.30	
LO 100 LIVE	SAFETY ZONE AREA [AC] ³	0.00	33.57	90'92	0.88	AP JAC-2
	MAX LOT COVERAGE ²	9%0	90%	70%	70%	T ALUCP MA
ı	PROP. LAND USE CATEGORY1		PHONE	WIND WIND TURBINES		RATIVE DRAF
	SAFETY ZONE	1	2	4	9	PER ADMINISTRATIVE DRAFT ALUCP MAP JAC-2

SITE INFORMATION

MAJOR USE PERMI

DRAWING 300 NUMBER

AVIATION COMPATIBILITY PLAN



BayWa r.e. Solar Projects LLC

17901 Von Karman Ave, Suite 1050 Invine, CA 92614 Phone: 949.398.3915 | Fax: 949.396.391 www.baywa-e.us

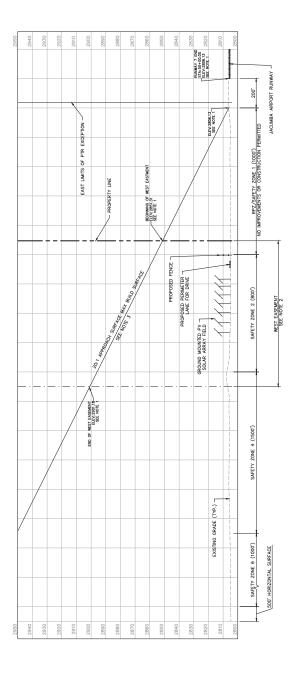
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SITE INFORMATION JVR ENERGY PARK

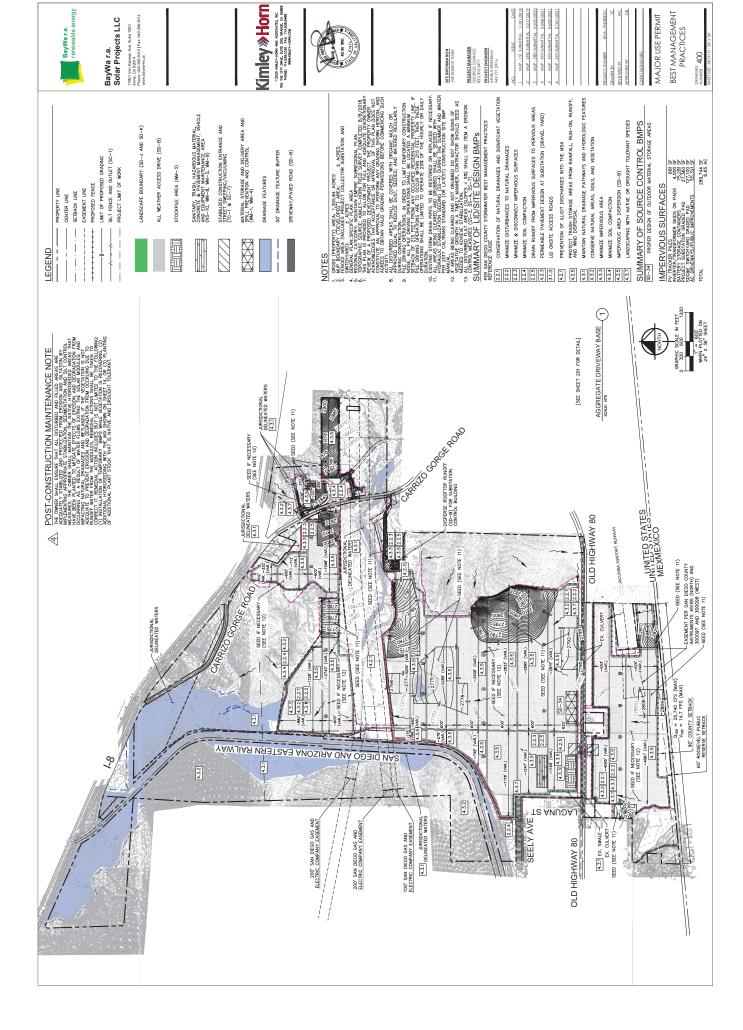
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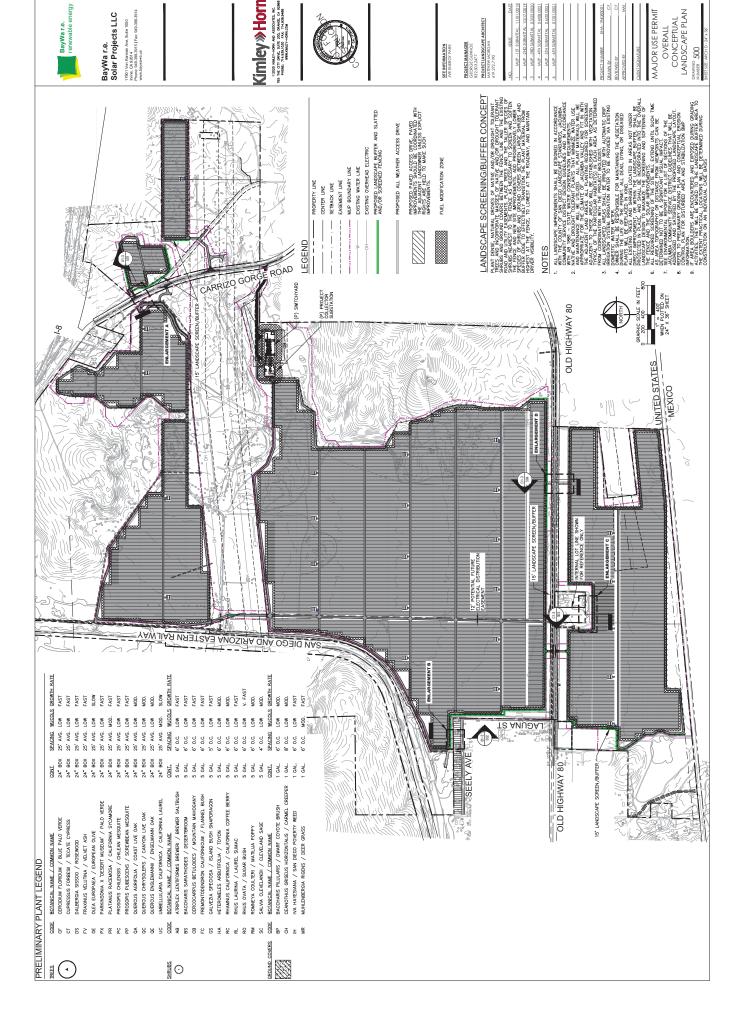
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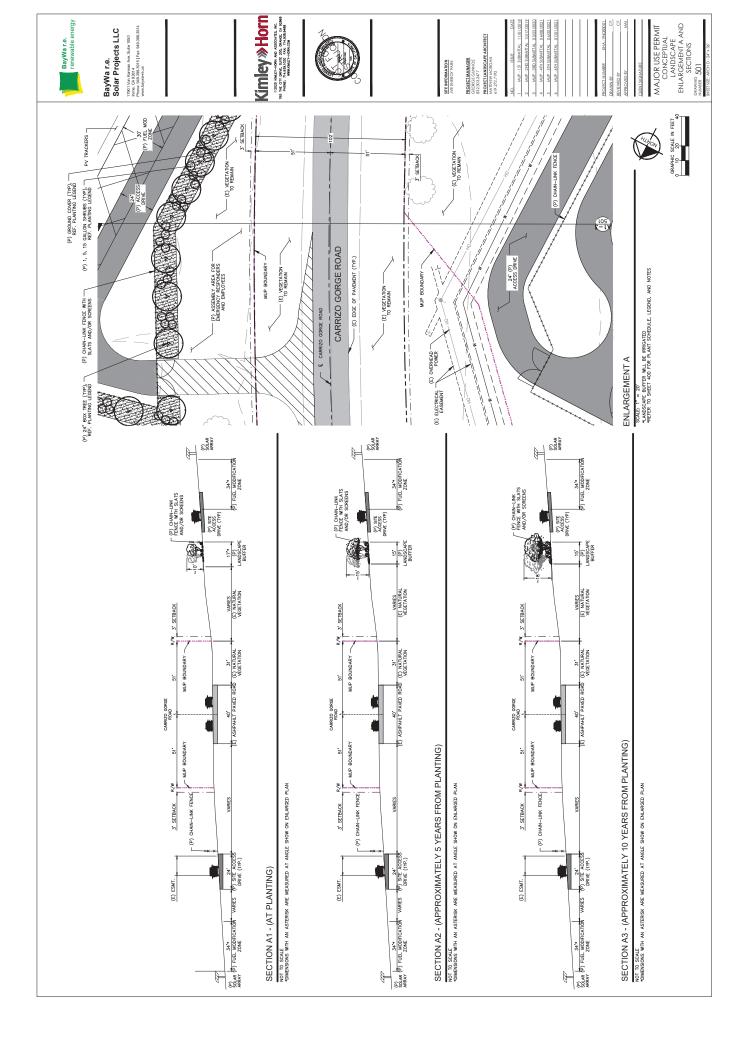


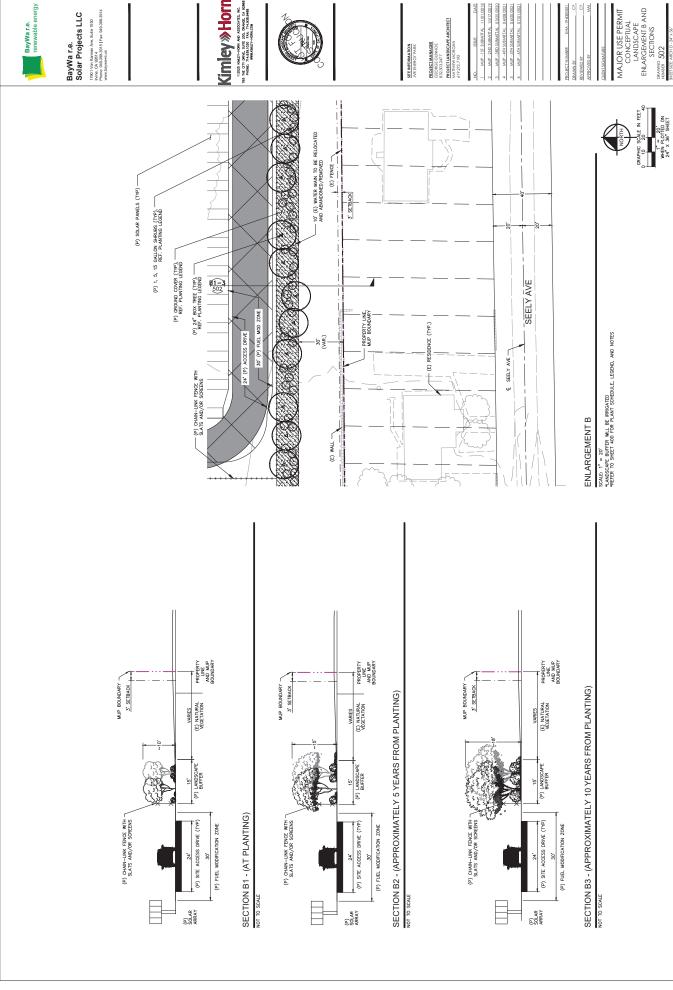
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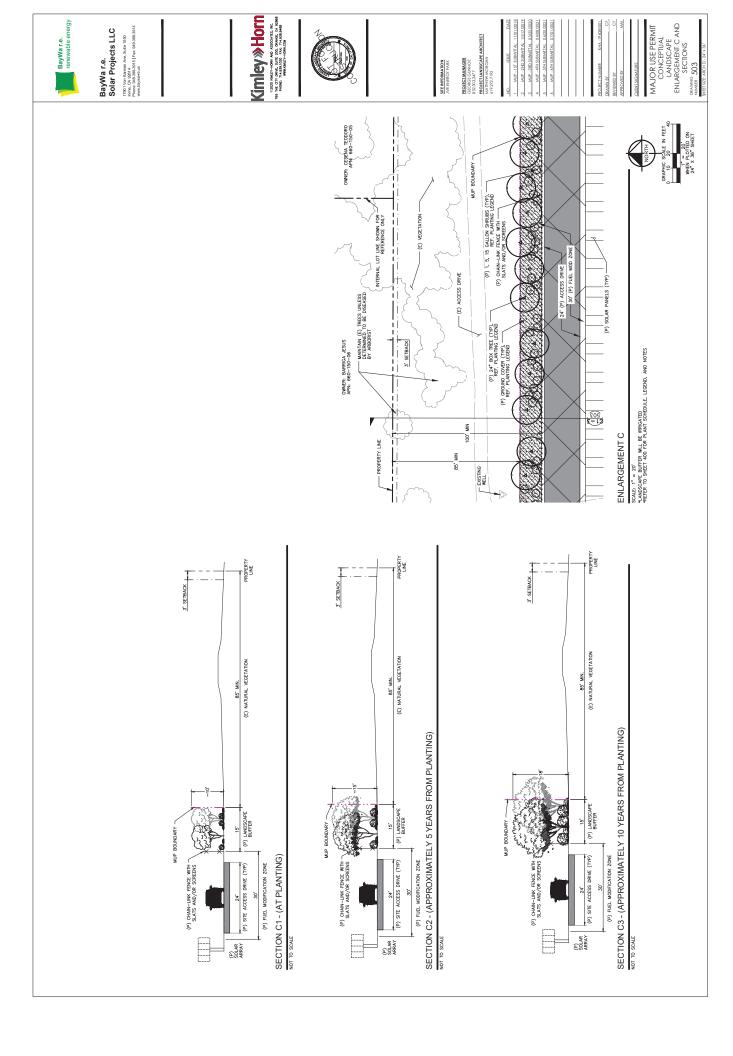


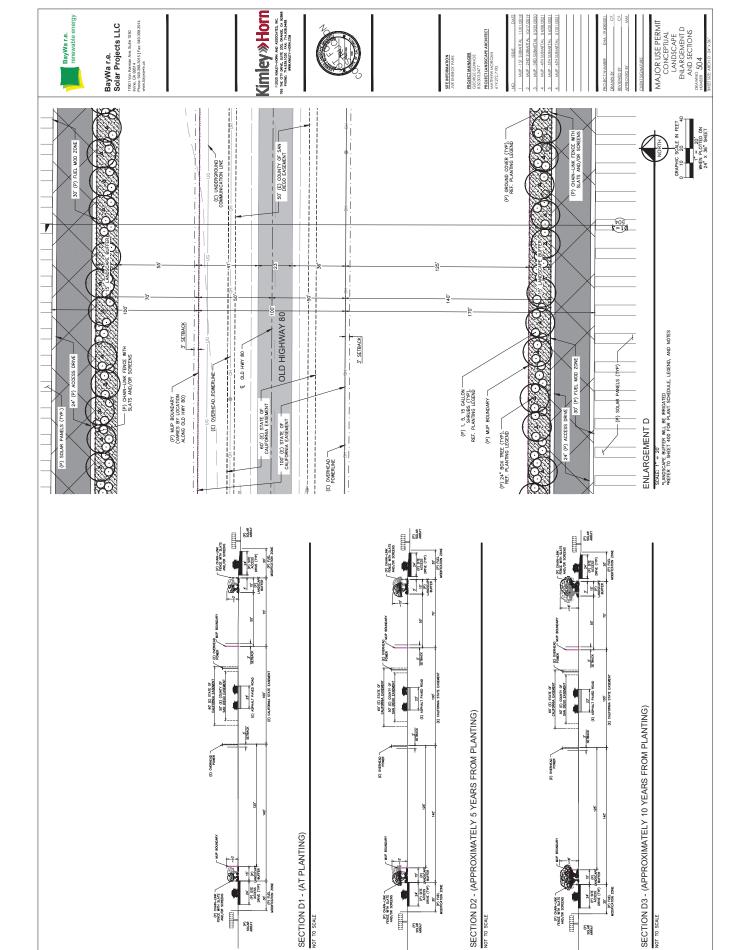
17901 Von Karmen Ave, Suite 1050 Infine, CA 9261 4 Phone: 949.398.3915 | Fax: 949.399.391 www.baywe-re.us

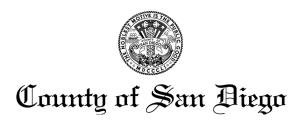
Kimley.

*Horn

POZOD KOMET-HORM AND ASSOCIATES, INC.
785 THE CITY DRIVE, CA 92865
PHONE: 714.939.1030 FAX: 714.938.9488
WWK.KMLEY-HORN.COM







JEFF C. MONEDA DIRECTOR DEPARTMENT OF PUBLIC WORKS 5510 OVERLAND AVENUE, SUITE 410 SAN DIEGO, CA 92123-1237 (858) 694-2212 www.sdcounty.ca.gov/dpw/

June 24, 2021

David Bossu 1100 W. Town and Country Road, Ste. 700 Orange, CA 92868

Dear Mr. Bossu:

REQUEST FOR EXCEPTION(S) TO PUBLIC ROAD STANDARD(S) – JVR ENERGY PARK LOCATED IN THE UNINCORPORATED PORTION OF SAN DIEGO COUNTY WITHIN THE MOUNTAIN EMPIRE SUBREGIONAL PLAN AREA, APN 614-100-04, -20, -21, 660-020-05, -06, 660-150-04, -07, -08, -10, -14, -17, -18, 660-170-09, 661-010-02, -15, -26, -27, -30, 661-060-12, -22; PDS2018-MUP-18-022

County of San Diego (County) Department of Public Works (DPW) has reviewed your request, dated June 18, 2021, for the following exception (s) to a public road standard(s):

 Request to approve a reduction in the minimum centerline separation to a minimum 100 feet in lieu of the County criteria noted in Section 6.1.C., for the existing and proposed private driveways along Old Highway 80 (2.2D Light Collector) and Carrizo Gorge Road (2.2D Light Collector). The County's required centerline separation for a Mobility Element Road is 300 feet.

County staff has assessed the appropriateness of the requested exceptions to standards and the County Traffic Engineer has reviewed and supports the request. The existing driveways provide operations and maintenance access to various easement holders within the project. It has been determined that your request for modification will not adversely affect traffic safety and flow of traffic in the area. This Design Exception Request is hereby approved. All other standards, conditions, and improvements required shall be met.

Mr. Bossu June 24, 2021 Page 2

If you have any questions or need additional information related to this request, please contact Zoubir Ouadah, DPW County Traffic Engineer at (858) 694-3857, or at: Zoubir.Ouadah@sdcounty.ca.gov.

Sincerely,

Digitally signed by Gade, Derek — Date: 2021.06.24 09:07:08 -07'00'

DEREK R. GADE, P.E., Assistant Director Department of Public Works

cc: PDS2018-MUP-18-022 File

Zoubir Ouadah - Department of Public Works George Gunnoe - george.gunnoe@baywa-re.com MARK WARDLAW DIRECTOR

PLANNING & DEVELOPMENT SERVICES 5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123

KATHLEEN A. FLANNERY
ASSISTANT DIRECTOR

5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 921: (858) 694-2962 • Fax (858) 694-2555 www.sdcounty.ca.gov/pds

June 18, 2021

To: Derek Gade, Assistant Director

Department of Public Works

From: Jacob Armstrong, Chief of Land Development

Planning & Development Services

Reference: PDS2018-MUP-18-022 (Design Exception Request)

RECOMMENDER:

Sinsay, Edwin

Digitally signed by Sinsay,

Edwin M

Date: 2021.06.18 13:49:33

Date: 6/18/21

Date: 6/18/21

EDWIN M. SINSAY.

PDS Land Development Project Manager

Armstrong,

Digitally signed by Armstrong,

Jacob Date: 2021.06.18 14:10:52

21.06.18 14:10:52

JACOB ARMSTONG,

Chief of Land Development

RECOMMENDATION:

It is recommended that the Director of Public Works support this request. Decision is based upon the County of San Diego (County) Department of Public Works (DPW) and Planning & Development Services (PDS) review of the applicant's request, dated June 18, 2021, for the following modification to a project condition:

 Request to approve a reduction in the minimum centerline separation to a minimum 100 feet in lieu of the County criteria noted in Section 6.1.C., for the existing and proposed private driveways along Old Highway 80 (2.2D Light Collector) and Carrizo Gorge Road (2.2D Light Collector). The County's required centerline separation for a Mobility Element Road is 300 feet.

BACKGROUND:

The JVR Energy Park Project involves the operation and construction of a 90 megawatt (MW) solar energy facility and a battery energy storage system of up to 90 MW (180MWh). The Project components include approximately 300,000 photovoltaic modules fitted on single axis trackers, a battery energy storage system,

REQUEST FOR EXCEPTION(S) TO PUBLIC ROAD STANDARD(S) – JVR ENERGY PARK LOCATED IN THE UNINCORPORATED PORTION OF SAN DIEGO COUNTY WITHIN THE MOUNTAIN EMPIRE SUBREGIONAL PLAN AREA, APN 614-100-04, -20, -21, 660-020-05, -06, 660-150-04, -07, -08, -10, -14, -17, -18, 660-170-09, 661-010-02, -15, -26, -27, -30, 661-060-12, -22; PDS2018-MUP-18-022

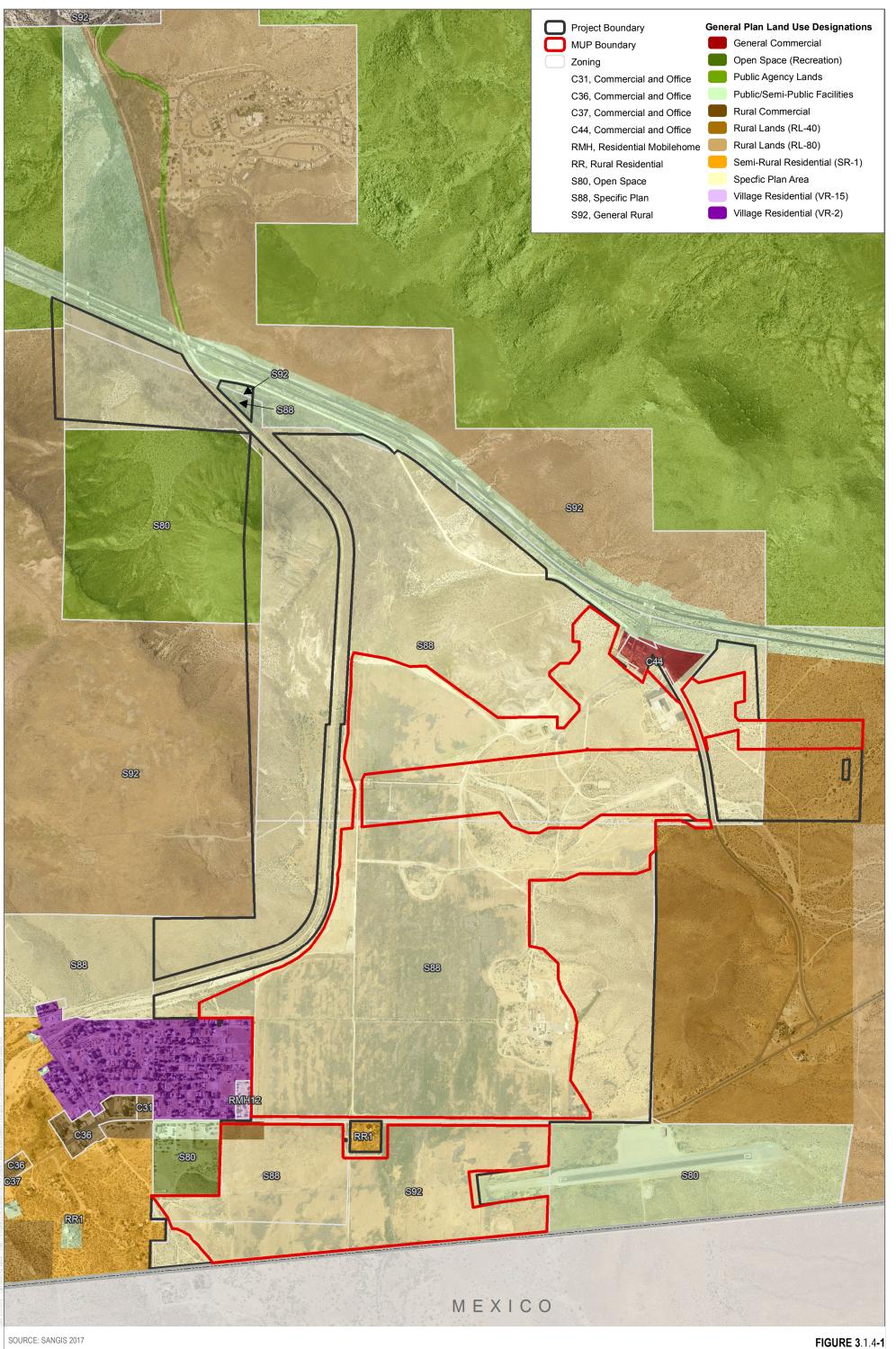
inverter/transformer platforms, an underground electrical collection system, a collector substation, a switchyard, an overhead gen-tie line, security fencing, and internal access. The development footprint of the proposed facilities is approximately 643 acres. Eventual decommissioning would occur at the end of the Project's useful life, which is conservatively assumed to be 35 years. All Project components would be decommissioned except the switchyard, which would be transferred to San Diego Gas & Electric after construction. The Project requires a Major Use Permit (MUP).

The 1,356-acre Project site is located within unincorporated southeastern San Diego County, within the Mountain Empire Subregion. The Project site is located adjacent to the community of Jacumba Hot Springs and the Jacumba Airport, and south of Interstate 8 (I-8). Primary access would be provided from I-8 with local access from Carrizo Gorge Road and Old Highway 80.

PROJECT MANAGEMENT TEAM REVIEW:

County of San Diego (County) Department of Public Works (DPW) and Planning & Development Services (PDS) has reviewed the applicant's request, dated June 2, 2021, and have concluded the following reasons to support the applicant's requests:

- 1. The existing driveways provide access for Operations and Maintenance to existing SDG&E transmission towers, wells owned by JCSD or others, portions of the property not improved by the MUP, or other facilities.
- 2. The traffic along the roads is relatively low and the visibility is relatively high, and the proposed O&M traffic to the project is infrequent and minimal.
- 3. Requiring the driveways to maintain centerline spacing would require construction of new driveways and access roads, which would increase project impacts.
- 4. The County of San Diego, Traffic Engineer has reviewed and supported the request.



DUDEK & 0 500 1,000 Fee



AGENDA

Regular Meeting of the Board of Directors of San Diego Community Power (SDCP)

May 27, 2021

5:00 p.m.

Due to the public health orders and guidelines in California and in accordance with the Governor's Executive Orders N-25-20 and N-29-20, there will be no location for in-person attendance. SDCP is providing alternatives to in-person attendance for viewing and participating in the meeting. Further details are below.

Note: Any member of the public may provide comments to the SDCP Board of Directors on any agenda item. When providing comments to the Board, it is requested that you provide your name and city of residence for the record. Commenters are requested to address their comments to the Board as a whole through the Chair. Comments may be provided in one of the following manners:

- 1. Providing Oral Comments During Meeting. To provide comments during the meeting, join the Zoom meeting by computer, mobile phone, or dial-in number. On Zoom video conference by computer or mobile phone, use the "Raise Hand" feature. This will notify the moderator that you wish to speak during a specific item on the agenda or during non-agenda Public Comment. Members of the public will not be shown on video but will be able to speak when called upon. If joining the meeting using the Zoom dial-in number, you can raise your hand by pressing *9. Comments will be limited to three (3) minutes.
- 2. Written Comments. Written public comments must be submitted prior to the start of the meeting by using this (web form). Indicate a specific agenda item when submitting your comment. All written comments received prior to the meeting will be provided to the Board members in writing. In the discretion of the Chair, the first ten (10) submitted comments shall be stated into the record of the meeting. Comments read at the meeting will be limited to the first 400 words. Comments received after the start of the meeting will be collected, sent to the Board members in writing, and be part of the public record.

If you have anything that you wish to be distributed to the Board, please provide it via info@sdcommunitypower.org and it will be distributed to the Members.

The public may participate using the following remote options:

Teleconference Meeting Webinar

https://zoom.us/j/94794075133

Telephone (Audio Only)

(669) 900-6833 or (346) 248-7799 | Webinar ID: 947 9407 5133

AGENDA - BOARD OF DIRECTORS - SAN DIEGO COMMUNITY POWER

Welcome

Call to Order

Pledge of Allegiance

Roll Call

Items to be Added, Withdrawn, or Reordered on the Agenda

Public Comments

Opportunity for members of the public to address the Board on any items not on the agenda but within the jurisdiction of the Board. Members of the public may use the web form noted above to provide a comment or request to speak.

Consent Calendar

All matters are approved by one motion without discussion unless a member of the Board of Directors requests a specific item to be removed from the Consent Agenda for discussion. A member of the public may use the web form noted above to comment on any item on the Consent Calendar.

- 1. Approval of the minutes of the Regular Meeting of the Board of Directors of San Diego Community Power held on March 25, 2021 and April 22, 2021.
- 2. Amendment to Professional Services Agreement with Maher Accountancy for Accounting Services

Recommendation: Approve first amendment to Professional Services Agreement with Maher Accountancy to increase the not-to-exceed amount by \$37,500 to \$241,000 through June 30, 2022 and authorize the Interim CEO to execute the amendment.

3. Amendment to Professional Services Agreement with Tosdal APC for Legal and Regulatory Services

Recommendation: Approve second amendment to Professional Services Agreement with Tosdal APC to increase the not-to-exceed amount by \$80,000 for services through FY 21, add a not-to-exceed amount of \$240,000 for FY 22 and authorize the Interim CEO to execute the agreement.

4. Amendment to Professional Services Agreement with NewGen Strategies and Solutions, LLC for Regulatory Support and Rate-related Analysis

Recommendation: Approve second amendment to Professional Services Agreement with NewGen Strategies and Solutions, LLC to increase the not-to-exceed amount by \$260,000, extend agreement term through FY 22 and authorize the Interim CEO to execute the amendment.

5. Amendment to Professional Services Agreement with Keyes & Fox LLP for Legal and Regulatory Services

Recommendation: Approve third amendment to Professional Services Agreement with Keyes & Fox LLP to increase the not-to-exceed amount by \$37,500 and authorize the Interim CEO to execute the amendment.

6. Amendment to Engagement Letter with Best Best & Krieger in the amount of \$300,000 for Services through FY22 -

Recommendation: Approve amendment to Engagement Letter with Best Best & Krieger for \$300,000 through June 30, 2022 and authorize the Interim Chief Executive Officer to execute the contract.

7. Amendment to Professional Services Agreement with Civilian, Inc. for Marketing and Communication Services -

Recommendation: Approve first amendment to Professional Services Agreement with Civilian, Inc. in the amount of \$143,000 for marketing and communications services, and authorize the Interim CEO to execute the agreement.

8. Amendment to Professional Services Agreement with Neyenesch Printers in the amount of \$277,000 for services through FY22

Recommendation: Approve amendment to Professional Services Agreement with Neyenesch Printers for \$277,000 through June 30, 2022 and authorize the Interim Chief Executive Officer to execute the contract.

REGULAR AGENDA

The following items call for discussion or action by the Board of Directors. The Board may discuss and/or take action on any item listed below if the Board is so inclined.

9. Operations and Administration Report from the Interim Chief Executive Officer

Recommendation: Receive and file update on various operational and administration activities.

- General Administrative Updates
 - San Diego County
 - Strategic Planning
- Staffing
- Power Resources
- Back Office Operations
- Retirement Plans

10. Update on Regulatory and Legislative Affairs

Recommendation: Receive and file the update on regulatory and legislative affairs.

- Power Charge Indifference Adjustment Final Decision
- Senate Bill 612 Update
- SDG&E Application for Approval of 2022 Electric Procurement Revenue Requirement Forecasts
- Direct Access Rulemaking Proposed Decision
- Provider of Last Resort Rulemaking

11. Discussion and Direction on Potential New Members to SDCP and Input on Response Letter to County of San Diego

Recommendation:

- 1. Discuss considerations of adding new member jurisdictions to SDCP and provide direction to staff.
- 2. Provide input to staff on the draft response letter to the County of San Diego.

12. Approval of Fiscal Year (FY) 2021 Budget Amendment and Review Proposed Fiscal Year 2022 Budget

Recommendation:

- 1. Approve the FY21 budget amendment.
- 2. Review the proposed FY22 budget.

13. Approval of Updates to the Net Energy Metering (NEM) Program and Amend the NEM Program Policy

Recommendation:

- 1. Establish a Net Surplus Compensation Rate
- 2. Establish a Net Surplus Compensation Limit
- 3. Establish monthly settlements and billing
- 4. Delegate authority to the Interim Chief Executive Officer to update the NEM policy consistent with the approved Board actions

14. Review and Provide Direction to Staff on Legislative Position for AB 1139

Recommendation:

- Receive and file the Community Advisory Committee's recommended position on AB 1139
- 2. Adopt a position on AB 1139

15. Renewable Power Purchase Agreement with IP Oberon, LLC

Recommendation: Approve the Long-term Renewable Power Purchase Agreement with IP Oberon, LLC and authorize the Interim CEO to execute the agreement.

16. Renewable Power Purchase Agreement with JVR Energy Park, LLC

Recommendation: Approve the Long-term Renewable Power Purchase Agreement with JVR Energy Park, LLC and authorize the Interim CEO to execute the agreement.

Director Comments

Board Members may briefly provide information to other members of the Board and the public, ask questions of staff, request an item to be placed on a future agenda, or report on conferences, events, or activities related to SDCP business. There is to be no discussion or action taken on comments made by Directors unless authorized by law.

Reports by Management and General Counsel

SDCP Management and General Counsel may briefly provide information to the Board and the public. The Board may engage in discussion if the specific subject matter of the report is identified below, but the Board may not take any action other than to place the matter on a future agenda. Otherwise, there is to be no discussion or action taken unless authorized by law.

ADJOURNMENT

Compliance with the Americans with Disabilities Act

SDCP Board of Directors meetings comply with the protections and prohibitions of the Americans with Disabilities Act. Individuals with a disability who require a modification or accommodation, including auxiliary aids or services, in order to participate in the public meeting may contact (888) 382-0169 or info@sdcommunitypower.org. Requests for disability-related modifications or accommodations require different lead times and should be provided at least 72-hours in advance of the public meeting.

Availability of Board Documents

Copies of the agenda and agenda packet available at https://sdcommunitypower.org/resources/meeting-notes/. Late-arriving documents related to a Board meeting item which are distributed to a majority of the Members prior to or during the Board meeting are available for public review as required by law. Previously, public records were available for inspection at the City of San Diego Sustainability Department, located at 1200 Third Ave., Suite 1800, San Diego, CA 92101. However, due to the Governor's Executive Orders N-25-20 and N-29-20 and the need for social distancing, in-person inspection is now suspended. Public records, including agenda-related documents, can instead be requested electronically at info@sdcommunitypower.org or by mail to SDCP, 815 E Street, Suite 12716, San Diego, CA 92112. The documents may also be posted at the above website.



SAN DIEGO COMMUNITY POWER (SDCP) BOARD OF DIRECTORS

San Diego City Administration Building, 12th Floor 202 "C" Street San Diego, CA 92101

MINUTES

March 25, 2021

This meeting was conducted utilizing teleconferencing and electronic means consistent with State of California Executive Order N-29-20 dated March 17, 2020, regarding the COVID-19 pandemic.

The Board minutes are prepared and ordered to correspond to the Board Agenda. Agenda Items can be taken out of order during the meeting.

The Agenda Items were considered in the order presented.

WELCOME

CALL TO ORDER

Chair Mosca (Encinitas) called the SDCP Board of Directors meeting to order at 5:03 p.m.

PLEDGE OF ALLEGIANCE

Chair Mosca (Encinitas) led the Pledge of Allegiance.

ROLL CALL

PRESENT: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Director Baber

(La Mesa), Director Dedina (Imperial Beach), and Alternate Director LaCava

(San Diego)

ABSENT: Director Montgomery Steppe (San Diego)

Also Present: Interim Chief Executive Officer ("CEO") Carnahan, Chief Operating Officer

("COO") Hooven, General Counsel Baron, Interim Board Clerk Wiegelman

ITEMS TO BE ADDED, WITHDRAWN, OR REORDERED ON THE AGENDA

There were no additions or deletions to the agenda.

PUBLIC COMMENTS

There were no comments.

CONSENT CALENDAR

(Items 1 through 2)

1. Approval of the minutes of the Regular and Special Meetings of the Board of Directors of San Diego Community Power held on February 25, 2021

Approved.

2. Treasurer's Report – Presentation of Financial Results for 2020/21 Period ended 1/31/21

Received and filed.

<u>ACTION</u>: Motioned by Director Baber (La Mesa) and seconded by Director Dedina (Imperial Beach) to approve Consent Calendar Items 1 through 2. The motion carried by the following vote:

Vote: 5-0

Yes: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Director Baber

(La Mesa), Director Dedina (Imperial Beach), and Alternate Director LaCava

(San Diego)

No: None Abstained: None Absent: None

REGULAR AGENDA

3. Operations and Administration Report from the Interim Chief Executive Officer

Interim CEO Carnahan provided an update on staff discussions with San Diego Gas and Electric (SDG&E), Net Energy Metering, the search for SDCP office space, the status of the various vendor requests for proposals ("RFP") and other solicitations, the implementation of the organization plan, the hiring and recruitment efforts, and.

COO Hooven provided an update on the billing system and the hiring and recruitment efforts and announced the following new hires:

- Lucas Utouh, Director of Data Analytics and Account Services
- Lee Friedman, Account Services Manager
- Nelson Lomeli, Program Manager

Power Services Director Vosburg provided an update on the purchase efforts for renewable energy, complying with the Resource Adequacy requirements, and the purchase of SDCP's market energy needs in accordance with its Energy Risk Management Policy.

Board questions and comments ensued.

Director of Regulatory and Legislative Affairs Fernandez and Ty Tosdal, Tosdal APC, provided a PowerPoint presentation on emergency reliability, SDG&E's elimination of seasonal rates, SDG&E's General Rate Case Phase II, Net Energy Metering 3.0, Disadvantaged Communities Green Tariff, Utility Cost and Affordability Report, and other energy regulatory affairs as they relate to the interests of SDCP.

Following Board questions and comments, no action was taken.

4. Committee Reports

Community Advisory Committee ("CAC") Vice Chair Hammond provided an update on the proceedings of the CAC.

Following Board questions and comments, no action was taken.

5. Market Update and Direction to Staff Regarding 2021 Rates

CEO Carnahan provided a PowerPoint presentation on the timeline for the approval of rates, the 2020-2021 market conditions, the pro forma financial model, and the rate-setting options.

Board questions and comments ensued.

ACTION: Motioned by Chair Mosca (Encinitas) and seconded by Alternate Director LaCava (San Diego) to: (1) receive the market update and direct staff to present revised 2021 rates to the SDCP Board of Directors for adoption on April 22, 2021 to be effective with SDCP's Phase 2 enrollment on June 1, 2021; and (2) direct staff to target generation rates that result in at least a 1% discount to corresponding service from SDG&E and a planned reserve margin contribution of at least 5%. The motion carried by the following vote:

Vote: 5-0

Yes:

Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Director Baber

(La Mesa), Director Dedina (Imperial Beach), and Alternate Director LaCava

(San Diego)

No: None Abstained: None Absent: None

6. Approval of Support for Senate Bill 612

Director of Regulatory and Legislative Affairs Fernandez provided an overview of Senate Bill 612 and the purpose for supporting Senate Bill 612.

Board questions and comments ensued.

<u>ACTION</u>: Motioned by Vice Chair Padilla (Chula Vista) and seconded by Director Dedina (Imperial Beach) to adopt a support position for Senate Bill 612 (Portatino): the Ratepayer Equity Act. The motion carried by the following vote:

Vote: 5-0

Yes: Chair Mosca (Encinitas), Vice Chair Padilla (Chula Vista), Director Baber

(La Mesa), Director Dedina (Imperial Beach), and Alternate Director LaCava

(San Diego)

No: None Abstained: None Absent: None

DIRECTOR COMMENTS

There were no comments.

REPORTS BY MANAGEMENT AND GENERAL COUNSEL

There were no reports.

ADJOURNMENT

Chair Mosca (Encinitas) adjourned the meeting at 6:38 p.m.

Megan Wiegelman, CMC Interim Board Clerk

Prepared by:

Kimberly Isley, Executive Assistant



SAN DIEGO COMMUNITY POWER Staff Report – Item 16

To: San Diego Community Power Board of Directors

From: Byron Vosburg, Director of Power Services

Via: Bill Carnahan, Interim Chief Executive Officer

Subject: Renewable Power Purchase Agreement with JVR Energy Park, LLC.

Date: May 27, 2021

RECOMMENDATION

Approve the Long-term Renewable Power Purchase Agreement with JVR Energy Park, LLC and authorize the Interim CEO to execute the agreement.

BACKGROUND

As SDCP strives to meet its environmental, financial, and regulatory compliance goals and requirements, long-term power purchase agreements (PPAs) of at least 10 years in duration will become integral components of its energy supply portfolio. Long-term PPAs provide renewable generation facility developers with the certain revenue stream against which they can finance up-front capital requirements, so each long-term PPA that SDCP signs with a developing facility will underpin a new, incremental renewable energy project. In addition, long-term PPAs lock in renewable energy supply around which SDCP can build its power supply portfolio while also providing power supply cost certainty around which SDCP can develop its pro forma financial model.

In response to last year's Long-term Renewable Energy Request for Offers (RFO), SDCP staff received offers from thirty-two suppliers or developers to purchase renewable energy from eighty-four unique project configurations. Staff reviewed these responses with the Ad Hoc Contracts Committee on August 4, 2020 and narrowed them down on August 18, 2020 to a "short-list" of potential projects with which to enter PPA negotiations. Staff reviewed three of these PPAs with the Finance and Risk Management Committee on April 15, 2021. The Vikings Energy Farm PPA was approved by the SDCP Board and executed last month; this month, we present for your review the remaining two PPAs with IP Oberon and JVR Energy Park. Together, these three PPAs represent a combined 340 MW of solar and 220 MW of storage capacity to be developed in Southern California. Generation from these three projects is expected to total 990,000 MWh per year, which is enough to serve approximately 200,000 SDCP customer households.

ANALYSIS AND DISCUSSION

Staff negotiated the attached PPA for the purchase of renewable energy from JVR Energy Park, which is a solar project to be developed near Jacumba Hot Springs, CA in San Diego County by BayWa r.e. ("BayWa").

The project has a guaranteed capacity of 90 MW of solar production and 70 MW of battery storage capacity. As previously reviewed with the Ad Hoc Contracts Committee, the contract offers competitive energy and capacity prices. The capacity from this project is especially valuable given the project's proximity to SDCP communities and eligibility for San Diego-Imperial Valley (SD-IV) Local Resource Adequacy ("RA").

Renewable energy produced by the facility will be an important ~260 GWh/year foundational block of long-term renewable energy deliveries within SDCP's power supply portfolio (~6,000 GWh/year once fully enrolled).

Below is additional information regarding BayWa and the draft PPA.

Background – BayWa r.e. ("Baywa")

- Jointly owned by BayWa AG (51%) and Energy Infrastructure Partners (49%).
 - BayWa AG founded in Munich, Germany in 1923
- Located in 30 countries; 4 GW installed worldwide; 10 GW under management;
 1.5 GW operating/constructing in North America.
- US headquarters in Irvine, CA
- Previously completed 28 MW Jacumba Solar facility in 2017

Contract Overview – JVR Energy Park, LLC

- Project:
 - o 90 MW Solar
 - 70 MW/280 MWh Battery Energy Storage System (BESS)
- Project location: Jacumba Hot Springs, San Diego County, CA
- Guaranteed commercial operation date: March 31, 2023
- Contract term: 20 years
- Expected annual energy production: approximately 260,000 MWh (equivalent power for approximately 52,000 homes)
- Guaranteed energy production: 85% of projected annual deliveries
- Energy price:
 - Solar Fixed energy price applicable to the full term of the agreement
 - Battery Energy Storage System Fixed capacity price adjusted for efficiency, availability and verified capacity
- No credit or collateral obligations for SDCP
- SDCP would receive financial compensation in the event of seller's failure to successfully achieve certain development milestones

COMMITTEE REVIEW

This item was recommended for Board approval by the Finance and Risk Management Committee on April 15, 2021.

FISCAL IMPACT

The competitive energy and capacity pricing of the PPA are confidential, but the long-term purchase of renewable energy and capacity will provide SDCP with significant value and cost certainty over the term of this PPA

ATTACHMENTS

Attachment A: Renewable Power Purchase Agreement with JVR Energy Park, LLC

RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: JVR Energy Park, LLC, a California limited liability company

Buyer: San Diego Community Power, a California joint powers authority

<u>Description of Facility</u>: A 90 MW $_{AC}$ solar photovoltaic Generation Facility combined with a 70 MW $_{AC}$ / 280 MW $_{AC}$ DC-coupled battery energy storage facility, limited to 90 MW $_{AC}$ deliveries at the Delivery Point, as further described herein.

Milestones:

Milestone	Expected Date for Completion
Evidence of Site Control	Complete
Executed Interconnection Agreement	Complete
CEC Pre-Certification Obtained	Complete
Major Use Permit	
Network Upgrades Completed	
Expected Construction Start Date	
Full Capacity Deliverability Status Obtained	
Initial Synchronization	
Expected Commercial Operation Date	
Guaranteed Commercial Operation Date	

<u>Delivery Term</u>: The period for Product delivery will be for Twenty (20) Contract Years.

Expected Energy:

Contract Year	Expected Energy (MWh _{AC})
1	
2	
3	
4	

5	
6	
7	
8	
9	
10	
11	
12	
13	
14	
15	
16	
17	
18	
19	
20	

Guaranteed PV Capacity: 90 MW_{AC}

Storage Contract Capacity: 70 MW_{AC}

Storage Contract Output: 280 MWh_{AC}

Minimum Storage Facility Discharging Loss Factor:

Guaranteed Storage Availability:

Maximum storage facility Cycles per year:

Maximum storage facility Cycles per day:

Capacity Attributes: Local RA within the SD-IV Area

<u>Delivery Point</u>: Facility PNode, as further described in Exhibit A

Contract Price

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	\$ MWh _{AC} (flat) with no escalation

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	\$\textstyle \kappa \kap

Product:

	PV Energy Wind Energy Discharging Energy* Green Attributes (Portfolio Content Category 1) Storage Capacity* Capacity Attributes (select options below as applicable) Energy Only Status Full Capacity Deliverability Status (completed)
\bowtie	Ancillary Services, if applicable
Schedul than Sel	ing Coordinator : A party to be designated by Buyer, for the avoidance of doubt, other ler
	ment Security : The sum of W_{AC} of Guaranteed PV Capacity and W_{AC} ge Contract Capacity
	nance Security : The sum of W_{AC} of Guaranteed PV Capacity and W_{AC} ge Contract Capacity.

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Exhibits:

Exhibit A Facility Description

Exhibit B Major Project Development Milestones and Commercial Operation

Exhibit C Compensation

Exhibit D Scheduling Coordinator Responsibilities

Exhibit E Progress Reporting Form

Exhibit F-1 Form of Average Expected Energy Report

Exhibit F-2 Form of Monthly Available Generating Capacity Report
Exhibit G
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 Storage Facility Availability

Exhibit Q Operating Restrictions

Exhibit R Metering Diagram

RENEWABLE POWER PURCHASE AGREEMENT

This Renewable Power Purchase Agreement ("<u>Agreement</u>") is entered into as of ______, 2021 (the "<u>Effective Date</u>"), between San Diego Community Power, a California joint powers authority ("<u>Buyer</u>") and JVR Energy Park, LLC, a California limited liability company ("<u>Seller</u>"). Buyer and Seller are sometimes referred to herein individually as a "<u>Party</u>" and jointly as the "<u>Parties</u>." 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 or otherwise control, and operate the Facility; and

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

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

ARTICLE 1 DEFINITIONS

- 1.1 <u>Contract Definitions</u>. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:
 - "AC" means alternating current.
 - "Accepted Compliance Costs" has the meaning set forth in Section 3.11(d).
- "<u>Adjusted Charging Energy</u>" means, for the applicable period, multiplying (i) the total Charging Energy by (ii) the Storage Facility Charging Loss Factor and then dividing the result by the (iii) the Storage Facility Discharging Loss Factor. For avoidance of doubt, this is intended to represent the energy at the Facility meter equivalent to the energy charged by the Storage Facility from the Generating Facility, as if it had been delivered directly to the Facility Meter.
- "<u>Adjusted Discharging Energy</u>" means, for the applicable period, the result of multiplying (i) the total Discharging Energy for such period by (ii) the Storage Facility Discharging Loss Factor. For avoidance of doubt, this is intended to represent the energy discharged from the Storage Facility at the Facility meter.
 - "Adjusted Energy Production" has the meaning set forth in Exhibit G.
- "Adjusted Facility Energy" means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) Adjusted Charging Energy, minus (c) Adjusted Discharging Energy for such period. For illustrative purposes, Adjusted Facility Energy = (a) + (b) (c).

- "Affiliate" means, with respect to any Person, each Person that directly or indirectly controls, is controlled by, or is under common control with such designated Person. For purposes of this definition and the definition of "Permitted Transferee", "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, shall mean (a) the direct or indirect right to cast at least fifty percent (50%) of the votes exercisable at an annual general meeting (or its equivalent) of such Person or, if there are no such rights, ownership of at least fifty percent (50%) of the equity or other ownership interest in such Person, or (b) the right to direct the policies or operations of such Person.
- "Agreement" has the meaning set forth in the Preamble and includes any Exhibits, schedules and any written supplements and amendments hereto, the Cover Sheet, and any designated collateral, credit support or similar arrangement between the Parties.
 - "<u>Alternative Dispatches</u>" has the meaning set forth in Section 4.5(f).
- "Ancillary Services" means those Ancillary Services, as defined in the CAISO Tariff, that can be produced from the Storage Facility at any relevant time consistent with the terms and conditions of this Agreement, the Operating Restrictions and Prudent Operating Practice. For clarity, "Ancillary Services" as used herein does not include, at any relevant time, any ancillary services that the Facility is not actually physically capable of providing consistent with the terms and conditions of this Agreement, the Operating Restrictions, the Interconnection Agreement, the Facility's CAISO Certification, and Prudent Operating Practice.
 - "Annual Storage Availability" has the meaning set forth in Exhibit P.
- "<u>Approved Forecast Vendor</u>" means (a) any of Clean Power Research SolarAnywhere, SolarGIS, CAISO, AWS Truepower/UL, DNV GL, or Tenaska Power Services Co., or (b) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3(d).
- "<u>Automated Dispatch System</u>" or "<u>ADS</u>" has the meaning set forth in the CAISO Tariff.
 - "Automated Dispatches" has the meaning set forth in Section 4.5(f).
- "Availability Adjusted Storage Contract Capacity" has the meaning set forth in Exhibit P.
- "<u>Available Generating Capacity</u>" means the capacity of the Generating Facility, expressed in whole MWs_{AC} deliverable at the Delivery Point, that is mechanically available to generate Energy assuming no Charging Energy or Discharging Energy during such period.
 - "Available Storage Energy Capacity" has the meaning set forth in Exhibit P(a).
 - "Available Storage Power Capacity" has the meaning set forth in Exhibit P(a).

"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.

<u>"Battery Augmentation"</u> means any change to the Storage Facility equipment related to increasing or replenishing its ability to store Energy.

"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 San Diego Community Power, a California joint powers authority.

"Buyer Bid Curtailment" means occurrence of both of the following:

- (a) the CAISO provides notice to a Party or the Scheduling Coordinator for the Generating Facility, requiring the Party to curtail any Facility Energy which would have been produced from the Facility for a period of time based on the full amount of Facility Energy forecasted for the Facility for such period in accordance with the most recent forecast available under Section 4.3 for the period specified in the CAISO notice and such curtailment notice results from actions of the Buyer or the SC; and
- (b) the Facility either (i) did not submit a Self-Schedule for the MWhs subject to the reduction; or (ii) did submit a Self-Schedule in the Day-Ahead Market for the MWhs subject to the reduction, but thereafter submitted an Energy Supply Bid (as defined in the CAISO Tariff) in the Real-Time Market for such MWhs subject to the reduction.

Notwithstanding the occurrence of a curtailment as described in pargraph (a) and (b) above, if the Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event or a Curtailment Period for all or any portion of the period covered in the curtailment notice from the CAISO described in paragraph (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not generated or Charging Energy not stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"Buyer Curtailment Order" means the instruction from Buyer to Seller to reduce Facility Energy from the Facility by the amount, and for the period of time set forth in such instruction, for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or Curtailment Order.

"Buyer Curtailment Period" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy from the Facility pursuant to or

as a result of (a) a Buyer Bid Curtailment, (b) a Buyer Curtailment Order, or (c) a Buyer Default which directly causes Seller to be unable to deliver Facility Energy to the Delivery Point; provided, that the duration of any Buyer Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

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

"Buyer's WREGIS Account" has the meaning set forth in Section 4.10(a).

"<u>CAISO</u>" means the California Independent System Operator Corporation or any successor entity performing similar functions.

"CAISO Approved Meter" means a CAISO approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

"<u>CAISO Certification</u>" means the certification and testing requirements for a storage unit set forth in the CAISO Tariff that are applicable to the Facility, including certification and testing for all Ancillary Services that are applicable to the Facility.

"CAISO Dispatch" means any Charging Notice or Discharging Notice given by the CAISO to the Facility, whether through ADS, AGC, Alternative Dispatches or any successor communication protocol, communicating an Ancillary Service Award (as defined in the CAISO Tariff) or directing the Storage Facility to charge or discharge at a specific MW_{AC} rate for a specified period of time or amount of MWh_{AC}.

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

"<u>CAISO Operating Order</u>" means the "operating order" defined in Section 37.2.1.1 of the CAISO Tariff.

"<u>CAISO Tariff</u>" 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.

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

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

"Capacity Availability Factor" has the meaning set forth in Exhibit C.

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

"<u>Capacity Test</u>" or "CT" means the Commercial Operation Storage Capacity Test, Storage Capacity Test, or any other test conducted pursuant to Exhibit O.

"<u>CEC</u>" means the California Energy Commission, or any successor agency performing similar statutory functions.

"CEC Certification and Verification" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified, as such date may be extended pursuant to Section 3.9) that the Facility or Generating Facility (as applicable) is an Eligible Renewable Energy Resource for purposes of the California Renewables Portfolio Standard and that all Facility Energy or PV Energy (as applicable) delivered to the Delivery Point qualifies as generation from an Eligible Renewable Energy Resource.

"CEC Precertification" means that the CEC has issued a precertification for the Facility or the Generating Facility (as applicable) indicating that the planned operations of the Facility or the Generating Facility (as applicable) would comply with applicable CEC requirements for CEC Certification and Verification.

"CEQA" means the California Environmental Quality Act.

"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.

"<u>Charging Energy</u>" means all Energy produced by the Generating Facility that is delivered to the Storage Facility pursuant to a Charging Notice. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility. For avoidance of doubt, Charging Energy shall be measured at the Storage Facility Meter.

"Charging Notice" means the operating instruction, and any subsequent updates, given by Buyer's SC or the CAISO to the Facility, directing the Storage Facility to charge Charging Energy at a specific MW_{DC} rate for a specified period of time or to an amount of MWh_{DC}, provided (a) any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed to be charging, the actual power output level of the Generating Facility is less than the power level set forth in an applicable "Charging Notice", such "Charging Notice" shall be deemed to be automatically adjusted to be equal to the actual power level of the Generating Facility (as adjusted to reflect Electrical Losses). For the avoidance of doubt, (i) any Buyer request to initiate a Storage Capacity Test consistent with Section 4.9 shall not be considered a Charging Notice, and (ii) any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

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

"Clipped PV Energy" means the amount of energy as would be measured at the Storage Facility Meter produced at the Generating Facility in excess of what can be delivered as $90MW_{AC}$ at the Delivery Point.

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

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

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

"Commercial Operation Delay Damages" means an amount equal to (a) the Development Security amount required hereunder, *divided by* (b) one hundred and twenty (120).

"Commercial Operation Storage Capacity Test" means the Storage Capacity Test conducted in connection with Commercial Operation of the Storage Facility, including any additional Storage Capacity Test for additional Storage Facility capacity installed after the Commercial Operation Date pursuant to Section 5 of 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 Start" has the meaning set forth in Exhibit B.

- "Construction Start Date" has the meaning set forth in Exhibit B.
- "Contract Price" has the meaning set forth on the Cover Sheet. For the avoidance of doubt, the Contract Price is each of the Renewable Rate and the Storage Rate.
 - "Contract Term" has the meaning set forth in Section 2.1.
- "Contract Year" means a period of twelve (12) consecutive months. The first Contract Year shall commence on the Commercial Operation Date and each subsequent Contract Year shall commence on the anniversary of the Commercial Operation Date.
- "Costs" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.
- "Cover Sheet" means the cover sheet to this Agreement, which is incorporated into this Agreement.
- "COVID-19" means the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof, and the efforts of a Governmental Authority to combat such disease.
- "<u>CPUC</u>" 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 or Moody's. If ratings by S&P and Moody's are not equivalent, the lower rating shall apply.

"Curtailment Order" means any of the following:

(a) CAISO orders, directs, alerts, or provides notice to a Party, including a CAISO Operating Order, that such Party is required to curtail deliveries of Facility 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; provided, however, that if the CAISO directs the Generating Facility to curtail production as a sole result of Buyer or the SC submitting a Self-Schedule that results in an Energy oversupply or potential Energy oversupply and Buyer or the SC are unable to resolve the issue with the CAISO, then such curtailment will be treated as Buyer Bid Curtailment.

- (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 facilities that prevents (i) Buyer from receiving or (ii) Seller from delivering Facility Energy to the Delivery Point; or
- (d) a curtailment in accordance with Seller's obligations or limitations under its Interconnection Agreement with the CAISO, Participating Transmission Owner or distribution operator, including curtailments arising from Seller not possessing Full Capacity Deliverability Status as to one-hundred percent (100%) of the Installed Capacity, or other limitations on transfer capability under the Interconnection Agreement; or
- (e) a curtailment resulting from the operation of any Storage Facility capacity in excess of the Storage Contract Capacity installed pursuant to Section 4.5(f).

provided, however, that a Curtailment Order will not include any curtailment that is a Buyer Bid Curtailment.

"<u>Curtailment Period</u>" means the period of time, as measured using current Settlement Intervals, during which Facility Energy from the Facility is reduced pursuant to a Curtailment Order; <u>provided</u> that the Curtailment Period shall be inclusive of the time required for the Generating Facility to ramp down and ramp up.

"Cycles" means, at any point in time during any Contract Year, the number of full equivalent charge/discharge cycles of the Storage Facility, calculated as: (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh_{AC}) *divided by* (b) the weighted average Storage Contract Capacity for such Contract Year to date *multiplied by* four (4).

"<u>Daily Delay Damages</u>" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) one hundred twenty (120).

"<u>Damage Payment</u>" means a dollar amount not to exceed the amount of the Development Security, as measured in the aggregate pursuant to Section 11.7.

"<u>Day-Ahead Forecast</u>" has the meaning set forth in Section 4.3(c).

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

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

"Deemed Delivered Energy" means the amount of Energy expressed in MWh_{AC} that the Generating Facility would have produced and delivered to the Storage Facility or the Delivery Point, but that is not produced by the Generating Facility during a Buyer Curtailment Period, which amount shall be equal to the Real-Time Forecast (of the hourly expected PV Energy produced by the Generating Facility) provided pursuant to Section 4.3(d) for the period of time during the Buyer Curtailment Period (or other relevant period), less the amount of (i) PV Energy delivered to the Delivery Point directly from the Generating Facility and (ii) Adjusted Charging Energy, during the Buyer Curtailment Period (or other relevant period); provided that, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0). If the LMP for the Facility's PNode during any Settlement Interval was less than zero, Deemed Delivered Energy shall be reduced in such Settlement Interval by the amount of any Charging Energy that was not able to be delivered to the Storage Facility during such Settlement Interval due to the unavailability of the Storage Facility due to a Forced Facility Outage.

"<u>Defaulting Party</u>" has the meaning set forth in Section 11.1(a).

"<u>Deficient Month</u>" has the meaning set forth in Section 4.10(e).

"Delivery Point" means the Facility PNode.

"<u>Delivery Term</u>" shall mean the period of Contract Years set forth on the Cover Sheet beginning on the Commercial Operation Date, unless terminated earlier in accordance with the terms and conditions of this Agreement.

"<u>Development Cure Period</u>" has the meaning set forth in <u>Exhibit B</u>.

"<u>Development Security</u>" means (i) cash; or (ii) a Letter of Credit in the amount set forth on the Cover Sheet; or (iii) in the sole discretion of Buyer, a Guaranty.

"<u>Discharging Energy</u>" means all Energy delivered to the Delivery Point from the Storage Facility, net of the Electrical Losses and Station Use, as measured at the Storage Facility Metering Point by the Storage Facility Meter. For the avoidance of doubt, all Discharging Energy will have originally been delivered to the Storage Facility as Charging Energy.

"Discharging Notice" means the operating instruction, and any subsequent updates, given by Buyer or Buyer's SC or CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW_{AC} rate for a specified period of time or amount of MWh_{AC}, provided that any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) subject to Section 7.1(b), if, during a period when the Storage Facility is so instructed to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, such "Discharging Notice" shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the sum of Discharging Energy and PV Energy does not exceed the Interconnection Capacity Limit, until such time as Buyer's SC or CAISO issues a further modified Discharging Notice. For the avoidance of doubt, any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

- "Early Termination Date" has the meaning set forth in Section 11.2(a).
- "Effective Date" has the meaning set forth on the Preamble.
- "<u>Effective FCDS Date</u>" means the date identified in Seller's Notice to Buyer (along with a Full Capacity Deliverability Status Finding from CAISO) as the date that the Facility has attained Full Capacity Deliverability Status.
- "Electrical Losses" means subject to meeting any applicable CAISO requirements and in accordance with Section 7.1, all transmission or transformation losses (a) within the Generating Facility before the Delivery Point associated with delivery of PV Energy, (b) between the Storage Facility Metering Point and the Delivery Point associated with delivery of Discharging Energy, and (c) from within the Generating Facility to the Storage Facility Metering Point associated with delivery of Charging Energy. If any amounts included within the definitions of "Electrical Losses" and "Station Use" hereunder are duplicative, then for all relevant calculations hereunder it is intended that such amounts not be double counted or otherwise duplicated.
- "Eligible Renewable Energy Resource" has the meaning set forth in California Public Utilities Code Section 399.12(e) and California Public Resources Code Section 25741(a), as either code provision is amended or supplemented from time to time.
- "Energy" means the amount of electricity either used or generated, charged, or discharged over a period of time, expressed in terms of kilowatt-hours ("kWh") or megawatt-hours ("MWh"), as context dictates.
- "Energy Management System" or "EMS" means the Storage Facility's energy management system.
 - "Energy Supply Bid" has the meaning set forth in the CAISO Tariff.
 - "Event of Default" has the meaning set forth in Section 11.1.
 - "Excess MWh" has the meaning set forth in Exhibit C.
 - "Excused Event" has the meaning set forth in Exhibit P.
- "<u>Executed Interconnection Agreement Milestone</u>" means the date for completion of execution of the Interconnection Agreement by Seller and the PTO as set forth on the Cover Sheet.
- "Expected Commercial Operation Date" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Commercial Operation.
- "Expected Construction Start Date" is the date set forth on the Cover Sheet by which Seller reasonably expects to achieve Construction Start.
- "Expected Energy" means the quantity of PV Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year or other time period

(assuming no Charging Energy or Discharging Energy during such Contract Year or time period) in the quantity specified on the Cover Sheet, which amount shall be adjusted proportionately to the reduction from Guaranteed PV Capacity to Installed PV Capacity pursuant to Section 5(a) of Exhibit B, if applicable.

"Facility" means the combined Generating Facility and the Storage Facility.

"<u>Facility Energy</u>" means PV Energy and/or Discharging Energy, as applicable, at the Delivery Point, during any Settlement Interval or Settlement Period, net of Electrical Losses and Station Use, as measured by the Facility Meter, will be adjusted in accordance with CAISO meter requirements and Prudent Operating Practices to account for Electrical Losses and Station Use.

"Facility Meter" means the CAISO Approved Meter that will measure all Facility Energy.

"<u>FERC</u>" means the Federal Energy Regulatory Commission or any successor government agency.

"Force Majeure Event" has the meaning set forth in Section 10.1.

"<u>Forced Facility Outage</u>" means an unexpected failure of one or more components of the Facility that prevents Seller from generating Energy or making Facility Energy available at the Delivery Point and that is not the result of a Force Majeure Event.

"Forecasting Penalty" means for each hour in which Seller does not provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure and Buyer's scheduling activities in such hour with respect to Facility Energy, the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which, for the avoidance of doubt, assumes no Charging Energy or Discharging Energy in such hour) set forth in the Monthly Forecast and (ii) the actual PV Energy produced by the Generating Facility (absent any Charging Energy and Discharging Energy), *multiplied by* (B) the absolute value of the Real-Time Price in such hour.

"Forward Certificate Transfers" has the meaning set forth in Section 4.10(a).

"Full Capacity Deliverability Status" has the meaning set forth in the CAISO Tariff.

"<u>Full Capacity Deliverability Status Finding</u>" means a written confirmation from the CAISO that the Facility is eligible for Full Capacity Deliverability Status.

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

Facility. Future Environmental Attributes do not include any Energy, Ancillary Services, reliability, or Capacity Attributes, or Tax Credits, associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

"Gains" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes, Renewable Energy Incentives, any Future Environmental Attributes (to the extent such are in existence at the time "Gains" are applicable under this Agreement), and Capacity Attributes. A Party shall use commercially reasonable efforts to obtain third-party information in order to determine Gains and shall use information available to it internally for such purpose only if it is unable, after using commercially reasonable efforts, to obtain relevant third-party information.

"Generating Facility" means the solar photovoltaic generating facility described on the Cover Sheet and in Exhibit A, located at the Site and including mechanical equipment and associated facilities and equipment required to deliver (i) PV Energy to the Delivery Point, and (ii) Charging Energy to the Storage Facility; provided, that the "Generating Facility" does not include the Storage Facility or the Shared Facilities.

"Governmental Authority" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law, including CAISO and CPUC; provided, however, that "Governmental Authority" shall not in any event include any Party.

"Green Attributes" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Facility and its displacement of conventional energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere; (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) Tax Credits, or (iii) emission reduction credits encumbered

or used by the Facility for compliance with local, state, or federal operating and/or air quality permits. Green Attributes under the preceding definition are limited to Green Attributes that exist under applicable Law as of the Effective Date.

"Green Tag Reporting Rights" means the right of a purchaser of renewable energy to report ownership of accumulated "Green Tags" in compliance with and to the extent permitted by applicable Law and include, without limitation, rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program or emissions trading program, including pursuant to the WREGIS Operating Rules.

"Green Tags" means a unit accumulated on a MWh_{AC} basis where one (1) represents the Green Attributes associated with one (1) MWh_{AC} of Facility Energy.

"Guaranteed Commercial Operation Date" means the Expected Commercial Operation Date, as such date may be extended by the Development Cure Period.

"Guaranteed Construction Start Date" means the Expected Construction Start Date, as such date may be extended by the Development Cure Period.

"<u>Guaranteed Energy Production</u>" means an amount of Adjusted Facility Energy, as measured in MWh_{AC}, equal to the Guaranteed Energy Production Percentage *multiplied by* the total Expected Energy (as set forth on the Cover Sheet) for the applicable Performance Measurement Period.

"Guaranteed Energy Production Percentage" means

"Guaranteed PV Capacity" means the amount of generating capacity of the Generating Facility, as measured in MW_{AC} at the Delivery Point, set forth on the Cover Sheet, as the same may be adjusted pursuant to Section 5(a) of Exhibit B.

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

"Guarantor" means, with respect to Seller, (a) a Person that is reasonably acceptable to Buyer, or (b) any Person that (i) Buyer does not already have any material credit exposure to under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (ii) has an Investment Grade Credit Rating, (iii) has a tangible net worth of at least One Hundred Fifty Million Dollars (\$150,000,000), (iv) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (v) executes and delivers a Guaranty for the benefit of Buyer.

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

"Imbalance Energy" means the amount of Energy in MWh, in any given Settlement Period or Settlement Interval, by which the amount of Facility Energy deviates from the applicable amount of Scheduled Energy.

- "Indemnifiable Loss(es)" has the meaning set forth in Section 16.1.
- "Indemnified Group" has the meaning set forth in Section 16.1.
- "<u>Initial Synchronization</u>" means the initial delivery of Facility Energy to the Delivery Point.
 - "Installed Capacity" has the meaning set forth in Exhibit I.
- "<u>Installed PV Capacity</u>" means the actual PV generating capacity of the Generating Facility, as measured in MW_{AC} at the Delivery Point, that achieves Commercial Operation, as demonstrated by a performance test, adjusted for ambient conditions on the date of the performance test, and evidenced by a certificate substantially in the form attached as <u>Exhibit I</u> hereto.
- "Installed Storage Capacity" means the maximum dependable operating capability of the Storage Facility to discharge electric energy, as measured in MW_{AC} at the Delivery Point, that achieves Commercial Operation, adjusted for ambient conditions on the date of the performance test, and as evidenced by a certificate substantially in the form attached as Exhibit I hereto. It is acknowledged that Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Storage Contract Capacity; provided, Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW_{AC}) in excess of the Storage Contract Capacity; (ii) charge the Storage Facility to a level (in MWh_{AC}) in excess of the Storage Contract Capacity times four (4) hours; or iii) otherwise violate the Operating Restrictions.
- "Interconnection Agreement" means the interconnection agreement entered into by Seller pursuant to which the Facility will be interconnected with the Transmission System, and pursuant to which Seller's Interconnection Facilities and any other Interconnection Facilities will be constructed, operated and maintained during the Contract Term.
- "Interconnection Capacity Limit" means the maximum instantaneous amount of power that is permitted to be delivered to the Delivery Point under Seller's Interconnection Agreement, in the amount of $90~MW_{AC}$.
- "<u>Interconnection Facilities</u>" 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.

[&]quot;Interest Rate" has the meaning set forth in Section 8.2.

[&]quot;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.
- "<u>ITC</u>" means the investment tax credit established pursuant to Section 48 of the United States Internal Revenue Code of 1986.
- "<u>Joint Powers Act</u>" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).
- "<u>Joint Powers Agreement</u>" means that certain Joint Powers Agreement dated October 30, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.
- "<u>kWh</u>" means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.
- "<u>Law</u>" 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, 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 directly or indirectly 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 and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.
- "<u>Letter(s) of Credit</u>" means one or more irrevocable, standby letters of credit issued by a U.S. commercial bank or a foreign bank with a U.S. branch with such bank (a) having a Credit Rating of at least A- with an outlook designation of "stable" from S&P or A3 with an outlook designation of "stable" from Moody's or (b) being reasonably acceptable to Buyer, in a form substantially similar to the letter of credit set forth in <u>Exhibit K</u>.
- "<u>Licensed Professional Engineer</u>" means an independent, professional engineer selected by Seller and reasonably acceptable to Buyer, licensed in the State of California.
 - "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 Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., SP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"Lost Output" has the meaning set forth in Section 4.7.

"Major Project Development Milestone" has the meaning set forth in in Exhibit B.

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

"Maximum Available Clipped PV Energy" means, for the day in question,

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

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

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

"<u>Monthly Capacity Payment</u>" means the payment required to be made by Buyer to Seller each month of the Delivery Term as compensation for the Storage Contract Capacity and Capacity Attributes associated with the Storage Facility, as calculated in accordance with Exhibit C.

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

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

"<u>MW</u>" means megawatts in alternating current, unless expressly stated in terms of direct current.

- "<u>MWh</u>" means megawatt-hour measured in alternating current, unless expressly stated in terms of direct current.
- "Negative LMP" means, in any Settlement Interval, the Real-Time Market LMP at the Facility's PNode is less than Zero dollars (\$0).
 - "Negative LMP Costs" has the meaning set forth in Exhibit C.
- "<u>NERC</u>" 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.
 - "Non-Defaulting Party" has the meaning set forth in Section 11.2.
- "Notice" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, or electronic messaging (e-mail).
 - "Notice of Claim" has the meaning set forth in Section 16.2.
- "<u>On-Peak Hour</u>" 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.
- "<u>Operating Restrictions</u>" means those rules, requirements, and procedures set forth on Exhibit Q and any other restriction pursuant to Prudent Operating Practice.
- "<u>Participating Transmission Owner</u>" or "<u>PTO</u>" 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 <u>Exhibit A</u>.
 - "Party" or "Parties" has the meaning set forth in the Preamble.
- "Performance Measurement Period" means each two (2) consecutive Contract Years commencing with the first Contract Year so that the first Performance Measurement Period shall include Contract Years 1 and 2. For the avoidance of doubt, Performance Measurement Periods shall overlap, so that if the first Performance Measurement Period is comprised of Contract Years 1 and 2, the second Performance Measurement Period shall be comprised of Contract Years 2 and 3, the third Performance Measurement Period shall be comprised of Contract Years 3 and 4, and so on; provided, however, that a new Performance Measurement Period shall begin following any Performance Measurement Period for which Seller pays any liquidated damages or provides any Replacement Product under Section 4.7. Thus, for example, if Seller pays any liquidated damages

or provides any Replacement Product under Section 4.7 for the Performance Measurement Period that is comprised of Contract Years 4 and 5, the next Performance Measurement Period shall be comprised of Contract Years 6 and 7.

"<u>Performance Security</u>" means (i) cash or (ii) a Letter of Credit or (iii) a Guaranty (if permitted by Buyer, in its sole discretion) in the amount set forth on the Cover Sheet.

"<u>Permitted Transferee</u>" means (i) any Affiliate of Seller or (ii) any entity that satisfies, or is controlled by another Person that satisfies, the following requirements:

- (a) either (i) has a tangible net worth of not less than one hundred million dollars (\$100,000,000) or an Investment Grade Credit Rating, or (ii) provides a replacement of the Development Security or Performance Security, as applicable; and
- (b) At least two (2) years of experience in the ownership and operations of power generation facilities and energy storage facilities similar to the Facility, or has retained a third-party with such experience to operate the Facility.

"<u>Person</u>" means any individual, sole proprietorship, corporation, limited liability company, limited or general partnership, joint venture, association, joint-stock company, trust, incorporated organization, institution, public benefit corporation, unincorporated organization, government entity or other entity.

"Planned Outage" means a period during which the Facility is either in whole or in part not capable of providing service due to planned maintenance that has been scheduled in accordance with Section 4.6(a).

"PNode" has the meaning set forth in the CAISO Tariff.

"<u>Portfolio</u>" means the single portfolio of electrical energy generating, energy storage, or other assets and entities, including the Facility (or the interests of Seller or Seller's Affiliates or the interests of their respective direct or indirect parent companies), that is pledged as collateral security in connection with a Portfolio Financing.

"Portfolio Content Category" means PCC1, PCC2 or PCC3, as applicable.

"<u>Portfolio Content Category 1</u>" or "<u>PCC1</u>" means any Renewable Energy Credit associated with the generation of electricity from an Eligible Renewable Energy Resource consisting of the portfolio content set forth in California Public Utilities Code Section 399.16(b)(1), as may be amended from time to time or as further defined or supplemented by Law.

"Portfolio Financing" means any debt incurred by an Affiliate of Seller that is secured only by a Portfolio.

"<u>Portfolio Financing Entity</u>" means any Affiliate of Seller that incurs debt in connection with any Portfolio Financing.

"Product" has the meaning set forth on the Cover Sheet.

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

"Prudent Operating Practice" means (a) the applicable practices, methods and acts required by or consistent with applicable Laws and reliability criteria, and otherwise engaged in or approved by a significant portion of the electric utility and independent power producer industry during the relevant time period with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States, or (b) any of the practices, methods and acts which, in the exercise of reasonable judgment in light of the facts known at the time the decision was made, could have been expected to accomplish the desired result at a reasonable cost consistent with good business practices, reliability, safety and expedition. Prudent Operating Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others, but rather to acceptable practices, methods or acts generally accepted in the industry with respect to grid-interconnected, utility-scale generating facilities with integrated energy storage in the Western United States. Prudent Operating Practice includes compliance with applicable Laws, applicable reliability criteria, and the applicable 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.

"<u>PTC</u>" means the production tax credit established pursuant to Section 45 of the United States Internal Revenue Code of 1986.

"<u>PV Energy</u>" means Energy that is generated using photo-voltaic cells at the Generating Facility and delivered directly to the Delivery Point, net of Electrical Losses, and is not Charging Energy or Discharging Energy.

"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 the date set forth in the deliverability Section of the Cover Sheet, which is the date the Facility is expected to achieve Interim or Full Capacity Deliverability Status.

"<u>RA Shortfall Month</u>" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which the Net Qualifying Capacity of the Facility for such month was less than the Qualifying Capacity of the Facility for such month.

"Real-Time Forecast" means any Notice of any change to the Available Generating Capacity, Available Storage Power Capacity, Available Storage Energy Capacity, or hourly expected Energy delivered by or on behalf of Seller pursuant to Section 4.3(d).

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

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

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

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

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

"Renewable Rate" has the meaning set forth on the Cover Sheet.

"Replacement Energy" has the meaning set forth in Exhibit G.

"Replacement Green Attributes" has the meaning set forth in Exhibit G.

"Replacement Product" has the meaning set forth in Exhibit G.

"Replacement RA" means Resource Adequacy Benefits, if any, equivalent to those that would have been provided by the Facility with respect to the applicable month in which a RA Deficiency Amount is due to Buyer and, to the extent that the Facility would have qualified as a Local Capacity Area Resource for such month, described as a Local Capacity Area Resource and located within the same Local Capacity Area.

"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.

"Resource Adequacy Rulings" means all CPUC rulings and decisions governing resource adequacy that are currently in effect and applicable to the performance of this Agreement and any future ruling or decision, or any other resource adequacy Law, however described, as such

decisions, rulings, Laws, rules or regulations may be amended or modified from time-to-time throughout the Delivery Term.

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

"<u>SCADA Systems</u>" means the standard supervisory control and data acquisition systems to be installed by Seller as part of the Facility, including those system components that enable Seller to receive ADS and AGC instructions from the CAISO or similar instructions from Buyer's SC.

"<u>Schedule</u>" has the meaning set forth in the CAISO Tariff, and "<u>Scheduled</u>" has a corollary meaning.

"<u>Scheduled Energy</u>" means the Facility Energy that clears under the applicable CAISO market based on the final Day-Ahead Schedule, FMM Schedule (as defined in the CAISO Tariff), 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.

"Settlement Amount" means the Non-Defaulting Party's (or in the case of Section 3.10(d)(v), Seller's) Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's (or in the case of Section 3.10(d)(v), Seller's) Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party (or in the case of Section 3.10(d)(v), Seller's) Gains exceed its Costs and Losses, then the Settlement Amount shall be zero dollars (\$0). The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

[&]quot;Security Interest" has the meaning set forth in Section 8.8.

[&]quot;Self-Schedule" has the meaning set forth in the CAISO Tariff.

[&]quot;Seller" has the meaning set forth on the Cover Sheet.

[&]quot;Seller's WREGIS Account" has the meaning set forth in Section 4.10(a).

"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.

"<u>Site</u>" means the real property on which the Facility is or will be located, as further described in Exhibit A.

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

"SOC" or "State of Charge" means the (a) Stored Energy Level, as defined at whatever point is measured of the Storage Facility relative to (b) the result of multiplying (i) the Storage Contract Capacity by (ii) four (4) hours; expressed as a percentage.

"<u>Station Use</u>" means the Energy (including Energy produced or discharged by the Facility) that is used within the Facility to power the lights, motors, temperature control systems, control systems, and other electrical loads that are necessary for operation of the Facility.

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

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

"Storage Facility" means the energy storage facility described on the Cover Sheet and in $\underline{\text{Exhibit A}}$ (including the operational requirements of the energy storage facility) and in $\underline{\text{Exhibit R}}$, 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 energy storage facility may be expanded or otherwise modified from time to time in accordance with the terms of this Agreement.

"Storage Facility Charging Loss Factor" is determined by the Storage Capacity Test, and represents the result of subtracting from the number one (1)

"Storage Facility Discharging Loss Factor" is determined by the Storage Capacity Test, and shall not fall below the minimum value set forth on the Cover Sheet and represents the result of subtracting from the number one (1) the percentage of electrical losses associated with Energy physically stored in the Storage facility (as read by the Storage Facility meter in MWh_{DC}) being discharged to the Delivery point as Discharging Energy. For example, the difference between the Stored Energy Level in MWh_{DC} at the Delivery point after losses was 10% less than the physically stored energy level in MWh_{DC} at the Storage Facility meter, then the Storage Facility Discharging Loss Factor would be (.90).

"Storage Facility Meter" means, as applicable, all or part of the equipment and software, including the EMS, 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 delivered to the Storage Facility Metering Points and the amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Points to the Delivery Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Facility may contain multiple measurement devices that will make up the Storage Facility Meter, and, unless otherwise indicated, references to the Storage Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"Storage Facility Metering Point" means the location(s) of the Storage Facility Meter(s) shown on Exhibit R.

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

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

"Stored Energy Level" means, at a particular time, the amount of Energy in the Storage Facility available to be discharged as Discharging Energy, as defined at whatever point is measured. The Parties acknowledge that, taking into account Electrical Losses to the Delivery Point, the actual amount of Energy (expressed in MWh_{DC}) physically stored in the Storage Facility at any moment in time shall be greater than the Stored Energy Level as measured at the Delivery Point (expressed in MWh_{AC}) as defined in the preceding sentence, and the Facility's energy management system shall provide a continuous monitoring and read out of the Stored Energy Level as defined in the preceding sentence as measured at the Delivery Point.

"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.

"<u>Tax</u>" or "<u>Taxes</u>" 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.

"<u>Tax Credits</u>" means the PTC, ITC and any other state, local and/or federal production tax credit, depreciation benefit, tax deduction and/or investment tax credit specific to the production of renewable energy and/or investments in renewable energy or battery storage facilities.

"<u>Terminated Transaction</u>" has the meaning set forth in Section 11.2(a).

"<u>Termination Payment</u>" has the meaning set forth in Section 11.3.

"<u>Test Energy</u>" means Facility Energy delivered (a) commencing on the later of (i) the first date that the CAISO informs Seller in writing that Seller may deliver Facility Energy to the CAISO and (ii) the first date that the PTO informs Seller in writing that Seller has conditional or temporary permission to operate in parallel with the CAISO grid, and (b) ending upon the occurrence of the Commercial Operation Date.

"<u>Test Energy Rate</u>" has the meaning set forth in Section 3.6.

"<u>Transmission System</u>" 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.

"Transmission System Outage" means an outage on the Transmission System, other than a System Emergency, that is not caused by Seller's actions or inactions and that prevents Buyer or the CAISO (as applicable) from receiving Facility Energy onto the Transmission System.

"<u>Ultimate Parent</u>" means BayWa r.e. Solar Projects, LLC, a Delaware limited liability company.

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

"<u>WREGIS</u>" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

"WREGIS Certificate Deficit" has the meaning set forth in Section 4.10(e).

"<u>WREGIS Certificates</u>" has the same meaning as "Certificate" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

- "<u>WREGIS Operating Rules</u>" means those operating rules and requirements adopted by WREGIS as of May 1, 2018, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.
- 1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:
- (a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;
- (b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;
- (c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;
- (d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;
- (e) a reference to a document or agreement, including this Agreement 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 word or provision in respect of which such examples are provided;
- (h) references to any statute, code or statutory provision are to be construed as a reference to the same as it may have been, or may from time to time be, amended, modified or reenacted, and include references to all bylaws, instruments, orders and regulations for the time being made thereunder or deriving validity therefrom unless the context otherwise requires;
- (i) in the event of a conflict, a mathematical formula or other precise description of a concept or a term shall prevail over words providing a more general description of a concept or a term;
- (j) references to any amount of money shall mean a reference to the amount in United States Dollars;
- (k) 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 ("<u>Contract Term</u>"); <u>provided, however</u>, that subject to Buyer's obligations in Section 3.6, Buyer's obligations to pay for or accept any Product are subject to Seller's completion of the conditions precedent pursuant to Section 2.2.
- (b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 and all audit rights shall remain in full force and effect for two (2) years following the termination of this Agreement and all indemnity obligations shall remain in full force and effect for two (2) years following the termination of this Agreement.
- 2.2 <u>Conditions Precedent</u>. The Delivery Term shall not commence 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 and (ii) a certificate from a Licensed Professional Engineer substantially in the form of Exhibit I setting forth the Installed Capacity on the Commercial Operation Date;
- (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 and the PTO shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;
- (d) All applicable regulatory authorizations, approvals and permits required for the operation of the Facility have been obtained and all required conditions thereof that are capable

of being satisfied on the Commercial Operation Date have been satisfied and shall be in full force and effect:

- (e) Seller has received CEC Precertification of the Facility (and reasonably expects to receive final CEC Certification and Verification for the Facility in no more than one hundred eighty (180) days from the Commercial Operation Date);
- (f) Seller (with the reasonable participation of Buyer) shall have completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Commercial Operation Date under WREGIS rules, including (as applicable) the completion and submittal of all applicable registration forms and supporting documentation, which may include applicable interconnection agreements, informational surveys related to the Facility, QRE service agreements, and other appropriate documentation required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;
- (g) Seller has delivered the Performance Security to Buyer in accordance with Section 8.8; and
- (h) Seller has paid Buyer for all amounts owing under this Agreement as of the Commercial Operation Date, if any, including Daily Delay Damages and Commercial Operation Delay Damages.
- **Development; Construction; Progress Reports**. Within fifteen (15) days after 2.3 the close of (i) each calendar quarter from the first calendar quarter following the Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report, and when requested by Buyer, shall conduct telephonic meetings (unless office meetings are agreed to by the Parties) between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E, and shall include such additional information as may be reasonably requested by Buyer from time to time. Seller shall also provide Buyer with any reasonably requested documentation (subject to confidentiality restrictions) directly related to the achievement of Milestones within ten (10) Business Days of receipt of such request by Seller. For the avoidance of doubt, 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 <u>Remedial Action Plan</u>. If Seller (a) misses the Guaranteed Construction Start Date, (b) misses three (3) or more Milestones (other than the Guaranteed Construction Start Date), or (c) misses any one (1) Milestone (other than the Guaranteed Construction Start Date) 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 after the occurrence of (a), (b) or (c), a remedial action plan ("<u>Remedial Action Plan</u>"), 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 Guaranteed Commercial Operation Date; <u>provided</u>, that delivery of any Remedial Action Plan shall not relieve Seller of its obligation to provide Remedial Action Plans with respect to any subsequent Milestones and to achieve the Guaranteed Commercial Operation Date in accordance with the terms of this Agreement. Subject to the provisions of <u>Exhibit B</u>, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3 PURCHASE AND SALE

- 3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer will purchase and receive all of the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all of the Product produced by or associated with the Facility (net of applicable losses). At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, provided that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer will have exclusive rights to offer, bid, and/or otherwise submit the Product, or any component thereof, from the Facility after the Delivery Point for resale into the market or to any third party, and retain and receive any and all related revenues. Subject to Buyer's obligation to purchase Product in accordance with this Section 3.1 and Exhibit C, Buyer has no obligation to pay Seller the Renewable Rate for any Product from the Generating Facility for which the associated PV Energy or Discharging Energy is not or cannot be delivered to the Delivery Point as a result of an outage of the Facility, a Force Majeure Event, or a Curtailment Order.
- 3.2 <u>Sale of Green Attributes</u>. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase and receive from Seller, all Green Attributes attributable to the Facility Energy generated by the Facility. Upon request of Buyer, Seller shall use commercially reasonable efforts to (a) submit, and receive approval from the Center for Resource Solutions (or any successor that administers the Green-e Certification process), for the Green-e tracking attestations and (b) support Buyer's efforts to qualify the Green Attributes transferred by Seller as Green-e Certified.
- 3.3 <u>Imbalance Energy</u>. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of energy scheduled with the CAISO. To the extent there are such deviations, any costs or revenues from such imbalances shall be solely for the account of Buyer.
- 3.4 <u>Ownership of Renewable Energy Incentives</u>. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer

shall reasonably cooperate with Seller, at Seller's sole expense, in Seller's efforts to meet the requirements for any certification, registration, or reporting program relating to Renewable Energy Incentives.

3.5 <u>Future Environmental Attributes</u>.

- (a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a), and Sections 3.5(b) and 3.12, in such event, Buyer shall bear all costs and risks associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes. Seller shall have no obligation to bear any costs, losses or liability, or alter the Facility or the operation of the Facility, unless the Parties have agreed on all necessary terms and conditions relating to such alteration or change in operation and Buyer has agreed to reimburse Seller for all costs, losses, and liabilities associated with such alteration or change in operation.
- (b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 3.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs to Buyer, as set forth above (in any event subject to Section 3.12); *provided*, that the Parties acknowledge and agree such terms are not intended to alter the other material terms of this Agreement.
- 3.6 <u>Test Energy</u>. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of and expected duration of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy and any associated Products on an as-available basis for up to ninety (90) days from the first delivery of Test Energy. As compensation for such Test Energy and associated Product, Buyer shall pay Seller an amount equal to of the Renewable Rate (the "<u>Test Energy Rate</u>"). For the avoidance of doubt, the conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.
- 3.7 <u>Capacity Attributes</u>. 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.

- (b) Throughout the Delivery Term and subject to Section 3.12, 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 commercially reasonable actions necessary to ensure that the Facility qualifies to provide Resource Adequacy Benefits to Buyer. Throughout the Delivery Term, and subject to Section 3.12, Seller hereby covenants and agrees to transfer all Resource Adequacy Benefits from the Facility to Buyer.
- (c) For the duration of the Delivery Term and subject to Section 3.12, Seller shall take all commercially reasonable administrative actions, including complying with all applicable registration and reporting requirements, and execute 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) <u>RA Deficiency Determination</u>. For each RA Shortfall Month, Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages and/or provide Replacement RA, as set forth in Section 3.8(b), as the sole remedy for the Capacity Attributes that Seller failed to convey to Buyer.
- 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) the Qualifying Capacity of the Facility (or, if applicable during the period between the RA Guarantee Date and the Effective FCDS date, the amount of Qualifying Capacity the Facility would reasonable be estimated to qualify for based on the CPUC-adopted qualifying capacity methodology(s) then in effect), minus (ii) the Net Qualfying Capacity of the Facility, multiplied by the price for CPM Capacity (in \$/kW) as listed in Section 43A.7.1 of the CAISO Tariff (or its successor) ("CPM Price"); provided that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a Notice substantially in the form of Exhibit M at least fifty (50) Business Days before the applicable CPUC operating month for the purpose of monthly RA reporting.
- 3.9 <u>CEC Certification and Verification</u>. Subject to Section 3.12 and in accordance with the timing set forth in this Section 3.9, Seller shall take all necessary steps including, but not limited to, making or supporting timely filings with the CEC to obtain and maintain CEC Certification and Verification throughout the Delivery Term, including compliance with all applicable requirements for certified facilities set forth in the current version of the *RPS Eligibility Guidebook* (or its successor) that are applicable to the Facility. Seller shall obtain CEC Precertification by the Commercial Operation Date. Within thirty (30) days after the Commercial Operation Date, Seller shall apply with the CEC for final CEC Certification and Verification. Within one hundred eighty (180) days after the Commercial Operation Date, Seller shall obtain and (subject to Section 3.12) maintain throughout the remainder of the Delivery Term the final CEC Certification

and Verification. Seller must promptly notify Buyer and the CEC of any changes to the information included in Seller's application for CEC Certification and Verification for the Facility.

3.10 **[Reserved]**.

3.11 **RPS Standard Terms and Conditions**.

- (a) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first delivery under this Agreement.
- (b) Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Facility qualifies and is certified by the CEC as an Eligible Renewable Energy Resource as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Facility's electrical energy output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.12.
- (c) Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

3.12 <u>Compliance Expenditure Cap.</u>

- (a) If a change in Law occurring after the Effective Date has increased Seller's known or reasonably expected cost to comply with Seller's obligations under this Agreement with respect to obtaining, maintaining, conveying or effectuating Buyer's use of (as applicable) Green Attributes or Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of out-of-pocket costs and expenses ("Compliance Costs") Seller shall be required to bear to comply with all of such obligations shall be capped at per MW of Guaranteed Capacity, in the aggregate, during the Delivery Term ("Compliance Expenditure Cap"). Seller's internal administrative costs association with obtaining, maintaining, conveying or effectuating, Buyer's use of (as applicable) any Product are excluded from the Compliance Expenditure Cap.
 - (b) Any actions required for Seller to comply with its obligations set forth in

the first paragraph above, 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) If the Compliance Costs exceed the Compliance Expenditure Cap, then 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 a portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "Accepted Compliance Costs") on terms and conditions to be set forth in a written amendment to this Agreement, or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take Compliance Actions that are the subject of the Notice, and Seller shall have no further obligation to take, and no liability for any failure to take, these Compliance Actions for the remainder of the Contract Term.
- (e) If Buyer agrees to pay for all or a portion of the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by the Parties in a commercially reasonable timeframe and Buyer shall reimburse Seller for it share of the Accepted Compliance Costs within sixty (60) days from receipt of an invoice, or as otherwise agreed upon by the Parties.
- 3.13 **Project Configuration**. In order to optimize the benefits of the Facility, Buyer and Seller each agree that if requested by the other Party, then Buyer and Seller will discuss in good faith potential reconfiguration of the Facility or Interconnection Facilities (including enabling the Storage Facility to be charged from the grid); provided that neither Party shall be obligated to agree to any changes under this Agreement, or to incur any expense in connection with such changes, except under terms mutually acceptable to both Parties in their sole discretion (and Seller's Lenders) as set forth in a written agreement executed by the Parties.

ARTICLE 4 OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

(a) <u>Energy</u>. Subject to the provisions of this Agreement, commencing on the Commercial Operation Date and through the end of the Contract Term, Seller shall supply and deliver the Product to Buyer at the Delivery Point (except for Charging Energy), and Buyer shall take delivery of the Product at the Delivery Point (except for Charging Energy) in accordance with

the terms of this Agreement. Seller will be responsible for paying or satisfying when due any costs or charges imposed in connection with the delivery of Facility Energy to the Delivery Point, and including without limitation (but without limiting Buyer's obligation to pay amounts associated with the Storage Facility Discharge Loss Factor as expressly provided herein), Station Use, Electrical Losses, any costs associated with delivering the Charging Energy from the Generating Facility to the Storage Facility, and any operation and maintenance charges imposed on Seller by the PTO directly relating to the Facility's operations. Buyer shall be responsible for all costs, charges and penalties, if any, imposed in connection with the delivery of Facility Energy at and after the Delivery Point, including without limitation transmission costs and transmission line losses and imbalance charges. The PV Energy, Charging Energy, and Discharging Energy will be scheduled with the CAISO by Buyer (or Buyer's designated Scheduling Coordinator for the Facility) in accordance with Exhibit D.

- (b) <u>Green Attributes</u>. All Green Attributes associated with the Facility Energy during the Delivery Term are exclusively dedicated to and will be conveyed to Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.
- (c) Ancillary Services; Environmental Attributes. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different environmental attributes or Ancillary Services that may become recognized from time to time in the CAISO market and that are not expressly listed in Exhibit Q (including, for example, reactive power), and Seller is able to provide any such product from the Facility without material adverse effect (including any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall use commercially reasonable efforts to coordinate with Buyer to provide such product. If provision of any such new product would have a material adverse effect (including any obligation to incur more than de minimis costs or liabilities) on Seller or the Facility or Seller's obligations or liabilities under this Agreement, then Seller shall be obligated to provide such product only if the Parties first execute an amendment to this Agreement with respect to such product that is mutually acceptable to both Parties.

4.2 **Title and Risk of Loss**.

- (a) <u>Energy</u>. Notwithstanding <u>Section 4.1(a)</u>, title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.
- (b) <u>Green Attributes</u>. Title to and risk of loss related to the Green Attributes associated with the Facility Energy shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.
- 4.3 **Forecasting**. Seller shall provide the forecasts described below at its sole expense and in a format reasonably acceptable to Buyer (or Buyer's designee). Seller shall use commercially 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, including CAISO requirements applicable to projects similar to the Facility.

- (a) <u>Annual Forecast of Energy</u>. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and (ii) at the beginning of each calendar year for every subsequent Contract Year during the Delivery Term, Seller shall provide to Buyer and the SC for the Facility (if applicable) a non-binding forecast of each month's average-day expected PV Energy and Clipped PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in <u>Exhibit F-1</u>, or as reasonably requested by Buyer.
- (b) Monthly Forecast of PV Energy and Available Generating Capacity. No less than thirty (30) days before the beginning of Commercial Operation, and thereafter ten (10) Business Days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC for the Facility (if applicable) a non-binding forecast of the hourly expected PV Energy, Clipped PV Energy, Available Generating Capacity, available Storage Energy Capacity, and Available Storage Power Capacity for each day of the following month in a form substantially similar to the table found in Exhibit F-2 ("Monthly Delivery Forecast").
- Day-Ahead Forecast. By 5:30 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise specified by Buyer consistent with Prudent Operating Practice, Seller shall provide Buyer with a non-binding forecast of (i) Available Generating Capacity and (ii) Available Storage Power Capacity, (iii) Available Storage Energy Capacity, and (iv) hourly expected PV Energy, and (v) Clipped PV Energy, in each case, for each Settlement Interval of 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 Settlement Interval of each hour, Seller's best estimate of (i) the Available Generating Capacity and (ii) the Available Storage Power Capacity and (iii) Available Storage Energy Capacity and (iv) the hourly expected Energy, and (v) Stored Energy Level. These Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller fails to provide Buyer with a Day-Ahead Forecast as required herein for any period, then for such unscheduled delivery period only Buyer shall rely on any Real-Time Forecast provided in accordance with Section 4.3(d) or the Monthly Delivery Forecast or Buyer's best estimate based on information reasonably available to Buyer.
- (d) Real-Time Forecasts. During the Delivery Term, Seller shall notify Buyer of any changes from the Day-Ahead Forecast of one (1) MW_{AC} or more in (i) Available Generating Capacity, (ii) Avaible Storage Power Capacity, (iii) Available Storage Energy Capacity, (iv) hourly expected Energy, or (v) Clipped PV Energy in each case, 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 Available Generating Capacity, Available Storage Power Capacity, or hourly expected Energy changes by at least one (1) MW_{AC} as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller

must notify Buyer as soon as reasonably possible. Such Real-Time Forecasts of PV Energy shall be provided by an Approved Forecast Vendor and shall contain information regarding the beginning date and time of the event resulting in the change in Available Generating Capacity, Available Storage Power Capacity, Available Storage Energy Capacity, Clipped PV Energy, or hourly expected Energy, as applicable, the expected end date and time of such event, and any other information required by the CAISO or reasonably requested by Buyer. Seller shall also provide access to routinely updated forecasts for each Settlement Interval of each hour of the expected Energy. Such real-time forecasts of Energy shall be provided by the CAISO, or if the CAISO does not provide such forecasts for the Facility then such forecasts shall be provided by an Approved Forecast Vendor. 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; provided that Buyer specifies the method no later than sixty (60) 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 e-mail to the SC and by email to the Buyer.

- (e) <u>Forced Facility Outages.</u> Notwithstanding anything to the contrary herein, Seller shall promptly notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages, and Seller shall keep Buyer informed of any developments that will affect either the duration of the outage or the availability of the Facility during or after the end of the outage.
- (f) <u>Forecasting Penalties</u>. Subject to a Force Majeure Event, in the event Seller does not in a given hour provide the forecast required in Section 4.3(d) and Buyer incurs a loss or penalty resulting from Seller's failure and Buyer's scheduling activities with respect to PV 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) <u>CAISO Tariff Requirements</u>. To the extent such obligations are applicable to the Facility, Seller will comply with all applicable obligations for Variable Energy Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, including providing appropriate operational data and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

4.4 **Dispatch Down/Curtailment**.

(a) <u>General</u>. Seller agrees to reduce the amount of PV Energy and/or Discharging Energy produced by the Facility, by the amount and for the period set forth in any applicable Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, <u>provided</u> that Seller is not required to reduce such amount to the extent such reduction or any such Curtailment Order, Buyer Curtailment Order or notice is inconsistent with the (i) limitations of the Facility set out in the Operating Restrictions and (ii) with a directive from CAISO or the Transmission Provider.

- (b) <u>Buyer Curtailment.</u> Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders, provided that Buyer shall pay Seller for all Deemed Delivered Energy associated with a Buyer Curtailment Period at the Renewable Rate.
- Charging during curtailment. Seller may at its discretion automatically use PV Energy that is subject to an applicable Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, as Charging Energy, by the amount and for the period set forth in any applicable Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that such charging is consistent with the (i) limitations of the Facility set out in the Operating Restrictions and (ii) with a directive from CAISO or the Transmission Provider.
- (d) Failure to Comply. If Seller fails to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, then, for each MWh_{AC} of Facility Energy that is delivered by the Facility to the Delivery Point that is in excess of the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, Seller shall pay Buyer for each such MWhAC at an amount equal to the sum of (A) + (B) + (C), where: (A) is the amount, if any, paid to Seller by Buyer for delivery of such excess MWh_{AC} (excluding any excess MWhs delivered to reasonably comply with the limitation of the Facility set out in the Operating Restrictions) and, (B) is the sum, for all Settlement Intervals with a Negative LMP during the Buyer Curtailment Period or Curtailment Period, of the absolute value of the product of such excess MWh_{AC} in each Settlement Interval and the Negative LMP for such Settlement Interval (excluding any excess MWhs delivered to reasonably comply with the limitation of the Facility set out in the Operating Restrictions), and (C) is any penalties assessed by the CAISO or other charges assessed by the CAISO resulting from Seller's failure to comply with the Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, in each case that are not related to any excess MWhs delivered to reasonably comply with the limitation of the Facility set out in the Operating Restrictions.
- Seller Equipment Required for Curtailment Instruction Communications. (e) Subject to the last sentence of this Section 4.4(e), Seller shall acquire, install, and maintain such SCADA Systems, 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 CAISO or Buyer's SC in accordance with this Agreement and/or a Governmental Authority, including to implement a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order in accordance with the 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 applicable to the Facility, Seller shall, subject to the last sentence of this Section 4.4(e), take the steps necessary to become compliant as soon as commercially reasonably possible. Seller shall be liable pursuant to Section 4.4(d) for failure to comply with a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order, during the time that Seller's facilities, communications links or other equipment, protocols or practices are not in compliance with this Section 4.4(e). For the avoidance of doubt, a Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order

communication via such systems and facilities shall have the same force and effect on Seller as any other form of communication. If Seller is directed by Buyer to install or implement facilities, communications links or other equipment, protocols or practices facilities pursuant to this Section 4.4(e) that are not otherwise required for the Facility pursuant to the CAISO Tariff, then the installation or implementation of such facilities, communications links or other equipment, protocols or practices facilities will be deemed Compliance Actions subject to the Compliance Expenditure Cap as set forth in Section 3.12.

4.5 Charging Energy Management.

- (a) Upon receipt of a valid Charging Notice, Seller shall take all actions that are in accordance with Prudent Operating Practice and are necessary, to deliver the Charging Energy from the Generating Facility to the Storage 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 from the Generating Facility to the Storage Facility. CAISO costs and charges associated with charging of the Storage Facility shall be allocated in accordance with this Agreement.
- (b) Buyer will have the right to charge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Charging Notices to Seller electronically, provided, that Buyer's right to issue Charging Notices is subject to Prudent Operating Practice and the requirements and limitations set forth in this Agreement, including the Operating Restrictions, the CAISO Tariff, and the availability of Charging Energy 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 Storage Facility during the Delivery Term other than pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), or as pursuant to 4.4.(c), or in connection with a Storage Capacity Test, Planned Outage, Forced Facility Outage, or pursuant to a notice from CAISO, the PTO, or any other Governmental Authority, or as otherwise required by applicable law. If, during the Delivery Term, Seller (a) charges the Storage Facility to a Stored Energy Level greater than the Stored Energy Level provided for in the Charging Notice (b) charges the Storage Facility in violation of the first sentence of this Section 4.5(c), or (c) charges the Storage Facility in connection with maintenance of the Storage Facility or to achieve any Operating Restrictions (which charging shall not be a violation of the first sentence of this Section 4.5(c)), then (x) Seller shall be responsible for all energy costs associated with such charging of the Storage Facility, (y) Buyer shall not be required to pay for the charging of such energy (i.e., Charging Energy), and (z) Buyer shall be entitled to discharge such energy and entitled to all of the benefits (including Storage Product) associated with such discharge.
- (d) Buyer will have the right to discharge the Storage Facility seven (7) days per week and twenty-four (24) hours per day (including holidays), by providing Discharging Notices to Seller electronically, and subject to the requirements and limitations set forth in this

Agreement, including the Operating Restrictions, the CAISO Tariff, and the existing State of Charge of the Storage Facility. Each Discharging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Discharging Notice by providing Seller with an updated Discharging Notice.

- (e) Seller shall not discharge the Storage Facility during the Delivery Term other than pursuant to a valid Discharging Notice (it being understood that Seller may adjust a Charging Notice in order to maintain compliance with the Operating Restrictions), or in connection with a Storage Capacity Test, Planned Outage, Forced Facility Outage, or pursuant to a notice from CAISO, the PTO, Transmission Provider, or any other Governmental Authority, or as otherwise required by applicable law. If at any time the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit, then (i) the applicable Discharging Notice shall be deemed to be modified to reduce the amount of Discharging Energy such that the total Facility Energy does not exceed the Interconnection Capacity Limit; (ii) Seller shall provide Notice to Buyer's SC of such condition; and (iii) Buyer shall have the right to issue a modified Discharging Notice and Buyer Curtailment Order.
- (f) During the Delivery Term, Seller shall maintain SCADA Systems, the EMS, communications links and other equipment consistent with Section 4.4, including as may be necessary to receive automated Charging Notices and Discharging Notices consistent with CAISO protocols and practice, if applicable ("Automated Dispatches"). In the event of the failure or inability of the Storage Facility to receive Automated Dispatches, Seller shall use all commercially reasonable efforts to repair or replace the applicable components as soon as reasonably possible, and if there is any material delay in such repair or replacement, Seller shall provide Buyer with a written plan of all actions Seller plans to take to repair or replace such components for Buyer's review and comment. During any period during which the Storage Facility is not capable of receiving or implementing Automated Dispatches, Seller shall implement back-up procedures consistent with the CAISO Tariff and CAISO protocols to enable Seller to receive and implement non-automated Charging Notices or Discharging Notices ("Alternative Dispatches").
- Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, and Buyer Bid Curtailments applicable to such Settlement Interval shall have priority over any Charging Notices and Discharging Notices applicable to such Settlement Interval, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notice or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any Curtailment Order, Buyer Curtailment Order, Buyer Bid Curtailment or other instruction or direction from a Governmental Authority or the PTO. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order consistent with the Operating Restrictions.
- 4.6 **Reduction in Delivery Obligation**. For the avoidance of doubt, and in no way limiting Section 3.1, 3.8 or <u>Exhibit G.</u> or any rights expressly provided hereunder of Seller in relation to operation of the Facility:

- (a) Facility Maintenance. Seller will provide to Buyer written schedules for Planned Outages for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments no later than ten (10) days after receiving any such schedule, and Seller will in good faith take into account any such comments. Seller will deliver to Buyer the final updated schedule of Planned Outages no later than ten (10) days after receiving Buyer's comments. Seller shall be permitted to change any Planned Outages within the current Contract Year if such changes are required to comply with Prudent Operating Practices, or by providing at least sixty (60) days' notice, in both cases subject to consent by Buyer not to be unreasonably withheld, conditioned or delayed. Seller shall be permitted to reduce deliveries of Product during any period of such Planned Outages. Notwithstanding anything in this Agreement to the contrary, no outages of the Facility shall be scheduled or planned from each June 1 through October 31 during the Delivery Term, unless approved by Buyer in writing in its sole discretion. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all reasonable efforts to reschedule such Planned Outage.
- (b) <u>Forced Facility Outage</u>. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and expected duration (if known) of any Forced Facility Outage.
- (c) <u>System Emergencies and other Interconnection Events</u>. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission Outage, Buyer Curtailment Period or upon Notice of a Curtailment Order pursuant to the terms of this Agreement, the Interconnection Agreement or applicable tariff.
- (d) <u>Force Majeure Event</u>. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event.
- (e) <u>Health and Safety</u>. Seller shall be permitted to reduce deliveries of Product as necessary to maintain health and safety pursuant to Section 6.2.
- (f) <u>Payments</u>. Seller shall remain responsible to Buyer for any payment or penalty otherwise due under this Agreement as a result of a reduction in delivery of Product.
- Guaranteed Energy Production. Seller shall be required to deliver to Buyer no less than the Guaranteed Energy Production in each Performance Measurement Period. Seller shall be excused from achieving the Guaranteed Energy Production during any Performance Measurement Period only to the extent of any Force Majeure Events, System Emergency, Transmission System Outage, Storage Capacity Tests, Buyer's Default or other failure to perform, and Curtailment Periods or Buyer Curtailment Periods. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer (1) any Deemed Delivered Energy, plus (2) PV Energy + Adjusted Discharging Energy in the amount it could reasonably have delivered to Buyer or the Storage Facility but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmisison System Outage, Storage Capacity Tests, Buyer's Default or other failure to perform, and Curtailment Periods ("Lost Output"). If Seller fails to achieve the Guaranteed Energy Production

amount in any Performance Measurement Period, Seller shall pay Buyer damages calculated in accordance with Exhibit G; provided that Seller may, as an alternative, provide Replacement Product (as defined in Exhibit G) delivered to Buyer at SP-15 Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) within the compliance period for which the Product that is being replaced would have been provided to Buyer unless otherwise agreed upon by Buyer, (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement, and (iii) not to exceed of the Expected Energy for the previous Contract Year.

4.8 **Storage Availability**.

- (a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Availability during each Contract Year of no less than (the "Guaranteed Storage Availability"), which Annual Storage Availability shall be calculated in accordance with Exhibit P.
- (b) If the Annual Storage Availability during any Contract Year is less than the Guaranteed Storage Availability, then Buyer's payment for the Storage Product shall be calculated by reference to the Availability Adjusted Storage Contract Capacity (as determined in accordance with Exhibit P).
- (c) In years where the Storage Facility is modified to change the capacity, Annual Storage Availability shall be equitably adjusted, provided, however, that in no event will the obligations of Seller by reduced if the change in capacity is for the Seller's benefit and not to maintain compliance with its obligations under this Agreement.

4.9 **Storage Capacity Tests**

- (a) Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with <u>Exhibit O</u>. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.
- (b) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests. Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Storage Capacity Test. 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. If the actual capacity determined pursuant to a Storage Capacity Test differs from the then current Storage Contract Capacity, then the actual capacity determined pursuant to a Storage Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for all purposes under this Agreement, including compensation under Exhibit C.

- (d) Seller shall, at times and for durations reasonably agreed to by Buyer, conduct necessary testing to ensure the Storage Facility is functioning properly and the Storage Facility is able to respond to Buyer or CAISO dispatch instructions. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Capacity Tests shall be deemed Buyer-instructed dispatches of the Facility ("Buyer Dispatched Test"). Any other test of the Facility (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Storage Contract Capacity immediately prior to such Storage Capacity Test is below of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain CAISO Certification), and other Seller-requested discretionary tests or dispatches that Seller deems necessary for purposes of reliably operating or maintaining the Facility or for re-performing a required test within a reasonable number of days, (considering the circumstances that led to the need for a retest), which shall be within no more than five (5) Business Days of the initial required test) shall be deemed a "Seller Initiated Test".
- (i) For any Seller Initiated Test, other than a Storage Capacity Test, Seller shall notify Buyer no later than twenty-four (24) hours prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices). For any Seller Initiated Test that is a Storage Capacity Test, Seller shall notify Buyer no less than five (5) Business Days prior thereto (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practices).
- (ii) The Storage Facility will be deemed unavailable during any Seller Initiated Test, and Buyer shall not dispatch or otherwise schedule the Storage Facility during such Seller Initiated Test.
- 4.10 <u>WREGIS</u>. Seller shall, at its sole expense, but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Facility Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit, it being acknowledged that Seller may not be able under WREGIS rules to complete all WREGIS registration requirements prior to the Commercial Operation Date. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in Section 4.10(g), provided that Seller fulfills its obligations under Sections 4.10(a) through (g) below. In addition:
- (a) Prior to the Commercial Operation Date, Seller shall register the Facility with WREGIS and establish an account with WREGIS ("Seller's WREGIS Account"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("Buyer's WREGIS Account"). Seller shall

be responsible for all expenses associated with registering the Facility with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

- (b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh_{AC} amounts of Facility Energy generated, any fractional MWh_{AC} amounts (i.e., kWh_{AC}) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.
- (c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Facility Energy for such calendar month as evidenced by the Facility's metered data.
- (d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.
- A "WREGIS Certificate Deficit" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Facility Energy for the same calendar month (taking into account the timing of WREGIS' issuance of WREGIS Certificates in normal course) ("Deficient Month") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or the result of any action or inaction by Seller, then the amount of Facility Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; provided, however, that such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month, (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) that reflect a production vintage in the same calendar year in which the WREGIS Certifiate Deficit occurs unless otherwise acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
- (f) If (i) WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, or (ii) the Parties enable the Storage Facility to be charged from the grid in accordance with Section 3.13, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS

Certificates for each given calendar month that corresponds to the Facility Energy in the same calendar month.

- (g) The Parties acknowledge and agree that this Section 4.10 reflects an understanding between the Parties that WREGIS Certificates will be created equivalent to the amount of Facility Energy that is generated by the Generating Facility. If the RPS (or other applicable Law) is applied or changes in a manner inconsistent with such understanding, subject to Section 3.12, the parties shall reasonably coordinate to amend or modify this Agreement to carry out the intent hereof, such agreement not to be unreasonable delayed, conditioned, or withheld.
- 4.11 <u>Green-E Certification</u>. Seller shall, at its sole expense but subject to Section 3.12, take all actions and execute all documents or instruments necessary to ensure that the Facility is eligible for Green-e certification.

ARTICLE 5 TAXES

- 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 the Product to Buyer, that are imposed on 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 Product that are imposed on 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 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 <u>Cooperation</u>. Each Party shall use commercially 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 Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6 MAINTENANCE OF THE FACILITY

6.1 <u>Maintenance of the Facility</u>. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

- 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 PV Energy or Discharging Energy to the Delivery Point or Charging Energy to the Storage Facility.
- Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Participating Transmission Owner, Seller's Affiliates, and/or third parties pursuant to which certain Interconnection Facilities may be subject to joint ownership and shared maintenance and operation arrangements; *provided* that such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7 METERING

- **Metering**. Seller shall measure the amount of Facility Energy using the Facility 7.1 Meter, 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. Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meters. All meters will be operated pursuant to Prudent Operating Practices and any required CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the meters shall be programmed to adjust for Electrical Losses and Station Use from the Facility to the Delivery Point in a manner subject to Buyer's prior written approval, not to be unreasonably withheld. Metering will be consistent with the Metering Diagram set forth as Exhibit R, 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, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Operational Meter Analysis and Reporting (OMAR) web and/or directly from the CAISO meter(s) at the Facility.
- 7.2 <u>Meter Verification</u>. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall request permission from the CAISO to 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 such a test is conducted at the request of Buyer, Buyer shall pay for such test unless the testing shows the Facility Meter is inaccurate by more than one percent (1%), in which case Seller shall pay for such test. If a meter is inaccurate it shall be promptly repaired or replaced. If it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period; provided, that (a) such period may not exceed twelve (12) months and (b) such adjustments are accepted by CAISO and WREGIS.

ARTICLE 8 INVOICING AND PAYMENT; CREDIT

- 8.1 **Invoicing.** Seller shall make good faith efforts to deliver an invoice to Buyer for Product within fifteen (15) Business Days after the end of the prior monthly billing period. Each invoice shall reflect (a) records of metered data, including CAISO metering and transaction data sufficient to document and verify the amount of Product delivered by the Facility for any Settlement Period during the preceding month, including the amount of PV Energy produced by the Generating Facility as read by the Facility Meter, the amount of Charging Energy charged by the Storage Facility and the amount of Discharging Energy delivered from the Storage Facility to the Delivery Point, in each case, as read by the Storage Facility Meter, the amount of Replacement RA and Replacement Product delivered to Buyer (if any), the calculation of Adjusted Facility Energy, Deemed Delivered Energy, and Adjusted Energy Production, the LMP prices at the Delivery Point for each Settlement Period, and the Contract Price applicable to such Product in accordance with Exhibit C; (b) access to any records, including invoices or settlement data from the CAISO, necessary to verify the accuracy of any amount; and (c) be in a format reasonably specified by Buyer, covering the services provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.
- Payment. Buyer shall make payment to Seller for Product by wire transfer or ACH payment to the bank account provided on each monthly invoice, provided, however, that Seller will give Buyer no less than ten (10) days notice of any account change with respect to the place of payment. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice or the end of the prior monthly billing period, whichever is later. 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 <u>Books and Records</u>. 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 twenty-four (24) 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 twenty-four (24) months after the invoice is rendered or subsequently adjusted, except in the event of intentional fraud or misrepresentation by the Seller or to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twenty-four-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 <u>Netting of Payments</u>. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in

which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement, including any related damages calculated pursuant to <u>Exhibits B</u> and <u>P</u>, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

- 8.7 Seller's Development Security. To secure its obligations under this Agreement, Seller shall deliver Development Security to Buyer within thirty (30) days of the Effective Date. Seller shall maintain the Development Security in full force and effect and Seller shall within ten (10) Business Days after any draw thereon replenish the Development Security in the event Buyer collects or draws down any portion of the Development Security for any reason permitted under this Agreement other than to satisfy a Damage Payment or a Termination Payment. Upon the earlier of (i) Seller's delivery of the Performance Security, or (ii) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement. If the Development Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating specified in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit in the amount of the Development Security and that otherwise meets the requirements set forth in the definition of Development Security.
- Seller's Performance Security. To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form of Guaranty set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, subject to any draws made by Buyer in accordance with this Agreement, until the following have occurred: (A) the Delivery Term has expired or terminated early; and (B) all payment obligations of the Seller then due and payable under this Agreement, including compensation for penalties, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting). Following the occurrence of both events, Buyer shall promptly return to Seller the unused portion of the Performance Security. If the Performance Security is a Letter of Credit and the issuer of such Letter of Credit (i) fails to maintain the minimum Credit Rating set forth in the definition of Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit and such Letter of Credit expires prior to the Commercial Operation Date, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit by such issuer, Seller shall have ten (10) Business Days to either post cash or deliver a substitute Letter of Credit that meets the requirements set forth in the definition of Performance Security. 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 <u>First Priority Security Interest in Cash or Cash Equivalent Collateral</u>. 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 ("<u>Security Interest</u>") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof.

Upon or any time after the occurrence 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 <u>Financial Statements</u>. In the event a Guaranty is provided as Performance Security in lieu of cash or a Letter of Credit, Seller shall provide to Buyer, or cause the Guarantor to provide to Buyer, unaudited quarterly and annual audited financial statements of the Guarantor (including a balance sheet and statements of income and cash flows), all prepared in accordance with generally accepted accounting principles in the United States, consistently applied.



8.12 **Buyer's Covenants**:

- (a) During any period during the Term, Buyer shall provide to Seller, both upon request and as indicated below: (i) within ninety (90) days following the end of each fiscal quarter, unaudited quarterly financial statement of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with generally accepted accounting principals as promulgated by the Government Accounting Standards Board in the United States, consistently applied; and (ii) within one hundred and eighty (180) days following the end of each fiscal year, annual financial statements of Buyer (including a balance sheet and statements of income and cash flows) prepared in accordance with the requirements of California law applicable to Joint Powers Authorities; *provided* that nothing in this Section 8.12 shall require Buyer to provide information that is not generally available to Buyer as part of its normal accounting and financing reporting processes.
- (b) During any period during the Term when Buyer does not have or maintain an Investment Grade Credit Rating, Buyer shall provide to Seller, both upon request and as indicated below: (i) as available, Buyer's annual report; (ii) reserve levels; (iii) subscription_and opt out rates; and (iv) other financial and operational information as may be reasonably requested by the Seller's financing parties from time to time; *provided* that nothing in this Section 8.12 shall require Buyer to provide information that is not generally available to Buyer as part of its normal accounting and financing reporting processes
- (c) <u>Cooperation with Financing Parties</u>. Buyer shall cooperate with Seller and Seller's financing counterparties to execute and arrange for the delivery of consents and estoppels providing factual confirmations with respect to this Agreement within ten (10) business days of request therefore and other information reasonably requested in connection with the debt or equity (including tax equity) financing of the Facility.

ARTICLE 9 NOTICES

- 9.1 <u>Addresses for the Delivery of Notices</u>. Except as provided in <u>Exhibit D</u>, 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 <u>Exhibit N</u> or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.
- 9.2 <u>Acceptable Means of Delivering Notice</u>. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) 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; or (b) 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; or (c) 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 commercially reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.
- (b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic or pandemic, including COVID-19; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.
- Notwithstanding the foregoing, the term "Force Majeure Event" does not (c) include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy electric energy at a lower price, or Seller's ability to sell the Product, or any component thereof, at a higher price, than under this Agreement); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility, except to the extent such inability is caused by a Force Majeure Event; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) a Curtailment Order; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (vii) Seller's inability to achieve Construction Start of the Facility following the Guaranteed Construction Start Date or achieve Commercial Operation following the Guaranteed Commercial Operation Date unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described

above; 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.

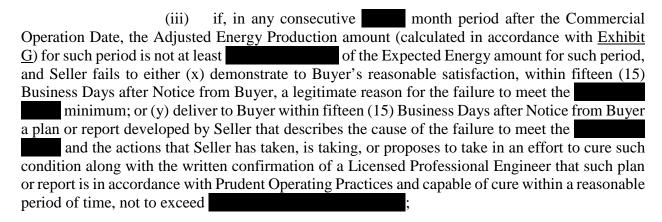
- be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability. 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 Construction Start Date or the 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)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.
- Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.
- 10.4 <u>Termination Following Force Majeure Event.</u> If a Force Majeure Event has occurred after the Commercial Operation Date that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and the impacted Party has claimed and received relief from performance of its obligations for period, then either Party may terminate this Agreement upon written Notice to the other Party with respect to the Facility experiencing the Force Majeure Event. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any 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 "<u>Defaulting Party</u>") 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 except for (1) failure to deliver Capacity Attributes, the exclusive remedies for which are set forth in Section 3.8, (2) failures to achieve the Guaranteed Energy Production that do not trigger the provisions of Section 11.1(b)(iv), the exclusive remedies for which are set forth in Section 4.7; and (3) failures related to the Annual Storage Availability that do not trigger the provisions of Section 11.1(b)(v), the exclusive remedies for which are set forth in Section 4.8) and such failure is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional ninety (90) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30) days period despite exercising commercially reasonable efforts);
 - (iv) such Party becomes Bankrupt;
- (v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 14.1 or 14.2, as applicable; or
- (vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party.
- (b) with respect to Seller as the Defaulting Party, the occurrence of any of the following:
- (i) if at any time, Seller delivers or attempts to deliver electric energy to the Delivery Point for sale under this Agreement that was not generated or discharged by the Facility, except for Replacement Product;
- (ii) the failure by Seller to achieve Commercial Operation within days after the Guaranteed Commercial Operation Date, as such date may be extended hereunder, by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2 of Exhibit B, and/or by a Development Cure Period pursuant to Section 4 of Exhibit B;



- (iv) if, in any two consecutive Contract Years, the average Annual Storage Availability is, on an annual basis, less than seventy percent (70%) in each Contract Year;
- (v) if, in any two (2) consecutive Contract Year period during the Delivery Term, the Adjusted Energy Production amount is not at least seventy-five percent (75%) of the Expected Energy amount;
- (vi) if, for any full Contract Year, the Annual Storage Capacity Availability for such Contract Year *multiplied by* the weighted average Storage Contract Capacity for such Contract Year is not at least seventy percent (70%) *multiplied* by the Installed Storage Capacity, and Seller fails to (x) deliver to Buyer within ten (10) Business Days after Notice from Buyer a plan or report developed by Seller that describes the cause of the failure to meet the seventy percent (70%) *multiplied* by the Installed Storage Capacity threshold, and the actions that Seller has taken, is taking, or proposes to take in an effort to cure such condition along with the written confirmation of a Licensed Professional Engineer that such plan or report is in accordance with Prudent Operating Practices and capable of cure within a reasonable period of time, not to exceed one hundred eighty (180) days ("Storage Cure Plan") and (y) complete such Storage Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;
- (vii) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 after Notice and expiration of the cure periods set forth therein, including the failure to replenish the Development Security or Performance Security amount in accordance with this Agreement in the event Buyer draws against either for any reason other than to satisfy a Damage Payment or a Termination Payment;
- (viii) with respect to any Guaranty provided for the benefit of Buyer, the failure by Seller to provide for the benefit of Buyer either (1) cash, (2) a replacement Guaranty from a different Guarantor meeting the criteria set forth in the definition of Guarantor, or (3) a replacement Letter of Credit from an issuer meeting the criteria set forth in the definition of Letter of Credit, in each case, in the amount required hereunder within ten (10) Business Days after Seller receives Notice of the occurrence of any of the following events:
 - (A) if any representation or warranty made by the Guarantor in connection with this Agreement is false or misleading in any material

respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

- (B) the failure of the Guarantor to make any payment required or to perform any other material covenant or obligation in any Guaranty;
 - (C) the Guarantor becomes Bankrupt;
- (D) the Guarantor shall fail to meet the criteria for an acceptable Guarantor as set forth in the definition of Guarantor;
- (E) the failure of the Guaranty to be in full force and effect (other than in accordance with its terms) prior to the indefeasible satisfaction of all obligations of Seller hereunder; or
- (F) the Guarantor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of any Guaranty; or
- (ix) 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
 - (G) Seller shall fail to renew or cause the renewal of each outstanding Letter of Credit on a timely basis as provided in the relevant

Letter of Credit and as provided in accordance with this Agreement, and in no event less than sixty (60) days prior to the expiration of the outstanding Letter of Credit.

- 11.2 <u>Remedies; Declaration of Early Termination Date</u>. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("<u>Non-Defaulting Party</u>") 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 ("<u>Early Termination Date</u>") that terminates this Agreement (the "<u>Terminated Transaction</u>") 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)(ii)) 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;

<u>provided</u>, 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 <u>Notice of Payment of Termination Payment</u>. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment and whether the Termination Payment is due to or from the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.
- 11.5 <u>Disputes With Respect to Termination Payment</u>. 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 <u>Rights And Remedies Are Cumulative</u>. 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 use commercially reasonable efforts 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 <u>Seller Pre-COD Liability Limitations</u>. Notwithstanding any other provision of this Agreement, Seller's aggregate liability under or arising out of a termination of this Agreement prior to the Commercial Operation Date shall be limited to an amount equal to the Damage Payment.
- 11.8 <u>Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date</u>. If the Agreement is terminated by Buyer prior to the Commercial Operation Date due to Seller's Event of Default, neither Seller nor Seller's Affiliates may sell, market or deliver any Product associated with or attributable to the Facility to a party other than Buyer for a period of two (2) years following the Early Termination Date due to Seller's Event of Default, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product which provides Buyer the right to

select in its sole discretion either the terms and conditions materially similar to the terms and conditions contained in this Agreement (including price) or the terms and conditions to which the third party agreed, and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof.

11.9 <u>Mitigation</u>. Any Non-Defaulting Party shall be obligated to use commercially reasonable efforts to mitigate its Costs, Losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 12 LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

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

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED. IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX CREDITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE

RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED OR ANY OTHER EXCLUSIVE REMEDLY IS SET FORTH HEREIN, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT G, AND EXHIBIT P THE PARTIES ACKNOWLEDGE THAT 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 <u>Seller's Representations and Warranties</u>. 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) The Facility is located in the State of California.
- (f) Seller will be responsible for obtaining all permits necessary to construct and operate the Facility.
- 13.2 <u>Buyer's Representations and Warranties</u>. As of the Effective Date, Buyer represents and warrants as follows:
- (a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, and is qualified to conduct business in each jurisdiction of the Joint Powers Agreement members. All Persons making up the governing body of Buyer are the elected or appointed incumbents in their positions and hold their positions in good standing in accordance with the Joint Powers Agreement and other 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 the 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.)
- (f) Buyer is a "local public entity" as defined in Section 900.4 of the Government Code of the State of California.
- (g) Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement.
- 13.3 <u>General Covenants</u>. 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.
- laws, statutes, ordinances, rules and regulations, and orders and decrees of any courts or administrative bodies or tribunals, including without limitation employment discrimination laws and prevailing wage laws. Seller shall use reasonable efforts to ensure that all employees hired by Seller, and its contractors and subcontractors, that will perform construction work or provide services at the Site related to construction of the Facility are paid wages at rates not less than those prevailing for workers performing similar work in the locality as provided by applicable California law, if any ("Prevailing Wage Requirement"). Buyer agrees that Seller's obligations under this Section 13.4 with respect to the Prevailing Wage Requirement will be satisfied upon the execution of a project labor agreement related to construction of the Facility.

ARTICLE 14 ASSIGNMENT

- 14.1 <u>General Prohibition on Assignments</u>. Except as provided 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 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 consent shall not be unreasonably withheld, conditioned or delayed; *provided*, however, that a Change of Control of Seller shall not require Buyer's consent if the assignee or transferee is a Permitted Transferee. Any assignment made without required written consent, or in violation of the conditions to assignment set out below, shall be null and void. Seller shall be responsible for Buyer's reasonable costs associated with the preparation, review, execution and delivery of documents in connection with any assignment of this Agreement by Seller, including without limitation reasonable attorneys' fees.
- 14.2 <u>Collateral Assignment</u>. 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 by Seller. In connection with any financing or refinancing of the Facility, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("<u>Collateral Assignment Agreement</u>"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions:
- (a) Buyer shall give Notice of an Event of Default by Seller to the Person(s) to be specified by Lender in the Collateral Assignment Agreement, before exercising its right to terminate this Agreement as a result of such Event of Default; *provided* that such Notice shall be provided to Lender at the time such Notice is provided to Seller and any additional cure period of Lender agreed to in the Collateral Assignment Agreement shall not commence until Lender has received notice of such Event of Default:
- (b) Following an Event of Default by Seller under this Agreement, Buyer may require Seller or Lender (if Lender has provided the notice set forth in subsection (c) below) to provide to Buyer a report concerning:
- (i) The status of efforts by Seller or Lender to develop a plan to cure the Event of Default;
 - (ii) Impediments to the cure plan or its development;
- (iii) If a cure plan has been adopted, the status of the cure plan's implementation (including any modifications to the plan as well as the expected timeframe within which any cure is expected to be implemented); and
- (iv) Any other information which Buyer may reasonably require related to the development, implementation and timetable of the cure plan.

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

- (c) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period under this Agreement, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);
- (d) Lender will have the right to consent before any termination of this Agreement which does not arise out of an Event of Default;
- (e) Lender will receive prior Notice of and the right to approve material amendments to this Agreement, which approval will not be unreasonably withheld, delayed or conditioned;
- (f) If Lender, directly or indirectly, takes possession of, or title to the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), Lender must assume all of Seller's obligations arising under this Agreement and all related agreements (subject to such limits on liability as are mutually agreed to by Seller, Buyer and Lender as set forth in the Collateral Assignment Agreement); *provided*, before such assumption, if Buyer advises Lender that Buyer will require that Lender cure (or cause to be cured) any Event of Default existing as of the possession date (other than any Event of Default personal to Seller and not reasonably capable of cure) and capable of cure in order to avoid the exercise by Buyer (in its sole discretion) of Buyer's right to terminate this Agreement with respect to such Event of Default, then Lender at its option, and in its sole discretion, may elect to either:
 - (i) Cause such Event of Default to be cured, or
 - (ii) Not assume this Agreement;
- (g) If Lender elects to sell or transfer the Facility (after Lender directly or indirectly, takes possession of, or title to the Facility), or sale of the Facility occurs through the actions of Lender (for example, a foreclosure sale where a third party is the buyer, or otherwise), then Lender must cause the transferee or buyer to assume all of Seller's obligations arising under this Agreement and all related agreements as a condition of the sale or transfer. Such sale or transfer may be made only to an entity that meets the definition of Permitted Transferee; and
- (h) Subject to Lender's cure of any Events of Defaults under the Agreement in accordance with Section 14.2(f), if (i) this Agreement is rejected in Seller's bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer

having substantially the same terms as this Agreement for the remaining term thereof, and, promptly after Lender's written request, Buyer must enter into such replacement agreement with Lender or Lender's designee, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request which must be made within forty-five (45) days after Buyer receives notice of such rejection or termination, Lender must itself or must cause its designee to promptly enter into a new agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, provided that in the event a designee of Lender, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure), such designee (if it is not a Permitted Transferee) shall be approved by Buyer, not to be unreasonably withheld.

- 14.3 <u>Permitted Assignment by Seller</u>. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:
 - (i) the assignee is a Permitted Transferee;
 - (ii) Seller has given Buyer Notice at least fifteen (15) Business Days before the date of such proposed assignment; and
 - (iii) Seller has provided Buyer a written agreement signed by the Person to which Seller wishes to assign its interests that (x) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (y) certifies that such Person meets the definition of a Permitted Transferee.

Except as provided in the preceding sentence, any assignment by Seller, its successors or assigns under this Section 14.3 shall be of no force and effect unless and until such Notice has been received and accepted by Buyer.

14.4 **Shared Facilities; Portfolio Financing**. Buyer agrees and acknowledges that Seller may elect to finance all or any portion of the Facility or the Interconnection Facilities or the Shared Facilities (1) utilizing tax equity investment, and/or (2) through a Portfolio Financing, which may include cross-collateralization or similar arrangements. In connection with any financing or refinancing of the Facility, the Interconnection Facilities or the Shared Facilities by Seller or any Portfolio Financing, Buyer, Seller, Portfolio Financing Entity (if any), and Lender shall execute and deliver such further consents, approvals and acknowledgments as may be reasonable and necessary to facilitate such transactions provided, however, that Buyer shall not be required to agree to any terms or conditions which are reasonably expected to have a material adverse effect on Buyer and all reasonable attorney's fees incurred by Buyer in connection therewith shall be borne by Seller.

14.5 Limited Assignment By Buyer

Subject to prior written consent by Seller, Buyer may make a limited assignment to an entity that has creditworthiness that is equal to or better than the creditworthiness of Buyer ("Buyer Assignee") of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to the Seller; provided, however, that (i) Buyer must substantiate the creditworthiness of such Buyer Assignee to Seller's reasonable satisfaction, (ii) any such assignment shall be expressly subject to the Buyer Assignee's assumption of the obligation of timely payment of amounts due under the PPA, and (iii) Buyer will retain all other obligations under this Agreement.

ARTICLE 15 DISPUTE RESOLUTION

- 15.1 <u>Governing Law</u>. 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 laws. 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.
- 15.2 <u>Venue</u>. 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 San Diego County, California.
- **<u>Dispute Resolution</u>**. 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, the Parties shall submit the dispute to non-binding mediation prior to seeking any and all remedies available to it at Law in or equity, provided, however, that a dispute as to whether an Event of Default has occurred pursuant to Article 11 shall not be subject to mediation unless the Parties mutually agree. The Parties will cooperate in selecting a qualified neutral mediator selected from a panel of neutrals and in scheduling the time and place of the mediation as soon as reasonably possible, but in no event later than thirty (30) days after the request for mediation is made. The Parties agree to participate in the mediation in good faith and to share the costs of the mediation, including the mediator's fee, equally, but such shared costs shall not include each Party's own attorneys' fees and costs, which shall be borne solely by such Party. If the mediation is unsuccessful, 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 directors, officers, agents, attorneys, employees and representatives (each an "<u>Indemnified Party</u>" and collectively, the "<u>Indemnified Group</u>") from and against all third party 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 negligent or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, employees or agents (collectively, "<u>Indemnifiable Losses</u>").

- (b) Nothing in this Section 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 <u>Notice of Claim</u>. 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 ("<u>Claim</u>"). 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 <u>Defense of Claims</u>. 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, that 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 <u>Subrogation of Rights</u>. 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 <u>Rights and Remedies are Cumulative</u>. 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 with a minimum of liability limits in the amount of Two Million Dollars (\$2,000,000) per occurrence and Five Million Dollars (\$5,000,000) in the aggregate. Coverage shall include products and completed operations, personal & advertising injury insurance, contractual liability, specifically covering Seller's obligations under this Agreement. The policy shall include Buyer as an additional insured but only to the extent of the liabilities assumed hereunder by Seller. The coverage required under this Section 17.1(a) may be provided through a combination of general liability, umbrella liability and/or excess liability policies. 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.
- (b) <u>Umbrella or Excess Liability Insurance</u>. Seller shall maintain, or cause to be maintained at its sole expense, an Umbrella or Excess Liability Insurance policy in a

minimum amount of liability of Ten Million Dollars (\$10,000,000) per occurrence and in the aggregate.

- (c) <u>Workers Compensation Insurance</u>. 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. Employer's 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.
- (d) <u>Business Auto Liability Insurance</u>. Seller shall maintain at all times during the Contract Term Business Auto Liability insurance for bodily injury and property damage with limits of One Million Dollars (\$1,000,000) per occurrence. Such insurance shall cover liability arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.
- (e) <u>Construction All-Risk Insurance</u>. Seller shall maintain or cause to be maintained during the construction of the Facility, but only after major electrical generating 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 Lender (if any) as the loss payee where its interest may appear.
- (f) <u>Subcontractor Insurance</u>. Seller shall require all of its subcontractors to carry the same levels of insurance as Seller where exposure exists. All subcontractors shall include Seller as an additional insured to (i) Commercial General Liability insurance; (ii) Employers' Liability coverage; and (iii) Business Auto Liability insurance for bodily injury and property damage. All subcontractors shall provide a primary and non-contributory endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(g).
- Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any cancellation 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

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.

- **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 request or 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 Public Records Act (Government Code Section 6250 et seq.).
- 18.3 <u>Irreparable Injury; Remedies</u>. 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 in this Article 18. 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 Article 18 or the continuation of any such breach, without the necessity of proving actual damages.
- 18.4 <u>Disclosure to Lenders, Etc.</u>. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by Seller to any actual or potential Lender or investor or any of their 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 <u>Public Records Act</u>. Seller and Buyer acknowledge and agree that this Agreement and any documents, notices or confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Cal. Government Code § 6250 et seq.). Buyer

acknowledges that Seller may submit information to Buyer that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code § 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act (Cal. Government Code §§ 6254 and 6255). Seller acknowledges that Buyer may submit to Seller information that Buyer considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act (Government Code sections 6254 and 6255). Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information" and the disclosing Party, the "Disclosing Party"), the Party receiving such request (the "Receiving Party") as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it.

18.6 <u>Press Releases</u>. 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 <u>Amendments</u>. 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 <u>No Agency, Partnership, Joint Venture or Lease</u>. 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 <u>Severability</u>. 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 <u>Mobile-Sierra</u>. 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 <u>Counterparts; Electronic Signatures</u>. 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, facsimile or scanned signatures as originals.
- 19.8 <u>Electronic Delivery</u>. 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 **<u>Binding Effect.</u>** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.
- 19.10 No Recourse to Members of Buyer. Buyer is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to its Joint Powers Agreement and is a public entity separate from its constituent members. Buyer shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions or assert any remedies against any of Buyer's

constituent members, or the employees, directors, officers, consultants or advisors or Buyer or its constituent members, in connection with this Agreement.

- 19.11 **Forward Contract**. The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code, and Buyer and Seller are "forward contract merchants" within the meaning of the U.S. Bankruptcy Code. Each Party further agrees that, for all purposes of this Agreement, each Party waives and agrees not to assert the applicability of the provisions of 11 U.S.C. § 366 in any bankruptcy proceeding wherein such Party is a debtor. In any such proceeding, each Party further waives the right to assert that the other Party is a provider of last resort to the extent such term relates to 11 U.S.C. § 366 or another provision of 11 U.S.C. § 101-1532.
- 19.12 **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.
- Agreement or any provisions hereof incapable of being performed or administered, then any Party may request that Buyer and Seller enter into negotiations to make the minimum changes to this Agreement necessary to make this Agreement capable of being performed and administered, while attempting to preserve to the maximum extent possible the benefits, burdens, and obligations set forth in this Agreement as of the Effective Date. Upon delivery of such a request, Buyer and Seller shall engage in such negotiations in good faith. If Buyer and Seller are unable, within sixty (60) days after delivery of such request, to agree upon changes to this Agreement or to resolve issues relating to changes to this Agreement, then any Party may submit issues pertaining to changes to this Agreement to the dispute resolution process set forth in Article 15. Notwithstanding the foregoing, (i) a change in cost shall not in and of itself be deemed to render this Agreement or any of the provisions hereof incapable of being performed or administered, and (ii) all of unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.

[Signatures on following page]

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

JVR Energy Park, LLC	SAN DIEGO COMMUNITY POWER, a California joint powers authority
By: Name: Title:	By: Name: Title:

EXHIBIT A

FACILITY DESCRIPTION

Site Name: JVR Energy Park

Site includes all or some of the following APNs:

05-00 (portion); 614-100-20-00 (portion); 660-020-05-00 (portion);

County: San Diego

CEQA Lead Agency: San Diego County

Type of Generating Facility: Solar photovoltaic

Operating Characteristics of Generating Facility: See Cover Sheet

Type of Storage Facility: DC-coupled lithium-ion

Operating Characteristics of Storage Facility: See **Exhibit Q**

Operating Restrictions of Storage Facility: See Exhibit Q

Guaranteed PV Capacity: See definition in Section 1.1

Storage Contract Capacity: See definition in Section 1.1

Facility PNode: To be established prior to the Commercial Operation Date at Facility

Interconnection Point

Facility Meter: See Exhibit R

Storage Facility Meter Location(s): See Exhibit R

Facility Interconnection Point: New switchyard to be named "Carrizo Gorge Switchyard," as

further described in the Interconnection Agreement

Participating Transmission Owner: San Diego Gas & Electric Company

EXHIBIT B

MAJOR PROJECT DEVELOPMENT MILESTONES AND COMMERCIAL OPERATION

1. <u>Major Project Development Milestones</u>.

- (a) "<u>Construction Start</u>" will occur upon Seller's execution of an engineering, procurement, and construction contract (or similar agreement) and issuance thereunder of a notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction 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 <u>Exhibit J</u> hereto, and the date certified therein by Seller shall be the "<u>Construction Start Date</u>." The Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.
- (b) If Construction Start is not achieved by the Guaranteed Construction Start Date, Seller shall pay Daily Delay Damages to Buyer on account of such delay. Daily Delay Damages shall be payable for each day for which Construction Start has not begun by the Guaranteed Construction Start Date. Daily Delay Damages shall be payable to Buyer by Seller until Seller reaches Construction Start of the Facility. On or before the tenth (10th) day of each month, Buyer shall invoice Seller for Daily Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Daily Delay Damages set forth in such invoice. Daily Delay Damages shall be refundable to Seller pursuant to Section 2(b) of this Exhibit B. The Parties agree that Buyer's receipt of Daily Delay Damages shall 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)(ii) and receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2.
- 2. <u>Commercial Operation of the Facility</u>. "<u>Commercial Operation</u>" means the condition existing when (i) Seller has provided Notice to Buyer substantially in the form of <u>Exhibit H</u> (the "<u>COD Certificate</u>"), and (ii) Seller has notified Buyer in writing that it has provided the required documentation to Buyer and met the conditions for achieving Commercial Operation. The "<u>Commercial Operation Date</u>" shall be the later of (x) ninety (90) days before the Guaranteed Commercial Operation Date or (y) the date specified in the COD Certificate.
- (a) Seller shall cause Commercial Operation for the Facility to occur by the Guaranteed Commercial Operation Date. Seller shall notify Buyer that it intends to achieve Commercial Operation at least sixty (60) days before the anticipated Commercial Operation Date.
- (b) If Seller achieves Commercial Operation by the Guaranteed Commercial Operation Date, all Daily Delay Damages paid by Seller shall be refunded to Seller, in addition to any interest actually accrued on such Daily Delay Damages. Seller shall include the request for refund of the Daily Delay Damages (and associated interest) with the first invoice to Buyer after Commercial Operation.

- Operation Date, Seller shall pay Commercial Operation Delay Damages to Buyer for each day after the Guaranteed Commercial Operation Date until the Commercial Operation Date. Commercial Operation Delay Damages shall be payable to Buyer by Seller until the Commercial Operation Date. On or before the tenth (10th) of each month, Buyer shall invoice Seller for Commercial Operation Delay Damages, if any, accrued during the prior month and, within ten (10) Business Days following Seller's receipt of such invoice, Seller shall pay Buyer the amount of the Commercial Operation Delay Damages set forth in such invoice. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages shall 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)(ii) and receive a Damage Payment upon exercise of Buyer's rights pursuant to Section 11.2.
- 3. <u>Termination for Failure to Achieve Commercial Operation</u>. If the Facility has not achieved Commercial Operation within days after the Guaranteed Commercial Operation Date, as such date may be extended hereunder, Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.
- 4. <u>Extension of the Guaranteed Dates</u>. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date both shall, subject to notice and documentation requirements set forth below, be automatically extended, subject to reasonable verification by Buyer, on a day-for-day basis (the "<u>Development Cure Period</u>") for the duration of any and all delays arising out of the following circumstances:
- (a) Seller has not acquired a final and non-appealable major use permit or any other material permits, consents, licenses, approvals, or authorizations in final and non-appealable form from any Government Authority required for Seller to own, construct, interconnect, operate or maintain the Facility, despite the exercise of diligent and commercially reasonable efforts by Seller, including the timely filing of applications for such permits, consents, licenses, approvals or authorization so as to provide sufficient time for processing under normal circumstances to meet the Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date; or



- (c) a Force Majeure Event occurs; or
- (d) the Interconnection Facilities or Network Upgrades are not complete and ready for the Facility to connect and sell Product at the Delivery Point by the Guaranteed Commercial Operation Date, despite the exercise of commercially reasonable efforts by Seller; or



(f) Buyer has not made all necessary arrangements to receive the Facility Energy at the Delivery Point by the Guaranteed Commercial Operation Date.

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period shall not exceed days, for any reason, including a Force Majeure Event, and no extension shall be given if the delay was the result of Seller's failure to take all reasonable actions to meet its requirements and deadlines; provided that the foregoing limitation shall not apply to extensions granted pursuant to . Notwithstanding anything to the contrary, no extension under the Development Cure Period shall be given if (i) the delay was the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take reasonable actions.

5. Failure to Reach Guaranteed PV Capacity or Storage Contract Capacity.

- (a) Guaranteed PV Capacity. If, at Commercial Operation, the Installed PV Capacity is less than one hundred percent (100%) of the Guaranteed PV Capacity, Seller shall have one hundred twenty (120) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed PV Capacity is equal to (but not greater than) the Guaranteed PV Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "Capacity Damages" to Buyer, in an amount equal to the product of (i) and (ii) each MW_{AC} (or portion thereof) that the Guaranteed PV Capacity exceeds the Installed PV Capacity, and the Guaranteed PV Capacity and other applicable portions of the Agreement shall be adjusted accordingly.
- (b) Storage Contract Capacity. If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Storage Contract Capacity, Seller shall have one hundred eighty (180) days after the Commercial Operation Date to install additional capacity and/or Network Upgrades such that the Installed Storage Capacity is equal to (but not

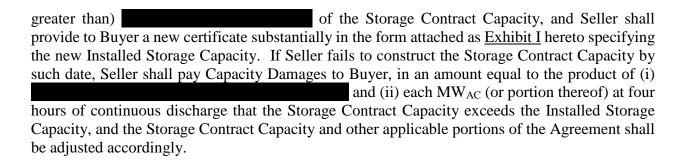


EXHIBIT C

COMPENSATION

Buyer shall compensate Seller for the Product in accordance with this <u>Exhibit C</u>.

- (a) <u>Renewable Rate</u>. For each MWh of Adjusted Facility Energy in each Settlement Period, Buyer shall pay Seller the Renewable Rate.
- (b) <u>Deemed Delivered Energy</u>. For each Settlement Period, Buyer shall pay Seller the Renewable Rate for each MWh of Deemed Delivered Energy.
- (c) Excess Contract Year Deliveries Over
 the amount of Facility Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds
 of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy in such Contract Year in excess of
 of the Expected Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval in which the Facility Energy or Deemed Delivered Energy is provided or (b)

If, at any point in any Contract Year, the amount of Facility Energy plus the amount of Deemed Delivered Energy for such Contract Year exceeds of the Expected Energy for such Contract Year, the price to be paid for additional Facility Energy or Deemed Delivered Energy in such Contract Year in excess of

- (d) <u>Excess Settlement Interval Deliveries</u>. If during any Settlement Interval, Seller delivers PV Energy + Adjusted Discharging Energy in excess of the product of the Guaranteed PV Capacity and the duration of the Settlement Interval, expressed in hours ("<u>Excess MWh</u>"), then the price applicable to all such excess MWh_{AC} in such Settlement Interval shall be and if there is a Negative LMP during such Settlement Interval, Seller shall pay to Buyer an amount equal to the absolute value of the Negative LMP times such excess MWh_{AC} ("<u>Negative LMP Costs</u>").
- (e) <u>Curtailment Payments</u>. Seller shall receive no compensation from Buyer for Facility Energy provided in violation of a Curtailment Order. Buyer shall pay for Deemed Delivered Energy.

(f) Storage Rate.

(i) Each month of the Delivery Term (and pro-rated for the first and last month of the Delivery Term if the Delivery Term does not start on the first day of a calendar month), Buyer shall pay Seller a Monthly Capacity Payment equal to the <u>Storage Rate multiplied by</u> the <u>Availability Adjusted Storage Contract Capacity</u>, as determined under <u>Exhibit P</u>. Without limiting Buyer's obligation to pay Seller for Discharging Energy included in Adjusted Facility Energy,

such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product.

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Buyer shall calculate the year-to-date (YTD) Availability Adjusted Storage Contract Capacity for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%) of the Guaranteed Storage Availability, or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Buyer shall (1) withhold the Storage Capacity Availability Payment True-Up Amount from the next Monthly Capacity Payment(s) (the "Storage Capacity Availability Payment True-Up"), and (2) provide Seller with a written statement of the calculation of the YTD Annual Storage Capacity Availability and the Storage Capacity Availability Payment True-Up Amount; provided, if the Storage Capacity Availability Payment True-Up Amount is a negative number for any month prior to the final year-end Storage Capacity Availability Payment True-Up calculation, Buyer shall not be obligated to reimburse Seller any previously withheld Storage Capacity Availability Payment True-Up Amount, except as set forth in the following sentence. If Buyer withholds any Storage Capacity Availability Payment True-Up Amount pursuant to this subsection (d)(ii), and if the final year-end Storage Capacity Availability Payment True-Up Amount is a negative number, Buyer shall pay to Seller the positive value of such amount together with the next Monthly Capacity Payment due to Seller.

"Storage Capacity Availability Payment True-Up Amount" means an amount equal to A x B - C, where:

- A = The sum of the year-to-date Monthly Capacity Payments
- B = The Capacity Availability Factor
- C = The sum of any Storage Capacity Availability Payment True-Up Amounts previously subject to withholding by Buyer in the applicable Contract Year.

"Capacity Availability Factor" means:

(A) If the YTD Availability Adjusted Storage Contract Capacity times the Storage Contract Capacity is equal to or greater than the Guaranteed Storage Availability times the Storage Contract Capacity, then:

Capacity Availability Factor = 0

(B) If the YTD Annual Storage Capacity Availability times the Storage Contract Capacity is less than the Guaranteed Storage Availability times the Storage Contract Capacity, but greater than or equal to Capacity, then:

Capacity Availability Factor = Guaranteed Storage Availability - YTD Annual Storage Capacity Availability

(C) If the YTD Annual Storage Capacity Availability times the Storage Contract Capacity is less than of the Installed Storage Capacity, then:

Capacity Availability Factor = ((

provided that, if the result of any of the calculations in clauses (A) through (C) above is greater than 1.0, then the Capacity Availability Factor shall be deemed to be equal to 1.0.

- (g) <u>Test Energy</u>. Test Energy is compensated at the Test Energy Rate in accordance with Section 3.6.
- (h) <u>Tax Credits</u>. The Parties agree that the neither the Renewable Rate, the Storage Rate nor the Test Energy Rate are 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 Facility Energy and Product, shall be effective regardless of whether the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

- Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of (a) the Facility to the CAISO Grid and through the end of the Delivery Term, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for the delivery and the receipt of Test Energy and the Product at the Delivery Point and for the purposes of conducting Storage Capacity Tests. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit Schedules to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Product on a day-ahead, hour-ahead, fifteen-minute market or real time basis, as determined by Buyer.
- (b) <u>Notices</u>. 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 or by electronic mail transmission to the personnel designated to receive such information.
- costs (including penalties, Imbalance Energy costs, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. Seller shall be responsible for all CAISO penalties resulting from any failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement (except to the extent such non-compliance is caused by Buyer's failure to perform its duties as Scheduling Coordinator for the Facility). The Parties agree that any Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of the Seller and for Seller's account and that any Non-Availability

Charges (as defined in the CAISO Tariff) are the responsibility of the Seller and for Seller's account. In addition, if during the Delivery Term, the CAISO implements or has implemented any sanction or penalty related to scheduling, outage reporting, or generator operation, and any such sanctions or penalties are imposed upon the Facility or to Buyer as Scheduling Coordinator due to failure by Seller to abide by the CAISO Tariff or the outage notification requirements set forth in this Agreement, the cost of the sanctions or penalties shall be the Seller's responsibility.

- CAISO Settlements. Buyer (as the Facility's SC) shall be responsible for all (d) 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 such CAISO charges. Notwithstanding the foregoing, Seller acknowledges that the CAISO will issue additional invoices reflecting CAISO adjustments to such CAISO charges. Buyer will review, validate, and if requested by Seller under paragraph (e) below, dispute any charges that are the responsibility of Seller in a timely manner and consistent with Buyer's existing settlement processes for charges that are Buyer's responsibilities. Subject to Seller's right to dispute and to have Buyer pursue the dispute of any such invoices, Seller shall pay the amount of CAISO Charges Invoices within ten (10) Business Days of Seller's receipt of the CAISO Charges Invoice. If Seller fails to pay such CAISO Charges Invoice within that period, Buyer may net or offset any amounts owing to it for these CAISO Charges Invoices against any future amounts it may owe to Seller under this Agreement. The obligations under this Section with respect to payment of CAISO Charges Invoices shall survive the expiration or termination of this Agreement.
- (e) <u>Dispute Costs</u>. Buyer (as the Facility's SC) may be required by Seller to dispute CAISO settlements in respect of the Facility. Seller agrees to pay Buyer's costs and expenses (including reasonable attorneys' fees) associated with its involvement with such CAISO disputes to the extent they relate to CAISO charges payable by Seller with respect to the Facility that Seller has directed Buyer to dispute.
- (f) <u>Terminating Buyer's Designation as Scheduling Coordinator</u>. 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) <u>Master File and Resource Data Template</u>. Seller shall provide the data to the CAISO (and to Buyer) that is required for the CAISO's Master 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, such consent not to be unreasonably withheld.
- (h) <u>NERC Reliability Standards</u>. 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.

- (i) <u>Clipped PV Energy</u>. Scheduling Coordinator will utilize Clipped PV Energy as Charging Energy to the extent that is commercially reasonable.
- (j) <u>Charging and Discharging periods</u>. Scheduling Coordinator will set Charging Notices and Discharging Notices at periods where it is commercially reasonable and in accordance with Operating Restrictions, the CAISO tariff, and the Interconnection Agreement.

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. Progress with respect to completion of interconnection with SDG&E.
- 5. Gantt chart schedule showing progress on achieving each of the Milestones.
- 6. Description of any material planned changes to the Facility or the site.
- 7. Summary of activities during the previous calendar quarter or month, as applicable.
- 8. Forecast of activities scheduled for the current calendar quarter.
- 9. Written description about the progress relative to Seller's Milestones, including whether Seller has met or is on target to meet the Milestones.
- 10. List of issues that are likely to potentially affect Seller's Milestones.
- 11. 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.
- 12. If applicable, prevailing wage reports as required by Law.
- 13. 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.
- 14. 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.
- 15. Supplier Diversity Reporting (if applicable). Format to be mutually agreed by Buyer and Seller.
- 16. Any other documentation, reasonably requested by Buyer, evaluated by Seller and agreed if agreed to by both parties.

EXHIBIT F-1

Average Expected Energy for Contract Year 1

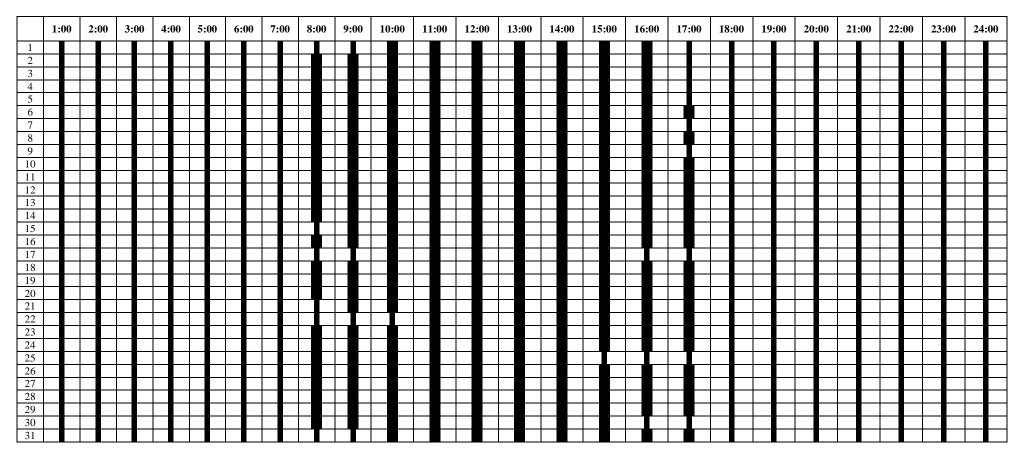
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EXHIBIT F-2

Available Generating Capacity for Contract Year 1

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

Available Generating Capacity, MWAC Per Hour - January



Available Generating Capacity, MWAC Per Hour – February

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Available Generating Capacity, MW_{AC} Per Hour October

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Available Generating Capacity, MWAC Per Hour - November

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Available Generating Capacity, MWAC Per Hour December

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

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EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

$$[(A - B) * (C - D)]$$

where:

 $\underline{A} =$ the Guaranteed Energy Production amount for the Performance Measurement Period, in MWh_{AC}

 \underline{B} = the Adjusted Energy Production amount for the Performance Measurement Period, in MWh_{AC}

 \underline{C} = Price for Replacement Product for the Contract Year, in \$/MWh_{AC}, which shall be calculated by Buyer in a commercially reasonable manner. Buyer is not required to enter into a replacement transaction in order to determine this amount.

D = the Renewable Rate for the Contract Year, in \$/MWh_{AC}

"<u>Adjusted Energy Production</u>" shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Energy.

"<u>Lost Output</u>" has the meaning given in Section 4.7 of the Agreement. The Lost Output shall be calculated in the same manner as Deemed Delivered Energy is calculated, in accordance with the definition thereof.

"Replacement Energy" means energy produced by a facility other than the Facility that, at the time delivered to Buyer, qualifies under Public Utilities Code 399.16(b)(1), and has Green Attributes that meet the same compliance requirements as the Energy being replaced, including with respect to the timeframe for retirement of such Green Attributes, if any, as the Green Attributes that would have been generated by the Facility during the Contract Year for which the Replacement Energy is being provided.

"Replacement Green Attributes" means Renewable Energy Credits of the same Portfolio Content Category (i.e., PCC1) as the Green Attributes portion of the Product and of the same timeframe for retirement as the Renewable Energy Credits that would have been generated by the Facility.

"<u>Replacement Product</u>" means (a) Replacement Energy, and (b) Replacement Green Attributes.

No payment shall be due if the calculation of (A - B) or (C - D) yields a negative number.

Within sixty (60) days after each Contract Year, Buyer will send Seller Notice of the amount of damages owing, if any, which shall be payable to Buyer before the later of (a) thirty (30) days of such Notice and (b) ninety (90) days after each Performance Measurement Period, provided that the amount of damages owing shall be adjusted to account for Replacement Product, if any, delivered after each applicable Performance Measurement Period.

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("Certification") of Commercial Operation is delivered by[lic	ensed
professional engineer] ("Engineer") to San Diego Community Power, a California joint p	owers
authority ("Buyer") in accordance with the terms of that certain Renewable Power Pu	rchase
Agreement dated ("Agreement") by and between [] ("Seller	") and
Buyer. All capitalized terms used in this Certification but not otherwise defined herein shal	l have
the respective meanings assigned to such terms in the Agreement.	

As of _[DATE]_, Engineer hereby certifies and represents to Buyer the following:

- 1. The Generating Facility is operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.
- 2. Seller has installed equipment for the Generating Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.
- 3. Seller has installed equipment for the Storage Facility with a nameplate capacity of no less than ninety-five percent (95%) of the Storage Contract Capacity.
- 4. The Generating Facility's testing included a performance test demonstrating peak electrical output of no less than ninety-five percent (95%) of the GuaranteedPV Capacity for the Generating Facility at the Delivery Point, adjusted for ambient conditions on the date of the Facility testing, and such peak electrical output, as adjusted, was [peak output in MW_{AC}].
- 5. The Storage Facility is fully capable of charging, storing and discharging energy up to no less than ninety-five percent (95%) of the Storage Contract Output and is receiving instructions to charge, store and discharge energy, all within the operational constraints and subject to the applicable Operating Restrictions.
- 6. Authorization to parallel the Facility was obtained by the PTO, [Name of Participating Transmission Owner as appropriate] on _[DATE]_.
- 7. The PTO has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Participating Transmission Owner as appropriate] on _[DATE]_.
- 8. The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on <code>[DATE]</code> .

EXECUT	ED by [LICENSED]	PROFESSIONAL	L ENGINEER]
this	day of	, 20	
			[LICENSED PROFESSIONAL ENGINEER]
			By:
			Its:
			Date:

EXHIBIT I

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification (" <u>Certification</u> ") of Installed engineer] (" <u>Engineer</u> ") to to San Diego Commu (" <u>Buyer</u> ") in accordance with the terms of that dated (" <u>Agreement</u> ") by and between a capitalized terms used in this Certification but respective meanings assigned to such terms in the	nity Power, a California joint powers authority certain Renewable Power Purchase Agreement [] (" <u>Seller</u> ") and Buyer. All not otherwise defined herein shall have the						
I hereby certify the following:							
1. The performance test for the Generating Facility demonstrated peak electrical output of $_$ MW _{AC} at the Delivery Point, as adjusted for ambient conditions on the date of the performance test;							
2. 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; and							
3. The sum of 1. and 2. is MW _{AC} :	and shall be the Installed Capacity.						
EXECUTED by [LICENSED PROFESSIONAL	ENGINEER]						
this, 20	his day of, 20						
	[LICENSED PROFESSIONAL ENGINEER]						
	By:						
	Its:						
	Date:						

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

his certification of Construction Start Date (" <u>Certification</u> ") is delivered by [
ccordance with the terms of that certain Renewable Power Purchase Agreement dated	
'Agreement") by and between Seller and Buyer. All capitalized terms used in this Certification	tion
ut not otherwise defined herein shall have the respective meanings assigned to such terms in	the
greement.	
eller hereby certifies and represents to Buyer the following:	
1. Construction Start (as defined in Exhibit B of the Agreement) has occurred, an	
opy of the notice to proceed that Seller issued to its contractor as part of Construction Startached hereto;	t is
2. the Construction Start Date occurred on (the "Construction S	tart
eate"); and	
3. the precise Site on which the Facility is located is, which must be within	
oundaries of the previously identified Site:	·
N WITNESS WITEDEOE the undersioned has every todathis Contistion on behalf of Salle	
N WITNESS WHEREOF, the undersigned has executed this Certification on behalf of Selle f the day of	ras
SELLER ENTITY]	
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s:	
vate:	

EXHIBIT K

FORM OF LETTER OF CREDIT

[Issuing Bank Letterhead and Address]

IRREVOCABLE STANDBY LETTER OF CREDIT NO. [XXXXXXX]

Date:
Bank Ref.:
Amount: US\$[XXXXXXXX]
Expiry Date:

Beneficiary:

San Diego Community Power, a California joint powers authority

Ladies and Gentlemen:

By the order of _____ ("<u>Applicant</u>"), we, [insert bank name and address] ("<u>Issuer</u>") hereby issue our Irrevocable Standby Letter of Credit No. [XXXXXXX] ("<u>Letter of Credit</u>") in favor of San Diego Community Power, a California joint powers authority] ("<u>Beneficiary</u>"), for an amount not to exceed the aggregate sum of U.S. \$[XXXXXX] (United States Dollars [XXXXX] and 00/100), pursuant to that certain Renewable Power Purchase Agreement dated as of _____ and as amended ("<u>Agreement</u>") between Applicant and Beneficiary. This Letter of Credit shall become effective immediately and shall expire on [Insert Date] which is one year after the issue date of this Letter of Credit, or any expiration date extended in accordance with the terms hereof ("Expiration Date").

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement purportedly signed by your duly authorized representative, in the form attached hereto as Exhibit A, containing one of the two alternative paragraphs set forth in paragraph 2 therein, referencing our Letter of Credit No. [XXXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, (b) as a PDF attachment to an e-mail to [bank email address] or (c) facsimile to [bank fax number [XXX-XXXXXX]] confirmed by [e-mail to [bank email address]] Transmittal by facsimile or email shall be deemed delivered when received.

The original of this Letter of Credit (and all amendments, if any) is not required to be presented in

connection with any presentment of a Drawing Certificate by Beneficiary hereunder in order to receive payment.

We hereby agree with the Beneficiary that all documents presented under and in compliance with the terms of this Letter of Credit, that such drafts will be duly honored upon presentation to the Issuer on or before the Expiration Date. All payments made under this Letter of Credit shall be made with Issuer's own immediately available funds by means of wire transfer in immediately available United States dollars to Beneficiary's account as indicated by Beneficiary in its Drawing Certificate or in a communication accompanying its Drawing Certificate.

Partial draws are permitted under this Letter of Credit, and this Letter of Credit shall remain in full force and effect with respect to any continuing balance.

It is a condition of this Letter of Credit that the Expiration Date shall be deemed automatically extended without an amendment for a one year period beginning on the present Expiration Date hereof and upon each anniversary for such date, unless at least one hundred twenty (120) days prior to any such Expiration Date we have sent to you written notice by overnight courier service that we elect not to extend this Letter of Credit, in which case it will expire on the date specified in such notice. No presentation made under this Letter of Credit after such Expiration Date will be honored.

Notwithstanding any reference in this Letter of Credit to any other documents, instruments or agreements, this Letter of Credit contains the entire agreement between Beneficiary and Issuer relating to the obligations of Issuer hereunder.

This Letter of Credit shall be subject to the provisions (to the extent that such provisions are not inconsistent with this Letter of Credit) of the International Chamber of Commerce International Standby Practices (ICC publication no. 590, 1998) (the "ISP98") with regard to all matters not provided for herein, and, to the extent not inconsistent with the ISP98, this Letter of Credit shall be governed by and interpreted in accordance with the laws of the State of New York, without giving effect to any choice of law rules that would require the application of laws of another jurisdiction.

Please address all correspondence regarding this Letter of Credit to the attention of the Letter of Credit Department at [insert bank address information], referring specifically to Issuer's Letter of Credit No. [XXXXXXX]. For telephone assistance, please contact Issuer's Standby Letter of Credit Department at [XXX-XXXX-XXXX] and have this Letter of Credit available.

[Dank Name]	
[Insert officer name]	

[Donle Nome]

[Insert officer title]

(DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawir	ng Certificate		
[Insert	Bank Name and	Address]	
powers (the "l	s authority, as ber Letter of Credit"	neficiary (the "Beneficiary") o	of San Diego Community Power, a California joint of the Irrevocable Letter of Credit No. [XXXXXXX] ame] (the "Bank") by order of (the
1.	* *	Beneficiary are party to that cen_, 20 (the "Agreement").	rtain Renewable Power Purchase Agreement dated as
2.	because a Seller	r Event of Default (as such terr led for in the Agreement whe	etter of Credit in the amount of U.S. \$
	OR		
	which equals the maintain the Le but has failed t	e full available amount under etter of Credit in force and effe	etter of Credit in the amount of U.S. \$the Letter of Credit, because Applicant is required to ect beyond the expiration date of the Letter of Credit a replacement Letter of Credit or other acceptable h expiration date.
3.	_	•	ntative of San Diego Community Power, a California ecute and deliver this Drawing Certificate on behalf
			quested amount to San Diego Community Power, a mmediately available funds to the following account:
	[Specify account	nt information]	
			San Diego Community Power a California joint powers authority
			By: Name: Title: Date:

EXHIBIT L

FORM OF GUARANTY

between [], a [] ("Guarantor"), and San Diego Community Power, a California joint powers authority (together with its successors and permitted assigns, "Buyer").
Recitals
A. Buyer and [SELLER ENTITY], a ("Seller"), entered into that certain Renewable Power Purchase Agreement (as amended, restated or otherwise modified from time to time, the "PPA") dated as of [], 20
B. Guarantor is entering into this Guaranty as Performance Security to secure Seller's obligations under the PPA, as required by Section 8.8 of the PPA.
C. It is in the best interest of Guarantor to execute this Guaranty inasmuch as Guarantor will derive substantial direct and indirect benefits from the execution and delivery of the PPA.
D. Initially capitalized terms used but not defined herein have the meaning set forth in the PPA.
<u>Agreement</u>
1. Guaranty. For value received, Guarantor does hereby unconditionally, absolutely and irrevocably guarantee, as primary obligor and not as a surety, to Buyer the prompt payment by Seller of any and all amounts and payment obligations now or hereafter owing from Seller to Buyer under the PPA, including, without limitation, compensation for penalties, the Termination Payment, indemnification payments or other damages, as and when required pursuant to the terms of the PPA (the "Guaranteed Amount"), provided, that Guarantor's aggregate liability under or arising out of this Guaranty shall not exceed Dollars (\$). The Parties understand and agree that any payment by Guarantor or Seller of any portion of the Guaranteed Amount shall thereafter reduce Guarantor's maximum aggregate liability hereunder on a dollar-for-dollar basis. This Guaranty is an irrevocable, absolute, unconditional and continuing guarantee of the full and punctual payment, and not of collection, of the Guaranteed Amount and, except as otherwise expressly addressed herein, is in no way conditioned upon any requirement that Buyer first attempt to collect the payment of the Guaranteed Amount from Seller, any other guarantor of the Guaranteed Amount or any other Person or entity or resort to any other means of obtaining payment of the Guaranteed Amount. In the event Seller shall fail to duly, completely or punctually pay any Guaranteed Amount as required pursuant to the PPA, Guarantor shall promptly pay such amount as required herein.

2. <u>Demand Notice</u>. For avoidance of doubt, a payment shall be due for purposes of this Guaranty only when and if a payment is due and payable by Seller to Buyer under the terms and conditions of the Agreement. If Seller fails to pay any Guaranteed Amount as required pursuant to

the PPA for five (5) Business Days following Seller's receipt of Buyer's written notice of such failure (the "<u>Demand Notice</u>"), then Buyer may elect to exercise its rights under this Guaranty and may make a demand upon Guarantor (a "<u>Payment Demand</u>") for such unpaid Guaranteed Amount. A Payment Demand shall be in writing and shall reasonably specify in what manner and what amount Seller has failed to pay and an explanation of why such payment is due and owing, with a specific statement that Buyer is requesting that Guarantor pay under this Guaranty. Guarantor shall, within five (5) Business Days following its receipt of the Payment Demand, pay the Guaranteed Amount to Buyer.

- 3. Scope and Duration of Guaranty. This Guaranty applies only to the Guaranteed Amount. This Guaranty shall continue in full force and effect from the Effective Date until the earlier of the following: (x) all Guaranteed Amounts have been paid in full (whether directly or indirectly through set-off or netting of amounts owed by Buyer to Seller), or (y) replacement Performance Security is provided in an amount and form required by the terms of the PPA. Further, this Guaranty (a) shall remain in full force and effect without regard to, and shall not be affected or impaired by any invalidity, irregularity or unenforceability in whole or in part of this Guaranty, and (b) subject to the preceding sentence, shall be discharged only by complete performance of the undertakings herein. Without limiting the generality of the foregoing, the obligations of the Guarantor hereunder shall not be released, discharged, or otherwise affected and this Guaranty shall not be invalidated or impaired or otherwise affected for the following reasons:
 - (i) the extension of time for the payment of any Guaranteed Amount, or
 - (ii) any amendment, modification or other alteration of the PPA, or
 - (iii) any indemnity agreement Seller may have from any party, or
- (iv) any insurance that may be available to cover any loss, except to the extent insurance proceeds are used to satisfy the Guaranteed Amount, or
- (v) any voluntary or involuntary liquidation, dissolution, receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or other similar proceeding affecting, Seller or any of its assets, including but not limited to any rejection or other discharge of Seller's obligations under the PPA imposed by any court, trustee or custodian or any similar official or imposed by any law, statue or regulation, in each such event in any such proceeding, or
- (vi) the release, modification, waiver or failure to pursue or seek relief with respect to any other guaranty, pledge or security device whatsoever, or
- (vii) any payment to Buyer by Seller that Buyer subsequently returns to Seller pursuant to court order in any bankruptcy or other debtor-relief proceeding, or
- (viii) those defenses based upon (A) the legal incapacity or lack of power or authority of any Person, including Seller and any representative of Seller to enter into the PPA or perform its obligations thereunder, (B) lack of due execution, delivery, validity or enforceability, including of

the PPA, or (C) Seller's inability to pay any Guaranteed Amount or perform its obligations under the PPA, or

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

<u>provided</u> that Guarantor reserves the right to assert for itself any defenses, setoffs or counterclaims that Seller is or may be entitled to assert against Buyer.

- 4. <u>Waivers by Guarantor</u>. Guarantor hereby unconditionally waives as a condition precedent to the performance of its obligations hereunder, with the exception of the requirements in Paragraph 2, (a) notice of acceptance, presentment or protest with respect to the Guaranteed Amounts and this Guaranty, (b) notice of any action taken or omitted to be taken by Buyer in reliance hereon, (c) any requirement that Buyer exhaust any right, power or remedy or proceed against Seller under the PPA, and (d) any event, occurrence or other circumstance which might otherwise constitute a legal or equitable discharge of a surety. Without limiting the generality of the foregoing waiver of surety defenses, it is agreed that the occurrence of any one or more of the following shall not affect the liability of Guarantor hereunder:
- (i) at any time or from time to time, without notice to Guarantor, the time for payment of any Guaranteed Amount shall be extended, or such performance or compliance shall be waived;
- (ii) the obligation to pay any Guaranteed Amount shall be modified, supplemented or amended in any respect in accordance with the terms of the PPA;
- (iii) subject to Section 10, any (a) sale, transfer or consolidation of Seller into or with any other entity, (b) sale of substantial assets by, or restructuring of the corporate existence of, Seller or (c) change in ownership of any membership interests of, or other ownership interests in, Seller; or
- (iv) the failure by Buyer or any other Person to create, preserve, validate, perfect or protect any security interest granted to, or in favor of, Buyer or any Person.
- 5. <u>Subrogation</u>. Notwithstanding any payments that may be made hereunder by the Guarantor, Guarantor hereby agrees that until the earlier of payment in full of all Guaranteed Amounts or expiration of the Guaranty in accordance with Section 3, it shall not be entitled to, nor shall it seek to, exercise any right or remedy arising by reason of its payment of any Guaranteed Amount under this Guaranty, whether by subrogation or otherwise, against Seller or seek contribution or reimbursement of such payments from Seller.
- 6. Representations and Warranties. Guarantor hereby represents and warrants that (a) it has all necessary and appropriate [limited liability company][corporate] powers and authority and the legal right to execute and deliver, and perform its obligations under, this Guaranty, (b) this Guaranty constitutes its legal, valid and binding obligations enforceable against it in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights or general principles of equity, (c) the

execution, delivery and performance of this Guaranty does not and will not contravene Guarantor's organizational documents, any applicable Law or any contractual provisions binding on or affecting Guarantor, (d) there are no actions, suits or proceedings pending before any court, governmental agency or arbitrator, or, to the knowledge of the Guarantor, threatened, against or affecting Guarantor or any of its properties or revenues which may, in any one case or in the aggregate, adversely affect the ability of Guarantor to enter into or perform its obligations under this Guaranty, and (e) no consent or authorization of, filing with, or other act by or in respect of, any arbitrator or Governmental Authority, and no consent of any other Person (including, any stockholder or creditor of the Guarantor), that has not heretofore been obtained is required in connection with the execution, delivery, performance, validity or enforceability of this Guaranty by Guarantor.

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

If delivered to Buyer, to it at	[] Attn: [] Fax: []
If delivered to Guarantor, to it at	[] Attn: [] Fax: []

- 8. <u>Governing Law and Forum Selection</u>. This Guaranty shall be governed by, and interpreted and construed in accordance with, the laws of the United States and the State of California, excluding choice of law rules. The Parties agree that any suit, action or other legal proceeding by or against any party (or its affiliates or designees) with respect to or arising out of this Guaranty shall be brought in the federal courts of the United States or the courts of the State of California sitting in San Diego County, California.
- 9. <u>Miscellaneous</u>. This Guaranty shall be binding upon Guarantor and its successors and assigns and shall inure to the benefit of Buyer and its successors and permitted assigns pursuant to the PPA. No provision of this Guaranty may be amended or waived except by a written instrument executed by Guarantor and Buyer. This Guaranty is not assignable by Guarantor without the prior written consent of Buyer. No provision of this Guaranty confers, nor is any provision intended to confer, upon any third party (other than Buyer's successors and permitted assigns) any benefit or right enforceable at the option of that third party. This Guaranty embodies the entire agreement and understanding of the parties hereto with respect to the subject matter hereof and supersedes all prior

or contemporaneous agreements and understandings of the parties hereto, verbal or written, relating to the subject matter hereof. If any provision of this Guaranty is determined to be illegal or unenforceable (i) such provision shall be deemed restated in accordance with applicable Laws to reflect, as nearly as possible, the original intention of the parties hereto and (ii) such determination shall not affect any other provision of this Guaranty and all other provisions shall remain in full force and effect. This Guaranty may be executed in any number of separate counterparts, each of which when so executed shall be deemed an original, and all of said counterparts taken together shall be deemed to constitute one and the same instrument. This Guaranty may be executed and delivered by electronic means with the same force and effect as if the same was a fully executed and delivered original manual counterpart.

[Signature on next page]

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

GUARANTOR:
[]
By:
Printed Name:
Title:
BUYER:
[]
By:
Printed Name:
Title:
By:
Printed Name:
Title:

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "Notice") is delivered by [SELLER ENTITY] ("Seller") to San Diego Community Power, a California joint powers authority] ("Buyer") in accordance with the terms of that certain Renewable Power Purchase Agreement dated ("Agreement") by and between Seller and Buyer. All capitalized terms used in this 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 Information¹

No	
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.

By:			

[SELLER ENTITY]

Its:

Date:_____

EXHIBIT N

NOTICES

("Seller")	San Diego Community Power, a California joint powers authority ("Buyer")	
All Notices:	All Notices:	
Street:	San Diego Community Power	
City:	Attn: Chief Executive Officer	
Attn:	San Diego Community Power	
Phone:	815 E Street, Suite 12716	
Facsimile:	San Diego, CA 92112	
Email:	Phone: (619) 236-6563	
	E-mail: <u>bcarnahan@sdcommunitypower.org</u>	
With a copy to:		
Street:		
City:		
Attn:		
Phone:		
Facsimile:		
Email:		
Reference Numbers:	Reference Numbers:	
Duns:		
Federal Tax ID Number:		
Invoices:	Invoices:	
Attn:	Attn: Michael Maher	
Phone:	Phone: (415) 526-3020	
Facsimile:	Email: mmaher@mahercpa.com	
E-mail:		
Scheduling:	Scheduling:	
Attn:	Tenaska Power Services CO.	
Phone:	Attn: Kara Whillock, Tenaska Power Services	
Facsimile:	Co.	
E-mail:	Phone: 972-333-6122	
	Email: <u>kwhillock@tnsk.com</u>	
	Day Ahead: (817) 303-1115	
	Real Time: (817) 303-1852	
	Facsimile: (817) 303-1104	

("Seller")	San Diego Community Power, a California joint powers authority ("Buyer")
Confirmations:	Confirmations:
Attn:	Attn: Chief Executive Officer
Phone:	San Diego Community Power
Facsimile:	815 E Street, Suite 12716
E-mail:	San Diego, CA 92112
	Phone: (619) 236-6563
	E-mail: <u>bcarnahan@sdcommunitypower.org</u>
Payments:	Payments:
Attn:	Attn: Michael Maher
Phone:	Phone: (415) 526-3020
Facsimile:	Email: mmaher@mahercpa.com
E-mail:	
Wire Transfer:	Wire Transfer:
BNK:	
ABA:	
ACCT:	
With additional Notices of an Event of	With additional Notices of an Event of
Default to:	Default to:
A	D D
Attn:	Ryan Baron,
Phone:	Best Best & Krieger LLP
E-mail:	18101 Von Karman Ave., Suite 1000
W. 1	Irvine CA 92612
With a copy to:	Phone: (949) 263-6568
E. C. A. A.	Email: ryan.baron@bbklaw.com
Emergency Contact:	Emergency Contact: Attn: Chief Executive Officer
Attn: Phone:	
Facsimile:	San Diego Community Power 815 E Street, Suite 12716
E-mail:	San Diego, CA 92112
E-man.	Phone: (619) 236-6563
	E-mail: bcarnahan@sdcommunitypower.org
	E-man. ocamanane sucommunitypower.org
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EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

- A. <u>Commercial Operation Date Storage Capacity Test</u>. Upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Commercial Operation Storage Capacity Test prior to the Commercial Operation Date. Such initial Commercial Operation Storage Capacity Test (and any subsequent Commercial Operation Storage Capacity Test permitted in accordance with <u>Exhibit B</u>) shall be performed in accordance with this <u>Exhibit O</u> and shall establish the Installed Storage Capacity hereunder based on the actual Power capacity of the Storage Facility determined by such Commercial Operation Storage Capacity Test(s).
- B. Subsequent Storage Capacity Tests. Following the Commercial Operation Storage Capacity Test(s), but not more than once per Contract Year within the first quarter of each Contract Year, upon no less than ten (10) Business Days prior Notice to Seller, Buyer shall have the right to require Seller to schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the most recent Storage Capacity Test at any time upon no less than five (5) Business Days prior written Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Storage Contract Capacity has varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to perform a Storage Capacity Test or run a retest of any Storage Capacity Test at any time during any Contract Year upon five (5) Business Days' prior written Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).
- C. <u>Test Results and Re-Setting of Storage Contract Capacity</u>. No later than five (5) days following any Storage Capacity Test, Seller shall submit a testing report detailing results and findings of the test. The report shall include Storage Facility Meter readings and plant log sheets verifying the operating conditions and output of the Storage Facility. In accordance with Section 4.9(b) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Storage Contract Capacity determined pursuant to such Capacity Test shall become the new Storage Contract Capacity at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Storage Capacity Test Procedures

PART I. GENERAL.

A. Each Storage Capacity Test (including the Commercial Operation Storage Capacity Test, each subsequent Storage Capacity Test, and all re-tests thereof permitted under paragraph B above) shall be conducted in accordance with Prudent Operating Practices and the provisions of this Exhibit O. For ease of reference, a Storage Capacity Test is sometimes referred to in this Exhibit O as a "SCT". Buyer or its representative may be present for the SCT and may, for informational purposes only, use its own metering equipment for verification purposes (at Buyer's sole cost).

B. Conditions Prior to Testing.

- (1) The EMS shall be successfully configured to communicate and exchange data with the Battery Management System ("BMS"), Seller's SCADA system (if applicable), Buyer's SCADA device, and a historian device (if separate) for the calculation, recording and archiving of data points.
- (2) The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Buyer's RTU and the SCADA System should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Buyer's RTU and Seller's EMS interface and the ability to record SCADA Systems data.
- (3) Commissioning shall be successfully completed per manufacturer guidance on all applicable installed Facility equipment, including verification that all controls, set points, and instruments of the BMS and EMS are configured.
- (4) Any SCTs requiring the availability of Charging Energy shall be conducted when the Generating Facility is producing at a rate equal to or above the Storage Contract Output *divided by* four (4) hours, continuously for a five (5)-hour period; *provided* that Seller may waive such conditions at its sole discretion. Any SCTs that are required or allowed to occur under this Exhibit O that take place in the absence of the above condition being satisfied shall be subject to a mutually agreed upon adjustment (such agreement not to be unreasonably withheld) between Seller and Buyer with respect to the allowed charging time for such SCT and/or Storage Facility Charging Loss Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.
- (5) Any SCTs measuring Discharging Energy shall be conducted when the Generating Facility is not delivering Energy to the Facility meter.

PART II. REOUIREMENTS APPLICABLE TO ALL STORAGE CAPACITY TESTS.

A. <u>Purpose of Test</u>. Each SCT shall:

- (1) Test Charging from the Generating Facility at the Storage Facility Meter to establish Storage Facility Charging Loss Factor and charging ramp rate.
- (2) Test Discharging from the Storage Facility to the Delivery Point at the Facility Meter to establish Storage Facility Discharging Loss Factor, discharging ramp rate, and Storage Contract Capacity,.
- B. <u>Parameters</u>. During each SCT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at a minimum of two (2) second intervals:

- (1) time (seconds);
- (2) Charging Power (MW_{DC}) at the Storage Facility Meter;
- (3) Stored Energy Level (MWh_{DC}) at the Storage Facility Meter, either directly measured or derived;
- (4) Discharging Power (MW_{AC}) at the Facility Meter;
- C. <u>Site Conditions</u>. During each SCT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:
 - (1) Relative humidity (%);
 - (2) Barometric pressure (inches Hg) at facility weatherstation nearest to Storage Facility; and
 - (3) Ambient air Temperature (°F).
- D. <u>Test Elements</u>. Each SCT shall include the following test elements, during which time the Storage Facility may be regulated between 0.95 power factor leading and lagging as needed to comply with CAISO reactive power requirements:
 - (1) The discharging of the Storage Facility to its minimum SoC as allowed by the Storage Facility's control system and Operating Restrictions;
 - (2) Once at Minimum SoC, holding the Storage Facility in an active-standby state for at least 30 minutes to allow for thermal normialization of batteries:
 - (3) The charging of the Storage Facility at a constant power charge rate no larger than per Operating Restrictions until the SoC reaches at least 90%, continued by the receipt of charging Energy as sustained until the SoC reaches 100%, not to exceed five (5) hours of total charging time;
 - (4) The measurement of the time from when the charge signal is sent until the constant power charge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated charging ramp rate);
 - (5) The measurement of Energy, as measured by the Storage Facility Meter, that is required to charge the Storage Facility until a 100% SoC is achieved;
 - (6) Once at Maximum SoC, the Storage Facility shall be held in an active-standby state for at least 30 minutes to allow for thermal normilzation of the batteries;

- (7) The discharging of the Storage Facility for four (4) continuous hours at a constant power discharge rate (in MW_{AC} as measured at the Facility Meter) no greater than the Storage Contract Output divided by for four (4) hours;
- (8) The measurement of the time from when the discharge signal is sent until the constant power discharge rate is achieved (dividing the constant power charge rate by this measurement will determine the updated discharging ramp rate);
- (9) The measurement of Energy, as measured by the Storage Facility Meter, that is discharged from the Storage Facility to the Delivery Point until the minimum SoC allowed by Operating Restrictions is achieved as indicated by the battery management system.

E. Test Conditions.

- (1) General. At all times during a SCT, the Storage Facility shall be operated in compliance with Prudent Operating Practices and all operating protocols recommended, required or established by the manufacturer for the Storage Facility. Buyer shall ensure that the Storage Facility has charged and discharged at least eighty percent (80%) of one (1) Cycle in the 24-hour period prior to the beginning of the SCT.
- (2) <u>Abnormal Conditions</u>. If abnormal operating or grid conditions that prevent the recordation of any required parameter occur during a SCT (including a level of irradiance that does not permit the Generating Facility to produce sufficient Charging Energy), Seller may postpone or reschedule all or part of such SCT in accordance with Part II.F below.
- (3) <u>Instrumentation and Metering</u>. Seller shall provide all instrumentation, metering and data collection equipment required to perform the SCT. The instrumentation, metering and data collection equipment electrical meters shall be calibrated in accordance with Prudent Operating Practice, and as applicable, the CAISO Tariff.
- F. <u>Incomplete Test</u>. Except as provided in Part I(D), If any SCT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the SCT stopped; (ii) require that the portion of the SCT not completed, be completed within a reasonable specified time period; or (iii) require that the SCT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a SCT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the PTO, Seller shall be permitted to reconduct such SCT on dates and at times reasonably acceptable to the Parties.
- G. <u>Final Report</u>. Within fifteen (15) Business Days after the completion of any SCT, Seller shall prepare and submit to Buyer a written report of the results of the SCT,

which report shall include:

- (1) a record of the personnel present during the SCT that served in an operating, testing, monitoring or other such participatory role;
- (2) the measured data for each parameter set forth in Part II.A through D, as applicable, including copies of the raw data taken during the test;
- (3) the current level of Storage Contract Capacity, the amount of Energy required to fully charge the battery, the current charge and discharge ramp rate, and the Maximum Stored Energy Level, each determined by the SCT, including supporting calculations; and
- (4) Seller's statement of either Seller's acceptance of the SCT or Seller's rejection of the SCT results and reason(s) therefor.

Within ten (10) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the SCT results or Buyer's rejection of the SCT and reason(s) therefor.

If either Party reasonably rejects the results of any SCT, such SCT shall be repeated in accordance with Part II.F.

- H. <u>Supplementary Storage Capacity Test Protocol</u>. No later than sixty (60) days prior to commencing Storage Facility construction, Seller shall deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) a supplement to this <u>Exhibit O</u> with additional and supplementary details, procedures and requirements applicable to Storage Capacity Tests based on the then current design of the Storage Facility ("<u>Supplementary Storage Capacity Test Protocol</u>"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended updates to the then current Supplementary Storage Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.
- I. Adjustment to Storage Contract Capacity. The result of dividing (i) the lesser of (a) the Storage Contract Output, and (b) the total amount of Facility Energy delivered to the Delivery Point as measured at the Facility Meter (expressed in MWh_{AC}) during the first four (4) hours of discharge; divided by (ii) four (4) hours; shall be the new Storage Contract Capacity in accordance with Section 4.9(c) of the Agreement.
- J. <u>Adjustment to Storage Facility Charging Loss Factor</u>. Using the measurements from the test procedure measuring constant power charging from SoC of 0% to SoC of no less than 90%, the result of dividing (i) the average Charging Power

(expressed in MWh_{DC}) as measured at the Storage Facility Meter, by (ii) the Storage Facility's maximum Charging Power allowed under Operating Restrictions (expressed in MWh_{DC}) at the DC bus of the inverter, shall be the new Storage Facility Charging Loss Factor.

K. <u>Adjustment to Storage Facility Discharging Loss Factor</u>. The result of (i) the total change in Discharging Energy (expressed in MWh_{AC}) at the Facility meter divided by (ii) the total change in Stored Energy Level (expressed in MWh_{DC}) at the Storage Facility Meter, as measured during the four (4) hour constant power discharging test, shall be the new Storage Facility Discharging Loss Factor.

EXHIBIT P

STORAGE FACILITY AVAILABILITY

Annual Storage Availability

(a) <u>Calculation of Annual Storage Availability</u>. Seller shall calculate the "<u>Annual Storage Availability</u>" in a given Contract Year using the formula set forth below:

Annual Storage Availability (%) =

$$\frac{1}{Annual\ On\ Peak\ Hours}*\sum_{h=1}^{Annual\ On\ Peak\ Hours}MIN[(ASPC(h)), (ASEC(h))]$$

Where:

Annual On Peak Hours – the sum of all On-Peak Hours in a given Contract Year.

ASPC(h) = "Available Storage Power Capacity" - In a given On-Peak Hour, the deliverable power capacity of the Storage Facility at the Delivery Point (as determined by the EMS, adjusted for losses) divided by the Storage Contract Capacity.

ASEC(h) = "Available Storage Energy Capacity" - In a given On-Peak Hour, the deliverable Stored Energy Level in MWh_{AC} at the Delivery Point if the SOC was 100%, *divided by* the result of (i) the Storage Contract Capacity multiplied by (ii) four (4) hours.

ASPC and ASEC shall only be deemed unavailable (in whole or in part) if the Storage Facility is not able to deliver corresponding Storage Product for any reason other than the occurrence of any of the following (each, an "Excused Event"): a Force Majeure Event, Buyer Bid Curtailment, Buyer Curtailment Orders, Curtailment Orders, Buyer Default, Storage Capacity Tests, System Emergencies, Transmission System Outage, Battery Augmentation, or the Operating Restrictions in Exhibit Q. For the avoidance of doubt, ASPC and ASEC during an On-Peak Hour coinciding with an Excused Event shall be calculated as if an Excused Event had not occurred.

If the Storage Facility was previously deemed unavailable (in whole or in part) for a period of time, and Seller provides a revised Notice indicating the Storage Facility is available for such period of time by 5:00 A.M. of the morning Buyer schedules or bids the Storage Facility in the Day-Ahead Market, the Storage Facility will be deemed to be available to the extent set forth in the revised Notice.

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

Availability Adjustment

The applicable "<u>Availability Adjusted Storage Contract Capacity</u>" is calculated by multiplying the Storage Contract Capacity by the Availability Adjustment ("<u>Availability Adjustment</u>" or "<u>AA</u>"), which is calculated as follows:

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

$$AA =$$

(ii) If the Annual Storage Availability is less than the Guaranteed Storage Availability, but greater than or equal to \(\bigcup_{\pi}\), then:

(iii) If the Annual Storage Availability is less than , then:

$$AA =$$

EXHIBIT Q

OPERATING RESTRICTIONS

The Storage Facility shall be subject to the following Operating Restrictions:

	Description	Value	Notes
1.	Storage Contract Capacity		
2.	Maximum Stored Energy Level		
3.	Minimum Stored Energy Level		
4.	Maximum Charging Capacity		
5.	Minimum Charging Capacity		
6.	Maximum Discharging Capacity		
7.	Minimum Discharging Capacity		
8.	Maximum State of Charge (SOC) during Charging		
9.	Minimum State of Charge (SOC) during Discharging		
10.	Annual Average State of Charge Range (SOC)		Measured during each Contract Year
11.	Annual Cycle Limit		Not to exceed the stated value Measured during each Contract Year
12.	Daily Dispatch Limits		Not to exceed the stated value See Cover Sheet

13.	Ramp rate		
14.	Charging Energy source	The Storage Facility will only be charged by the Generating Facility	
15.	EMS/BMS limits	Any limits on imposed on Storage Facility operation by the EMS or BMS for the protection or preservation of person or property.	Limts shall be respected.

EXHIBIT R

METERING DIAGRAM

