Regular Meeting of the Valley Clean Energy Alliance
Board of Directors
Thursday, April 9, 2026 at 5:30 p.m.
City of Davis Community Chambers
23 Russell Boulevard, Davis, California 95616

Board Members will be attending in-person and public participation will be in-person and available via Zoom Webinar (video/teleconference). VCE will, to the best of its ability, provide hybrid and remote options for VCE meeting participants and to the public; however, VCE cannot guarantee these options will be available due to technical limitations outside of our control. For assurance of public comment, VCE encourages in-person and written public comments to be submitted as described below when possible. VCE, to the best of its abilities, will provide participation via the Zoom platform.

Accommodations for Persons with disabilities: Individuals who need special assistance or a disability-related modification or accommodation to participate in this meeting, or who have a disability and wish to request an alternative format for the meeting materials, should contact Alisa Lembke, VCE Board Clerk/Administrative Analyst, as soon as possible and preferably at least two (2) working days before the meeting at (530) 446-2754 or Alisa.Lembke@ValleyCleanEnergy.org.

If you have anything that you wish to be distributed to the Board and included in the official record, please hand it to a member of VCEA staff who will distribute the information to the Board members and other staff.

Please note that the numerical order of items is for convenience of reference. Items may be taken out of order on the request of any Board member with the concurrence of the Board. Staff recommendations are advisory to the Board. The Board may take any action it deems appropriate on any item on the agenda even if it varies from the staff recommendation.

Members of the public who wish to listen to the Board of Director's meeting may do so with the video/teleconferencing call-in number and meeting ID code. Video / teleconference information below to join meeting:

Join meeting via Zoom:

a. From a PC, Mac, iPad, iPhone, or Android device with high-speed internet. (If your device does not have audio, please also join by phone.)
https://us02web.zoom.us/j/85383785578
Meeting ID: 853 8378 5578

b. By phone:
One tap mobile:
+1-669-444-9171,,85383785578# US
+1-669-900-9128,, 85383785578# US

Or Dial:
+1-669-444-9171 US
+1-669-900-9128 US
Meeting ID: 853 8378 5578

Public comments may be submitted electronically or during the meeting. Instructions on how to submit your public comments can be found in the PUBLIC PARTICIPATION note at the end of this agenda.

Board Members: Jesse Loren (City of Winters, Chair), Tania Garcia-Cadena (City of Woodland, Vice Chair), Bapu Vaitla (City of Davis), Lucas Frerichs (Yolo County), Richard Casavecchia (City of Winters), Tom Stallard (City of Woodland), Donna Neville (City of Davis), Sheila Allen (Yolo County)

Alternate Board Members: Angel Barajas (Yolo County), Mayra Vega (City of Woodland), Linda Deos (City of Davis), Albert Vallecillo (City of Winters)

5:30 p.m. Call to Order

1. **Welcome, Approval of Agenda**
2. **Public Comment:** This item is reserved for persons wishing to address the Board on any VCE-related matters that are not otherwise on this meeting agenda or are listed on the Consent portion of the agenda. Public comments on matters listed on the agenda shall be heard at the time the matter is called. As with all public comment, members of the public who wish to address the Board are customarily limited to two minutes per speaker, electronically submitted comments should be limited to approximately 300 words. Comments that are longer than 300 words will only be read for two minutes. All electronically submitted comments, whether read in their entirety or not, will be posted to the VCE website within 24 hours of the conclusion of the meeting. See below under **PUBLIC PARTICIPATION** on how to provide your public comment.

CONSENT AGENDA

3. **Approve February 12, 2026 Board meeting Minutes.**
4. **Receive 2026 long range calendar.**
5. **Receive legislative update provided by Pacific Policy Group.**
6. **Receive March 2026 regulatory update dated April 1, 2026 provided by Keyes & Fox.**
7. **Receive Community Advisory Committee March 26, 2026 meeting summary.**
8. **Receive Customer Participation update (Quarter 1 2026).**
9. **Receive Enterprise Risk Management Report (Bi-Annual). (Information)**
10. **Approve updates to VCE's Conflict of Interest Code. (Action)**
11. **Approve updates via Resolution to Exhibit C – Annual Energy Usage and Exhibit D – Voting Rights to VCE's Joint Powers Authority. (Action)**
12. **Receive process and schedule of Integrated Resource Plan update. (Information)**
13. **Receive Treasury and financial update; ratify Investment Policy; and, approve a one year extension of Second Amended and Restated Credit Agreement with River City Bank. (Action)**

REGULAR AGENDA

14. **Approve Second Amended and Restated Power Purchase Agreement for the Gibson Project. (Discussion/Action)**
15. **Ratify Valley Clean Energy's positions on the following bills:**
    A. AB 1761 (Rogers). Improving PCIA Transparency. (CalCCA Sponsored) Support;
    B. SB 1138 (Padilla). Resource Adequacy (RA) Transactability. (CalCCA Sponsored) Support; and,
    C. AB 2383 (Zbur). Large Load Rate Setting Authority. Oppose Unless Amended. (Discussion/Action)
16. **Board Member and Staff Announcements:** Action items and reports from members of the Board, including announcements, AB1234 reporting of meetings attended by Board Members of VCE expense, questions to be referred to staff, future agenda items, and reports on meetings and information which would be of interest to the Board or the public.
17. **Adjournment/Announcement:** The Board's May 14, 2026 regular meeting has been cancelled due to the CalCCA Conference being held in Sacramento on May 12-14, 2026. A special meeting of the Board may be scheduled in May should an urgent matter needs to be addressed. The Board's has scheduled its regular meeting for Thursday, June 11, 2026 at the City of Davis Community Chambers, located at 23 Russell Boulevard, Davis, California 95616.

PUBLIC PARTICIPATION: **Public Comments:** Public participation for this meeting will be done electronically via e-mail and during the meeting as described below.

Public participation via e-mail: If you have anything that you wish to be distributed to the Board and included in the official record, please e-mail it to VCE staff at Meetings@ValleyCleanEnergy.org . If information is received by 3:00 p.m. on the day of the Board meeting it will be e-mailed to the Board members and other staff prior to the meeting. If it is received after 3:00 p.m. the information will be distributed after the meeting, but within 24 hours of the conclusion of the meeting. Written public comments that do not exceed 300 words will be read by the VCE Board Clerk, or other assigned VCE staff, to the Board and the public during the meeting subject to the usual time limit for public comments [two (2) minutes]. General written public comments will be read during Item 2, Public Comment. *Written public comment on individual agenda items should include the item number in the "Subject" line for the e-mail and the Clerk will read the comment during the item.* All written comments received will be posted to the VCE website.

Verbal public participation during the meeting:

1) **If attending in person**, please complete a **Comment Card** and return it to the Board Clerk.
2) **If attending remotely via Zoom**, there are two (2) ways for the public to provide verbal comments:
   A. If you are attending by computer, activate the "participants" icon at the bottom of your screen, then raise your hand (hand clap icon) under "reactions". When called upon, you will be "unmuted" to allow to speak.
   B. If you are attending by phone only, you will need to press *9 to raise your hand. When called upon, press *6 to unmute your microphone.

VCE staff will acknowledge that you have a public comment to make during the item and will call upon you to make your verbal comment.

Public records that relate to any item on the open session agenda for a regular or special Board meeting are available for public review on the VCE website. Records that are distributed to the Board by VCE staff less than 72 hours prior to the meeting will be posted to the VCE website at the same time they are distributed to all members, or a majority of the members of the Board. Questions regarding VCE public records related to the meeting should be directed to Board Clerk Alisa Lembke at (530) 446-2750 or Alisa.Lembke@ValleyCleanEnergy.org. The Valley Clean Energy website is located at: https://valleycleanenergy.org/board-meetings/.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 3

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Approval of February 12, 2026 Board meeting Minutes

DATE: April 9, 2026

RECOMMENDATION

Receive, review and approve the attached February 12, 2026 meeting Minutes.

Attachment: February 12, 2026 Board meeting Minutes

MINUTES OF THE VALLEY CLEAN ENERGY ALLIANCE
BOARD OF DIRECTORS REGULAR MEETING
THURSDAY, FEBRUARY 12, 2026

The Board of Directors of the Valley Clean Energy Alliance duly noticed their regular meeting for Thursday, February 12, 2026 at 5:30 p.m. to be held at City of Davis Community Chambers located at 23 Russell Boulevard, Davis, California 95616. Board Chair Bapu Vaitla established that there was a quorum present and began the meeting at 5:32 p.m.

Board Members Present:	Bapu Vaitla, Tania Garcia-Cadena, Lucas Frerichs, Tom Stallard, Sheila Allen, Albert Vallecillo (Alternate City of Winters, departed meeting at 6:10 p.m.), Donna Neville
Attending Remotely:	Board Vice Chair Jesse Loren
Members Absent:	Richard Casavecchia

Item 1: Welcome and Approval of the Agenda

Chair Vaitla welcomed everyone and roll called the Board Members present to establish a quorum recognizing Director Jesse Loren who was attending remotely. Director Frerichs made a motion to approve the February 12, 2026 Agenda, seconded by Director Stallard. The Board Clerk called for a vote verbally with no vote from Vice Chair Loren. Motion passed by the following vote:

AYES: Vaitla, Garcia-Cadena, Frerichs, Stallard, Allen, Neville, Vallecillo (Alt.)
NOES: None
ABSENT: Casavecchia
ABSTAIN: None

Item 2. Receive 2025 Year-end review. (Information)

VCE's Chief Executive Officer Mitch Sears provided a brief introduction. VCE Staff Rebecca Kuczynski provided highlights from 2025 on customer care, marketing (social media), Customer Service Representative (CSR) interactions, Opt ups and opt downs, monthly interaction type, website analytics, and programs. VCE Staff Chad Curran reviewed VCE's power procurement portfolio and forecast of power and GHG-free resources. VCE Staff Edward Burnham reviewed finance highlights, rates and discounts, dividends for future discounts into 2026, adoption of the updated Reserve Policy, PPA Prepay transaction, Investment Grade Credit Rating with S&P, 2024 clean financial audited financials, compliance with All Debit (line of credit), power purchase covenants, and multi-year enterprise financial model. There were no written or verbal public comments.

The Board and Staff briefly discussed: an enterprise financial forecasting model tool, Indian Valley Power Purchase Agreement (PPA), and local resources. There were no written or verbal public comments.

Item 3. Election of Officers for 2026 (Action)

Chair Vaitla nominated Jesse Loren as Chair and Tania Garcia-Cadena as Vice Chair, motion was seconded by Director Neville. The Board Clerk called for a vote verbally with no vote from Vice Chair Loren. Motion passed by the following vote:

AYES: Vaitla, Garcia-Cadena, Frerichs, Stallard, Allen, Neville, Vallecillo (Alt.)
NOES: None
ABSENT: Casavecchia
ABSTAIN: None

Chair Loren informed those present that she has just cause to attend remotely due to a family emergency. Legal Counsel informed the Board Members present that they could via a motion and vote allow Chair Loren to attend remotely and vote on items as long as Director Loren met all the requirements to attend remotely, including that there was nobody in the room with her and that she kept her video and audio turned on the entire meeting. Director Loren informed those present that she meets all of the requirements to attend remotely.

Motion made by Director Frerichs to allow Chair Jesse Loren, who is attending remotely due to a family emergency, to vote during this Board meeting, motion seconded by Director Vallecillo (Alt.). The Board Clerk called for a vote verbally with no vote from Chair Loren. Motion passed by the following vote:

AYES: Vaitla, Garcia-Cadena, Frerichs, Stallard, Allen, Neville, Vallecillo (Alt.)
NOES: None
ABSENT: Casavecchia
ABSTAIN: None

Vice Chair Garcia-Cadena took over leading the Board meeting.

Item 4. Public Comment – General and Consent Items

There were no written or verbal public comments not on the agenda or on Consent.

CONSENT AGENDA

Items 5-17. Approval of Consent Agenda Items / Resolutions 2026-001 through 2026-005

Motion made by Director Frerichs to approve the Consent agenda items, seconded by Director Neville. The Board Clerk called for a vote verbally. Motion passed by the following vote:

AYES: Vaitla, Garcia-Cadena, Frerichs, Stallard, Allen, Neville, Vallecillo (Alt.), Loren
NOES: None
ABSENT: Casavecchia
ABSTAIN: None

The following items were:
5. Approved December 11, 2025 Board meeting Minutes;
6. Received 2026 long range calendar;
7. Received Treasurer's reports: A) October 31, 2025; B) November 30, 2025; and C) December 31, 2025;
8. Received legislative update provided by Pacific Policy Group;
9. Received January 2026 regulatory update dated February 4, 2026 provided by Keyes & Fox;
10. Received Community Advisory Committee (CAC) December 18, 2025 and January 22, 2026 meeting summaries and CAC Task Group 2025 Year-end reports;
11. Received Customer Participation update (4th Quarter 2025);
12. Approved VCE Employee Handbook updates as Resolution 2026-001;
13. Received annual Strategic Plan Report;
14. Adopted Resolution amending Resolution 2021-008 to modify the time and location for regular Board of Directors meetings as Resolution 2026-002;
15. Adopted Resolution designating VCE Officers for purposes of executing or verifying CPUC filings as Resolution 2026-003;
16. Ratified Consultant Agreement with First Principles for portfolio modeling services for VCE's Integrated Resources Plan (IRP) update as Resolution 2026-004; and,
17. Ratified Consultant Agreement with Gridtractor to assist VCE with dynamic rate design options for the Residential Dynamic Pricing Pilot project as Resolution 2026-005.

REGULAR AGENDA

Item 18. Approve participation in and authorize VCE to execute documents associated with VCE

VCE Staff Chad Curran provided an overview of CC Power's long duration storage project: Willow Rock.

(Alternate Board Member Albert Vallecillo departed at 6:10 p.m.)

participating in the CC Power long duration storage project: Willow Rock. (Discussion/Action)	Staff and Board Members briefly discussed: timing of when VCE would start to pay for energy; how the Advance Compressed Air Energy Storage (A-CAES) works; location, acreage, and anticipated Megawatt production of project; and, risk to VCE on taking power from a project with this new technology. There were no written or verbal public comments.
Resolution 2026-006	Motion made by Director Vaitla to: 1) Authorize the Executive Officer to execute on behalf of Valley Clean Energy as a member of CC Power the following agreements and any necessary ancillary documents for the Willow Rock long duration storage (LDS) project with a delivery term of 20 years starting at the commercial operation date on or about July 1, 2030: a. Project Participation Share Agreement between Valley Clean Energy, California Community Power and other participating CCAs b. Buyer Liability Pass Through Agreement between Valley Clean Energy, California Community Power, and GEM A-CAES LLC. This motion was seconded by Chair Loren. The Board Clerk called for a vote verbally. Motion passed by the following vote: AYES: Vaitla, Garcia-Cadena, Frerichs, Stallard, Allen, Neville, Loren NOES: None ABSENT: Casavecchia, Vallecillo (Alt.) ABSTAIN: None
Item 19. Discuss and approve appointment to vacant Yolo County seat on the Community Advisory Committee. (Discussion/Action)	Mr. Sears provided a brief introduction to this item. There were no written or verbal public comments. Director Allen made a motion to appoint Mark Murray to the vacant County of Yolo seat (Class 2) on the Community Advisory Committee, with their term expiring in June 2026, seconded by Director Frerichs. The Board Clerk called for a vote verbally. Motion passed by the following vote: AYES: Vaitla, Garcia-Cadena, Frerichs, Stallard, Allen, Neville, Loren NOES: None ABSENT: Casavecchia, Vallecillo (Alt.) ABSTAIN: None
Item 20. Board Member and Staff Announcements.	There were no announcements from the Board Members. Mr. Sears informed those present that VCE will have an event booth at the Almond Festival in Esparto on Sunday, February 22, 2026. He invited the Board to attend and stop by the booth.

Mr. Sears introduced VCE's newest employee, Daniel Alvarez, who is VCE's Customer Accounts & Programs Analyst working with VCE's Customer Care and Marketing team.

Mr. Sears informed those present that he and Mr. Curran presented information to UC Davis students at Director Vaitla's class and recently provided a case study at UC Davis' Graduate School of Management students. In addition, Mr. Sears and Ms. Kuczynski presented billing information to a UC Davis class.

Mr. Sears informed those present that CalCCA is sponsoring two (2) legislative bills related to: 1) Power Charge Indifference Adjustment (PCIA) data transparency and 2) Resource Adequacy (RA) transactability. Staff are monitoring Diablo Canyon legislation and drivers of PG&E rate growth.

Item 21. Announcement / Adjournment	Vice Chair Garcia-Cadena announced that the Board's next regular meeting is scheduled for Thursday, March 12, 2026 at the City of Woodland Council Chambers. It was announced that the Board will recess into Closed Session and that the Board anticipates no reportable action will be taken in Closed Session. There being no further business to discuss, the Board recessed at 6:40 p.m. into Closed Session.
Public Comment on Closed Session Items	Chair Jesse Loren recused herself from Closed Session. Vice Chair Garcia-Cadena asked if there were any public comments on the Closed Session item. There were no written or verbal public comments.
Item 22. **CLOSED SESSION** Conference with Legal Counsel – Anticipated Litigation	The Board convened into Closed Session at 6:45 p.m. and adjourned their Closed Session at 7:00 p.m. Inder Khalsa of Richard, Watson, & Gershon, VCE's general legal counsel, announced that there was nothing to report out from Closed Session.

Alisa M. Lembke
VCEA Board Secretary

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 4

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: Board and Community Advisory Committee 2026 Long-Range Calendar

DATE: February 12, 2026

Recommendation

Receive and file the 2026 Board and Community Advisory Committee long-range calendar listing proposed meeting topics. Please note that meeting locations and topics may change.

Attachment: 2026 Board and CAC long range calendar

VALLEY CLEAN ENERGY

2026 Meeting Dates and *Proposed* Topics
Board and Community Advisory Committee (CAC)
(Note: Meeting locations and Topics are subject to change)

MEETING DATE		TOPICS	ACTION
~~January 8, 2026~~ CANCELLED	**Board (Woodland)**	• ~~Oaths of Office for Board Members (Annual - new Members only) (R) (placeholder)~~ • ~~Election of Officers for 2026 (Annual) (R) (placeholder)~~ • ~~Customer Participation Update (4th Quarter 2025) (O) (placeholder)~~ • ~~2025 Year-end review (R) (placeholder)~~ • ~~VCE Employee Handbook Update (R) (placeholder)~~ • ~~Annual Strategic Plan Report (R) (placeholder)~~	• ~~Action~~ • ~~Nominations~~ • ~~Information~~ • ~~Information~~ • ~~Action~~ • ~~Information~~
January 22, 2026	**Advisory Committee (Woodland)**	• Rates/Budget 2026 Update (O) • Customer Participation Update (4th Quarter 2025) (O) • Review and approve **2026** draft CAC Task Group(s) "Charges" (R) • Power Portfolio update (R) • 2025 Year in review: Customer Care & Marketing (R)	• Information • Information • Discussion/Action • Information • Information
February 12, 2026	**Board (Davis)**	• Oaths of Office for Board Members (Annual - new Members only) (R) • Election of Officers for 2026 (Annual) (R) • Customer Participation Update (4th Quarter 2025) (O) • 2025 Year-end review (O) • VCE Employee Handbook update (R) • Annual Strategic Plan Report (R) • Receive CAC 2025 Year-end Task Group Reports (O)	• Action • Nominations • Information • Information • Action • Information • Information
~~February 26, 2026~~ Cancelled	**Advisory Committee (Davis)**	• This meeting has been cancelled.	•
~~March 12, 2026~~ Cancelled.	**Board (Woodland)**	• This meeting has been cancelled.	•

March 26, 2026	**Advisory Committee (Woodland)**	• Integrated Resource Plan (IRP) Update (O) • Local Energy Task Group Update (O) • Update on CalCCA sponsored legislative bills (O)	• Information • Information • Information
April 9, 2026	**Board (Davis)**	• Receive Enterprise Risk Management Report (Bi-Annual) (R) • Customer Participation update (1st Quarter 2026) (O) • Receive Treasury and Financial update; ratify Investment Policy; and extend RCB Credit Agreement (R/O) • Update Exhibits C & D of VCE's JPA (R) • Update VCE's Conflict of Interest Code (R) • Brown Act compliance (R) • Ratify VCE's position on legislative bills	• Information • Information • Action • • Action • Action • Action • Action
~~April 23, 2026~~ Cancelled.	**Advisory Committee (Davis)**	• This meeting has been cancelled.	•
May 12-14, 2026	**CalCCA Annual Conference (Sacramento)**	VCE Staff and some Board and CAC members attending	
~~May 14, 2026~~ Cancelled, may be rescheduled.	**Board (Woodland)**	• * No meeting due to CalCCA Annual Conference. A special meeting may be scheduled if an urgent matter needs to be addressed.	•
May 28, 2026	**Advisory Committee (Woodland)**	• 2025 Net Margin Allocation (R) • Load Management Standards Update (O) • Customer Participation update (1st Quarter 2026) (O) • Seek feedback on updates to Integrated Resource Plan (O)	• Discussion/Action • Information • Information • Discussion/Action
June 11, 2026	**Board (Davis)**	• Re/Appointment of Members to Community Advisory Committee (Annual) (R) • Calendar Year 2025 Audited Financial Statements (James Marta & Co.) (placeholder) (R) • Mid-Year 2026 Financial Update (R) • 2025 Net Margin Allocation (R) • Summer Preparedness outlook (O) • Residential Dynamic Pricing Pilot Program (HFP) (O) • Indian Valley Long Term Power Purchase Agreement (Placeholder) • Electric Vehicle (Charge Your Ride) Rebate Program (O) • Load Management Standards Update (O)	• Action • Action • Information • Discussion/Action • Information • Discussion/Action • Discussion/Action • Discussion/Action • Information

*No meeting unless an urgent matter needs to be addressed

		• Recap of CalCCA May 2026 Annual Conference (O)	• Information
June 25, 2026	**Advisory Committee (Davis)**	• Summer Preparedness outlook (O) • Seek recommendation to Board on updated Integrated Resource Plan (O)	• Information • Discussion/Action
July 9, 2026	**Board (Woodland)**	• Customer Participation update (2nd Quarter 2026) (O) • Approve updates to Integrated Resource Plan (R)	• Information • Discussion/Action
July 23, 2026	**Advisory Committee (Woodland)**	• * Tentatively no meeting.	
August 13, 2026	**Board (Davis)**	• * Tentatively no meeting.	
August 27, 2026	**Advisory Committee (Davis)**	• Customer Participation Update (2nd Quarter 2026) (O) • Power Portfolio Update (O)	• Information • Information
September 10, 2026	**Board (Woodland)**	• Certification of 2025 Power Content Label (Annual) (R)	• Action
September 24, 2026	**Advisory Committee (Woodland)**	•	•
October 8, 2026 Possibly meeting date conflict with League of Cities Annual Conference	**Board (Davis)**	• Enterprise Risk Management Update (Annual) (R) • Customer Participation Update (3rd Quarter 2026) (O) • Legislative End of Session Update (O)	• Discussion/Action • Information • Information
October 22, 2026	**Advisory Committee (Davis)**	• 2025 Power Content Label Outreach (O) • Customer Participation Update (3rd Quarter 2026) (O) • Legislative End of Session Update (O) • 2027 Legislative & Regulatory Platform	• Information • Information • Information • Discussion/Action
November 12, 2026	**Board (Woodland)**	• 2027 Preliminary Operating Budget (R) • Contract Renewals (R) (placeholder) • Approve 2027 Legislative and Regulatory Platform	• Information/Discussion • Discussion/Action • Discussion/Action

*No meeting unless an urgent matter needs to be addressed

~~November 26, 2026~~ **November 19, 2026** (rescheduled to November 19 due to Thanksgiving holiday on Nov. 26th)	**Advisory Committee (~~Woodland~~) (Davis)**	• Review CAC Draft 2026 Task Group Year-end Reports (R) • GHG Free Attributes (R) (placeholder)	• Discussion/Action • Discussion/Action
December 10, 2026	**Board (Davis)**	• Approve 2027 Operating Budget (Annual) and 2027 Customer Rates (R) • Receive VCE Grant/Program Annual Report (R) • GHG Free Attributes (R) (placeholder) • Contract Renewals (R) (placeholder)	• Discussion/Action • Information • Discussion/Action • Action
~~December 24, 2026~~ **December 17, 2026** (rescheduled to December 17 due to Christmas Eve on Dec. 24th)	**Advisory Committee (Davis)**	• Approve 2026 Task Group Year-end Reports (R) • Power Portfolio Update (R) • Election of Officers for 2027 (Annual) (R)	• Discussion/Action • Information • Nominations
January 14, 2027	**Board (Woodland)**	• Oaths of Office for Board Members (Annual - new Members only) (R) • Election of Officers for 2027 (Annual) (R) • Customer Participation Update (4th Quarter 2026) (O) • 2026 Year in review: Customer Care & Marketing (R) • Receive 2026 Task Group Year-end Reports (R) • VCE Employee Handbook Update (R) • Annual Strategic Plan Report (R)	• Action • Nominations • Information • Information • Information • Action • Information
January 28, 2027	**Advisory Committee (Woodland)**	• Rates/Budget 2027 Update (O) • Customer Participation Update (4th Quarter 2026) (O) • Approve 2027 CAC Task Group(s) "Charges" (R)	• Information • Information • Discuss/Action

PLEASE NOTE: **May 12-14*, 2026: CalCCA Annual Conference in Sacramento, California***

CAC *PROPOSED* FUTURE TOPICS **Topics and Discussion dates may change as needed**	***ESTIMATED* MEETING DATE(S)**

*No meeting unless an urgent matter needs to be addressed

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 5

To: Board of Directors

From: Mark Fenstermaker, Pacific Policy Group

Subject: Legislative Update – Pacific Policy Group

Date: April 9, 2026

Pacific Policy Group, VCE's lobby services consultant, continues to work with Staff and the Community Advisory Committee's Legislative - Regulatory Task Group (LRTG) continues to meet and discuss legislative matters. Below is a summary:

As the legislative session enters into the second quarter of 2026, the theme of "affordability" is once again leading the way, but a second theme of "uncertainty" has also emerged. The session is nearly six weeks removed from the bill introduction deadline and yet new bills continue to materialize. At the same time, there is wide expectation that additional policy proposals have yet to be put on the table, including an extension of the Diablo Canyon Nuclear Power Plant, even more bills on electricity rates and supply for data centers, and legislation on investor-owned utility liability and wildfires. All of these policy unknowns are a reminder that the beginning of April is still an early time in the legislative session.

The state's budget situation is an even bigger mystery than the policy realm. Total tax revenue continues to outpace projections, currently the state has realized some seven billion dollars in additional revenue than was expected. This is welcome news as the prevailing wisdom coming into the session is that California would be in a deficit somewhere between 10 and 20 billion dollars, which may still be the case for FY 2027-28 but FY 2026-27 appears closer to balanced. Despite this welcome news, those on the inside of the budget process continue to preach caution as they work through the healthcare subsidy impacts from H.R. 1 from last summer that is likely to cost the state tens of billions of dollars. Finally, the war in the Middle East and the subsequent increase in energy prices has created instability in the stock market, giving pause as to how much more California will reap in capital gains taxes, which is a key figure in the budget picture.

The last bit of uncertainty and intrigue is the ongoing cluster of Democrat gubernatorial candidates with no clarity as to who may lead California next. There has been significant media speculation that the large pool of Democrat candidates could split the votes in a way that the top two candidates coming out of the primary would both be Republicans. Some legislators are beginning to endorse candidates and most of the labor unions have done so as well, but who wins at the June primary will have some influence on the end-of-session decisions.

Nearly 1500 bills have been introduced since the beginning of the year, and the energy policy area is once again high on the popularity list. Reigning in IOU rates and profits, data centers, electric vehicles, and transitioning away from fossil gas use are some of the issue areas that will be debated over the next several months. VCE staff, the LRTG and PPG are currently examining the following bills and expect to evaluate more bills as they are identified as of interest to VCE and CCAs.

1. AB 1761 (Rogers) PCIA Transparency
Summary: Would require the Public Utilities Commission to ensure that all data serving as a basis for any decision or ruling issued by the commission, or in any proposal or analysis provided by commission staff, for the determination or application of the Power Charge Indifference Adjustment (PCIA) is made available to load-serving entities and ratepayer advocates on behalf of customers. The bill would require the PUC to require an investor-owned utility or other party, in submitting a proposal or analysis for the determination or application of a calculation methodology for the PCIA to make all data serving as a basis for that proposal or analysis available to load-serving entities and ratepayer advocates on behalf of customers. The bill would require that data to meet specified requirements, including that it is made through a public disclosure, except for market-sensitive data, as provided.
Additional Information

- Next Hearing: The bill passed Assembly Utilities & Energy Committee and will be heard next in Assembly Appropriations Committee.
- VCE has taken a support position.
- CalCCA is the sponsor of AB 1761
- Bill language: AB 1761

2. SB 1138 (Padilla) Resource Adequacy Transactability
Summary: Current law requires the Public Utilities Commission, in consultation with the Independent System Operator, to establish resource adequacy requirements for all load-serving entities, as provided. This bill would require the commission to permit a load-serving entity to demonstrate compliance with resource adequacy requirements by selling to, or otherwise making transactions with, another load-serving entity to meet not more than 25% of its compliance obligation, on a short-term basis, and to permit those transactions to be denominated in the same unit of time used to denominate resource adequacy compliance requirements.

Additional Information

- Next Hearing: The bill will be heard on April 7, 2026, in Senate Energy, Utilities & Communications Committee.
- VCE has taken a support position.
- CalCCA is the sponsor of SB 1138
- Bill language: SB 1138

3. AB 2383 (Zbur) Electricity: Large Energy Use Facilities.
Summary: Current law authorizes the Public Utilities Commission to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable.

Current law authorizes the commission to investigate a single rate, classification, rule, contract, practice, or the entire schedule of rates, classifications, rules, contracts, and practices, of any public utility, and to establish new rates, classifications, rules, contracts, practices, or schedules. This bill would require the commission, on or before January 1, 2028, in a new or existing proceeding, to provide for a classification of retail electricity consumers that are large energy use facilities, defined as those facilities that have a peak load of 20 megawatts or more, that is separate and distinct from classifications of service for other commercial or industrial retail electricity consumers and has its own rate schedule. The bill would require any rate schedule adopted by the commission for large energy use facilities to meet certain requirements of a specified tariff. Those conditions include not creating a cost-shit to other customers, pay equitable costs of wildfire mitigation, have a 15-year contract minimum duration, pay a percentage of the contract up front, and any other conditions set by the commission in the public interest.

Problematically, this bill requires CCAs to have the same terms and conditions in any contract for generation service with a large energy use facility. The bill undermines CCAs' authority to set their own rates.

Additional Information

- Next Hearing: The bill will be heard in Assembly Utilities & Energy Committee.
- VCE has taken an Oppose Unless Amended position.
- CalCCA has taken an Oppose Unless Amended position
- Bill language: AB 2383

4. SB 886 (Padilla) California Technology Innovation and Ratepayer Protection Act.

Summary: Existing law authorizes the Public Utilities Commission to fix the rates and charges for every public utility and requires that those rates and charges be just and reasonable. This bill, the California Technology Innovation and Ratepayer Protection Act, would require the commission, on or before July 1, 2027, to establish a rate structure that includes an IOU tariff for the interconnection of the participating customer facilities and the provision of transmission, distribution, and generation services to participating customers, as specified. The bill would require the commission, as part of establishing the electrical corporation tariff, to, at a minimum, establish eligibility criteria for participating customers, evaluate the risks and benefits of the electrical corporation tariff to nonparticipating customers, ensure that the electrical corporation tariff prevents the creation of stranded costs for, or cost shifts to, nonparticipating customers, and, for unbundled customers, ensure that charges generally included in the generation component of their bills are assessed separately from charges generally included in the transmission and distribution components of their bills. The bill would also require that the electrical corporation tariff, among other things, assign cost responsibility for all transmission facility upgrades triggered by a new facility interconnection to the applicable participating customer and require an early termination fee to be assessed against a participating customer under specified circumstances.

The bill was amended coming out of the Senate Energy, Utilities & Communications Committee to focus the IOU tariff on distribution and transmission and separate any generation related terms so as not to exclude CCAs from serving data centers.

Additional Information

- Next Hearing: The bill will be heard in the Senate Appropriations Committee.
- VCE has yet to take an official position.
- CalCCA has yet to take an official position.
- Bill language: SB 886

5. SB 875 (Wiener) Public Utilities: Eminent Domain for Municipalization.

Summary: The Eminent Domain Law authorizes a public entity to exercise the power of eminent domain to acquire property for a public use if the use for which the property is sought to be taken is a more necessary public use than the use to which the property is appropriated, as specified. Existing law specifies that if property has been appropriated to public use by any person other than a public entity, the use of the property by a public entity for the same or any other public use is a more necessary use than the current use. Current law also specifies that if property that has been appropriated to a public use is electrical, gas, or water public utility property, as defined, that the public entity intends to put to the same use, the presumption of a more necessary use is a rebuttable presumption affecting the burden of proof, except as specified. Current law requires a court to award a defendant their litigation expenses if the eminent domain proceeding is dismissed or if there is a final judgment that the plaintiff cannot acquire the property by eminent domain, as provided. This bill would specify that if property that has been appropriated to a public use is electrical, gas, or water public utility property that a public entity within the Pacific Gas and Electric Company service area intends to put to the same use, the presumption of a more necessary use is conclusive and not rebuttable.

Additional Information

- Next Hearing: The bill will be heard on April 14, 2026, in the Senate Judiciary Committee.
- VCE has yet to take an official position.
- CalCCA has yet to take an official position.
- Bill language: SB 875

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 6

To: Board of Directors

From: Keyes & Fox, Regulatory Consultant

Subject: Regulatory Monitoring Report – Keyes & Fox

Date: April 9, 2026

Please find attached Keyes & Fox's March 2026 Regulatory Memorandum dated April 1, 2026 an informational summary of the key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC).

Attachment: Keyes & Fox Regulatory Memorandum dated April 1, 2026

KEYES&FOX LLP

EQ Research

Valley Clean Energy Alliance

Regulatory Monitoring Report

To:	Valley Clean Energy Alliance (VCE) Board of Directors
From:	Sheridan Pauker, Partner, Keyes & Fox LLP Jason Hoyle, Director of Research, EQ Research LLC
Subject:	Monthly Regulatory Update
Date:	April 1, 2026

Keyes & Fox LLP and EQ Research LLC are pleased to provide VCE's Board of Directors with this informational memo describing key California regulatory and compliance-related updates from the California Public Utilities Commission (CPUC) over the past two months.

NEW PG&E Diablo Canyon 2027 & VPF

Background: During the period of extended operations for the Diablo Canyon Nuclear Plant, PG&E submits an annual application forecasting its costs, market revenues from CAISO, net costs allocated to ratepayers of each large IOU, and its plan for use of volumetric performance fees (VPFs) in the upcoming calendar year.

Recent Developments: On March 27, PG&E filed its Application for cost recovery of 2027 Diablo Canyon's extended operations and its plan for VPF expenditures in 2027. The proposed revenue requirement allocated to PG&E's territory is $340 million, which is expected to increase bundled residential customer's bills by an average of $1.08 per month.

Analysis: N/A.

Next Steps: Protests or responses to the Application are due 30 days after it is noticed in the Daily Calendar.

Additional Information: Application (Mar. 27, 2026); Docket No. A.26-03-031.

NEW PG&E 2025 ERRA Compliance

Background: The annual ERRA Compliance proceeding reviews the utility's compliance with CPUC-approved standards for generation-procurement and cost recovery activity occurring in the prior year, such as energy resource contract administration, least-cost dispatch, fuel procurement, and balancing account entries.

Recent Developments: On February 27, PG&E filed its 2025 ERRA Compliance Application requesting the Commission find it complied with its Bundled Procurement Plan, and that management of its utility-owned generation portfolio and recorded expenditures are reasonable. PG&E requested that the Commission exclude review of Diablo Canyon Power Plant's extended operations from the scope and that four generating projects with outages extending past the 2025 review period also be excluded from review in this proceeding.

Analysis: N/A.

Next Steps: Protests or responses to the Application are due April 2.

Additional Information: Application (Feb. 27, 2026); Docket No. A.26-02-019.

Climate Credit OIR

Background: This rulemaking will explore potential approaches to supporting customer affordability through cap-and-trade program proceeds returned to electric consumers via the state Climate Credit. The proceeding is divided into two tracks, and the current Track 1 has a Phase 1A and a Phase 1B. Phase 1A will address the timing of the distribution of climate credits in 2026 and Phase 1B will address broader changes in the residential Climate Credit.

Recent Developments: On March 25, the CPUC issued D.26-03-013 temporarily pausing distribution of 2026 Climate Credits pending further consideration of potential changes to the 2026 Climate Credit distribution. On March 26, the CPUC issued the second Phase 1A Proposed Decision that orders immediate changes to the Climate Credit to increase its impact on affordability.

Analysis: The April 2026 Climate Credit distribution is temporarily paused, but under the Proposed Decision the full 2026 Climate Credit will be distributed in August and September and be accompanied by customer outreach and education efforts. More permanent potential changes to the Climate Credit will be considered in the upcoming Phase 1B, and they are focused on affordability and include eligibility to receive the credit, the timing of its distribution, number of annual distributions, and the methodology used to calculate the credit.

Next Steps: The Proposed Decision may be heard as soon as the April 30 Commission meeting. Comments on the Proposed Decision are due April 15 and reply comments are due April 20.

Additional Information: Proposed Decision (Mar. 26, 2026); D.26-03-013 (Mar. 25, 2026); Scoping Memo and Ruling (Feb. 3, 2026); Ruling (Oct. 31, 2025); OIR (Aug. 20, 2025); Docket No. R.25-07-013.

RPS Rulemaking

Background: This proceeding addresses ongoing Renewables Portfolio Standard (RPS) requirements, including legislative mandates, and other matters related to the purchase of renewable energy. This proceeding is the forum for review of VCE's RPS Procurement Plan and RPS Compliance reports.

Recent Developments: On March 27, the Assigned Commissioner issued a Ruling identifying requirements for and schedule of review for the 2026 RPS Procurement Plans. The Ruling includes some revised requirements related to reporting on IRP planning to better align the RPS Plan with the IRP filing requirements. **VCE's 2026 RPS Plan is due June 12**.

Analysis: Several new RPS Plan requirements in this cycle address how the RPs Plan aligns with planned procurement identified in each LSE's IRP filing and include reporting on progress towards existing and new Mid-Term Reliability procurement requirements.

Next Steps: Draft RPS Plans are due June 12, comments on Draft RPS Plans are due July 13, reply comments and motions to update RPS Plans are due July 27.

Additional Information: Ruling (Mar. 27, 2026); VCE Amended Confidentiality Motion (Jan. 26, 2026); D.25-12-025 (Dec. 26, 2025); VCE RPS Compliance Report (Aug. 1, 2025); VCE 2025 Draft RPS Plan (Jun. 30, 2025); Ruling on 2025 RPS Plans (Apr. 17, 2025); Notice of RPS Plan Approval (Apr. 3, 2025); Scoping Memo and Ruling (May 9, 2024); OIR (Feb. 1, 2024); Docket No. R.24-01-017.

RA Rulemaking

Background: This proceeding is the successor to R.23-10-011, and it will address the 2027 and 2028 RA compliance years, local RA obligations for the 2027-2029 and 2028-2030 compliance years, further refinements to the 24-hour Slice-of-Day (SOD) framework. Track 1 will consider accreditation for long-duration energy storage, unforced capacity outage rates for thermal resources, accreditation for solar and wind resources, and transactability within the SOD framework during the first half of 2026. Track 2 will address the planning reserve margin and coordination with the integrated resource plan proceeding.

Recent Developments: A February 24 Ruling updated the schedule and provided the Energy Division's Transactability Report. The report examines transactability after the first year of binding SOD compliance based on Year-Ahead (YA) and Month-Ahead (MA) RA filings, transaction and procurement data, and observed market outcomes for the 2025 compliance year. Proposals on transactability issues were filed on March 3. CalCCA's proposal highlighted that the report did not address the key function of transactability – reducing the over-procurement of RA by LSEs to support affordability. In its March 16 Comments on transactability issues, CalCCA emphasized that the intent underlying transactability is to increase affordability and resource efficiency.

Comments on Track 1 proposals other than transactability were filed March 6 and reply comments were filed March 20. Many parties, including CalCCA, generally supported the adoption of a methodology to account for energy-only resources' contribution to charging sufficiency for storage resources, although several options were presented. Several parties, including CalCCA and the Alliance for Retail Energy Markets, made recommendations to limit the inclusion of large loads like data centers in determining RA obligations until certain development thresholds are met.

A March 30 Ruling updated the schedule for the 2028 Loss of Load Expectation (LOLE) Study that will be used to determine the 2028 Planning Reserve Margin (PRM).

Analysis: The Transactability Report found that hourly resource transactions are feasible and could have potentially reduced RA compliance costs by between $2.9 and $7.6 million, but the potential gains do not outweigh the added complexity and risk of unintended consequences. Yet CalCCA's comments, which evaluated over-procurement of RA, found nearly $37 million in available savings from hourly transactability during the month of September 2025. Proposals to count energy-only resources for charging sufficiency of storage resources will support more efficient use of existing resources like stand-alone solar and reduce RA compliance costs.

Next Steps: A Track 1 proposed decision is expected in May 2026. Draft LOLE studies and PRM proposals are due August 14 and final proposals are due in October.

Additional Information: Ruling (Mar. 20, 2026); CalCCA Transactability issues Comments (Mar. 16, 2026); CalCCA Track 1 Comments (Mar. 6, 2026); CalCCA Transactability proposal Comments (Mar. 3, 2026); Ruling and Transactability Report (Feb. 24, 2026); Scoping Memo (Dec. 12, 2025); OIR (Oct. 15, 2025); Docket No. R.25-10-003.

IRP Rulemaking (2025)

Background: This proceeding governs the biennial Integrated Resource Plan (IRP) process, including load serving entity (LSE) procurement requirements, the establishment of a variety of state- and LSE-level load and procurement forecasts, greenhouse gas (GHG) reduction targets, ongoing reliability obligations, and the Commission's oversight of the IOUs'

bundled procurement plans. This proceeding continues the work of R.20-05-003 and will be the primary forum for most future CPUC work on the Reliable and Clean Power Procurement Program framework (RCPPP).

Recent Developments: On March 5, the CPUC issued D.26-02-057 requiring 2029-2032 electric resource procurement and transmitting portfolios for the 2026-2027 Transmission Planning Process. Under the Decision, **VCE is responsible for procuring an additional 7 MW by 2030, 7 MW by 2031, and 7 MW of non-fossil fuel resources that are eligible under the resource adequacy program by 2032 for a total of 21 MW. Additionally, by 2032, at least 5 MW of VCE's total 21 MW obligation must be from long duration energy storage and/or clean firm resources.** On March 9, the CPUC issued a Ruling extending the IRP filing deadline for LSEs from June 1 to August 10, 2026.

Analysis: In response to Comments by CalCCA and other parties, the Proposed Decision that led to D.26-02-057 was revised to extend the good-faith effort standard for assessing compliance, clarify that baseline swaps continue to be allowed, to allow energy-only co-located with fully deliverable storage resources as eligible resources, and to remove the 50% cap on storage resources. These revisions increase compliance options, add flexibility, and allow fully deliverable new storage resources that are co-located (i.e., share a single point of interconnection) with existing energy-only solar to count towards the procurement requirement.

Next Steps: VCE's next IRP filing is due August 10, 2026. Comments on IRP filings are due September 21. LSE procurement compliance filings remain due June 1, 2026. IOUs' Bundled Procurement Plan (BPP) updates are now due June 1, comments on proposed updates are expected to be due in Q3, and a proposed decision adopting updated BPPs is now expected in Q4. An ALJ ruling on the "good faith effort" standard for LSE compliance with procurement requirements was expected in Q4 of 2025 but is delayed.

Additional Information: Ruling (Mar. 9, 2026); D.26-02-057 and Attachment (Mar. 5, 2026); IRP Ruling (Jan. 16, 2026); Scoping Ruling (Oct. 28, 2025); Ruling (Sep. 30, 2025); OIR (Jul. 2, 2025); Docket No. R.25-06-019.

Demand Response Enhancements

Background: This proceeding seeks to enhance demand response (DR) resources by updating guiding principles, policies, and data system and process requirements. Demand response development is closely connected to the implementation of dynamic rates and real-time pricing (RTP), similar to VCE's AgFIT Pilot, but across all customer classes.

Recent Developments: On February 12, the CPUC issued a Scoping Memo and Ruling which included within the scope 1) bridge-year funding for existing programs, 2) extension of the Flex Alert marketing campaign, 3) guiding principles for DR policies, 4) data systems, communication protocols and data transfer processes to support DR and dynamic rates, and 5) broader DR improvement policies. On March 10, the CPUC issued a Ruling requesting comments on the Staff Proposal on IOUs Bridge Year Funding for 2028-2029. On March 26, the CPUC issued D.26-03-016 authorizing the continuation of the Flex Alert paid media campaign unchanged from prior years through December 31 with a budget of $15 million for this program year that will be shared by the large electric IOUs in proportion to their peak load.

Analysis: Scoping issue 4 pertaining to data systems will be relevant to CCAs' receipt of data from IOUs to enable DR and dynamic rates. The continuation of the Flex Alert program will support ongoing efforts to encourage voluntary reductions in power use during times of grid stress.

Next Steps: Comments on the Staff Proposal are due April 15 and reply comments are due May 6. A Staff Proposal on Data Systems and Processes is expected during the first quarter of 2026.

Additional Information: D.26-03-016 on Flex Alert Funding (Mar. 26, 2026); Ruling on Staff Proposal on IOUs Bridge Year Funding (Mar. 10, 2026); Scoping Memo and Ruling (Feb. 12, 2026); Ruling and Staff Proposal (Dec. 30, 2025); OIR and Guiding Principles (Sep. 29, 2025); Docket No. R.25-09-004.

PCIA/ERRA Reform

Background: This Rulemaking considers updates and reforms to the ERRA and Power Charge Indifference Adjustment (PCIA) rules and processes with the objectives of improving existing rules, mitigating rate volatility, and ensuring indifference among bundled and departing customers. Track 1 concluded in 2025, Track 2's scope was revised to consider issues related to the valuation of pre-2019 RECs arising from 2026 ERRA forecast proceedings, and an additional Track 3 will be initiated later in 2026 to review broader issues.

Recent Developments: A February 20 Ruling invited comments identifying and prioritizing issues to be included in Track 3 and specifically addressing data confidentiality or data access issues, and comments were filed on March 27. On March 27, a Ruling issued the Staff Report on valuation of pre-2019 banked RECs in which Staff agreed that pre-2019 banked RECs have value for departed load (i.e., CCA) customers and proposed several options to determine that value.

Analysis: A valuation for pre-2019 banked RECs will reduce PCIA charges and customer bills for CCAs with customers who departed IOU generation service after 2019.

Next Steps: The evidentiary hearing (if needed) begins April 28, any settlement is due May 15, and a proposed decision is expected by July 31. Comments on Track 3 issues are due March 27.

Additional Information: Ruling and Staff Report (Mar. 27, 2026); Ruling (Feb. 20, 2026); Amended Scoping Memo (Feb. 3, 2026); Ruling (Dec. 26, 2025); CalCCA Petition for Writ of Review (Dec. 1, 2025); D.25-06-049 (Jun. 27, 2025); Scoping Memo (Apr. 8, 2025); ALJ Ruling (Mar. 21, 2025); Ruling & Staff Report on RA MPB (Feb. 26, 2025); OIR (Feb. 26, 2025); Docket No. R.25-02-005.

PG&E 2027 Phase 1 GRC

Background: Phase 1 General Rate Case (GRC) proceedings determine PG&E's overall revenue requirement and classification of costs by function for a set period (in this case, 2027-2030).

Recent Developments: A February 3 Ruling required PG&E to submit supplemental information on several topics, including overhead maintenance and poles, vegetation management, clean energy strategy, and data centers. A February 26 Ruling granted an extension for party responses to the supplemental information provided by PG&E (extended to March 13) and for PG&E's reply (extended to April 7). On March 3, the Assigned Commissioner issued a Second Amended Scoping Memo and Ruling adding issues related to Assembly Bill 2666 (Stats. 2024, Ch. 413) to the scope of this proceeding. Specifically, the new scope includes the following questions:

1. Should the Commission establish guidelines for PG&E to calculate and report its actual rates of return to the Commission in this GRC decision? If so, what should those guidelines include?
2. Should the Commission adopt processes to adequately track PG&E's actual rate of return relative to its forecasted rate of return and require PG&E to identify the cost categories where projected costs differed from actual costs in this GRC decision? If so, what should those processes include?
3. Should the Commission require PG&E to provide the application's impact on PG&E's annual revenue requirement for each year that the capital expenditures described in the application are expected to remain in the application's rate base if the application is approved or conditionally approved? If so, should the Commission require PG&E to provide supporting workpapers and calculations for the net present value and other estimates, and what capital expenditures or projects should be identified?
4. Parties including CalCCA submitted comments on these newly scoped questions on March 17 recommending implementation of AB2666 requirements for reporting tracking and of IOUs' actual versus forecasted rates of return be addressed in a comprehensive rulemaking proceeding.

Analysis: N/A.

Next Steps: Track 1 evidentiary hearings begin April 27, opening briefs are due June 19, reply briefs are due July 10. A proposed decision is expected in March 2027.

Additional Information: Ruling on schedule (Feb. 26, 2026); Amended Scoping Memo and Ruling (Jan. 26, 2026); Ruling (Jan. 16, 2026); Resolution SPD-37 (Dec. 10, 2025); Ruling (Nov. 24, 2025); CalAdvocates/SBUA Motion (Nov. 6, 2025); Ruling (Sep. 25, 2025); Scoping Memo and Ruling (Jul. 31, 2025); Application (May 16, 2025); Docket No. A.25-05-009.

Distribution Interconnection Rules

Background: This rulemaking will review and refine distribution-level interconnection rules under Electric Rule 21, particularly those for distributed energy resources (DER) for PG&E, SCE, SDG&E and the small and multijurisdictional electric utilities. Phase 1 will consider interconnection timelines and evaluation screens, and the interconnection process for resources not interconnecting under the net billing or net metering tariffs. Subsequent phases are undefined at present, but may address issues related to interconnection processes, pathways, and standards; sharing of upgrade costs; net billing and net metering interconnections; among other topics.

Recent Developments: On January 20, the Commission issued Draft Comment Resolution E-5436 that directs the large IOUs to revise their online interconnection application websites to resolve ongoing data quality issues and expand the comprehensiveness of available data. On March 3, the Assigned Commissioner issued a Scoping Memo and Ruling defining the scope of Phase 1 to consider interconnection timelines and evaluation screens, and the interconnection process and fees for resources not interconnecting under the net billing or net metering tariffs.

Analysis: The initial phase of this proceeding will address a limited set of issues related to the interconnection of large-scale projects that provide electricity to the grid rather than primarily for behind-the-meter uses. Phase 1 issues cover issues defined in two of the eight categories of interconnection-related issues.

Next Steps: Party comments in response to the Scoping Memo are due April 30 and reply comments are due May 29. The Draft Resolution was held over from the February 26 Commission meeting to the March 19 meeting and again to the April 30 Commission meeting.

Additional Information: Scoping Memo and Ruling (Mar. 3, 2026); Draft Comment Resolution E-5436 (Jan. 20, 2026); OIR (Jul. 25, 2025); Docket No. R.25-08-004.

City and County of San Francisco Municipalization

Background: The City and County of San Francisco (City or CCSF) filed this Petition in 2021 for a determination by the CPUC of just compensation for acquisition by the City of PG&E property (PG&E distribution and transmission assets to serve San Francisco) pursuant to Public Utilities Code §1401-1421.

Recent Developments: On February 18, a Ruling revised the schedule and set the timeframes for the City's amended and restated opening testimony as well as responsive testimony. A March 10 Ruling provided schedule dates.

Analysis: After many years of discovery and procedural motions, this proceeding is moving forward with the testimony phase on the appraised value of PG&E's lands, property, and rights in San Francisco.

Next Steps: CCSF's amended and restated testimony is due April 20, PG&E's opening testimony is due October 20 and intervenor testimony is due December 22.

Additional Information: Ruling (Mar. 10, 2026); Ruling (Feb. 18, 2026); Ruling on CCSF Motion to Compel (Jan. 12, 2026); D.25-10-039 (Nov. 6, 2025); Amended Scoping Memo (Jul. 1, 2025); Petition (Jul. 27, 2021); Docket No. P.21-07-012.

EV Rates & Infrastructure

Background: This rulemaking is the successor to R.18-12-006 and will focus on issues related to 1) timely energization of electric vehicle (EV) charging, 2) transportation electrification grid planning to support charging infrastructure deployment, 3) deployment of behind-the-meter (BTM) charging infrastructure to support state goals, 4) vehicle-grid integration (VGI), and 5) ongoing transportation electrification policy development and collaboration.

Recent Developments: On February 27, the CPUC issued Resolution E-5434, approving, with modifications, PG&E's request in Advice Letter 7378-E for a Phase 1 extension until June 30 to complete demonstration and data collection activities. The Resolution also grants PG&E's request to modify the Phase II Vehicle-to-Everything Microgrid Pilot scope, converting it into a Hybrid Support Model that closes enrollment, returns unused incentive funds to ratepayers, and adopts the use of non-pilot funds for technical support.

Analysis: N/A.

Next Steps: The Technical Assistance Program Handbook, which provides program implementation guidance in accordance with D.22-11-040, is due April 6.

Additional Information: Resolution E-5434 (Feb. 27, 2026); D.25-12-005 (Dec. 5, 2025); Ruling (Oct. 14, 2025); Ruling (Oct. 1, 2025); PG&E Mid-Term Report (Sep. 15, 2025); Joint Report on the CPUC's Submetering and Telematics Workshop (Jun. 16, 2025); Joint Report on the Vehicle-Grid Integration Workshop (Jun. 16, 2025); Scoping Memo and Ruling (Apr. 12, 2024); OIR (Dec. 20, 2023); Docket No. R.23-12-008.

PG&E 2023 Phase 2 GRC

Background: Phase 2 General Rate Case (GRC) proceedings determine PG&E's marginal cost of service and revenue requirement allocation among customer classes for a set period (in this case, 2023-2026). This proceeding is also considering extension of existing dynamic rate pilots (including VCE's AgFIT pilot, now expanded across PG&E territory) and other real-time pricing (RTP) pilots as well as post-pilot dynamic rates required by the CEC's Load Management Standards.

Recent Developments: Intervenor testimony was submitted March 9.

Analysis: CalCCA's testimony focused on PG&E's proposed increases to its CCA service fees and its proposal to request future escalations of these fees via the informal Advice Letter process. CalCCA argued the Commission should reject these proposals. CalCCA also argued that the Commission should require PG&E to update its outdated and excessive Provider of Last Resort (POLR) fee.

Next Steps: Rebuttal testimony is due July 10, a meet and confer will be held July 20, and a Ruling on the need for evidentiary hearings is expected August 7. PG&E's testimony on the extension of (and potential changes to) dynamic rate pilots is due June 8, and intervenor testimony is due October 30, or 60 days after the release of the Mid-Term and M&E RTP pilot results. Evidentiary hearings, if necessary, will follow.

Additional Information: Ruling (Jan. 27, 2026); Ruling (Jan. 7, 2026); Ruling (Jan. 2, 2026); Motion for bifurcated track (Nov. 6, 2025); PG&E Testimony and Change Tables (Oct. 29, 2025); Ruling (Oct. 9, 2025); Ruling (Aug.18, 2025); Request for scoping amendment (Jun. 12, 2025); PG&E AL 7588-E (May 2, 2025); Scoping Memo (Mar. 21, 2025); Application (Sep. 30, 2024); Docket No. A.24-09-014.

PG&E 2024 ERRA Compliance

Background: The annual ERRA Compliance proceeding reviews the utility's compliance with CPUC-approved standards for generation-procurement and cost recovery activity occurring in the prior year, such as energy resource contract administration, least-cost dispatch, fuel procurement, and balancing account entries.

Recent Developments: PG&E filed supplemental testimony on March 11.

Analysis: N/A.

Next Steps: N/A.
Additional Information: Ruling (Feb. 2, 2026); Ruling requiring supplemental testimony (Dec. 22, 2025); Joint Status Conference Statement (Nov. 25, 2025); Scoping Memo and Ruling (May 2, 2025); PG&E 2024 ERRA Compliance Application (Feb. 28, 2025); Docket No. A.25-02-013.

PG&E Billing System Modernization

Background: This proceeding addresses PG&E's plan to upgrade its legacy billing system, some portions of which date back to the mid-1990s. PG&E proposed a three-stage upgrade that would ultimately be complete in Q4 2029 and cost an estimated $761.3 million.
Recent Developments: A February 3 Ruling postponed evidentiary hearings, and a February 5 Ruling requested party feedback on a draft schedule. A March 10 Ruling revised the procedural schedule.
Analysis: N/A.
Next Steps: Rebuttal to supplemental testimony is due April 28, a joint case management statement is due May 7, evidentiary hearings begin on June 8, opening briefs are due July 16, and reply briefs are due August 13.
Additional Information: Ruling (Mar. 10, 2026); Ruling (Feb. 5, 2026); Ruling (Feb. 3, 2026); Ruling (Dec. 12, 2025); Ruling (Nov. 18, 2025); Ruling (Sep. 11, 2025); Joint Case Management Statement (Aug. 20, 2025); D.25-08-008 (Aug. 19, 2025); Joint CCA Testimony (Jun. 30, 2025); Scoping Memo (Mar. 27, 2025); Application (Oct. 23, 2024); Docket No. A.24-10-014.

Disconnections and Reconnections

Background: This proceeding addresses approaches to the disconnection and reconnection of electric customers with a focus on improving energy access and cost containment.
Recent Developments: No recent developments.
Analysis: N/A.
Next Steps: Heat-based disconnection threshold proposals must be implemented by May 1.
Additional Information: CBO Pilot Recommendations (Dec. 11, 2025); Ruling granting extension (Oct. 21, 2025); Ruling (Oct. 13, 2025); D.25-06-012 (Jun. 17, 2025); Phase 2 Scoping Memo (Jul. 15, 2022); OIR (Jul. 20, 2018); Docket No. R.18-07-005.

Building Decarbonization

Background: This proceeding explores reduction of greenhouse gas (GHG) emissions associated with energy use in buildings. The current Phase 4 will consider whether modifications to electric line extension rules would assist under-resourced customers, electric baseline allowance modifications to encourage building decarbonization, and new programmatic approaches to building decarbonization.
Recent Developments: No recent developments.
Analysis: N/A.
Next Steps: N/A.
Additional Information: PG&E AL 7642-E (Jul. 15, 2025); D.25-06-034 (Jun. 20, 2025); PG&E AL 5074-G/7615-E (Jun. 5, 2025); Scoping Memo and Ruling (Jul. 1, 2024); OIR (Feb. 8, 2019); Docket No. R.19-01-011.

Other Dockets

The following table identifies other tracked dockets that are closed or inactive.

Docket	Name	Status
A.25-03-015	Diablo Canyon 2026	This proceeding was closed by D.25-12-007, but reopened in response to two Applications for Rehearing (SLOMFP, CARE).
R.20-05-003	IRP	This proceeding was superseded by the new IRP docket, but it remains open to consider the additional procurement requested in ACP-CA's July 2025 Motion, which is expected to be resolved in Q1 2026.
R.19-09-009	Microgrids	D.24-11-004 adopting implementation rules for multi-property microgrid tariffs and closing the proceeding was issued November 18. Proceeding reopened for pending Application for Rehearing and Petition for Modification.

R.23-03-007	Wildfire Fund NBC 2024-2026	D.25-12-006 set the 2026 Wildfire NBC at $5.91/MWh - a slight decrease from the 2025 WF NBC charge of $5.95/MWh.
A.22-05-002	Demand Response Programs (2023-2027)	D.24-04-006, issued April 24, 2024, ended the Demand Response Auction Mechanism (DRAM) pilot programs of PG&E, SCE, and SDG&E and closed the proceeding. The proceeding was reopened to consider a pending Application for Rehearing.
A.21-06-021	PG&E 2023 Phase 1 GRC	A Proposed Decision to close this proceeding is scheduled to be heard at the February 26 Commission meeting.
A.22-02-015	PG&E 2021 ERRA Compliance	This proceeding was closed in June 2025 with issuance of D.25-06-045, but was reopened in response to an August 2025 Application for Rehearing.
R.21-03-011	POLR	The proceeding was closed in January 2026 with issuance of D.26-01-022.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 7

TO: Board of Directors

FROM: Alisa Lembke, Board Clerk / Administrative Analyst

SUBJECT: Summary of Community Advisory Committee's (CAC) March 26, 2026 meeting

DATE: April 9, 2026

This report summarizes the Community Advisory Committee's meetings held in person and via Zoom webinar on March 26, 2026. The CAC did not have a meeting in February 2026.

Thursday, March 26, 2026 Meeting:

A. **Receive process and schedule of Integrated Resource Plan (IRP) update. (Information)** Staff provided information on the IRP process and schedule of the IRP update, with the biannual update due to the CPUC by August 10, 2026. CAC Members and Staff discussed topics such as: GHG emissions, power purchasing and planning, portfolio performance, and the purpose of the IRP.

B. **Receive update on CalCCA sponsored bills for 2026 legislative session AB 1761 (Rogers) and SB 1138 (Padilla). (Information)** Staff provided an update on two legislative bills sponsored by CalCCA: AB 1761 (Rogers) improving PCIA transparency and SB 1138 (Padilla) lowering the cost of Resource Adequacy (RA) by allowing hourly transactions. CAC members and Staff discussed items such as: availability of data, Resource Adequacy (RA) capacity, use of the data, affordability, and Power Charge Indifference Adjustment (PCIA) forecasting.

C. Receive Local Energy Task Group (LETG) update. (Information) Staff provided an overview of the LETG's recent work, describing local energy project types and their benefits and also to explore potential roles VCE could play in facilitating community-based clean energy and resilience initiatives. CAC Members and Staff discussed item such as: local energy "education", four (4) project types presented and possible involvement of VCE, photovoltaic battery advantages, capacity, and microgrids.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 8

TO: Board of Directors

FROM: Rebecca Kuczynski, Chief Customer Officer

SUBJECT: Quarterly Customer Participation Update (Information)

DATE: April 9, 2026

RECOMMENDATION

Receive the attached quarterly Customer Participation update reflecting the time period of January 1, 2026 through March 31, 2026 (Quarter 1 2026). Please note that this has a new graph showing the number of Retained Customers in each quarter starting in Quarter 3 of 2023.

Attachment: Quarterly Report - Customer Participation update

Item 8 – Customer Participation Update

	Davis	Woodland	Winters	Yolo Co	Total	Residential	Commercial	Industrial	Ag	NEM	Non-NEM
VCEA customers	28,644	20,504	2,619	10,718	62,485	54,567	6,022	8	1,888	15,485	47,000
Eligible customers	30,050	24,015	3,085	12,335	69,485	60,651	6,698	8	2,128	17,410	52,075
Participation Rate	95%	85%	85%	87%	90%	90%	90%	100%	89%	89%	90%

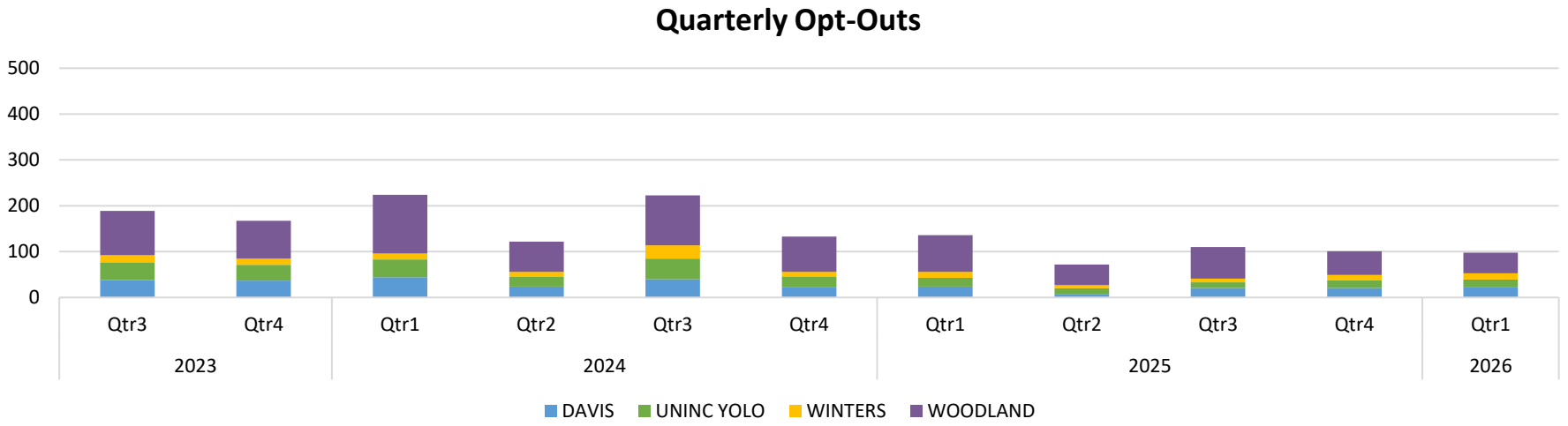
% of Load Opted Out

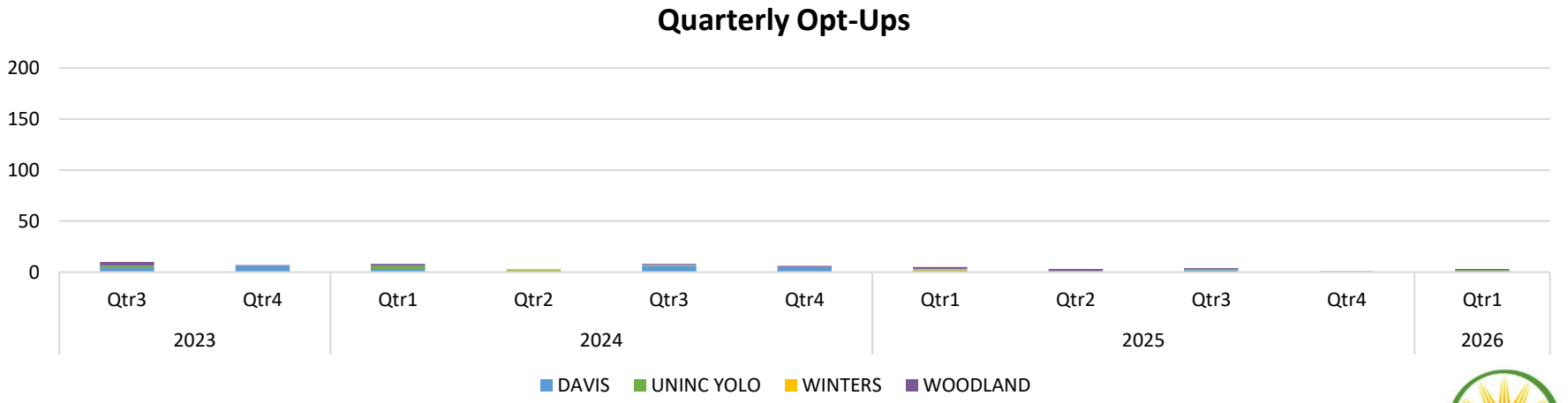
	Davis	Woodland	Winters	Yolo Co	Total	Residential	Commercial	Industrial	Ag	Total
% of Load Opted Out	7%	10%	13%	11%	10%	10%	10%	0%	11%	10%
% of Load Opted Up	3%	1%	0%	1%	1%	0%	3%	0%	0%	1%

VALLEY CLEAN ENERGY

Status Date: 04/01/2026

Item 8 – Customer Participation Update



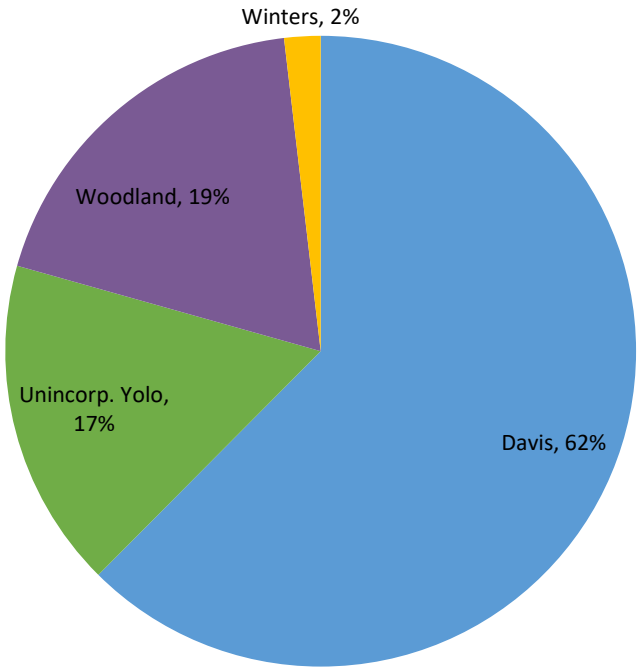


Status Date: 04/01/2026

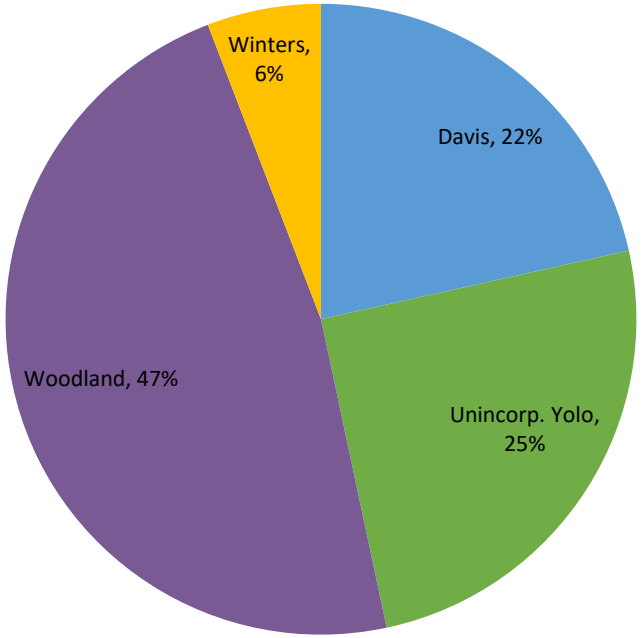
VALLEY CLEAN ENERGY

Item 8 – Customer Participation Update

538 Opt-Ups



12,859 Opt-Outs

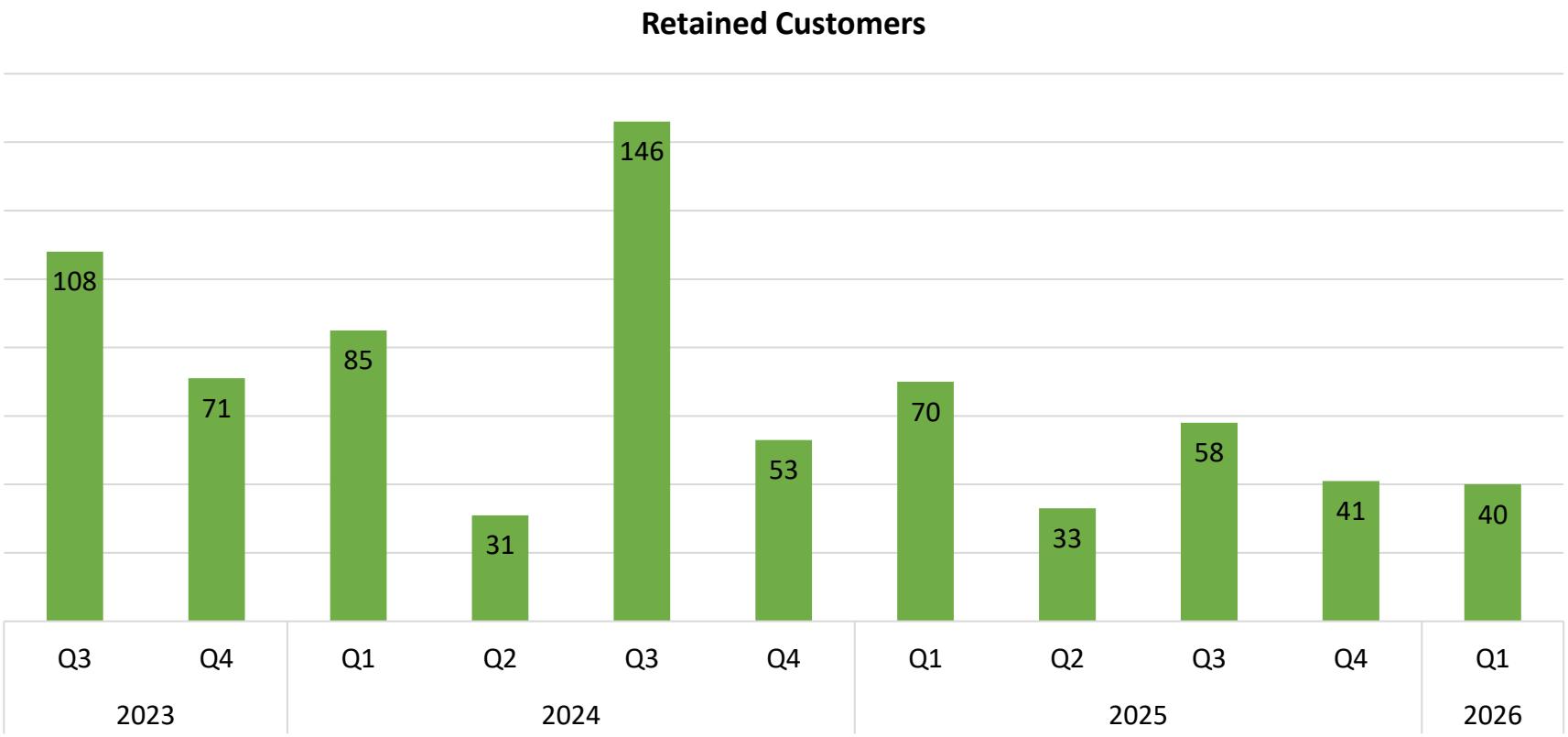


These pie charts are based on total opt-ups and opt-outs since launch. The percentages in the charts are the percentages of those opt-ups and opt-outs by TOT (town or territory).

VALLEY CLEAN ENERGY

Status Date: 04/01/2026

Item 8 – Customer Participation Update



Status Date: 04/01/2026

VALLEY CLEAN ENERGY

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 9

TO: Board of Directors

FROM: Mitch Sears, Chief Executive Officer
Edward Burnham, Chief Financial Officer

SUBJECT: Bi-annual Enterprise Risk Management Report

DATE: April 9, 2026

RECOMMENDATION
Accept the Bi-annual Enterprise Risk Management Report – March 2026.

BACKGROUND & DISCUSSION
In 2018, the Board approved VCE's Enterprise Risk Management (ERM) Policy. The policy is centered on risk management best practices and policies for the energy sector. In summary, the VCE ERM policy contains the following sections:

- Introduction: This section introduces the value of ERM as a structured approach to managing risk and uncertainty. It lays out the objectives of VCE's ERM function, providing the framework for evaluating and managing risk in the organization's decision-making process.

- ERM Roles and Responsibilities: The ERM roles are consistent with the Board-approved Wholesale Power Procurement & Risk Management Policy. The Enterprise Risk Oversight Committee (EROC) has primary responsibility for the implementation of ERM. The policy lays out the scope of the EROC's risk management authority.

- Business Practices: This section identifies the steps of risk management and the basic process associated with each step. The intent is to provide a high-level framework. Specific tools and techniques for implementing enterprise risk management will be recommended by the portfolio manager following approval of the policy.

- Management Reporting and Metrics: The policy defines an enterprise risk report that will be provided bi-annually to the Board.

Staff has used the consistent framework described in the ERM policy to identify various risks and related mitigations, and to ensure effective mitigation and communication across all levels of the

organization. The attached ERM bi-annual report describes the activities that have taken place since March 2025 and the actions VCE is and will be taking to manage the top risks that have been identified.

Prior to this report, staff most recently presented the bi-annual update to the Board in September 2025, describing progress on the ERM plan since inception. Bi-annual updates are provided in March and September of each year.

ATTACHMENT

1. Bi-annual Enterprise Risk Management Report – March 2026

Valley Clean Energy

Enterprise Risk Management Report

March 2026

Executive Summary

Introduction and Background

In 2018, the Valley Clean Energy (VCE) Board adopted an Enterprise Risk Management (ERM) framework based on the best industry practices structure developed by SMUD. The objective was to provide the Board with insight into risks that could impact the ability to execute VCE's mission and build credibility and sustain confidence in VCE's governance. In addition, the framework and reports are designed to enhance the understanding of significant risks to VCE, develop the capacity for continuous monitoring, provide for periodic reporting of risks, and establish a platform for responding to changing risk circumstances. This report is the 1st of VCE's biannual risk reports for 2026; the prior ERM biannual Report was issued in September 2025.

ERM is a strategic approach to risk management that supports the achievement of organizational objectives through the management of integrated impacts of risks as an interrelated risk portfolio. ERM is a coordinated effort by management to treat all risks effectively, thereby reducing the overall cost of risk to the organization. The Chief Executive Officer has charged functional leaders to oversee the treatment of known major risk categories and provide a risk overview to the Enterprise Risk Oversight Committee (EROC).

ERM Philosophy

VCE's ERM philosophy includes the following principles:

1. Identify, assess, prudently manage, monitor, and report on a variety of business-critical risks;
2. Provide enterprise risk context and linkage to existing core business processes to improve the allocation of limited resources;

ERM Approach

Staff has applied a multi-perspective approach to evaluate and estimate the trade-off between risk and cost of mitigation across VCE business functions. This approach addresses the following issues:

- Roles and responsibilities

- Definitions and language
- Risk heat map and risk exposure inventory
- Risk exposure monitoring, updating, and reporting
- Integration of ERM with key business processes
- Integration of risk awareness within corporate culture
- This framework supports the Board in exercising its overall responsibility to:
  - Regulate opportunities and risks for VCE;
  - Develop a better understanding of appropriate opportunities and risks for VCE;
  - Promote active management of risk exposure down to acceptable levels; and
  - Assist VCE in its achievement of business plan objectives and operational performance.

Summary of Activities through March of 2026

From an implementation perspective, progress continues on multiple fronts. Significant effort has been invested in creating an enterprise risk register. Risks to VCE have been identified, categorized, and rated. Existing risk controls and risk treatment measures implemented/proposed have also been identified. The risk register provides VCE's management with a consolidated view of risks being faced by VCE, the potential impact of those risks, mitigation actions, and assessment of short-term risk trends (i.e., higher/lower/steady).

Staff is using a consistent framework to identify various risks and related mitigations, and to ensure effective communication across all levels of the organization. In doing so, staff has completed the following developmental tasks:

1. Established the Chief Executive Officer as Chief Risk Officer and the Chief Financial Officer as risk process owner, focusing on day-to-day monitoring and coordination.
2. Developed ERM framework and tools
3. Conducted a risk survey
4. Developed VCE's top risk portfolio
5. Surveyed staff and management for ongoing risk input
6. Held monthly EROC meetings

Key Steps Taken Since the Last Biannual Update

Some actionable steps that VCE has taken since the last Board update in September 2025 include:

1. Have actively engaged from a regulatory and legislative standpoint, supporting regulatory statewide proceedings and settlements, meeting with key CPUC staff, and continuing progress on the annual VCE legislative platform.
2. Approved 2026 Budget with Rate Credits of 5% for all customers and 10% to CARE/FERA customers.
3. 2025 Energy Prepayment Bond Savings of $1.623M (14% discounted) fixed power cost savings to further stabilize VCE's financial standing, building reserves, and support affordability measures.
4. Developed and used a multi-year enterprise forecasting tool for budget and reserve management.
5. Adopted the 2026-2029 Strategic Plan Major Update ensuring alignment with evolving priorities, stakeholder input, and long-term organizational objectives.

Key Risks

Key risks are those risks that, given VCE's current position, could negatively impact VCE's business model, future performance or prospects, solvency, liquidity, reputation, or prevent it from delivering on its local control commitment. These key risks are updated on an ongoing basis and look forward over a 5-year horizon to identify the:

- Nature and extent of risks facing VCE
- Likelihood and velocity of the risks and potential impacts
- VCE's ability to reduce or control such risks

Key Priorities for Risk Management in 2026:

1. Maintain the operational risk management process
2. Provide regular updates to the Board
3. Continue to take specific actions to mitigate risks as outlined in this document
4. Begin to develop contingency plans for unexpected and emergent events

Risk Portfolio

Top 5 Risks for VCE:

1. 2026 PCIA Increases (net revenue reductions)
2. Rate Affordability and Stabilization
3. Legislative & Regulatory Policy Risk
4. Resource Adequacy (Planning Reserve Margin)
5. Large Load and Commodity procurement Impacts

The following tables outline current risks (Table 1) and summarize VCE's response plan for it's top identified risks (Table 2).

Table 1: Risk Description/Level

Risk	Description	Current Residual Risk	Target Residual Risk
Power Charge Indifference Adjustment (PCIA)	The PCIA rate for 2026 increased significantly with revised market price benchmarks (MPB) formulas. The CPUC has and additional proceeding to continue to look at other MPBs/formulas in the PCIA OIR proceedings.		
Resource Adequacy (RA)	Although the supply of RA in the western US is tightening, the regulatory slice of the day framework and markets have stabilized at reasonable cost levels.		
Commodity Procurement	The 2026 market is experiencing fluctuations associated with commodity prices, including energy prices, resource adequacy, and other components of the energy portfolio.		
Regulatory & Policy risk	Risk of additional regulatory requirements increasing VCE's operational complexity and costs. Recently, the CPUC has adopted positions and policies that have resulted in cost shifts from the IOUs to the CCA community.		
Capital availability/cashflow	Capital / Cashflow Risk has remained low through VCE's rate, auto rate adjustment, and reserve policies. The 2026 Budget included rates and reserve policies to meet, obtain, and maintain credit rating agency requirements.		

Risk	Description	Current Residual Risk	Target Residual Risk
Economic Uncertainty	The risks from the ongoing geopolitical climate increase the impacts on natural gas prices, the general economy, and the renewable sector, specifically through tax reform, trade agreements, war(s), and import tariffs.		
Rate structure	The risk of rate design for cost of service has been reduced with an updated rate policy and additional implementation of the "Base Green" rate option. VCE rate stabilization funds are anticipated to be used in 2026 with changing PCIA and PG&E generation rates.		
Cyber security & data privacy	Risk of a data breach as a result of a cyber breach or physical attack has been increasing. There are also increasing public information requests being sent to public agencies with the use of Artificial intelligence. VCE staff will return to the Board with a draft policy covering both internal use and external protections.		
Financial Markets Volatility	Swings in global energy markets, financial markets, and currencies due to current geopolitical events (e.g. Ukraine/Iran (Middle East) and trade tariffs) have created challenges that impact VCE's power costs.		
Changing customer expectations	The risk that customers' changing expectations, driven by innovation, may lead to reduced revenue and loyalty.		
Opt-out rate	The risk of higher than expected opt-out has normalized despite PG&E's increases in both electricity transmission and distribution and gas rates. VCE implementation of "Base Green" product option should minimize opt-outs.		
Business model	Ability to quickly identify and respond to business risks that have the potential to impact the ability to achieve VCE goals.		
Media & Community	Risk of unfavorable public communications or events; spillover customer dissatisfaction related to PG&E's PSPS events and affordability.		

Risk	Description	Current Residual Risk	Target Residual Risk
Unknown risks	Businesses and utilities attempt to identify and adapt to known risks, but some potential events outside of VCE's control could have a debilitating impact on utilities in general and VCE in particular. Load Serving Entities, like VCE, are facing new operational, financial, and reliability challenges from unknown impacts from large loads, such as increased demand volatility, potential grid congestion, higher procurement costs, and the need for enhanced infrastructure and forecasting capabilities.		

	High Risk
	High/Moderate Risk
	Low/Moderate Risk
	Low Risk

///

Table 2: Summary of VCE top risk response plan

Risk Event	Response	Trend[1]	Plan	Trigger/Control	Owner
PCIA	Monitor risk & actively engage and respond	⇧	1) Continue direct involvement with CalCCA task groups to seek favorable rulings and settlements in the PCIA, ERRA, and other filings. 2) Work towards the potential long-term goal of attaining an option for a PCIA buy-out and sunset date.	The 2026 PG&E PCIA increased due to RA Benchmark proceedings. VCE will continue to monitor the Energy Resource Recovery Account (ERRA) and the PCIA proceedings.	Chief Financial Officer
Commodity Procurement	Reduce & manage risk	⇨	1) Continue to pursue long-term power purchase agreements to reduce the average cost of power in future years 2) Pursue regulatory and legislative avenues in addressing the extreme swings in pricing. 3) Take an active role in regulatory proceedings at the CPUC, including appeals on various regulations that impact the cost of electricity, along with support from the CalCCA Regulatory Committee	Execution of PPA contracts Regulatory rulings that affect commodity procurement cost Monitor impacts and market conditions resulting from slice of day resource adequacy requirements.	Director of Power Resources

[1] Current trend of risk for VCE- increasing ⇧, no change ⇨ or decreasing ⇩

Risk Event	Response	Trend[1]	Plan	Trigger/Control	Owner
Regulatory & Policy risk	Monitor risk & actively engage and respond		1) Take an active role in legislative sessions (contract with lobbyist and engage Board members for support / opposition on bills) along with support from CalCCA legislative committee 2) Follow and continue to update the annual VCE Legislative Platform 3) Take an active role in regulatory proceedings at the CPUC, including appeals, on various regulations that impact VCE and CCA's that increase cost or bureaucracy without any significant safety or cost benefits to VCE and its customers along with support from CalCCA Regulatory Committee	Weekly CalCCA Regulatory and Legislative Committee meetings Regulatory rulings Legislative actions	Chief Executive Officer
Capital Availability / Cash Flow	Monitor risk & actively engage and respond		1) Continue towards conserving cash, reducing debt, and lowering cash requirements. 2) Evaluate reserve policy changes. 3) Work to maintain investment-grade credit rating.	VCE Line of credit agreements & extension to 2027. . Implement VCE Rate adjustment and Collections Policy	Chief Financial Officer

Risk Event	Response	Trend[1]	Plan	Trigger/Control	Owner
Resource Adequacy	Reduce & manage risk		1) Take an active role in regulatory proceedings at the CPUC, including appeals, on various regulations that impact the cost of electricity along with support from the CalCCA Regulatory Committee. 2) Monitor and participate in CalCCA activities related to regional developments in RA. 3) Continue to develop portfolio of resources that satisfy various future RA program scenarios.	Execution of PPA contracts Regulatory rulings that affect RA cost, including non-compliance penalty structure Annual review of VCE PPA RA resources	Director of Power Procurement
Rate Structure	Reduce & manage risk		1) Monitor and update Board based on analyst forecasts for ERRA proceeding. 2) Identify and mitigate risks outside of VCE control to limit impacts and frequency of rate changes. 3) Review and update rates for rate adjustment policy.	Economic outlook and Rate forecasts Monitor Regulatory proceedings that impact PCIA, RA, and ERRA. Monitor cash short-term and long-term impacts to reserve funds, credit lines, commercial negotiations, and PPA covenants.	Chief Financial Officer

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 10

TO: Board of Directors

FROM: Mitch Sears, Chief Executive Officer
Alisa Lembke, Board Clerk/Administrative Analyst

SUBJECT: VCE Updated Conflict of Interest Code

DATE: April 9, 2026

Recommendation

Adopt Resolution amending the Valley Clean Energy Alliance ("VCE") Conflict of Interest Code to add one designated position and update the titles of three positions.

Background and Discussion

The Political Reform Act (Gov. Code Sec. 81000 et seq.) requires local agencies to adopt and periodically review its conflict of interest code. VCE's Conflict of Interest Code was originally adopted by Resolution No. 2016-002 on December 13, 2016, and most recently amended by Resolution No. 2024-002 in April 2024. The code lists the positions within VCE that are required to file statements of economic interests (Form 700).

VCE staff has reviewed the current list of designated positions and recommends amending the Conflict of Interest Code to add the position of Director of Power Services as a designated position and update the titles of three existing positions.

Pursuant to the Political Reform Act, an updated conflict of interest code must be adopted by resolution and approved by VCE's code reviewing body the Yolo County Board of Supervisors. The attached Resolution updates the Appendix to VCE's Conflict of Interest Code to reflect the revised designated positions and corresponding disclosure categories.

Attachment

1. Updated Conflict of Interest Code
2. Resolution 2026-XXX

Conflict of Interest Code of the

Valley Clean Energy Alliance

(Adopted April ___, 2026)

The Political Reform Act (Gov. Code § 81000, et seq.) requires state and local government agencies to adopt and promulgate conflict of interest codes. The Fair Political Practices Commission has adopted a regulation (2 Cal. Code Regs. § 18730) that contains the terms of a standard conflict of interest code which can be incorporated by reference in an agency's code. After public notice and hearing, Section 18730 may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act. Therefore, the terms of 2 California Code of Regulations Section 18730, and any amendments to it duly adopted by the Fair Political Practices Commission, are hereby incorporated by reference. This incorporation page, Regulation 18730 and the attached Appendix designating positions and establishing disclosure categories, shall constitute the Conflict of Interest Code of the Valley Clean Energy Alliance ("VCE").

All Officials and Designated Positions required to submit a statement of economic interests shall file their statements with the Secretary, as VCE's Filing Officer. VCE's Filing Officer shall retain the originals of the statements of all Officials and Designated Positions and shall make all retained statements available for public inspection and reproduction during regular business hours. (Gov. Code § 81008).

APPENDIX

Conflict of Interest Code of the

Valley Clean Energy Alliance

(Adopted April ____, 2026)

PART "A"

OFFICIALS WHO MANAGE PUBLIC INVESTMENTS

Officials who manage public investments, as defined by 2 California Code of Regulations Section 18700.3(b)(1), are NOT subject to VCE's Code, but must file disclosure statements under Government Code Section 87200. (Regs. § 18730(b)(3)). These positions are listed here for informational purposes only.

It has been determined that the positions listed below are officials who manage public investments[1]:

Members of the Board of Directors

Members of the Board of Directors (Alternates)

Chief Executive Officer

Treasurer

Auditor

Chief Financial Officer

[1] Individuals holding one of the above-listed positions may contact the Fair Political Practices Commission for assistance or written advice regarding their filing obligations if they believe that their position has been categorized incorrectly. The Fair Political Practices Commission makes the final determination whether a position is covered by Government Code Section 87200.

DESIGNATED POSITIONS
GOVERNED BY THE CONFLICT OF INTEREST CODE

Designated Positions	Disclosure Category
General Counsel	1, 2, 3
Chief Customer Officer	1, 2, 3
Chief Operating Officer	1, 2, 3
Director of Power Services	1, 2, 3
Consultants and New Positions[2]	1, 2, 3

[2] Individuals providing services as a Consultant defined in Regulation 18700.3(a)(2), or in a new position created since this Code was last approved that makes or participates in making decisions shall disclose pursuant to the broadest disclosure category in this Code subject to the following limitation:

The Chief Executive Officer may determine in writing that a particular consultant or new position, although a "designated position," is hired to perform a range of duties that is limited in scope and thus is not required to comply with the disclosure requirements described in this section or shall be assigned a limited disclosure requirement. A clear explanation of the duties and a statement of the extent of the disclosure requirements must be in a written document. (Gov. Code Sec. 82019; FPPC Regulations 18219 and 18734). The Chief Executive Officer's determination is a public record and shall be retained for public inspection in the same manner and location as this Conflict of Interest Code. (Gov. Code Sec. 81008).

APPENDIX

Conflict of Interest Code of the

Valley Clean Energy Alliance

(Adopted April ___, 2026)

PART "B"

DISCLOSURE CATEGORIES

The Disclosure Categories listed below identify the types of economic interests that the Designated Position must disclose for each category to which he or she is assigned.[3] "Investment" means financial interest in any business entity (including a consulting business or other independent contracting business) and are reportable if they are either located in, doing business in, planning to do business in, or have done business during the previous two years in the jurisdiction of VCE.

1. All interests in real property which is located in whole or in part within, or not more than two (2) miles outside, the jurisdiction of VCE, or within two (2) miles of any land owned or used by VCE.

2. All reportable investments and business positions in, and sources of income, including gifts, loans, and travel payments, from business entities that contract with or have contracted with VCE to provide services, products, supplies, materials, machinery, vehicles or equipment to VCE.

3. All reportable investments and business positions in, and sources of income, including gifts, loans and travel payments, from business entities that are contractors or subcontractors engaged in the performance of work or services of the type utilized or foreseeably utilized by VCE, or manufacture, sell or provide services, products, supplies, materials, machinery, vehicles or equipment of the type purchased or leased by or used or foreseeably utilized by VCE.

[3] This Conflict of Interest Code does not require the reporting of gifts from outside VCE's jurisdiction if the source does not have some connection with or bearing upon the functions or duties of the position. (Reg. 18730.1).

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2026 -_____

A RESOLUTION OF VALLEY CLEAN ENERGY ALLIANCE ADOPTING AN UPDATED CONFLICT OF INTEREST CODE

WHEREAS, Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and

WHEREAS, the Political Reform Act (Government Code Section 81000, *et seq*.) requires state and local government agencies to adopt and promulgate conflict of interest codes; and

WHEREAS, the Fair Political Practices Commission has adopted a regulation (2 Cal. Code of Regs. § 18730), which contains the terms of a standard conflict of interest code, which may be incorporated by reference in an agency's code and, after public notice and hearing, may be amended by the Fair Political Practices Commission to conform to amendments in the Political Reform Act; and

WHEREAS, VCE is a joint powers agency subject to the Political Reform Act's code-filing requirement; and

WHEREAS, notice of the time and place of a public meeting on, and of consideration by the Board of Directors of, the proposed updated Conflict of Interest Code for VCE was provided to each affected designated employee and publicly posted for review at the offices of VCE.

NOW, THEREFORE, BE IT RESOLVED, by the Board of Directors of Valley Clean Energy Alliance, as follows:

Section 1. The Board of Directors of Valley Clean Energy Alliance (the "Board") hereby adopts the proposed updated Conflict of Interest Code, a copy of which is attached hereto and shall be on file with the Secretary of VCE, and available to the public for inspection and copying during regular business hours.

Section 2. The updated Conflict of Interest Code shall be submitted to the Board of Supervisors of Yolo County for approval and said Code shall become effective 30 days after the Board of Supervisors approves the proposed updated Conflict of Interest Code as submitted.

Section 3. Persons holding designated positions listed in the updated Conflict of Interest Code shall file with the Secretary of VCE Statements of Economic Interests on Fair Political Practices Commission forms, in conformance with the individual disclosure categories and state law.

Section 4. The Secretary of VCE is directed to provide, upon request, copies of this Resolution and the updated Conflict of Interest Code to any officer, employee, and consultant designated in the Code, and to make copies of the Code available to any interested party who requests a copy.

Section 5. Any violation of any provision of the updated Conflict of Interest Code is subject to the administrative, criminal, and civil sanctions provided in the Political Reform Act, Government Code Section 81000 *et seq*.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2026, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachment: Exhibit A – Conflict of Interest Code (Adopted ____ __, 2026)

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 11

TO: Board of Directors

FROM: Mitch Sears, Chief Executive Officer

SUBJECT: Approve updates to Exhibits C – Annual Energy and D – Voting Shares to VCE's Joint Powers Agreement

DATE: April 9, 2026

RECOMMENDATION

Adopt resolution approving updates to Exhibits C – Annual Energy and D – Voting Shares to VCE's Joint Exercise of Powers Agreement (JPA Agreement) and authorizing the Chief Executive Officer, in consultation with legal counsel, to take necessary implementation actions.

BACKGROUND & DISCUSSION

On December 12, 2019 the City of Winters became a signatory and party to VCE's JPA Agreement. Pursuant to the JPA Agreement, each party has a voting share which is determined by dividing the party's annual energy use by all of the parties' total annual energy. In February 2022, the completion of enrolling City of Winters customers initiated an update to the JPA. In July 2022 via Resolution 2022-025, Exhibits B (List of Parties), Exhibits C (Annual Energy) and D (Voting Shares) to the JPA Agreement were updated as the Second Amendment. In addition, the Second Amendment allows Exhibits C and D to be modified by the Board without going through a full amendment process to the JPA Agreement. Instead, modifications, such as updates, can be made to Exhibits C and D via resolution. In December 2023 via Resolution 2023-020, the Third Amendment to the JPA was approved, which adopted a Compensation and Expense Reimbursement Policy.

There is the need to update Exhibits C (Annual Energy) and D (Voting Shares) reflecting 2025 energy usage and voting shares for each of the four (4) jurisdictions: unincorporated Yolo County, and cities of Davis, Woodland and Winters.

CONCLUSION

Per VCE's Second Amendment to the JPA, Staff is recommending that the VCE Board approve via resolution updated Exhibits C and D and that the Board authorize the Chief Executive Officer, in consultation with legal counsel, to take necessary steps to implement this action.

Attachments

1. Updated Exhibit C – Annual Energy
2. Updated Exhibit D – Voting Shares
3. Resolution 2026-XXX

Attachment 1

EXHIBIT C

ANNUAL ENERGY USE / VOTING SHARES

Unincorporated Yolo County	204,336,463 kWh
Davis	189,323,505 kWh
Woodland	256,120,746 kWh
Winters	22,850,672 kWh

Attachment 2

EXHIBIT D

VOTING SHARES

Unincorporated Yolo County	204,336,463 kWh	30.4 votes
Davis	189,323,505 kWh	28.1 votes
Woodland	256,120,746 kWh	38.1 votes
Winters	22,850,627 kWh	3.4 votes
Total	672,631,340 kWh	100

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2026 -___

A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE APPROVING UPDATES TO EXHIBIT C – ANNUAL ENERGY AND EXHIBIT D – VOTING SHARES

WHEREAS, the Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, under Section 2.4.2 of the Joint Powers Agreement Relating to and Creating the VCE (the "Agreement"), the Board of Directors ("Board") may allow other cities and counties to become members in the VCE JPA and thereby to participate in VCE's Community Energy Choice program (the "Program") provided certain conditions are met; and,

WHEREAS, pursuant to the JPA Agreement each party has a voting share which is determined by dividing the party's annual energy use by all of the parties' total annual energy. This information is provided in Exhibit C – Annual Energy and Exhibit D – Voting Shares to the Agreement, and is necessary in order for the parties to conduct weighted voting by voting shares pursuant to Section 3.7 of the Agreement; and,

WHEREAS, Section 3.7.1 and 3.7.2 of the Agreement provide that Exhibits C and D of the Agreement shall be revised no less than annually as necessary to account for changes in the number of parties and changes to the parties' annual energy use; and,

WHEREAS, in July 2022, the Board, Cities of Davis, Woodland and Winters, and Yolo County approved the Second Amendment to the JPA allowing Exhibits C and D, "Annual Energy" and "Voting Shares", respectively, to be modified by the Board without going through a full amendment process; and,

WHEREAS, VCE desires to update Exhibits C and D to reflect changes to the parties' annual energy use and voting shares.

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolve as follows:

1. Exhibit C of the Agreement is hereby replaced in its entirety by Exhibit C as attached hereto.

2. Exhibit D of the Agreement is hereby replaced in its entirety by Exhibit D as attached hereto.

PASSED, APPROVED, AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2026, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachments:

1. Exhibit C – Annual Energy
2. Exhibit D – Voting Shares

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 12

TO: Board of Directors

FROM: Chad Curran, Director of Power Services

SUBJECT: 2026 Integrated Resource Plan (IRP) Schedule and Process

DATE: April 9, 2026

RECOMMENDATION
Informational - no action requested.

BACKGROUND
Since 2018, VCE has been required by the CPUC to prepare an IRP on a biannual basis. VCE last filed an IRP on November 1, 2022. At the October 13, 2022, meeting, the Board approved VCE's 2022 IRP[1]. The CPUC originally expected to require load serving entities (LSEs) to file their next IRPs in the fall of 2024[2]. After significant delays in the IRP process, on January 16, 2026, the CPUC issued a ruling setting a due date for the next IRP of June 1, 2026. On March 9, 2026, the CPUC issued a ruling extending that due date to August 10, 2026.

ANALYSIS
VCE must file an Integrated Resource Plan (IRP) with the California Public Utilities Commission (CPUC) by August 10, 2026. This staff report describes the schedule and process for this IRP.

IRP filings are the vehicle by which the CPUC and stakeholders gain insight into individual LSEs' plans for meeting state goals and how LSEs show compliance with their requirements under PUC 454.52(a)(1). VCE's objective for the upcoming IRP process is to provide guidance to VCE's Board, executive management, and the public on the expected power supply cost and the resources needed to meet the electric demand in the 2026-2045 period, while meeting CPUC's requirements for portfolio planning and VCE's strategic plan goals at the lowest cost.

IRP PROCESS
The CPUC sets the filing requirements for load serving entities' (LSEs) IRPs. Each LSE must file one "conforming portfolio" that achieves GHG emissions that are equal to or less than the LSE's proportional share of the state's targets for GHG emissions of 25 MMT by 2035 and 8 MMT by 2045.

[1] https://valleycleanenergy.org/wp-content/uploads/Item-13-Approval-of-2022-Integrated-Resource-Plan-Updated-10-10-22-10-13-22.pdf
[2] https://docs.cpuc.ca.gov/PublishedDocs/Efile/G000/M529/K525/529525977.PDF

The CPUC provides a wide range of inputs and assumptions for the IRP, such as load forecasts, resource costs, statewide resource potential, and generation profiles for different resource types.

Using the inputs and assumptions provided by the CPUC, VCE and its team will develop a confirming portfolio that satisfies the CPUC's requirements for the IRP filing. This portfolio will consist of existing resources in VCE's power portfolio, and future resources to be procured.

VCE's IRP TEAM

VCE Staff will work with an experienced team to prepare its 2026 IRP:

- **EQ Research** - EQ serves as VCE's regulatory consultant, helping VCE monitor, interpret, and ensure compliance with regulatory requirements, and prepare regulatory filings such as the IRP.
- **The Energy Authority (TEA)** - TEA (VCE's Wholesale Energy Provider) assists VCE with analysis, planning, procurement, and implementation of VCE's power procurement portfolio.
- **Keyes & Fox** – VCEs Regulatory Counsel for the IRP.
- **First Principles Advisory (FPA)** - FPA will use the open-source GenX software to perform portfolio modeling.

CPUC IRP FILING

The IRP filing due to the CPUC by August 10, 2026, will consist of three components:

- A **narrative template** describing VCE's plan development approach, results of analytical work, and action plan.
- A **resource data template (RDT)** reporting VCE's existing and planned energy and capacity contracts.
- A **clean system power calculator (CSP)** estimating the GHG and criteria pollutant emissions of VCE's portfolios and verifying that VCE's portfolio achieves its assigned GHG and reliability planning benchmarks.

VCE IRP SCHEDULE

Below is a schedule of the next major milestones for VCE in the IRP process.

- May 28, 2026 - Staff will present the initial results of the IRP analysis to the CAC.
- June 25, 2026 – If necessary, Staff will seek additional feedback from the CAC.
- July 9, 2026 – VCE staff will present its final report to the Board on its IRP and seek Board approval to file the IRP.
- August 10, 2026 – The deadline for the IRP to be filed with the CPUC.

COMMUNITY ADVISORY COMMITTEE

At the March 26, 2026, Community Advisory Committee (CAC) meeting, Staff presented about the IRP schedule and process as an information only item.

CONCLUSION

Staff will return to the CAC in the coming months to seek additional feedback and recommendations to the Board. At the July 9, 2026 Board meeting, staff will seek Board approval to file VCE's 2026 IRP.

VALLEY CLEAN ENERGY ALLIANCE

Staff Report - Item 13

TO: Board of Directors

FROM: Edward Burnham, CFO / Treasurer

SUBJECT: Treasury and Finance Update

DATE: April 9, 2026

RECOMMENDATION:

1. Adopt a resolution approving a one-year extension of the Second Amended and Restated Credit Agreement with River City Bank, including a revolving line of credit not to exceed $11,000,000
2. Authorize the Executive Officer to conduct any final negotiations, implement the approval, and sign all necessary documents related to the extension of the two-year Second Amended and Restated Credit Agreement with River City Bank.
3. Ratify the County of Yolo Investment Policy for the calendar year 2026 as the Investment policy applicable to VCE.

OVERVIEW

The purpose of this staff report is to (1) authorize the CEO to execute a 1-year extension with RCB, (2) ratify the County of Yolo Investment Policy for 2026, and (3) receive a preliminary update on 2026 Treasury and Investment improvements.

As detailed in the body of this report, VCE maintains a disciplined approach to assessing financial risks resulting from external challenges and continues to bolster its financial strength to maintain VCE's A- investment credit rating.

BACKGROUND

At the December 14, 2023, meeting, the Board appointed VCE's CFO to perform the treasurer's functions. The role of the Treasurer is threefold and focuses on three areas:

- **Banking and Cash Management** – Day-to-day transactions are ordinarily approved according to the delegation of authority provided to the executive staff of VCE. However, the Treasurer retains the authority to select the banking institutions to be used and to collaborate with staff to manage cash flow, ensuring that investing or financing occurs as needed.
- **Investing** – The Treasurer is responsible for investing funds in accordance with law and according to the agency's investment policy.

- **Debt and Financing** – The Treasurer participates as a key team member in debt and financing decisions in accordance with policies on borrowing, debt, and obligations. At the July 14, 2022, meeting, VCE adopted the Debt Policy to comply with SB1029 (requires public agencies seeking financing to have a debt policy), which became effective in 2018.

At the April 11, 2024 Board meeting, the Board approved Item 16, including a resolution extending for a Second Amended and Restated Credit Agreement with River City Bank for 2 years ending in April 2026.

Revolving Line of Credit (RLOC) with RCB

The current RLOC Agreement has a limit of $7,000,000 available for cash advances and/or letters of credit and an additional $4,000,000 credit facility available for Letters of Credit, for a total RLOC of $11,000,000. Since August 2018, VCE has not drawn cash on the RLOC. VCE currently has a $270,000 letter of credit issued for the PG&E Financial Security Requirement required by CPUC regulations for all CCAs. VCE reduced the need for a $3.8M letter of credit issued as optional financial security for PPA pricing discounts that provide power cost savings upon establishing its A- investment-grade credit rating in October 2025.

Analysis

As part of the VCE investment approach, the Treasurer manages cash flow forecasts to determine the capacity to invest VCE Funds. This included reviewing the investment policy, which requires that funds be invested first in safe, then liquid, assets to meet agency needs, and third to seek yields on investments (Att. A – County of Yolo Investment Policy).

In determining the ability to invest, the Treasurer reviewed existing agreements within the River City Bank Revolving Line of Credit (RLOC) Agreement, which states:

> *Section 10.4 Exclusive Deposit Relationship.* Borrower shall maintain all of Borrower's deposit accounts exclusively with Lender. If this covenant is not satisfied, as determined by Lender, it will not constitute an Event of Default, but the Applicable Rate on all outstanding Notes will immediately increase by an additional 2.00 percentage margin. This margin shall continue to apply to each succeeding interest rate change that may apply thereafter, so long as this covenant is not satisfied.
>
> *Section 10.11. Investments, Acquisitions, Loans, Advances, and Guarantees.* Borrower shall not directly or indirectly, make, retain or have any investments (whether through purchase of stock or obligations or otherwise) in, or loans or advances (other than for travel advances and other similar cash advances made to employees in the ordinary course of business) to any other Person, or acquire any substantial part of the assets or business of any other Person or division thereof, or be or become liable as endorser, guarantor, surety or otherwise for any debt, obligations or undertaking of any other Person, or otherwise agree to provide funds for payment of the obligations of another, or supply funds thereto or invest therein or otherwise assure a creditor of another against loss, or apply for or become liable to the issuer of a letter

of credit which supports an obligation of another, or subordinate any claim or demand it may have to the claim or demand of any other person.

Effectively, these restrictions limit deposits to River City Bank and investment options to its offerings. River City Bank does, however, offer a money market account that allows for earning interest on deposits. Valley Clean Energy has opened a Money Market Account with RCB that provides same day liquidity and generally pegs its interest rate to that of the Local Agency Investment Fund (LAIF) at the state level, (paid 5.76% annual interest rate for month as of March 13, 2026 (Attachment B / Attachment C)), though the interest rate can be adjusted at the option of RCB at any time to reflect changing market conditions.

This option was appropriate for VCE, given that the agency was growing its cash position to establish VCE's A investment-grade credit rating. Over the next 6 months, VCE will review its current treasury approach to ensure funds are invested first in safe, then liquid, investments that return appropriate yields.

- **Use of Surety Bonds** – VCE has begun to establish the use of Surety Bonds as a substitute for letters of credit from the line of credit for FSR requirements with PG&E. This will provide savings and increase VCE's liquidity.
- **Issuance of an RFP for Banking Services** – VCE will issue an RFP for banking services, including lines of credit, to understand market conditions and terms in order to reduce restrictions on funds for investments without increasing risks to funds.
- **Issuance of an RFP for Investment Advisory Services** – VCE will issue an RFP for investment services to understand market conditions, possible liquidity risks, and estimated earnings for investments on reserve funds.
- **Alternative Solutions –** VCE will evaluate additional solutions such as pooled investments, including the County of Yolo, that may provide additional advantages to investing individually.

Staff will begin this process during the second quarter, perform a comprehensive review of all possible scenarios, and return to the Board with the results and recommendations. In addition, staff will release the RFP for Enterprise Resource Planning (ERP) system. This ERP will be integral in providing additional cash flow planning, tracking, and reconciliations in a more complex financial structure.

These steps lay the foundation of the next steps in implementation of VCE's Strategic Plan Goals:

- Goal 1 - Financial Strength and;
- Goal 6 - Organizational Growth, development, and effectiveness

These actions are designed to optimize VCE's ability to provide long-term rate affordability and competitiveness with PG&E.

RCB Services Extension
Staff proposes extending the current RCB Revolving line of credit as outlined below for 1 year to execute the above.

River City Bank Terms – Revolving Line of Credit

The following key terms are summarized from the agreement with RCB.

- Type of Financing: Commercial Revolving Line of Credit
- Maximum Amount: $11,000,000, with a $7,000,000 sublimit for cash advances
- Maturity: April 15, 2027 *(one year from the current 4/15/2026 maturity date)*
- Interest Rate: Variable rate, Floating at the one (1) month U.S. Treasury Bill Yield + 2.00%, subject to a 2.00% floor (unchanged)
- Fees:
    - Loan Fee: 0.50% of the total RLOC commitment, payable upon loan closing
    - Documentation Fee: $500, payable upon loan closing, provided that Borrower approves the use of Bank's standard form documents.
    - Non-Use Fee: 0.10% of the average unused RLOC amount per annum, payable annually upon each anniversary of the RLOC

Collateral/Pledged Assets

RCB shall maintain a perfected security interest in 1st lien position via a UCC filing and security agreement in each of the following:

- Restricted Debt Service Reserve Account ("DSRA") (interest-bearing) maintained at RCB in the minimum amount of $1,100,000.
- A security agreement that covers (i) the right of set-off to all of Borrower's deposit accounts not otherwise encumbered by outside liens, and (ii) a pledge on Borrower revenues.
- A UCC-1 perfected blanket lien filing covering all Accounts, Revenues, Resource Adequacy Contracts, and the Debt Service Reserve Account.
- No junior liens will be permitted on any Collateral.

Covenants

The RLOC is currently subject to the following loan covenants, which will be maintained for the renewal term:

- Rate Covenant: VCE shall set customer rates at levels to cover all annual costs, inclusive of debt service.
- Adj. Tangible Unrestricted Net Position: VCE will maintain a minimum Adjusted Tangible Unrestricted Net Position of $17,500,000, measured annually as of each fiscal year end.
- Change in Net Position: VCE must achieve a minimum cumulative change in net position of $1.00 for each fiscal year.
- Leverage Ratio: VCE shall maintain a total Liabilities to total Adjusted Tangible Unrestricted Net Position ratio not any time greater than 1:50 : 1:00, measured quarterly as of each calendar quarter.

Conclusion

Based on the report above, VCE staff plan to continue using the River City MMA and ICS accounts with excess funds to invest, while VCE performs a comprehensive review of Treasury and Investment Services. Staff requests that the VCE Board ratify the County of Yolo Investment Policy for 2026 and

authorize the CEO to execute a one-year extension of the $11,000,000 RLOC facility, as set forth in the Second Amended and Restated Credit Agreement (RLOC Agreement).

Attachments
Attachment A - Resolution authorizing the Executive Officer to execute an extension of the Credit Agreement with the River City Bank
Attachment B – County of Yolo Investment Policy 2026
Attachment C – River City Materials on Public Money Market Account
Attachment D – River City Materials on Public Fund ICS Account

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2026-XXX

RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE AUTHORIZING THE EXTENSION OF ITS REVOLVING LINE OF CREDIT WITH RIVER CITY BANK

WHEREAS, Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, Under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and,

WHEREAS, the City of Winters, located in Yolo County, was added as a member of VCE and a party to the VCE in December of 2019;

WHEREAS, pursuant to a Resolution adopted on May 10, 2018, the Board of Directors of VCE (the "Board") approved the execution of a credit agreement and related documents thereto (collectively and as previously amended and extended, the "Credit Facility") with River City Bank ("RCB"), pursuant to which RCB agreed to provide credit working capital to meet VCE's liquidity needs and RCB also agreed to provide certain credit enhancements;

WHEREAS, pursuant to a Resolution adopted on March 10, 2022, the Board of Directors of VCE (the "Board") approved a Second Amended and Restated Credit Agreement (the "Agreement") with River City Bank, including a revolving line of credit not to exceed $11,000,000 and a term loan for approximately $1.1M;

WHEREAS, pursuant to a Resolution adopted on April 11, 2024, the Board of Directors of VCE (the "Board") approved a two year extension of the Second Amended and Restated Credit Agreement (the "Agreement") with River City Bank;

WHEREAS, the Credit Facility currently has a limit of $7,000,000 available for cash advances and/or letters of credit and an additional $4,000,000 credit facility available for Letters of Credit, for a total maximum amount of $11,000,000;

WHEREAS, RCB is willing to extend the Credit Facility for one year ending in April 2027 pursuant to the terms set forth in the Amendment; and

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NOW, THEREFORE, the Board of Directors of Valley Clean Energy Alliance resolves as follows:

Section 1. The foregoing recitals are true and correct.

Section 2. The Board of Directors (the "Board") of Valley Clean Energy Alliance ("VCE") hereby approves the executive officer and his designees as authorized representatives of VCE (each an "Authorized Representative" and collectively, the "Authorized Representatives") in connection with the negotiation and execution of the one-year extension the Amendment, including such related amendments deemed necessary or advisable by the Authorized Representative executing the Amendment extending the term of the Agreement, and any ancillary documents relating thereto.

Section 3. The Board hereby approves each Authorized Representative, acting singly, to execute and deliver the extension, and any related ancillary documents necessary to implement the Amendment Terms and in such form and substance as may be approved by such Authorized Representative, in consultation with General Counsel to VCE, as in the best interests of VCE, the execution thereof to be conclusive evidence of such approval.

Section 4. The Board hereby approves each Authorized Representative, acting singly, to borrow and authorize advances or the issuance of letters of credit from time to time under the Agreement Revolving Credit Facility in such amounts as in their judgment should be borrowed and to provide security for the obligations of VCE under the Agreement, including, without limitation, a pledge of the net revenues of VCE, and to execute and deliver any requests or other documents and agreements as such Authorized Representative may, in his or her discretion, deem reasonably necessary or proper in order to carry into effect the provisions of the Amended Revolving Credit Facility.

Section 5. The Authorized Representatives, the Board Secretary, and the Board Chair and all other appropriate officials of the VCE are hereby authorized and directed to execute such other agreements, documents and certificates as may be necessary to effect the purposes of this resolution.

Section 6. The Board hereby approves all acts, transactions or agreements undertaken, prior to the adoption of these resolutions by any of the officers of VCE, or their designees, in its name and for its account in connection with the foregoing matters, are hereby ratified, confirmed and adopted by VCE.

Section 7. This Resolution shall take effect immediately upon its adoption.

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PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the _____ day of _____ 2026, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

TITLE: Investment Policy

Department: Financial Services

TYPE: POLICY **DATE:** December 9, 2025

A. PURPOSE

This document is known as the annual investment policy and represents the policies of the Board of Supervisors of the County of Yolo related to the investment of funds under the control of the Chief Financial Officer. The office of the Auditor-Controller and the Treasurer-Tax Collector have been consolidated. All statutory duties, responsibilities, and budgets of the Auditor-Controller and Treasurer-Tax Collector are consolidated into the office known as the Chief Financial Officer as per Yolo County code section 2-5.113 effective January 5, 2015.

The Department of Financial Services was established to consolidate and perform all functions of the offices of the Auditor, Controller, Tax Collector, and Treasurer, and any other county-wide fiscal functions directed by the board as per county code sec. 2-5.2001.

This policy is prepared annually by the Chief Financial Officer in accordance with the California Government Code and prudent asset management principles. Pursuant to Government Code sections 27133 and 53646 this policy has been reviewed by the Financial Oversight Committee and approved by the Board of Supervisors at a public meeting.

B. APPLICABILITY

This policy will cover the period of January 1, 2026 through December 31, 2026.

This policy applies to the cash management and investment activities performed by County personnel and officials for any local agency, public agency, public entity, or public official that has funds on deposit in the county treasury pool. The terms "County" and "county treasury pool" are used interchangeably and include all such funds so invested.

The investment of bond proceeds will be governed by the provisions of relevant bond and related legal documents.

The investment of endowment funds will be governed by the underlying laws, regulations, and specific governmental approvals under those laws pursuant to which the endowments were created. Endowment fund investments will primarily focus on the preservation of principal and use of investment income for operational purpose.

The investment of the Section 115 Trusts related to OPEB and Pension will be invested in compliance with the County Policies on “Accounting, Funding and Recovery of OPEB Costs” and the “Pension Funding Policy” and legal documents associated with the Section 115 Trusts.

C. STANDARD OF CARE

Investments shall be made with judgment and care, under circumstances then prevailing, which persons of prudence, discretion, and intelligence exercise in the management of their own affairs, not for speculation, but for investment, considering the probable safety of their capital as well as the probable income to be derived.

The standard of prudence to be used by investment officials shall be the "prudent investor" standard which states that "when investing, reinvesting, purchasing, acquiring, exchanging, selling, or managing public funds, a trustee shall act with care, skill, prudence, and diligence under the circumstances then prevailing, including, but not limited to, the general economic conditions and the anticipated needs of the agency, that a prudent person acting in a like capacity and familiarity with those matters would use in the conduct of funds of a like character and with like aims, to safeguard the principal and maintain the liquidity needs of the agency.

This standard shall be applied in the context of managing an overall portfolio. Investment officers acting in accordance with written procedures and the investment policy and exercising due diligence shall be relieved of personal responsibility for an individual security's credit risk or market price changes, provided deviations from expectations are reported in a timely fashion and appropriate action is taken to control adverse developments.

D. PUBLIC TRUST

All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment officials shall avoid any transaction that might impair public confidence in the County's ability to govern effectively.

E. OBJECTIVES

The primary objectives, in descending priority order, of the investment activities of the County shall be:

1. **Safety.** Safety of principal is the foremost objective of the investment program. Investments of the County shall be undertaken in a manner that seeks to ensure preservation of capital in the portfolio.

2. **Liquidity**. The investment portfolio shall be maintained in such a manner as to provide sufficient liquidity to meet the operating requirements of any of the participants.

3. **Return on Investment.** The investment portfolio of the County shall be designed with the objective of attaining a market rate of return on its investments consistent with the constraints imposed by its safety objective and liquidity considerations.

F. DELEGATION OF AUTHORITY

Subject to Section 53607 the authority of the Board of Supervisors to invest or to reinvest funds of the pooled investments, or to sell or exchange securities so purchased, may be delegated for a one-year period by ordinance in accordance with Government Code Sections 27000.1 and 27000.3.

The Board of Supervisors has designated the Chief Financial Officer as its agent authorized to make investment decisions after considering the strategy proposed by the investment advisor.

G. ETHICS AND CONFLICT OF INTEREST

Individuals performing the investment function and members of the Financial Oversight Committee (FOC) shall maintain the highest standards of conduct.

County Officers and employees involved in the investment process shall refrain from personal business activities that could conflict with proper execution of the investment program, or which could impair their ability to make impartial decisions. These individuals should follow the Code of Ethics for Procurement approved by the Board of Supervisors and comply with all relevant provisions of the Political Reform Act, especially the requirements of Chapter 7 – Conflict of Interest and Chapter 9.5 – Ethics. The key requirements are listed below:

1. Officers and employees involved in the investment process shall refrain from personal business activity that could conflict with the proper execution and management of the investment program, or that could affect their ability to make impartial decisions.

2. Officers and employees shall refrain from undertaking personal investment transactions with the same individual with whom business is conducted on behalf of the County.

3. Officers and employees shall not accept gifts or gratuities with a value exceeding $500 in any one year from any bank, broker, dealer, or any other person, firm, or organization who conducts business with the Department of Financial Services.

4. No person with investment decision-making authority in the County Administrator's office or the Department of Financial Services may serve on the board of directors or any committee appointed by the board or the credit committee or supervisory committee of a state or federal credit union which is a depository for County funds.

The Financial Oversight Committee Charter includes the following requirements for members of the committee:

1. A member shall disclose to the committee at a regular meeting any activities that directly or indirectly raised money for a member of the governing board of any local agency that has deposited funds in the County Treasury while a member of the committee. For purposes of this subsection, raising money includes soliciting, receiving, or controlling campaign funds of a candidate, but not the member's individual campaign contributions or non-financial support. This section does not apply to a member raising money for his or her own campaign.

2. A member shall disclose to the Committee at a regular meeting any contributions, in the previous three years or during the period that the employee is a member of the committee, by an employer to the campaign of a candidate to be a member of a legislative body of any local agency that has deposited funds in the County Treasury.

3. A member cannot secure employment with, or be employed by, bond underwriters, bond counsel, security brokerages or dealers, financial services firms, financial institutions, and municipal advisors with whom the County is doing business during the member's Financial Oversight Committee membership period or for one year after leaving the Financial Oversight Committee. This subsection only applies to employment or soliciting employment, and not other relationships with such companies with whom the County is doing business.

4. A member shall disclose to the Committee any honoraria, gifts, and gratuities from advisors, brokers, dealers, bankers, or other persons who conduct business with the Department of Financial Services while a member of the Committee. All members shall also comply with the requirements of the Political Reform Act or any other law or regulation regarding to receipt and disclosure of financial benefits and conflicts.

H. INTERNAL CONTROLS

Internal control procedures shall be established and maintained by the Department of Financial Services that provide reasonable assurance that the investment objectives are met and to ensure that the assets are protected from loss, theft, misuse, or mismanagement. The internal controls shall be reviewed as part of the regular annual independent audit. The controls and procedures shall be designed to prevent employee error, misrepresentations by third parties, and imprudent or illegal actions by employees or officers of the County.

I. CASH MANAGEMENT

In determining the amount that can be invested County personnel shall take into account the liquidity needs of the County and the agencies in the Treasury pool, and shall take reasonable steps to ensure that cash flow requirements of the County and pool participants are met for the next six months, barring unforeseen actions from the State Controller or other funding sources, such as deferral of cash payments.

County personnel shall maintain separate accounting for cash funds and monitor aggregate cash balances of the County and each agency in the Treasury pool, and shall notify the County Administrator or agency management of unhealthy trends in aggregate cash balances. Unhealthy trends may include but are not limited to deferral of cash payments from State, Federal grantors, or other funding sources, significant declines in available aggregate cash balances, or near-deficit aggregate balances. Agencies that are so notified are expected to take immediate action to cure any deficit and improve cash balances. Continuing deficits shall be reported to the Board of Supervisors for further action.

The Chief Financial Officer shall provide quarterly reports on total cash flows and balances of the Treasury Pool to the Financial Oversight Committee.

J. AUTHORIZED FINANCIAL DEALERS AND QUALIFIED INSTITUTIONS

The County may secure the services of an Investment Advisor. Precautionary contractual language with such an adviser shall include: delivery versus payment methods, third-party custody arrangements, prohibitions against self-dealings, independent audits, and other appropriate internal control measures as deemed necessary by the Chief Financial Officer.

The County or the County's Investment Advisor shall maintain a list of authorized broker/dealers and financial institutions which are approved for investment transaction purposes, and it shall be the policy of the County to purchase securities only from those authorized institutions or firms. Authorized brokers/dealers must either (i) be classified as Reporting Dealers affiliated with the New York Federal Reserve Bank as Primary Dealers or (ii) be registered to conduct business in the State of California and be licensed by the state as a broker-dealer, as defined in Section 25004 of the Corporations Code.

No broker/dealer shall be selected which has within any consecutive 48-month period made a political contribution to any member of the Board of Supervisors or to any candidate for these offices in an amount exceeding the limitations contained in Rule G-37 of the Municipal Securities Rulemaking Board.

K. PERMITTED INVESTMENT INSTRUMENTS

1. United States Treasury Obligations. Government obligations for which the full faith and credit of the United States are pledged for the payment of principal and interest.

2. Federal Agency Obligations. Federal agency or United States government-sponsored enterprise obligations, participations, or other instruments, including those issued by or fully guaranteed as to principal and interest by federal agencies or United States government-sponsored enterprises.

3. California Municipal Obligations. Obligations of the State of California, this local agency or any local agency within the state, including bonds payable solely out of revenues from a revenue-producing property owned, controlled or operated by the state, this local agency or any local agency or by a department, board, agency or authority of the state or any local agency that is rated in a rating category of "A" long term or "A-1" short term, the equivalent or higher by a nationally recognized statistical rating organization (NRSRO). Any investment in obligations of this local agency shall be in a ratio proportionate to the County's share of the pooled investments.

4. Other 49 State Municipal Securities. Registered treasury notes or bonds issued by any of the other 49 states, including bonds payable solely out of the revenues from a revenue-producing property owned, controlled, or operated by a state or by a department, board, agency, or authority of any state that is rated in a rating category of "A" long term or "A-1" short term, the equivalent or higher by a NRSRO.

5. Repurchase Agreements. Agreements to be used solely as short-term investments not to exceed 90 days.

   The County may enter into Repurchase Agreements with primary dealers in U.S. Government securities who are eligible to transact business with, and who report to, the Federal Reserve Bank of New York.

   The following collateral restrictions will be observed: Only U.S. Treasury securities or Federal Agency securities, as described above in (K)(1) and (K)(2), will be acceptable collateral.

   All securities underlying Repurchase Agreements must be delivered to the County's custodian bank versus payment or be handled under a properly executed tri-party repurchase agreement. The total market value of all collateral for each Repurchase Agreement must equal or exceed, 102 percent of the total dollar value of the money invested by the County for the term of the investment. For any Repurchase Agreement with a term of more than one day, the value of the underlying securities must be reviewed at least weekly.

   Market value must be calculated each time there is a substitution of collateral.

   The County or its trustee shall have a perfected first security interest under the Uniform Commercial Code in all securities subject to Repurchase Agreement.

   The County will have properly executed a Public Securities Association (PSA) agreement with each counter party with which it enters into Repurchase Agreements.

6. Banker's Acceptances. Issued by domestic or foreign banks, the short-term paper of which is rated in the highest category by a nationally recognized statistical rating organization (NRSRO).

Purchases of Banker's Acceptances may not exceed 180 days maturity or 40 percent of the County's investment portfolio.

7. Commercial Paper. Of prime quality of the highest ranking or of the highest letter and number rating as provided for by a nationally recognized statistical-rating organization (NRSRO). The entity that issues the commercial paper shall meet all of the following conditions shown in either paragraph (A) or paragraph (B):

   a. The entity meets the following criteria:

      i. Is organized and operating in the United States as a general corporation.
      ii. Has total assets in excess of five hundred million dollars ($500,000,000).
      iii. Has debt other than commercial paper, if any, that is rated in a rating category of "A", the equivalent or higher by a nationally recognized statistical-rating organization (NRSRO).

   b. The entity meets the following criteria:

      i. Is organized within the United States as a special purpose corporation, trust, or limited liability company.
      ii. Has program wide credit enhancements including, but not limited to, over collateralization, letters of credit, or surety bond.
      iii. Has commercial paper that is rated in a rating category "A-1", the equivalent or higher by a nationally recognized statistical-rating organization (NRSRO).

   Purchases of eligible commercial paper may not exceed 397 days maturity. No more than 40 percent of the County's investment portfolio may be invested in eligible commercial paper.

8. Medium-Term Corporate Notes. Notes issued by corporations organized and operating within the United States or by depository institutions licensed by the U.S. or any state and operating within the U.S. Medium-term corporate notes shall be rated in a rating category "A", the equivalent or higher by a nationally recognized statistical rating organization (NRSRO) and shall have a maximum remaining maturity of five years or less. Purchase of medium-term corporate notes may not exceed 30 percent of the County's investment portfolio.

9. Non-Negotiable Certificates of Deposit. FDIC insured or fully collateralized time certificates of deposit in financial institutions located in California, including U.S. branches of foreign banks licensed to do business in California. All time deposits must be collateralized in accordance with California Government Code Section 53651, either at 150% by promissory notes secured by first mortgages and first trust deeds upon improved residential property in California eligible under section (m) or at 110% by eligible marketable securities listed in subsections (a) through (l) and (n) and (o). The County, at its discretion and by majority vote of the Board of Supervisors, on a quarterly basis, may waive the collateralization requirements for any portion of the deposit that is covered by federal insurance. Alternatively, the County may invest in deposits, including certificates of deposit, at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of certificates of deposit as provided for in Government Code section 53635.8.

10. Negotiable Certificates of Deposit. Negotiable certificates of deposit issued by a nationally or state-chartered bank or a state or federal savings and loan association or by a federally-licensed or a state-licensed branch of a foreign bank that is rated in a rating category of "A" long-term or "A-1 short-term, the equivalent or higher by a nationally recognized statistical rating organization (NRSRO). Purchases of all negotiable certificates of deposit may not exceed 30 percent of the County's investment portfolio.

11. Local Government Investment Pools. (Either state-administered or through joint powers statutes and other intergovernmental agreement legislation.) Investments may be maximized to the level allowed by the State and should be reviewed periodically. Investment objectives, limitations, and controls of each pool must be consistent with this policy.

12. Money Market Funds. Shares of beneficial interest issued by diversified management companies that are money market mutual funds registered with Securities and Exchange Commission under the Investment Company Act of 1940. To be eligible for investment pursuant to this subdivision these companies shall either: (1) attain the highest ranking letter or numerical rating provided by not less than two of the largest nationally recognized statistical rating organizations or (2) have retained an investment advisor registered or exempt from registration with the Securities and Exchange Commission with not less than five years experience investing in securities and obligations authorized by Government Code Section 53601 and with assets under management in excess of $500,000,000. Money Market Funds shall not exceed 20 percent of the investment portfolio of the County as recorded at purchase price on date of purchase.

13. Asset-Backed Securities. Any mortgage pass-through security, collateralized mortgage obligation, mortgage-backed or other pay-through bond, equipment lease-back certificate, consumer receivable pass-through certificate, or consumer receivable-backed bond. For securities eligible for investment under this subdivision not issued or guaranteed by an agency or issuer identified in subdivision (1) or (2), the following limitations apply: Eligible securities must be rated, by a nationally recognized statistical rating organization, as "AAA", and have a maximum remaining maturity of five years or less. No more than 20 percent of the County's investment portfolio may be invested in this type of security.

14. Reverse Repurchase Agreements. Reverse repurchase agreements shall be used primarily as a cash flow management tool and subject to all the following conditions

a. The security to be sold using a reverse repurchase agreement has been owned and fully paid for by the County for a minimum of 30 days prior to sale.

b. The total of all reverse repurchase agreements on investments owned by the County does not exceed 20 percent of the base value of the portfolio. The base value of the County's portfolio for this section is defined as that dollar amount obtained by totaling all cash balances placed in the portfolio by all participants, excluding any amounts obtained through selling securities by way of reverse repurchase agreements, securities lending agreements, or other similar borrowing methods.

c. The agreement does not exceed a term of 92 days, unless the agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

d. Funds obtained or funds within the pool of an equivalent amount to that obtained from selling a security to a counterparty using a reverse repurchase agreement shall not be used to purchase another security with a maturity longer than 92 days from the initial settlement date of the reverse repurchase agreement, unless the reverse repurchase agreement includes a written codicil guaranteeing a minimum earning or spread for the entire period between the sale of a security using a reverse repurchase agreement and the final maturity date of the same security.

e. Investments in reverse repurchase agreements or similar investments in which the County sells securities prior to purchase with a simultaneous agreement to repurchase the security shall be made only with primary dealers of the Federal Reserve Bank of New York or with a nationally or state-chartered bank that has or has had a significant banking relationship with a local agency. A significant banking relationship is defined by any of the following activities of a bank:

i. Involvement in the creation, sale, purchase, or retirement of the County's bonds, warrants, notes, or other evidence of indebtedness.
ii. Financing of the County's activities.
iii. Acceptance of the County's securities or funds as deposits.

15. Supranationals. United States dollar denominated senior unsecured unsubordinated obligations issued or unconditionally guaranteed by the International Bank for Reconstruction and Development (IBRD), International Finance Corporation (IFC), or Inter-American Development Bank (IADB), with a maximum remaining maturity of five years or less, and eligible for purchase and sale within the United States. Investments under this subdivision shall be rated in a rating category of "AA", the equivalent or higher by a NRSRO. Purchases of these securities shall not exceed 30 percent of the County's portfolio.

The Chief Financial Officer may make permitted investments (as described above) pursuant to the California Government Code (including Section 53601 et. seq.) or deposit funds for safekeeping in state or national banks, savings association, credit unions, or federal insured industrial loan companies (as described in Section 53635.2). For purposes of compliance with this policy, an investment's term or remaining maturity shall be measured from the settlement date to final maturity. A security purchased in accordance with this section shall not have a forward settlement date exceeding 45 days from the time of investment.

Credit criteria listed in this section refers to the credit of the issuing organization at the time the security is purchased. Should a security owned by the County be downgraded below "A" the Investment Advisor shall immediately notify the Chief Financial Officer who will report to the Board of Supervisors, at their next regularly scheduled meeting, the circumstances of the downgrade and any action taken or recommended.

L. INELIGIBLE INVESTMENTS

The County shall not invest any funds in inverse floaters, range notes, or interest-only strips that are derived from a pool of mortgages, or in any security that could result in zero interest accrual if held to maturity.

Effective January 1, 2021, the County may invest in securities issued by, or backed by, the United States government that could result in zero- or negative-interest accrual if held to maturity, in the event of, and for the duration of, a period of negative market interest rates. The County may hold these instruments until their maturity dates. Securities described in this paragraph shall remain in effect only until January 1, 2031, and as of that date is repealed.

Any other security not specifically permitted by Section K is prohibited.

M. MAXIMUM MATURITY

Investment maturities shall be based on a review of cash flow forecasts. Maturities will be scheduled so as to permit the County to meet all projected obligations.

Where this policy does not specify a limitation on the term or remaining maturity at the time of the investment, or unless authorized by the Board of Supervisors no less than three months prior to the investment, no investment shall be made in any security, other than a security underlying a repurchase agreement as authorized by this policy that at the time of the investment has a term remaining to maturity in excess of five years.

The Board of Supervisors has specifically approved investment maturities beyond five years for certain three long-term portfolios: Yolo County Landfill Closure Trust Fund, the Yolo County Cache Creek Maintenance and Remediation Fund, and the Demeter Endowment (funds deallocated from the Ceres Tobacco Endowment Fund).

N. DIVERSIFICATION & PERCENTAGE LIMITATIONS

The County shall limit the County's investments in any one issuer to no more than 5 percent of the County's total investments at the time of purchase, except for U.S. Treasuries, Federal Agencies, Supranationals, repurchase and reverse repurchase agreements, and pooled investments such as local government investment pools, LAIF, and money market funds

All percentage limitations apply at the time of the investment (purchase date).

O. REPORTING REQUIREMENTS

The Chief Financial Officer shall render a quarterly investment report to the Board of Supervisors that includes, at a minimum, the following information for each investment:

- Type of investment instrument (e.g., U.S. Treasury note, Federal Agency note)
- Issuer name (e.g., General Electric Capital Corp.)
- Credit quality
- Purchase date
- Maturity date
- Par value
- Purchase price
- Current market value and the source of the valuation
- Current amortized or book value
- Accrued interest
- Original yield to maturity
- Overall portfolio yield based on cost
- New investment transactions

The quarterly report shall (i) state compliance of the portfolio to the statement of investment policy, or manner in which the portfolio is not in compliance, (ii) include a description of any of the County's funds, investments or programs that are under the management of contracted parties, including lending programs, and (iii) include a statement explaining the ability of the County to meet its cash flows

requirements for the next six months, or provide an explanation as to why sufficient money shall, or may, not be available.

This quarterly report shall be available within 45 days following the end of the quarter and submitted to the Board of Supervisors at the earliest reasonable opportunity, with copies published and available to all pool participants.

P. ANNUAL REVIEW OF INVESTMENT POLICY

The Chief Financial Officer shall annually prepare an investment policy that will be reviewed by the County Financial Oversight Committee and submitted to the Board of Supervisors for approval in a public meeting. Any change to the investment policy shall be reviewed and approved by the Board in a public meeting.

Q. SAFEKEEPING AND CUSTODY

All securities, whether negotiable, bearer, registered or non-registered shall be delivered either by book entry or physical delivery to the County's third-party custodian.

Monthly safekeeping statements are received from custodians where securities are held. Authorized personnel, other than the person handling daily investments, shall review the statements to confirm that investment transactions have settled and been delivered to the County's third-party custodian.

R. APPORTIONMENT OF EARNINGS AND COSTS

The manner of calculating and apportioning the cost of investing, depositing, banking, auditing, reporting, or otherwise handling or managing funds is as follows:

Investment earnings shall be apportioned to all pool participants quarterly based upon the ratio of the average daily balance of each individual fund to the average daily balance of all funds in the investment pool. Earnings are computed on an accrual basis and the effective date that earnings are deposited into each fund is the first day of the following quarter (January 1, April 1, July 1, and October 1).

Direct and Administrative (including indirect) costs associated with investing, depositing, banking, auditing, reporting, safekeeping, or otherwise handling or managing funds shall be netted against any moneys received pursuant to state mandated reimbursements and deducted from the gross investment earnings in the quarter received.

S. CRITERIA FOR CONSIDERING REQUEST TO WITHDRAW FUNDS

Withdrawal of funds from County Treasurer Pool may occur pursuant to Government Code Section 27136 and approval of the Board of Supervisors.

Assessment of the effect of a proposed withdrawal on the stability and predictability of the investment in the County Pool will be based on the following criteria:

- Size of withdrawal
- Size of remaining balances of:
    - Pool
    - Agency
- Current market conditions

- Duration of withdrawal
- Effect on predicted cash flows
- A determination if there will be sufficient balances remaining to cover costs
- Proof that adequate information has been supplied in order to make a proper finding that other pool participants will not be adversely affected.

The Chief Financial Officer reserves the right to mark a fund balance to market value prior to allowing a withdrawal if it is deemed necessary to be equitable to the remaining funds.

T. TERMS AND CONDITIONS FOR NON-STATUTORY COMBINED POOL PARTICIPANTS

All entities qualifying under California Government Code Section 27133 (g) may deposit funds for investment purposes providing all of the following has been accomplished: (1) the agency's administrative body has requested the privilege, (2) has agreed to terms and conditions of an investment agreement as prescribed by the County's Board of Supervisors, (3) has by resolution identified the authorized officer acting on behalf of the agency; and (4) the Chief Financial Officer has prescribed the appropriate accounting procedures.

U. AUDIT

1. Annual Compliance Audit - The Financial Oversight Committee is not designated a Treasury Oversight Committee however the FOC may cause an annual audit pursuant to Government Code section 27134 at its discretion which may include issues relating to the structure of the investment portfolio and risk. The costs of complying with this article shall be County charges and may be included with those charges enumerated under Section 27013.

2. Quarterly Review and Annual Financial Audit – The Chief Financial Officer shall cause quarterly reviews to be made of the Treasury Division records relative to the type and amount of assets in the treasury, pursuant to Government Code sections 26920 - 26923. The Chief Financial Officer shall also cause an annual financial audit to be made of the Treasury Division's records as of June 30. In addition to an opinion on the statement of assets held in the treasury this audit shall include a review of the adequacy of internal controls.

The annual compliance audit and the annual financial audit may be combined.

The Chief Financial Officer shall report audits that contain significant audit findings to the Audit Subcommittee of the Board of Supervisors immediately and to the full Board at the earliest reasonable opportunity. Copies of the audit reports shall be provided to the Financial Oversight Committee.

All audit recommendations shall be addressed timely and in a manner acceptable to the Board of Supervisors' Audit Subcommittee.

ICS
INSURED CASH SWEEP

Safety. Return. Freedom.

Through ICS®, the Insured Cash Sweep® service, many government depositors can access multi-million-dollar FDIC insurance on funds placed into money market deposit accounts.

Through ICS, you can:

Enjoy peace of mind
ICS funds are eligible for multi-million-dollar FDIC insurance that's backed by the full faith and credit of the United States government.

Earn interest
Put excess cash balances to work in savings accounts (money market deposit accounts).

Save time
By providing access to FDIC insurance through a single bank relationship, ICS can help your organization to comply with investment policy mandates and avoid the hassles associated with ongoing collateral-tracking.

Access funds
Enjoy daily liquidity in your transaction account at our bank; replenish the transaction account by withdrawing ICS funds up to six times per month.

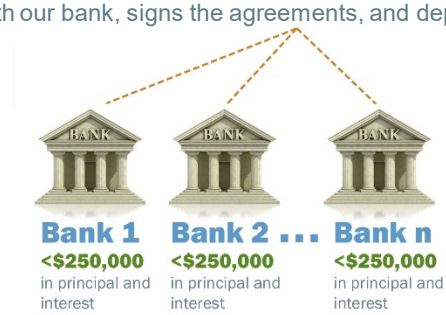
Support your community
Feel good knowing that the full amount of your funds placed through ICS can stay local to support lending opportunities that build a stronger community.*

Simply put, with ICS, you can have it all.

How does ICS work?

Work directly with just us—an institution you already know and trust—to access coverage from many, receive just one regular statement, and know that your confidential information remains protected.

Your organization has or sets up a transaction account with our bank, signs the agreements, and deposits funds.



Deposits are sent to money market deposit accounts at other member institutions in amounts under the standard FDIC insurance maximum of $250,000.*

River City Bank

Member FDIC

* When deposited funds are exchanged on a dollar-for-dollar basis with other banks in the ICS Network, we can use the full amount of a deposit placed through ICS for local lending, satisfying some depositors' local investment goals or mandates. In certain states, and with a depositor's consent, we may choose to receive fee income instead of deposits from other banks. Under these circumstances, deposited funds would not be available for local lending.

Placement of funds through the ICS service is subject to the terms, conditions, and disclosures in the service agreements, including the Deposit Placement Agreement ("DPA"). Limits and customer eligibility criteria apply. In the ICS savings option, program withdrawals are limited to six per month. Although funds are placed at destination banks in amounts that do not exceed the FDIC standard maximum deposit insurance amount ("SMDIA"), a depositor's balances at the relationship institution that places the funds may exceed the SMDIA (e.g., before ICS settlement for a deposit or after ICS settlement for a withdrawal) or be ineligible for FDIC insurance (if the relationship institution is not a bank). As stated in the DPA, the depositor is responsible for making any necessary arrangements to protect such balances consistent with applicable law. If the depositor is subject to restrictions on placement of its funds, the depositor is responsible for determining whether its use of ICS satisfies those restrictions. ICS and Insured Cash Sweep are registered service marks of Promontory Interfinancial Network, LLC.

0818

Using ICS® for Public Funds

In the State of California

CALIFORNIA GOVERNMENT CODE
Title 5. Local Agencies
Division 2. Cities, Counties, and Other Agencies
Part 1. Powers and Duties Common to Cities, Counties, and Other Agencies
Chapter 4. Financial Affairs
Article 1. Investment of Surplus

53600. As used in this article, "**local agency**" means **county, city, city and county**, including a chartered city or county, **school district**, **community college district, public district, county board of education, county superintendent of schools, or any public or municipal corporation.**

SECTION 53601.8 Excerpt [As amended, effective January 1, 2020
[SECTION 53635.8 is similar to Section 53601.8]

Notwithstanding any other provision of this code, a local agency that has the authority under law to invest funds, at its discretion, may invest a portion of its surplus funds in deposits at a commercial bank, savings bank, savings and loan association, or credit union that uses a private sector entity that assists in the placement of deposits. The following conditions shall apply:
(a) The local agency shall choose a nationally or state-chartered commercial bank, savings bank, savings and loan association, or credit union in this state to invest the funds, which shall be known as the "selected" depository institution.
(b) The selected depository institution may use a private sector entity to help place local agency deposits with one or more commercial banks, savings banks, savings and loan associations, or credit unions that are located in the United States and are within the network used by the private sector entity for this purpose.
(c) The selected depository institution shall request that the local agency inform it of depository institutions at which the local agency has other deposits, and the selected depository institution shall provide that information to the private sector entity.
(d) Any private sector entity used by a selected depository institution to help place its local agency deposits shall maintain policies and procedures requiring all of the following:

(1) The full amount of each deposit placed pursuant to subdivision (b) and the interest that may accrue on each such deposit shall at all times be insured by the Federal Deposit Insurance Corporation or the National Credit Union Administration.
(2) Every depository institution where funds are placed shall be capitalized at a level that is sufficient, and be otherwise eligible, to receive such deposits pursuant to regulations of the Federal Deposit Insurance Corporation or the National Credit Union Administration, as applicable.

(3) At the time of the local agency's investment with a selected depository institution and no less than monthly thereafter, the private sector entity shall ensure that the local agency is provided with an inventory of all depository institutions in which deposits have been placed on the local agency's behalf, that are within the private sector entity's network.
(4) Within its network, the private sector entity shall ensure that it does not place additional deposits from a particular local agency with any depository institution identified pursuant to subdivision (c) as holding that local agency's deposits if those additional deposits would result in that local agency's total amount on deposit at that depository institution exceeding the Federal Deposit Insurance Corporation or the National Credit Union Administration insurance limit.
(e) If a selected depository uses two or more private sector entities to assist in the placement of a local agency's deposits, the selected depository shall ensure that it does not place additional deposits from a particular local agency with a depository institution if those additional deposits would result in that local agency's total amount on deposit at that depository institution exceeding the Federal Deposit Insurance Corporation or the National Credit Union Administration insurance limit.
(f) The selected depository institution shall serve as a custodian for each such deposit.
(g) On the same date that the local agency's funds are placed pursuant to subdivision (b) by the private sector entity, the selected depository institution shall receive an amount of insured deposits from other financial institutions that, in total, are equal to, or greater than, the full amount of the principal that the local agency initially deposited through the selected depository institution pursuant to subdivision (b).
(h) Notwithstanding subdivisions (a) to (g), inclusive, a credit union shall not act as a selected depository institution under this section unless both of the following conditions are satisfied:

(1) The credit union offers federal depository insurance through the National Credit Union Administration.
(2) The credit union is in possession of written guidance or other written communication from the National Credit Union Administration authorizing participation of federally insured credit unions in one or more deposit placement services and affirming that the moneys held by those credit unions while participating in a deposit placement service will at all times be insured by the federal government.

(i) It is the intent of the Legislature that this section shall not restrict competition among private sector entities that provide placement services pursuant to this section.
(j) The deposits placed pursuant to this section shall be subject to Section 53638 and shall not, in total, exceed 50 percent of the agency's funds that may be invested for this purpose.
(k) This section shall remain in effect until January 1, 2026, and as of that date is repealed.
(Amended (as amended by Stats. 2015, Ch. 181, Sec. 1) by Stats. 2019, Ch. 619, Sec. 1. (AB 945) Effective January 1, 2020. Repealed as of January 1, 2026, by its own provisions. See later operative version, as amended by Sec. 3 of Stats. 2019, Ch. 619.)

Public Fund Money Market

Product Information and Disclosure

Accurate as of: 2/17/2023

Your interest rate may change. At our discretion, we may change the interest rate on your account at any time.

Tier	Interest Rate
$5,000 and Over	1.250%

Basic Terms and Conditions	
Minimum Deposit to Open Account	**$5,000**
Maintenance Fee	**$10** per statement cycle
How to Avoid the Maintenance Fee	**$0** maintenance fee when you maintain an average daily balance of **$5,000.00** during each statement cycle. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.
Interest Compounding and Crediting Frequency	Interest will be compounded every day. Interest will be credited to your account every month.
Effect of Closing an Account	If you close your account before interest is credited, you will not receive the accrued interest.
Minimum Balance to Obtain the Disclosed Interest Rate	**$5,000.00** minimum daily balance
Balance Computation Method	We use the daily balance method to calculate interest on your account. This method applies a daily periodic rate to the principal in the account each day.
Accrual of Interest on Noncash Deposits	Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example checks).
Transaction Limitations	**$15** Excessive Withdrawal Fee will be charged for each preauthorized/automatic withdrawal or transfer to another account or third party in excess of 6 per calendar month. This limit does not apply to withdrawals or transfers made in person at a branch or ATM.
Refer to the Deposit Account Agreement, and Schedule of Miscellaneous Fees and Service Charges for additional information.	

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 14

TO: Board of Directors

FROM: Chad Curran, Director of Power Services

SUBJECT: Second Amended and Restated Renewable Power Purchase Agreement with Gibson Renewables LLC

DATE: April 9, 2026

RECOMMENDATION

1. Approve resolution authorizing the Executive Officer to execute a second amended and restated power purchase agreement (PPA) and any necessary ancillary documents for the Gibson renewable photovoltaic (PV) plus battery energy storage system (BESS) project.

OVERVIEW

The Gibson solar + battery storage project was selected from VCE's 2020 Request for Offers process seeking local energy and storage projects. The long-lead time for development of the project has been due to factors largely outside the control of the developer. Greater clarity associated with many of those factors outlined in this report have resulted in the proposed second amended and restated power purchase agreement (PPA).

The negotiated amendment seeks to balance VCE's local development, community resilience, and cost effectiveness objectives with the realities of market shifts that have occurred since the first amended and restated power purchase agreement was approved by the Board in 2023.

BACKGROUND

Current Project

The Gibson project is located near Esparto and provides 13 MW of local solar PV and 65 MWh of battery energy storage (BESS). The project, if approved for grant funding under the California Public Utilities Commission funded (CPUC) PG&E Micro-grid Incentive Program (MIP), would increase resiliency in the Capay Valley by providing microgrid services. The project is forecast to provide renewable energy equal to approximately 5.8% of VCE's retail load in 2029, contributing toward: (1) VCE's strategic plan goals of local renewable energy/storage development, (2) providing 90% renewable energy by 2030, and (3) helping satisfy VCE's Mid-Term Reliability procurement obligations from the CPUC.

Local RFO

In April 2020, VCE launched a local renewable Request for Offers (RFO) to solicit renewable projects that were cost-effective, provide local benefits, located in environmentally suitable locations, and

minimized impacts on species, habitats, and landscapes. The RFO was to identify up to 25 MW of cost effective long-term local renewable production that could be added to VCE's portfolio. The Local RFO was consistent with general Board direction and VCE's Vision statement to pursue procurement of cost effective local renewable energy. The solicitation specified that proposals needed to be Renewable Portfolio Standard (RPS) eligible generation or generation + storage projects in the 2 to 25 Megawatt Alternating Current (MWac) range.

Staff received thirty-one proposals from a dozen entities. Ultimately, in November 2020, the Board approved two PPAs resulting from the local RFO: 1) Putah Creek Energy Farm (which went into commercial operation in October 2022), and 2) Gibson Renewables, LLC (Gibson) - the Gibson Solar project. In the original PPA, the Gibson project was a 20 MWac solar PV project with a 26 MWh (6.5 MW/4-hour) of BESS. The contract included a guaranteed construction start date (GCSD) of May 31, 2022, and a guaranteed commercial operation date (GCOD) of March 31, 2023.

First Amended and Restated PPA

Upon receiving and reviewing the interconnection System Impact Study (SIS), Gibson notified VCE that the project would need to be downsized to achieve a cost and utility construction timeline that would be viable within the then PPA milestone schedule. Gibson worked with VCE to downsize the project and extend development milestones under the contract to accommodate for continued delays in finalizing the interconnection to the grid and achieving the land use permit from Yolo County. VCE and Gibson agreed to terms of an amended and restated PPA (the "first A&R PPA"). The first A&R PPA decreased the interconnection limit of the project to 13 MWac, while increasing the PV portion of the facility to 25.2 MWdc, and increasing the size of the BESS to 65 MWh (13 MWac x 5 hours). The revised project was sized in part to support a potential microgrid serving the Capay Valley in times of electrical outages, for which VCE had applied for a grant from the California Department of Food and Agriculture (CDFA) (though VCE did not ultimately receive this grant). The first A&R PPA extended the milestones from the original PPA by about two and a half years, extending the GCSD from May 31, 2022, to September 1, 2024, and extending the GCOD from March 31, 2023, to September 30, 2025.

The first amended and restated PPA was approved by the Board in April 2023 and executed by VCE and Gibson shortly thereafter.

Development From 2023 to 2025

At the time of the first A&R PPA, Emeren was engaged with Yolo County to obtain the Special Use Permit (SUP) for the project. The project was awarded the SUP on Nov 14, 2023. After that Emeren engaged adjacent landowners to procure easements for the generation intertie line ("gen-tie") from the solar parcel to the point of interconnection (POI). Obtaining the easements took longer than expected, and Gibson was finally able to obtain the required easements in Q4 2025.

The project site is also subject to the Williamson Act. The Williamson Act, also known as the California Land Conservation Act of 1965[1], enables local governments to enter into contracts with private landowners for the purpose of restricting specific parcels of land to agricultural or related open space

[1] https://www.conservation.ca.gov/dlrp/wa/Pages/Index.aspx

use. In return, landowners receive property tax assessments which are much lower than normal because they are based upon land uses associated with farming and open space as opposed to full market value.

Because the Gibson project would convert land considered prime farmland under the Williamson Act, Gibson was required to identify mitigation lands with the right characteristics for taking prime agricultural lands out of production. After Gibson identified suitable lands, they engaged the YOLO Land Trust, who have been performing various studies and surveys to determine that the proposed mitigation lands are indeed suitable. The YOLO Land Trust completed their assessment in Q1 2026 and approved the mitigation land. Gibson is working with Yolo County to take the solar parcel out of the Williamson Act, and that is expected to be completed in Q2 2026.

Gibson has an executed interconnection agreement for the project. On April 10, 2024, PG&E completed a "Queue Cluster 14 Phase II Study Final Report Addendum 1", which determined that no network upgrades were needed for the facility to qualify for Full Capacity Deliverability Status (FCDS), which would allow VCE to count the project towards its CPUC and CAISO resource adequacy requirements. This week, Emeren and VCE were notified that the project was granted FCDS.

Also, from 2023 to 2025, the market for developing and procuring equipment for solar and BESS projects changed significantly. Although Gibson still expects to qualify for the federal investment tax credit, due to the Foreign Entity of Concern (FEOC) restrictions of the One Big Beautiful Bill Act (OBBBA) of 2025, Gibson will not be allowed to source solar panels from China. This will increase the costs of procuring equipment. In addition, battery equipment is expected to be subject to tariffs and solar panels may be subject to tariffs if they are not purchased from US manufacturers. Finally, inflation generally has increased costs since 2023.

Second Amended and Restated PPA

On October 22, 2024, VCE and Gibson executed a letter agreement (the "letter agreement") acknowledging that "facing delays and financing challenges as a result of unforeseen development issues and changes in the market". The letter agreement memorialized the parties' desire to work in good faith to renegotiate the terms of the first A&R PPA to give Gibson the opportunity to construct the facility in light of these issues and temporarily suspended remedies for Gibson missing the GCSD.

In December 2025, Gibson and VCE resumed negotiations for revised terms for the PPA. In March 2026, VCE and Gibson agreed to the terms of this second A&R PPA, pending approval by the Board.

MICROGRID GRANT FUNDING APPLICATION

In March 2023, VCE submitted a grant application to the California Department of Food and Agriculture (CDFA) for $5.7M to enable the Gibson project to have the capability to operate in a microgrid state. The grant opportunity was part of the CDFA's Community Resilience Centers Program. The project would have utilized the proposed Gibson project as well as additional electrical infrastructure (grant funds would support this additional infrastructure) to serve the Capay Valley in times of electrical outages. VCE ultimately did not receive this grant.

On December 17, 2025, VCE applied for a $14 million grant through a California Public Utilities Commission (CPUC) funded microgrid incentive program (MIP) administered by Pacific Gas & Electric Company (PG&E). VCE's proposed microgrid utilizing the Gibson solar + BESS project would serve a significant portion of Esparto in the Capay Valley. A decision is expected on VCE's MIP application around June 2026.

The second A&R PPA requires Gibson to support VCE throughout the MIP application process. If grant funds are ultimately awarded for the Gibson microgrid project, the second A&R PPA requires VCE and Gibson to negotiate amendments to memorialize the distribution of MIP grant funds, and how VCE and Gibson will implement and operate the Gibson microgrid. The second A&R PPA also contains provisions to reduce the PPA price if grant funds are eligible to be used to reduce the cost of developing the project.

ANALYSIS

The second amended and restated PPA revises several terms of the agreement in several ways that facilitate development of the project and provide additional protections to VCE and its customers. The recommended second amended and restated PPA:

1. Extends the milestones under the PPA, extending the Guaranteed Construction Start Date from September 1, 2024, to December 31, 2026, and extending the Guaranteed Commercial Operation Date from September 30, 2025, to June 30, 2028.
2. Increases the installed PV capacity from 25.2 MWdc to 26 MWdc.
3. Increases the rate paid per MWh of renewable energy and increases the rate paid per kW-month of storage capacity.
4. Provides a mechanism to adjust the renewable rate and storage rate up or down, if the cost of procuring equipment for the facility is higher or lower than anticipated.
5. Gives VCE the right to terminate the agreement if the project fails to receive a Full Capacity Deliverability Status TPD allocation from the CAISO (though this term is now moot, now that FCDS status has been allocated).
6. Increases the penalties should the project fail to provide resource adequacy for other reasons.
7. Requires Gibson to support VCE's Microgrid Incentive Program grant application. If grant funds are awarded, requires the parties to negotiate an amendment on the terms of developing and administering the microgrid. Provides for a reduction in the PPA price if MIP grant funds are eligible to be applied toward the development costs of the Gibson solar and BESS facility.
8. Gives VCE a right of first offer (ROFO) to purchase the Gibson project should Emeren decide to sell the project.

The negotiated second amended and restated PPA seeks to balance VCE's local development, community resilience, and cost effectiveness objectives with the realities of market shifts that have occurred since the first amendment was approved by the Board in 2023.

PROJECT ECONOMICS

The updated economics of the Gibson project exceed VCE's current portfolio averages, which are largely driven by utility-scale, non-local assets. Based on Staff's research, including surveying multiple market data sources and reliable subject matter experts, the updated project pricing included in the

proposed amended PPA is within current market ranges for similarly scaled projects located in Northern California. While the project carries a modest premium relative to larger, more distant developments, this premium reflects both the value of its local, small-scale nature and the potential enhanced microgrid capabilities that support resiliency, load flexibility, and potential islanding benefits. In addition, Staff notes that:

1. The project's price has generally floated with the overall trends in the renewable energy development market so that it has maintained its relative price competitiveness with replacement projects of similar scale and local characteristics;
2. A portion of the incremental cost is attributable to factors outside the builder's direct control, including extended permitting timelines, supply chain lead times, and evolving tariff constraints; and
3. The project will supply a relatively small portion of VCE's retail load (approximately 5.8%).

Based on these factors, Staff has concluded that the changed project economics are supportable as the project delivers meaningful co-benefits—such as portfolio diversification, improved resiliency, and localized economic and community impacts at a competitive price supported by market research. Overall, this project is aligned with the localization of energy and energy projects as outlined in VCE's strategic plan.

VCE's STRATEGIC PLAN GOALS AND REGULATORY COMPLIANCE OBLIGATIONS

The Gibson project supports several Goals/Objectives of VCE's Strategic Plan, specifically Objectives 2.1 and 2.2, as well as Objectives 4.2 and 4.4.

- Goal 2: Manage power supply resources to consistently exceed California's Renewable Portfolio Standard (RPS) while working toward a resilient resource portfolio that is 100% Carbon Free and a minimum of 90% Renewable by 2030.
    - 2.1 Objective: Continue to identify and pursue cost effective local renewable energy and storage resources.
    - 2.2 Objective: Through strategic procurement acquire sufficient clean energy and renewable resources including storage and other resource adequacy products to achieve VCE's greenhouse gas reduction targets and regulatory requirements.
- Goal 4: Promote and deploy local decarbonization and energy resilience programs to improve grid stability, reliability, and safety.
    - 4.2 Objective: Work with member jurisdictions (e.g., city and school district planning staff) to help plan and implement local energy resilience, decarbonization and electrification initiatives and where practical, powered by local supply resources.
    - 4.4. Objective: Identify external funding sources to support decarbonization, community energy resilience and grid-related programs and initiatives.

As noted, the Gibson project would provide 13 MWac of local solar PV and 65 MWh of BESS towards VCE's strategic plan goal of providing local renewable energy. In addition, the project, if approved for grant funding under PG&E's MIP program, would increase resiliency in the Capay Valley by providing microgrid services. The project is forecast to provide renewable energy equal to approximately 5.8% of

VCE's retail load in 2029, a critical contribution toward VCE's strategic plan goal of providing 90% renewable energy by 2030.

In addition, both the solar PV facility and the BESS portions of the Gibson project will contribute toward satisfying VCE's Mid-Term Reliability procurement obligations from the CPUC.

COUNTERPARTY

Emeren US, LLC is a privately held global solar and storage project developer, owner, and operator with a 3 GW pipeline of projects and IPP assets across Europe, North America, and Asia. Emeren focuses on solar and storage project development, construction management, and project financing services with local professional teams in more than 10 countries, with over 250 MW of globally operating projects. Its North American team has developed projects in Minnesota, North Carolina, Pennsylvania, New York, Florida, and California.

CONCLUSION

The project supports several strategic plan initiatives as well as regulatory compliance obligations. Although the original project was not complete on schedule and experienced cost increases, the delay and cost increases were outside of the developer's control. In addition, the renegotiated agreement includes several terms beneficial to VCE's customers, such as the obligations to support the Capay Valley microgrid, and remedies for failure to provide resource adequacy. Based on these factors, Staff recommends approval of the second amended and restated PPA.

ATTACHMENTS

1. Resolution 2026-XXX
2. Second Amended and Restated Power Purchase Agreement - redacted

VALLEY CLEAN ENERGY ALLIANCE

RESOLUTION NO. 2026 - ___

A RESOLUTION OF THE BOARD OF DIRECTORS OF VALLEY CLEAN ENERGY ALLIANCE APPROVING A SECOND AMENDED AND RESTATED POWER PURCHASE AGREEMENT WITH GIBSON RENEWABLES, LLC AND AUTHORIZING THE EXECUTIVE OFFICER, IN CONSULTATION WITH LEGAL COUNSEL, TO FINALIZE AND EXECUTE THE SECOND AMENDED AND RESTATED POWER PURCHASE AGREEMENT

WHEREAS, Valley Clean Energy Alliance ("VCE") was formed as a community choice aggregation agency ("CCA") on November 16, 2016, under the Joint Exercise of Power Act, California Government Code sections 6500 et seq., among the County of Yolo, and the Cities of Davis and Woodland, to reduce greenhouse gas emissions, provide electricity, carry out programs to reduce energy consumption, develop local jobs in renewable energy, and promote energy security and rate stability in all of the member jurisdictions. The City of Winters, located in Yolo County, was added as a member of VCE and a party to the JPA in December of 2019; and

WHEREAS, on November 3, 2020, VCE executed a power purchase agreement ("PPA") with Gibson Renewables LLC ("Gibson") for a 20 MW solar photovoltaic ("PV") facility combined with 6.5-MW/26 MWh (4-hour) battery energy storage system (BESS) (the "Gibson project"), in Madison, Yolo County, California, with a guaranteed commercial operation date of March 31, 2023; and

WHEREAS, the initial interconnection System Impact Study (SIS) results proved the original project size was cost-prohibitive; and

WHEREAS, Gibson and VCE staff worked to "right-size" the project to accommodate the point of interconnection capacity as well as storage sizing to satisfy VCE's CPUC mandated mid-term reliability requirement; and

WHEREAS, on April 13, 2023, Gibson and VCE executed an amended and restated PPA (the "first A&R PPA") for a 25.2 MW AC/13 MW DC solar PV facility combined with 13-MW/65 MWh (5-hour) BESS project with a guaranteed commercial operation date of September 30, 2025; and

WHEREAS, from 2023 to 2025, Gibson sought and obtained a Special Use Permit for the project from Yolo County; engaged landowners to procure easements for the generation intertie for the project; procured mitigation land required under the Williamson Act because the project would take prime agricultural land out of production; and worked with YOLO Land Trust for approval of the mitigation lands; and these activities took longer than anticipated in the first A&R and PPA; and

WHEREAS, on October 22, 2024, Gibson and VCE executed a letter agreement acknowledging that the project had faced unforeseen delays and financial challenges as a result of cost increases, and agreeing to temporarily waive certain provisions of the first A&R PPA to allow time to renegotiate the first A&R PPA; and

WHEREAS, on December 17, 2025, VCE applied to Pacific Gas and Electric Company's Microgrid Inventive Program for funding for a microgrid in which the Gibson project would provide energy to portions of the Capay Valley in the event of a transmission outage.

WHEREAS, Gibson and VCE staff have agreed to the terms of a second amended and restated PPA that addresses the delays and cost increases; and

WHEREAS, on October 14, 2025, the Board approved the Valley Clean Energy Strategic Plan 2026-2029 Major Update, which includes goals "to identify and pursue cost effective local renewable energy and storage resources" and to "[i]dentify external funding sources to support decarbonization, community energy resilience and grid-related programs and initiatives".

NOW, THEREFORE, the Board of Directors of the Valley Clean Energy Alliance resolves as follows:

1. The Chief Executive Officer is authorized to execute the second amended and restated PPA substantially in the form attached hereto as Exhibit A on behalf of VCE, and, in consultation with legal counsel, is authorized to approve minor changes to the PPA so long as the term and price are not changed.

PASSED, APPROVED AND ADOPTED, at a regular meeting of the Valley Clean Energy Alliance, held on the ___ day of _____ 2026, by the following vote:

AYES:
NOES:
ABSENT:
ABSTAIN:

_____
Jesse Loren, VCE Chair

_____
Alisa M. Lembke, VCE Board Secretary

Attachment A: Second Amended and Restated Power Purchase Agreement with Gibson Renewables LLC

Attachment A

Second Amended and Restated Power Purchase Agreement with Gibson Renewables LLC

Execution Version

SECOND AMENDED AND RESTATED RENEWABLE POWER PURCHASE AGREEMENT

COVER SHEET

Seller: Gibson Renewables LLC, a California limited liability company

Buyer: Valley Clean Energy Alliance, a California joint powers authority

Description of Facility: A 13 MW_{AC} (26.0 MW_{DC}) solar photovoltaic Generating Facility combined with a DC-coupled 65 MWh (13 MW_{AC} x 5 hours) battery energy Storage Facility, as more fully described in Exhibit A.

Milestones:

Milestone	Expected Date for Completion
Execute Interconnection Agreement	3/15/2023
Procure major equipment	9/30/2026
Obtain federal and state discretionary permits	10/31/2024
Expected Construction Start Date	10/15/2026
Guaranteed Construction Start Date	12/31/2026
Expected Commercial Operation Date	12/31/2027
Guaranteed Commercial Operation Date	6/30/2028

Delivery Term: Twenty (20) Contract Years

Delivery Term Expected Energy:

Contract Year	Expected Energy (KWh)
1	52,202,559
2	52,311,509
3	52,160,803
4	51,914,035
5	51,643,100

6	51,377,223
7	51,388,196
8	51,226,831
9	51,066,910
10	50,903,189
11	50,741,892
12	50,573,490
13	50,357,873
14	50,127,032
15	49,888,666
16	49,741,737
17	49,557,009
18	49,371,118
19	49,182,110
20	48,994,704

Guaranteed Capacity: 39.0 MW of total Facility capacity

Guaranteed Storage Capacity: 13 MW_{AC} of Installed Storage Capacity at five (5) hours of continuous discharge (the "**Resource Duration**")

Guaranteed PV Capacity: 26.0 MW_{DC} of Installed PV Capacity

Guaranteed Efficiency Rate:

Contract Year	Guaranteed Efficiency Rate
1	87.0%
2	86.7%
3	86.4%
4	86.3%

5	86.2%
6	86.2%
7	86.1%
8	86.1%
9	86.0%
10	86.0%
11	85.9%
12	85.9%
13	85.8%
14	85.7%
15	85.7%
16	85.6%
17	85.6%
18	85.5%
19	85.4%
20	85.4%

RA Guarantee Date: Commercial Operation Date

Contract Price:

The Renewable Rate shall be:

Contract Year	Renewable Rate
1 – 20	[redacted] as adjusted pursuant to Exhibit T

The Storage Rate shall be:

Contract Year	Storage Rate
1 – 20	[redacted] as may be adjusted pursuant to the Storage Rate definition and Exhibit T

Product:

- ☒ Facility Energy
- ☒ Green Attributes
- ☒ Installed Storage Capacity and Effective Storage Capacity
- ☒ Ancillary Services
- ☒ Capacity Attributes

Scheduling Coordinator: Buyer

Security:

Development Security: [redacted]

Performance Security: [redacted]

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Exhibits:

SECOND AMENDED AND RESTATED

RENEWABLE POWER PURCHASE AGREEMENT

This Second Amended and Restated Renewable Power Purchase Agreement ("**Agreement**") is entered into as of _____, 2026 (the "**Effective Date**"), between Buyer and Seller. Buyer and Seller are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." All capitalized terms used in this Agreement are used with the meanings ascribed to them in Article 1 to this Agreement.

RECITALS

WHEREAS, the Parties entered into that certain Renewable Power Purchase Agreement dated as of November 3, 2020 (the "**Original PPA**"), pursuant to which Seller agreed to sell, and Buyer agreed to purchase, on the terms and conditions set forth in the Original PPA, the Product (as defined in the Original PPA);

WHEREAS, the Parties entered into that certain Amended and Restated Renewable Power Purchase and Sale Agreement, dated as of April 23, 2023 (the "**Original Effective Date**"), pursuant to which the Parties amended and restated the Original PPA (the "**A&R PPA**") in accordance with the terms of the transaction as set forth in the A&R PPA;

WHEREAS, Buyer has applied for a fourteen million dollar ($14,000,000) grant (the "**Grant**") and a separate Twenty Five Thousand Dollar ($25,000) application development grant (the "**Application Development Grant**") from Pacific Gas and Electric Company ("**PG&E**") through PG&E's Microgrid Incentive Program developed in accordance with California State Senate Bill 1339 (2018) (the "**MIP**");

WHEREAS, the Parties desire to amend and restate the A&R PPA in accordance with the terms of the transaction as set forth in this Agreement;

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

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:"**A&R PPA**" has the meaning set forth in the Preamble.

"**AC**" means alternating current.

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

"**Actual BESS Costs**" has the meaning set forth in Exhibit T.

"**Actual PV System Costs**" has the meaning set forth in Exhibit T.

"**Adjusted Energy Production**" has the meaning set forth in Exhibit G.

"**Adjusted Facility Energy**" means, for the applicable period, the sum of (a) the total Facility Energy for such period, plus (b) the result of subtracting (i) the total Discharging Energy for such period from (ii) the total Discharging Energy for such period divided by the Efficiency Rate for such period.

"**Application Development Grant**" has the meaning set forth in the Recitals.

"**Administrative NQC Reduction**" means a reduction in the maximum achievable Net Qualifying Capacity of the Storage Facility able to be shown for each hour of the Resource Duration that cannot be avoided by and is beyond the reasonable control of and without the fault or negligence of Seller due to a reduction that has been generally applied to resources materially similar to the Storage Facility in terms of technology type, market and operational characteristics (including those characteristics specified in the CPUC Master Resource Database), including any methodology that incorporates fleet averages or other average outage rates.

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

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

"**Alternative Dispatches**" has the meaning set forth in Section 4.4(d).

"**Ancillary Services**" means spinning reserve, non-spinning reserve, regulation up, regulation down, and any other ancillary services that the Facility is capable of providing consistent with the Operating Restrictions, as each is defined in the CAISO Tariff.

"**Annual Forecast**" has the meaning set forth in Section 4.3(a).

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

"**Approved Forecast Vendor**" means any of (x) the CAISO or (y) any other vendor reasonably acceptable to both Buyer and Seller for the purposes of providing or verifying the forecasts under Section 4.3.

"**Assignment Agreement**" has the meaning set forth in Section 14.5.

"**Automated Dispatch System**" or "**ADS**" has the meaning set forth in the CAISO Tariff.

"**Automatic Generation Control**" or "**AGC**" has the meaning set forth in the CAISO Tariff.

"**Availability Standards**" has the meaning set forth in the CAISO Tariff or such other similar term as modified and approved by FERC hereafter to be incorporated in the CAISO Tariff.

"**Automated Dispatch System**" or "**ADS**" has the meaning set forth in the CAISO Tariff.

"**Automated Dispatches**" has the meaning set forth in Section 4.4(d).

"**Automatic Generation Control**" or "**AGC**" has the meaning set forth in the CAISO Tariff.

"**Bankrupt**" or "**Bankruptcy**" 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.

"**Battery Charging Factor**" means the percentage SOC of the Storage Facility after the first six and a quarter (6.25) hours of the charging phase of the applicable Storage Capacity Test.

"**Battery Discharging Factor**" means one (1) minus the percentage SOC of the Storage Facility after the first five (5) hours of the discharging phase of the applicable Storage Capacity Test.

"**BESS Budget**" has the meaning set forth in Exhibit T.

"**Business Day**" means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday in California. A Business Day begins at 8:00 a.m. and ends at 5:00 p.m. local time for the Party sending a Notice, or payment, or performing a specified action.

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

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

"**Buyer Bid Curtailment**" means the occurrence of all of the following:

(a) the CAISO provides notice to a Party or the SC for the Facility, requiring the Facility to deliver less Facility Energy for a period of time than the amount of PV Energy that is

forecasted in accordance with Section 4.3 that can be delivered to the Delivery Point consistent with the Interconnection Capacity Limit; and

(b) for the same time-period as referenced in (a), Buyer or the SC for the Generating Facility did not submit a Self-Schedule with respect to the MWhs subject to the reduction.

If either the Generating Facility or Storage Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time-period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**Buyer Curtailment Order**" means the occurrence of either of the following:

(a) Buyer instructs Seller to reduce Facility Energy by the amount, and for the period of time set forth in such instruction; or

(b) Buyer instructs Seller to deliver less PV Energy from the Generating Facility to the Storage Facility for reasons unrelated to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period.

If either the Generating Facility or Storage Facility is subject to a Planned Outage, Forced Facility Outage, Force Majeure Event and/or a Curtailment Period during the same time period as referenced in (a), then the calculation of Deemed Delivered Energy during such period shall not include any PV Energy that was not generated or stored due to such Planned Outage, Forced Facility Outage, Force Majeure Event or Curtailment Period.

"**Buyer Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces PV Energy from the Generating Facility pursuant to or as a result of (a) Buyer Bid Curtailment, (b) a Buyer Curtailment Order or (c) a Buyer Default or breach hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point or the Storage Facility; *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.

"**Buyer Default**" means an Event of Default of Buyer.

"**Buyer Dispatched Test**" has the meaning in Section 4.9(c).

"**Buyer's Indemnified Parties**" has the meaning set forth in Section 18.2.

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

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

"**CAISO-Approved Meter**" means a CAISO-approved revenue quality meter or meters, CAISO approved data processing gateway or remote intelligence gateway, telemetering equipment

and data acquisition services sufficient for monitoring, recording and reporting, in real time, all Facility Energy delivered to the Delivery Point.

"**CAISO Certification**" 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, PMAX, and PMIN associated with such storage units, that are applicable to the Facility.

"**CAISO Charges Invoice**" has the meaning set forth in Exhibit D.

"**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 rate for a specified period of time or amount of MWh.

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

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

"**Calculation Interval**" has the meaning set forth in Exhibit P.

"**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**" means collectively Storage Capacity Damages and PV Capacity Damages.

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

"**CEC**" means the California Energy Commission or its successor agency.

"**CEC Certification and Verification**" means that the CEC has certified (or, with respect to periods before the date that is one hundred eighty (180) days following the Commercial Operation Date, that the CEC has pre-certified) 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 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 Generating Facility (as applicable) indicating that the planned operations of the Facility or Generating Facility (as applicable) would comply with applicable CEC requirements for CEC Certification and Verification.

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

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

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

"**Charging Energy**" means all PV Energy produced by the Generating Facility and delivered to the Storage Facility net of Electrical Losses, as measured at the Storage Facility Metering Point by the Storage Facility Meter. All Charging Energy shall be used solely to charge the Storage Facility, and all Charging Energy shall be generated solely by the Generating Facility.

"**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 at a specific MW rate for a specified period of time or amount of MWh; *provided*, (a) any such operating instruction shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO 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. Any Buyer Dispatched Test shall be considered a Charging Notice, and any Charging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order.

"**Clipped Energy Period**" means any period during the Delivery Term in which (a) the SOC is one hundred percent (100%), and (b) the Facility Energy level (in MW) is equal to the Interconnection Capacity Limit or a CAISO operating limit.

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

"**Collateral Assignment Agreement**" has the meaning set forth in Section 14.2.

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

"**Commercial Operation Date**" means the date Commercial Operation is achieved.

"**Commercial Operation Delay Damages**" means an amount equal to (a) the Development Security amount required hereunder, divided by (b) ninety (90).

"**Commercial Operation Start Permitted Delay Days**" has the meaning set forth in Exhibit B.

"**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.

"**Communications Protocols**" means certain Operating Restrictions developed by the Parties pursuant to Exhibit Q that involve procedures and protocols regarding communication with respect to the operation of the Storage Facility pursuant to this Agreement.

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

"**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.

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

"**Contract Price**" has the meaning set forth on the Cover Sheet. For clarity, 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.

"**Cost Certificate**" has the meaning set forth in Exhibit T.

"**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.

"**CPM Soft Offer Cap**" has the meaning set forth in the CAISO Tariff Section 43A.4.1.1 (or its successor).

"**CPUC**" means the California Public Utilities Commission, or successor entity.

"**CPUC Master Resource Database**" means the CPUC database of generation, energy storage and other resources qualified to provide Resource Adequacy Benefits capacity to load serving entities.

"**CPUC System RA Penalty**" means the system RAR penalties assessed against load-serving entities by the CPUC for Resource Adequacy Requirement deficiencies that are not replaced or cured, as established in the Resource Adequacy Rulings and subsequently incorporated into the annual "Filing Guide for System, Local and Flexible Resource Adequacy Compliance Filings" that is issued by the CPUC Energy Division, which is expected to be updated annually, or any replacement or successor documentation established by the CPUC Energy Division to reflect Resource Adequacy Requirement penalties that are established by the CPUC and assessed against load-serving entities for Resource Adequacy Requirement deficiencies.

"**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.

"**Cure Plan**" has the meaning set forth in Section 11.1(b)(iii).

"**Curtailment Cap**" is the yearly quantity per Contract Year, in MWh, equal to forty (40) hours multiplied by the Installed PV Capacity.

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

(a) CAISO orders, directs, alerts, or provides notice to a Party to curtail deliveries of Facility Energy for the following reasons: (i) any System Emergency, (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, or (iii) in response to an Energy oversupply or potential Energy oversupply, and Buyer or the SC for the Facility submitted a Self-Schedule for the MWhs curtailed corresponding to the MWhs forecasted in accordance with Section 4.3 that can be delivered to the Delivery Point consistent with the Interconnection Capacity Limit during the relevant time period;

(b) a curtailment of Facility Energy ordered by the Transmission Provider for reasons including, but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to, any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, or (ii) any warning, forecast or anticipation of conditions or situations that jeopardize the Transmission Provider's

electric system integrity or the integrity of other systems to which the Transmission Provider is connected;

(c) a curtailment of Facility Energy ordered by CAISO or the Transmission Provider due to a Transmission System Outage;

(d) a curtailment of Facility Energy in accordance with Seller's obligations under its Interconnection Agreement with the Transmission Provider or distribution operator; or

(e) the CAISO provides notice to a Party or the SC for the Facility, requiring the Facility to deliver less PV Energy from the Generating Facility to the Storage Facility, if the CAISO Tariff is modified after the Effective Date to give the CAISO such authority.

"**Curtailment Period**" means the period of time, as measured using current Settlement Intervals, during which Seller reduces Facility Energy pursuant to a Curtailment Order; *provided*, the Curtailment Period shall be inclusive of the time required for the Facility to ramp down and ramp up.

"Cycles" means, at any point in time during any Contract Year, the number of equivalent discharge cycles of the Storage Facility, which shall be deemed to be equal to (a) the total cumulative amount of Discharging Energy from the Storage Facility at such point in time during such Contract Year (expressed in MWh) divided by (b) five (5) times the weighted average Effective Storage Capacity for such Contract Year to date.

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

"**Damage Payment**" means the amount to be paid by the Defaulting Party to the Non-Defaulting Party after a Terminated Transaction occurring prior to the Commercial Operation Date, in a dollar amount as set forth in Section 11.3(a).

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

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

"**Deemed Delivered Energy**" means the amount of PV Energy (excluding PV Energy subject to Buyer Curtailment Orders up to the Curtailment Cap in each Contract Year) expressed in MWh that the Generating Facility would have produced and delivered to the Storage Facility and/or the Delivery Point during any day of the Delivery Period, but that is not produced by the Generating Facility (a) during a Buyer Curtailment Period or (b) during any Clipped Energy Period (without duplication of subsection (a) of this definition), which amount in each case shall be equal to the total amount of Energy the Generating Facility was capable of producing during such period (calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during the Buyer Curtailment Period or Clipped Energy Period), less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the Buyer Curtailment Period or Clipped Energy Period; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0); *provided further*, with respect to any Clipped Energy Period, the quantity

of "Deemed Delivered Energy" for each day of the Delivery Period shall not exceed the sum of (i) the Stored Energy Level (in MWh) at the point in time during such day when the PV Energy delivered to the Delivery Point first reaches the Interconnection Capacity Limit or CAISO operating limit, plus (ii) any PV Energy that cannot be delivered to the Delivery Point due to a (A) Buyer Bid Curtailment, (B) a Buyer Curtailment Order or (C) a Buyer Default or breach hereunder which directly causes Seller to be unable to deliver PV Energy to the Delivery Point (excluding PV Energy subject to Buyer Curtailment Orders up to the Curtailment Cap in each Contract Year) after the point in time during such day when the PV Energy delivered to the Delivery Point first reaches the Interconnection Capacity Limit or CAISO operating limit, and such Energy is stored in the Storage Facility.

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

"**Deficient Month**" has the meaning set forth in Section 4.10(e).

"**Delay Damages**" means Daily Delay Damages and Commercial Operation Delay Damages.

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

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

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

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

"**Discharging Energy**" means all Energy delivered from the Storage Facility to the Storage Facility Metering Point, net of Station Use, pursuant to a Discharging Notice, and measured by the Storage Facility Meter. 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's SC or the CAISO to the Facility, directing the Storage Facility to discharge Discharging Energy at a specific MW rate for a specified period of time or to an amount of MWh; *provided*, (a) any such operating instruction or updates shall be in accordance with the Operating Restrictions and the CAISO Tariff, and (b) if, during a period when the Storage Facility is instructed by Buyer's SC or the CAISO to be discharging, the sum of PV Energy and Discharging Energy would exceed the Interconnection Capacity Limit or CAISO operating limit, such "Discharging Notice" shall be deemed to be automatically adjusted to reduce the amount of Discharging Energy so that the full amount of PV Energy up to (but no more than) the Interconnection Capacity Limit or CAISO operating limit can be delivered to the Delivery Point, until such time as Buyer's SC or the CAISO issues a further modified Discharging Notice. Any Discharging Notice shall not constitute a Buyer Bid Curtailment, Buyer Curtailment Order or Curtailment Order; *provided*, if any such automatic adjustment is prohibited by, or would result in Seller incurring any penalties or charges under, the CAISO Tariff, then Seller shall instead reduce deliveries of PV Energy as necessary to avoid

exceeding the Interconnection Capacity Limit and all such reduced PV Energy deliveries shall constitute (and be treated as) Deemed Delivered Energy.

"**Disclosing Party**" has the meaning set forth in Section 18.2.

"**Dispatch Operating Target**" has the meaning set forth in the CAISO Tariff.

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

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

"**Effective FCDS Date**" 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 Storage Facility has attained Full Capacity Deliverability Status.

"**Effective Storage Capacity**" means the lesser of (a) PMAX, and (b) the maximum dependable operating capacity of the Storage Facility to discharge Energy for five (5) hours of continuous discharge, as measured in MW_{AC} at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) pursuant to the most recent Storage Capacity Test (including the Commercial Operation Storage Capacity Test), as evidenced by a certificate substantially in the form attached as Exhibit I-2 hereto, in either case (a) or (b) up to but not in excess of (i) the Guaranteed Storage Capacity (with respect to a Commercial Operation Storage Capacity Test) or (ii) the Installed Storage Capacity (with respect to any other Storage Capacity Test).

"**Efficiency Rate**" means the rate calculated pursuant to a Storage Capacity Test by dividing Energy Out by Energy In and which for a given calendar month shall be prorated as necessary if more than one Efficiency Rate applies during such calendar month.

"**Electrical Losses**" means, as applicable, all transmission and transformation losses (a) between the Generating Facility Metering Point and 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, (c) between the Generating Facility Metering Point and the Storage Facility Metering Point associated with delivery of Charging Energy to the Storage Facility.

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

"**Energy**" means electrical energy, measured in kilowatt-hours or multiple units thereof.

"**Energy In**" has the meaning set forth in Section III.A(5) of Exhibit O.

"**Energy Management System**" or "**EMS**" means the Facility's energy management system.

"**Energy Out**" has the meaning set forth in Section III.A(10) of Exhibit O.

"**Estimated BESS Costs**" has the meaning set forth in Exhibit T.

"**Estimated PV System Costs**" has the meaning set forth in Exhibit T.

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

"**Excess MWh**" has the meaning set forth in Exhibit C.

"**Expected Commercial Operation Date**" has the meaning set forth on the Cover Sheet.

"**Expected Construction Start Date**" has the meaning set forth on the Cover Sheet.

"**Expected Energy**" means the quantity of Adjusted Facility Energy that Seller expects to be able to deliver to Buyer from the Generating Facility during each Contract Year, which for each Contract Year is 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.

"**Facility Energy**" means the sum of PV Energy and Discharging Energy, as applicable, that is delivered to the Delivery Point, net of Electrical Losses and Station Use, during any Settlement Interval or Settlement Period, as measured by the Facility Meter.

"**Facility Meter**" means the CAISO-Approved Meter that will measure all Facility Energy. Without limiting Seller's obligation to deliver Facility Energy to the Delivery Point, the Facility Meter will be located, and Facility Energy will be measured, at the Delivery Point, net of Electrical Losses and Station Use.

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

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

"**Force Majeure Unavailability**" has the meaning set forth in Exhibit C.

"**Forced Facility Outage**" 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**" has the meaning set forth in Section 4.3(e).

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

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

"**Full Capacity Deliverability Status Failure**" means that the Storage Facility did not receive an allocation of deliverability of the full Installed Capacity from CAISO in the 2025 TPD Allocation Cycle

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

"**Future Environmental Attributes**" means any and all Green Attributes that become recognized under applicable Law after the Effective Date (and not before the Effective Date), notwithstanding the last sentence of the definition of "Green Attributes" herein. Future Environmental Attributes do not include Tax Credits associated with the construction or operation of the Facility, or other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation.

"**Gains**" means, with respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining the economic benefit to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term, and include the value of Green Attributes and Capacity Attributes.

"**Generating Facility**" means the 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 (a) PV Energy to the Delivery Point, and (b) Charging Energy to the Storage Facility; *provided*, that the "Generating Facility" does not include the Storage Facility or the Shared Facilities.

"**Generating Facility Meter**" means the meter or meters (with a 0.6 accuracy class), 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 PV Energy delivered to the Generating Facility Metering Point for the purpose of invoicing in accordance with Section 8.1. For clarity, the Generating Facility may contain multiple measurement devices that will make up the Generating Facility Meter, and, unless otherwise indicated, references to the Generating Facility Meter shall mean all such measurement devices and the aggregated data of all such measurement devices, taken together.

"**Generating Facility Metering Point**" means the location(s) of the Generating Facility Meter(s) shown in Exhibit R.

"**Generating Facility Testing Condition**" has the meaning set forth in Part I.B.4 of Exhibit O.

"**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 the CPUC; *provided*, "Governmental Authority" shall not in any event include any Party.

"**Grant**" has the meaning set forth in the Recitals.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled (including under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision, program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto)), 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; and (3) the reporting rights to such 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 associated with the construction or operation of the Facility and other financial incentives in the form of credits, reductions, or allowances associated with the Facility that are applicable to a state or federal income taxation obligation, 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 basis where one (1) represents the Green Attributes associated with one (1) MWh of Facility Energy or PV Energy, as applicable.

"**Green-e Certified**" means the Green Attributes provided to Buyer pursuant to this Agreement are certified under the Green-e Energy National Standard.

"**Green-e Energy National Standard**" means the Green-e Renewable Energy Standard for Canada and the United States (formerly Green-e Energy National Standard) version 3.4, updated November 12, 2019, as may be further amended from time to time.

"**Guaranteed Capacity**" means the sum of (x) the Guaranteed PV Capacity in MW_{DC} and (y) the Guaranteed Storage Capacity in MW_{AC}.

"**Guaranteed Commercial Operation Date**" has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

"**Guaranteed Construction Start Date**" has the meaning set forth on the Cover Sheet, subject to extension pursuant to Exhibit B.

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

"**Guaranteed Energy Production**" has the meaning set forth in Section 4.7.

"**Guaranteed PV Capacity**" means the generating capacity of the Generating Facility, as measured in MW_{DC} at the Generating Facility Meter, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

"**Guaranteed Storage Availability**" has the meaning set forth in Section 0.

"**Guaranteed Storage Capacity**" means the maximum dependable operating capability of the Storage Facility to discharge Energy, as measured in MW_{AC} at the Delivery Point (i.e., measured at the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point) for five (5) hours of continuous discharge, that Seller commits to install pursuant to this Agreement as set forth on the Cover Sheet.

"**Guarantor**" means, with respect to Seller, any Person that (a) does not already have any material credit exposure to Buyer under any other agreements, guarantees, or other arrangements at the time its Guaranty is issued, (b) is reasonably acceptable to Buyer, (c) has a Credit Rating of BBB- or better from S&P or a Credit Rating of Baa3 or better from Moody's, (d) has a tangible net worth of at least [redacted] (e) is incorporated or organized in a jurisdiction of the United States and is in good standing in such jurisdiction, and (f) executes and delivers a Guaranty for the benefit of Buyer.

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

"**Hybrid Resources**" has the meaning set forth in the CAISO Tariff.

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

"**Incremental Costs**" has the meaning set forth in Section ARTICLE 213.4(c).

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

"**Indemnifying Party**" has the meaning set forth in Section 16.1.

"**Initial Synchronization**" means the initial delivery of Facility Energy to the Delivery Point.

"**Installed PV Capacity**" means the actual generating capacity of the Generating Facility, as measured in MW_{DC} at the Generating Facility Meter, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto. Seller shall have the right and option in its sole discretion to install Generating Facility capacity in excess of the Guaranteed PV Capacity in an amount not to exceed one (1) MW_{DC}.

"**Installed Storage Capacity**" means the lesser of (a) PMAX, and (b) maximum dependable operating capacity of the Storage Facility to discharge Energy for five (5) hours of continuous discharge, as measured in MW_{AC} at the Storage Facility Meter Point by the Storage Facility Meter and adjusted for Electrical Losses to the Delivery Point, that achieves Commercial Operation, as evidenced by a certificate substantially in the form attached as Exhibit I-1 hereto, as such capacity may be adjusted pursuant to Section 5 of Exhibit B. Seller shall have the right and option in its sole discretion to install Storage Facility capacity in excess of the Guaranteed Storage Capacity; *provided*, for all purposes of this Agreement the amount of Installed Storage Capacity shall never be deemed to exceed the Guaranteed Storage Capacity, and Buyer shall have no rights to instruct Seller to (i) charge or discharge the Storage Facility at an instantaneous rate (in MW) in excess of the Effective Storage Capacity or (ii) charge the Storage Facility to a level (in MWh) in excess of the Effective Storage Capacity times five (5) hours.

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

"**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 Energy that is permitted to be delivered to the Delivery Point under Seller's Interconnection Agreement, which amount is 13 MW_{AC}.

"**Interconnection Facilities**" means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in accordance with the Interconnection Agreement.

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

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

"**Investment Grade**" means a Credit Rating of at least "Baa3" with respect to Moody's and at least "BBB-" with respect to S&P.

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

"**Joint Powers Act**" means the Joint Exercise of Powers Act of the State of California (Government Code Section 6500 et seq.).

"**Joint Powers Agreement**" means that certain Joint Powers Agreement dated June 27, 2017, as amended from time to time, under which Buyer is organized as a Joint Powers Authority in accordance with the Joint Powers Act.

"**kWh**" means a kilowatt-hour measured in alternating current, unless expressly stated in terms of direct current.

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

"**Lender**" means, collectively, any Person (a) providing senior or subordinated construction, interim, back leverage or long-term debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, whether that financing or refinancing takes the form of private debt (including back-leverage debt), equity (including tax equity), public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity or tax equity investor directly or indirectly providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent or similar representative acting on their behalf, (b) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (c) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the Facility.

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

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

"**Limited Assignee**" has the meaning set forth in Section 0.

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

"**Local RAR**" means the local Resource Adequacy Requirements established for load-serving entities by the CAISO pursuant to the CAISO Tariff, the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority. "Local RAR" may also be known as local area reliability, local resource adequacy, local resource adequacy procurement requirements, or local capacity requirement in other regulatory proceedings or legislative actions.

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

"**Losses**" means, with respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from termination of this Agreement for the remaining Contract Term, determined in a commercially reasonable manner. Factors used in determining economic loss to a Party may include, without limitation, reference to information supplied by one or more third parties, which shall exclude Affiliates of the Non-Defaulting Party, including without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, comparable transactions, forward price curves based on economic analysis of the relevant markets, settlement prices for comparable transactions at liquid trading hubs (e.g., NP-15), all of which should be calculated for the remaining Contract Term and must include the value of Green Attributes, Capacity Attributes, and Renewable Energy Incentives.

"**Lost Output**" means PV Energy in the amount the Facility could reasonably have delivered to Buyer but was prevented from delivering to Buyer by reason of any Force Majeure Events, System Emergency, Transmission System Outage, or Curtailment Periods. The amount of Lost Output (in MWh) shall be calculated using an industry-standard methodology agreed to by Buyer and Seller that utilizes meteorological conditions on Site as input for the period of time during the for the period of time during the Force Majeure Event, System Emergency, Transmission System Outage, or Curtailment Period, less the amount of PV Energy delivered to the Storage Facility, or to the Delivery Point directly from the Generating Facility, during the during the Force Majeure Event, System Emergency, Transmission System Outage, or Curtailment Period; *provided*, if the applicable difference is negative, the Deemed Delivered Energy shall be zero (0).

"**Microgrid Requirements**" has the meaning set forth in Section ARTICLE 213.4(c).

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

"**MIP**" has the meaning set forth in the Recitals.

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

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

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

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

"**Negative LMP**" means, in any Settlement Period or Settlement Interval, the LMP at the Facility's PNode is less than Zero Dollars ($0).

"**NERC**" means the North American Electric Reliability Corporation.

"**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.

"**Non-Incremental Costs**" has the meaning set forth in Section ARTICLE 213.4(c).

"**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).

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

"**Operating Restrictions**" means those restrictions, rules, requirements, and procedures set forth in Exhibit Q.

"**Original Effective Date**" has the meaning set forth in the Preamble.

"**Party**" 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. 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*, 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.

"**Performance Security**" means (a) cash, (b) a Letter of Credit, or (c) a Guaranty (if permitted by Buyer, in its reasonable discretion) in the amount set forth on the Cover Sheet.

"**Permitted Transferee**" means (a) any Affiliate of Seller or (b) any entity that satisfies, or is controlled by another Person that satisfies the following requirements:

(i) A tangible net worth of not less than [redacted] or a Credit Rating of at least BBB- from S&P, BBB- from Fitch, or Baa3 from Moody's; and

(ii) At least two (2) years of experience in the operations of power generation and energy storage facilities similar to the Facility or has retained a third-party with such experience to operate the Facility.

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

"**PG&E**" has the meaning set forth in the Recitals.

"**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 advance in accordance with Section 4.6(a).

"**PMAX**" means the applicable CAISO-certified maximum operating level of the Storage Facility.

"**PMIN**" means the applicable CAISO-certified minimum operating level of the Storage Facility.

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

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

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

"**Portfolio Financing Entity**" 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 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 shall include 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.

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

"**Purchase Option**" has the meaning set forth in Section 3.14.

"**Purchase Price**" has the meaning set forth in Section 3.14.

"**PV Capacity Damages**" has the meaning set forth in Section 5 of Exhibit B.

"**PV Energy**" means all Energy delivered from the Generating Facility to the Generating Facility Metering Point, net of Station Use, and measured by the Generating Facility Meter.

"**PV System Budget**" has the meaning set forth in Exhibit T.

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

"**RA Compliance Showing**" means the (a) Local RAR compliance or advisory showings (or similar or successor showings), (b) RAR compliance or advisory showings (or similar or successor showings), and (c) Flexible RAR compliance or advisory showings (or similar successor showings), in each case, an entity is required to make to the CAISO pursuant to the CAISO Tariff, to the CPUC (and, to the extent authorized by the CPUC, to the CAISO) pursuant to the Resource Adequacy Rulings, or to any Governmental Authority.

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

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

"**RA Shortfall**" means, for a given Showing Month, the difference, expressed in MW, of (a) the Installed Storage Capacity, *minus* (b) any Administrative NQC reduction applicable to the Storage Facility for such Showing Month, *minus* (c) the quantity of Resource Adequacy Benefits that Buyer is able to include in its Resource Adequacy Plan for each hour of the Resource Duration for the Storage Facility for such Showing Month, *minus* (d) the quantity of Replacement RA provided by Seller and able to be included by Buyer in its Resource Adequacy Plan for such Showing Month. If the result of the calculation is a negative number, the RA Shortfall shall be deemed to be zero (0) MW for such Showing Month.

"**RA Shortfall Month**" means, for purposes of calculating an RA Deficiency Amount under Section 3.8(b), any month, commencing on the RA Guarantee Date, during which there is an RA Shortfall (including any month during the period between the RA Guarantee Date and the Effective FCDS Date, if applicable).

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

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

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

"**Receiving Party**" has the meaning set forth in Section 18.2.

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

"**Remedial Action Plan**" has the meaning set forth 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, 48, 45Y and 48E of the Internal Revenue Code of 1986, as amended); (b) any federal, state, or local grants, subsidies or other like benefits relating in any way to the Facility, including a cash grant available under Section 1603 of Division B of the American Recovery and Reinvestment Act of 2009, in lieu of federal Tax credits or any similar or substitute payment available under subsequently enacted federal legislation; and (c) any other form of incentive relating in any way to the Facility that is not a Green Attribute or a Future Environmental Attribute.

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

"**Renewable Rate Ceiling**" has the meaning set forth in Exhibit T.

"**Renewable Rate Floor**" has the meaning set forth in Exhibit T.

"**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 located within NP 15 TAC Area 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.

"**Requested Confidential Information**" has the meaning set forth in Section 18.2.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the Facility that satisfy any entity's resource adequacy obligations, as those obligations are set forth in any Resource Adequacy Rulings and shall include any local, zonal or otherwise locational attributes associated with the Facility.

"**Resource Adequacy Plan**" has the meaning set forth in the CAISO Tariff.

"**Resource Adequacy Requirements**" or "**RAR**" means the resource adequacy requirements applicable to an entity as established by the CAISO pursuant to the CAISO Tariff, by the CPUC pursuant to the Resource Adequacy Rulings, or by any other Governmental Authority.

"**Resource Adequacy Resource**" shall have the meaning used in Resource Adequacy Rulings.

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

"**Resource Duration**" means the number of continuous hours of discharge of the Storage Facility as set forth on the Cover Sheet.

"**RTE Cure Plan**" has the meaning set forth in Section 11.1(b)(v).

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

"**SCADA Systems**" 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.

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

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

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

"**Security Interest**" has the meaning set forth in Section 8.9.

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

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

"**Seller Initiated Test**" has the meaning set forth in Section 4.9(c).

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

"**Settlement Amount**" means the Non-Defaulting Party's Costs and Losses, on the one hand, netted against its Gains, on the other. If the Non-Defaulting Party's Costs and Losses exceed its Gains, then the Settlement Amount shall be an amount owing to the Non-Defaulting Party. If the Non-Defaulting Party's Gains exceed its Costs and Losses, then the Settlement Amount shall be [redacted] The Settlement Amount does not include consequential, incidental, punitive, exemplary or indirect or business interruption damages.

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

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

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

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

"**Site**" means the real property on which the Facility is or will be located, as further described in Exhibit A, and as shall be updated by Seller at the time Seller provides an executed Construction Start Date certificate in the form of Exhibit J to Buyer; *provided*, that any such update to the Site that includes real property that was not originally contained within the Site boundaries described in Exhibit A shall be subject to Buyer's approval of such updates in its sole discretion.

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

"**SOC**" or "**State of Charge**" means the (a) level of charge of the Storage Facility relative to (b) the Effective Storage Capacity multiplied by five (5) hours, expressed as a percentage.

"**Solar Property Tax Exclusion**" means the solar property tax exclusion codified at Section 73 of the California Revenue and Taxation Code, or any successor or replacement California statute, which provides a reduction to the property tax assessment applicable to Generating Facility and/or Storage Facility.

"**Station Use**" 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.

"**Storage Capability**" has the meaning in Exhibit P.

"**Storage Capacity Availability Payment True-Up**" has the meaning set forth in Exhibit C.

"**Storage Capacity Availability Payment True-Up Amount**" has the meaning set forth in Exhibit C.

"**Storage Capacity Damages**" has the meaning set forth in Section 5 of Exhibit B.

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

"**Storage Cure Plan**" has the meaning set forth in Section 11.1(b)(iv).

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

"**Storage Facility Meter**" means the bi-directional revenue quality meter or meters (with a 0.6 accuracy class), 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 Point, amount of Discharging Energy discharged from the Storage Facility at the Storage Facility Metering Point. 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 shown in Exhibit R.

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

"**Storage Rate**" has the meaning set forth on the Cover Sheet; *provided*, *however*, in the event the Facility is no longer eligible for the Solar Property Tax Exclusion because such Solar Property Tax Exclusion has been amended, repealed or sunset, the Storage Rate shall be [redacted] kW-month and shall not be further increased, including in accordance with Exhibit T.

"**Storage Rate Ceiling**" has the meaning set forth in Exhibit T.

"**Storage Rate Floor**" has the meaning set forth in Exhibit T.

"**Stored Energy Level**" means, at a particular time, the amount of Energy in the Storage Facility available to be discharged to the Delivery Point as Discharging Energy, expressed in MWh. The Parties acknowledge that, taking into account Electrical Losses, the actual amount of Energy (expressed in MWh) physically stored in the Storage Facility at any moment in time will be greater than the Stored Energy Level as defined in the preceding sentence.

"**Supplementary Capacity Test Protocol**" has the meaning set forth in Exhibit O.

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

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

"**Tax Credits**" means 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 facilities or battery storage facilities.

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

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

"**Test Energy**" means Facility Energy delivered (a) commencing on the later of (a) the first date that the CAISO informs Seller in writing that Seller may deliver Energy to the CAISO and (b) the first date that the Transmission Provider 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.

"**Test Energy Rate**" has the meaning set forth in Section 3.6.

"**Total YTD Calculation Intervals**" has the meaning set forth in Exhibit P.

"**Transmission Provider**" means any entity that owns, operates and maintains transmission or distribution lines and associated facilities and/or has entitlements to use certain transmission or distribution lines and associated facilities for the purpose of transmitting or transporting the Facility Energy from the Delivery Point.

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

"**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.

"**Ultimate Parent**" means Emeren US LLC, a Delaware limited liability company.

"**Unavailability Notice**" means any reduction in the available Effective Storage Capacity or Storage Capability communicated to Buyer pursuant to this Agreement, including pursuant to Sections 4.3 and 4.6, other than through Seller's EMS or SCADA System.

"**Unavailable Calculation Interval**" has the meaning set forth in Exhibit P.

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

"**WREGIS**" means the Western Renewable Energy Generation Information System or any successor renewable energy tracking program.

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

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

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of October 2022, 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 Article, Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified;

(e) a reference to a document or agreement, including this Agreement shall mean such document, agreement or this Agreement including any amendment or supplement to, or replacement, novation or modification of this Agreement, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document, agreement or this Agreement;

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

(g) the terms "include" and "including" mean "include or including (as applicable) without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the word or provision in respect of which such examples are provided;

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

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

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

(k) the expression "and/or" when used as a conjunction shall connote "any or all of";

(l) words, phrases or expressions not otherwise defined herein that (i) have a generally accepted meaning in Prudent Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Prudent Operating Practice but that have well known and generally accepted technical or trade meanings, shall have such recognized meanings; and

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

ARTICLE 2
TERM; CONDITIONS PRECEDENT

2.1 **Contract Term**.

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

(b) Applicable provisions of this Agreement shall continue in effect after termination, including early termination, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 18 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all indemnity and audit rights shall remain in full force and effect for one (1) year following the termination of this Agreement.

2.2 **Conditions Precedent**. Seller shall provide Notice of expected Commercial Operation to Buyer no less than sixty (60) days in advance of such date. The Delivery Term shall not commence until Seller completes to Buyer's reasonable satisfaction each of the following conditions:

(a) Seller shall have delivered to Buyer (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-1 setting forth the Installed PV Capacity and the Installed Storage 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 Transmission Provider shall have been executed and delivered and be in full force and effect and a copy of the Interconnection Agreement delivered to Buyer;

(d) All applicable regulatory authorizations, approvals and permits for the commencement of operation of the Facility (including CAISO Commercial Operation, as defined in the CAISO Tariff) that are capable of being satisfied on the Commercial Operation Date have been obtained and all conditions thereof required for commencement of operations have been satisfied and shall (as applicable) be in full force and effect;

(e) Seller has obtained CAISO Certification for the Facility;

(f) Seller has received CEC Precertification of the Facility or the Generating Facility (as applicable) (and reasonably expects to receive final CEC Certification and Verification for the Facility or the Generating Facility (as applicable) in no more than one hundred eighty (180) days from the Commercial Operation Date);

(g) 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, 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;

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

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

2.3 **Development; Construction; Progress Reports**. Within fifteen (15) days after the close of (a) each calendar quarter from the first calendar quarter following the Original Effective Date until the Construction Start Date, and (ii) each calendar month from the first calendar month following the Construction Start Date until the Commercial Operation Date, Seller shall provide to Buyer a Progress Report and agree to regularly scheduled meetings between representatives of Buyer and Seller to review such reports and discuss Seller's construction progress. The form of the Progress Report is set forth in Exhibit E. Seller shall also provide Buyer with any 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. Seller is solely responsible for the design and construction of the Facility, including the location of the Site, the Facility layout, and the selection and procurement of the equipment comprising the Facility.

2.4 **Remedial Action Plan**. If Seller misses a Milestone by more than thirty (30) days, except as the result of Force Majeure Event or Buyer Default or other Buyer breach hereunder which directly prevents Seller from achieving such Milestone, Seller shall submit to Buyer, within ten (10) Business Days of the end of such thirty (30)-day period following the Milestone completion date, a remedial action plan ("**Remedial Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone dates, including the cause of the delay (e.g., governmental approvals, financing, property acquisition, design activities, equipment procurement, project construction, interconnection, or any other factor), Seller's detailed description of its proposed course of action to achieve the missed Milestones and all subsequent Milestones by the Guaranteed Commercial Operation Date; *provided*, 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 Exhibit B, so long as Seller complies with its obligations under this Section 2.4, Seller shall not be considered in default of its obligations under this Agreement solely as a result of missing any Milestone.

ARTICLE 3
PURCHASE AND SALE

3.1 **Purchase and Sale of Product**. Subject to the terms and conditions of this Agreement, during the Delivery Term, Buyer shall purchase all the Product produced by or associated with the Facility at the Contract Price and in accordance with Exhibit C, and Seller shall supply and deliver to Buyer all the Product produced by or associated with the Facility. At its sole discretion, Buyer may during the Delivery Term re-sell or use for another purpose all or a portion of the Product, *provided* that no such re-sale or use shall relieve Buyer of any obligations hereunder. During the Delivery Term, Buyer shall have exclusive rights to offer, bid, or otherwise submit the Product, and/or any component thereof, from the Facility after the Delivery Point for resale in the market, and retain and receive any and all related revenues.

3.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all Green Attributes attributable to the PV Energy or Facility Energy (as applicable). 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 **Imbalance Energy**. Buyer and Seller recognize that in any given Settlement Period the amount of Facility Energy may deviate from the amount of Energy scheduled with the CAISO. Following the Commercial Operation Date and subject to Section 4.5, to the extent there are such deviations, any costs, liabilities or revenues from such imbalances shall be solely for the account of Buyer.

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

3.5 **Future Environmental Attributes**.

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. Subject to the final sentence of this Section 3.5(a) and Section 3.5(b), in such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated with such Future Environmental Attributes.

Seller shall have no obligation to alter the Facility 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; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

3.6 **Test Energy**. No less than fourteen (14) days prior to the first day on which Test Energy is expected to be available from the Facility, Seller shall notify Buyer of the availability of the Test Energy. If and to the extent the Facility generates Test Energy, Seller shall sell and Buyer shall purchase from Seller all Test Energy 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 seventy-five percent (75%) of the Renewable Rate (the "**Test Energy Rate**"). The conditions precedent in Section 2.2 are not applicable to the Parties' obligations under this Section 3.6.

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

(a) Throughout the Delivery Term and subject to Section 3.12, 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 for the Storage Facility from the CAISO and shall perform all commercially reasonable actions necessary to ensure that the Storage 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 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.

(d) Seller shall use commercially reasonable efforts to obtain and deliver Capacity Attributes or Resource Adequacy Benefits for the Generating Facility for Buyer's benefit, including applying for a deliverability allocation for the Generating Facility one (1) time after the Effective Date, at no cost to Buyer. Seller shall (i) submit additional applications for a deliverability allocation for the Generating Facility if reasonably requested by Buyer, and (ii) take

such additional steps as Buyer may reasonably request to obtain Capacity Attributes or Resource Adequacy Benefits for the Generating Facility for Buyer's benefit, so long as Buyer agrees to reimburse Seller for Seller's associated costs.

3.8 **Resource Adequacy Failure**.

(a) RA Deficiency Determination. For each RA Shortfall Month Seller shall pay to Buyer the RA Deficiency Amount as liquidated damages 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.

(b) RA Deficiency Amount Calculation. For each RA Shortfall Month, Seller shall pay to Buyer an amount (the "**RA Deficiency Amount**") equal to the product of the RA Shortfall, multiplied by (i) one thousand (1,000), multiplied by (ii) the sum of the CPUC System RA Penalty and the CPM Soft Offer Cap; *provided* that Seller may, as an alternative to paying some or all of the RA Deficiency Amounts, provide Replacement RA in the amount of any RA Shortfall with respect to such month, *provided* that any Replacement RA capacity is communicated by Seller to Buyer with Replacement RA product information in a written Notice substantially in the form of Exhibit M at least seventy-five (75) days before the applicable Showing Month for the purpose of monthly RA reporting.

3.9 **CEC Certification and Verification**. 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). 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 material changes to the information included in Seller's application for CEC Certification and Verification.

3.10 **Reserved**.

3.11 **California Renewables Portfolio Standard**.

(a) Eligibility. Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC 6].

(b) The term "commercially reasonable efforts" as used in this Section 3.11 means efforts consistent with and subject to Section 3.12. The term "Project" as used in Section 3.11(a) means the Facility.

(c) Transfer of Renewable Energy Credits. Seller and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the Renewable Energy Credits transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(d) Tracking of RECs in WREGIS. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

(e) The term "the contract" as used in Section ARTICLE 213.4(d) means this Agreement.

3.12 **Compliance Expenditure Cap**. If a change in Law occurring after the Effective Date has increased Seller's cost to comply with Seller's obligations under this Agreement that are made subject to this Section 3.12, including with respect to obtaining, maintaining, conveying or effectuating Buyer's use of Green Attributes and Capacity Attributes (as applicable), then the Parties agree that the maximum aggregate amount of costs and expenses Seller shall be required to bear during the Delivery Term to comply with all of such obligations shall be capped at [redacted] per MW of Guaranteed Capacity ("**Compliance Expenditure Cap**").

(a) Any actions required for Seller to comply with its obligations set forth in the first paragraph above, the cost of which will be included in the Compliance Expenditure Cap, shall be referred to collectively as the "**Compliance Actions**"; *provided*, Compliance Actions shall not require Seller to install any additional MW or MWh of energy storage or generation capacity, or otherwise alter the physical design or configuration of the Facility in any material manner as a result of any change in Law occurring after the Effective Date. Notwithstanding anything to the contrary hereunder, to the extent any Compliance Actions, despite Seller's use of commercially reasonable efforts to avoid any reduction in capacity and/or availability of the Storage Facility, cause the Storage Facility to have reduced capacity and/or availability during the time period within which such Compliance Actions are being completed, such reduced capacity and/or availability shall be excluded for purposes of calculating the Annual Storage Capacity Availability and/or Effective Storage Capacity.

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

(c) Buyer will have sixty (60) days to evaluate such Notice (during which time period Seller is not obligated to take any Compliance Actions described in the Notice) and shall, within such time, either (1) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (2) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a Notice given by Seller under this Section 3.12 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the 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, such Compliance Actions until such time as Buyer agrees to pay such Accepted Compliance Costs.

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

3.13 **Project Configuration**.

(a) Reconfiguration. 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 the use of grid energy to provide Charging Energy and the ability of the Facility to be operated in connection with a local microgrid, subject to the remainder of this Section 3.13.

(b) Grant Application. From and after the Effective Date and through the Grant award decision, Seller shall, upon Buyer's reasonable request and at Seller's sole cost and expense, provide reasonable cooperation, assistance, and support to Buyer in connection with Buyer's Grant application, eligibility screening and award decision. Such cooperation and support shall include, without limitation, preparing written materials requested by Buyer or PG&E and participating in meetings with Buyer or PG&E. If Buyer is awarded the Application Development Grant, Buyer shall reimburse Seller for its reasonable and demonstrated third party out of pocket costs and expenses associated with such cooperation, assistance, and support to Buyer in connection with Buyer's Grant application; *provided*, such reimbursement shall not exceed a maximum amount of Twenty-Five Thousand Dollars ($25,000).

(c) Microgrid Development, Commissioning and Operation. The Parties acknowledge and agree that if Buyer is awarded the Grant, PG&E will require the performance of certain activities and execution of certain agreements to plan, develop, commission, and operate the Facility as a microgrid under the MIP (the "**Microgrid Requirements**"). Upon Buyer's request, Seller shall negotiate in good faith to enter into mutually acceptable agreements between and among the Parties, PG&E, and any third parties to support planning, implementation, commissioning, and operation of the microgrid. To the extent Seller incurs incremental costs in implementing the Microgrid Requirements above the costs that Seller would otherwise incur to develop the Facility ("**Incremental Costs**"), the Parties shall cooperate and negotiate in good faith to enter into one or more mutually acceptable agreements to transfer Grant funds to Seller or

otherwise reimburse Seller for any such Incremental Costs. If Grant funds can be applied to costs that Seller would otherwise incur to develop the Facility regardless of whether or not the Facility is subject to the Microgrid Requirements ("**Non-Incremental Costs**"), upon Buyer's request, the Parties shall cooperate and negotiate in good faith to enter into one or more mutually acceptable agreements to transfer Grant funds to Seller. In the event of any such transfer, (i) if the Non-Incremental Costs relate to equipment procurement, then such transfer will be deemed to result in a dollar-for-dollar reduction to the Actual PV System Costs and/or Actual BESS Costs, as applicable, resulting in a reduction to the final Renewable Rate and/or final Storage Rate in accordance with the adjustment formula set forth in Sections 2(a) and (b) of Exhibit T, and (ii) if the Non-Incremental Costs do not relate to equipment procurement, then the Parties shall cooperate and negotiate in good faith a reasonable reduction to the Contract Price. Notwithstanding the foregoing, any such request made by Buyer after the Construction Start Date shall be subject to and conditioned upon Seller obtaining the approval of its Lenders to undertake any such actions.

3.14 **Right of First Offer**.

(a) Subject to the terms and conditions specified in this Section 3.14, during the Delivery Term, if the Person that holds all the equity interests in Seller ("**Seller's Parent**") desires to effectuate a sale of such equity interests of Seller to any Person who is not an Affiliate of Seller's Parent, Seller shall give written notice (a "**ROFO Notice**") to Buyer that Seller's Parent desires to make such a sale of such equity interests of Seller (the "**ROFO Offered Units**"). For the avoidance of doubt, no exercise of remedies by any Lender, including any foreclosure of the equity interests in Seller or any of the assets of the Facility (or sale after on in lieu of foreclosure) shall require Seller, any Financing Party or any other Person to deliver a ROFO Notice to Buyer or grant any other rights under this Section 3.14.

(b) Buyer shall have a thirty (30)-day period (the "**ROFO Offer Period**") to make an offer (the "**ROFO Offer**") to purchase the ROFO Offered Units by giving a written notice (the "**ROFO Offer Notice**") to Seller's Parent prior to the expiration of such ROFO Offer Period, which notice shall set forth (a) the purchase price in cash and the terms and conditions of payment offered by Buyer for the ROFO Offered Units and (b) a detailed summary of any other material terms and conditions (the "**ROFO Terms**"). If the Buyer fails to deliver a ROFO Offer Notice to Seller's Parent prior to the expiration of the ROFO Offer Period, it shall be deemed to have declined to make an offer to purchase the ROFO Offered Units.

(c) Within thirty (30) days after the receipt of the ROFO Offer Notice from Buyer (such period, the "**ROFO Acceptance Period**"), Seller's Parent shall have an option to elect to sell all of the ROFO Offered Units described in the ROFO Notice at the purchase price and upon the terms and conditions specified in the ROFO Offer Notice to Buyer. Seller's Parent may accept or reject the ROFO Offer in its sole discretion. If Seller's Parent desires to exercise the option to sell the ROFO Offered Units, Seller shall deliver a written notice (a "**ROFO Election Notice**") to Buyer indicating such election at any time during the ROFO Acceptance Period.

(d) If Seller delivers a ROFO Election Notice to Buyer during the ROFO Acceptance Period, then Buyer shall and Seller shall cause Seller's Parent to, negotiate in good faith the terms of a purchase agreement for the sale by Seller's Parent and purchase by Buyer of the ROFO Offered Units using the ROFO Terms set forth in the ROFO Offer Notice (the "**ROFO**

Purchase Agreement"). If Buyer and Seller's Parent have not executed the ROFO Purchase Agreement within sixty (60) days of Seller's Parent delivering such ROFO Election Notice, then either Buyer or Seller's Parent may terminate negotiations and Seller's Parent will be free to pursue any other sale of all of its equity interests in Seller in its sole discretion.

(e) If Seller's Parent rejects the ROFO Offer or, if Seller does not deliver a ROFO Election Notice to Buyer by the end of the ROFO Acceptance Period, the ROFO offer will be deemed rejected and, in each case, Seller's Parent will be free to pursue any other sale of all of its equity interests in Seller in its sole discretion.

(f) Notwithstanding anything herein to the contrary, Buyer may not assign its rights pursuant to this Section 3.14, without the prior written consent of Seller.

ARTICLE 4
OBLIGATIONS AND DELIVERIES

4.1 **Delivery**.

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

(b) Green Attributes. All Green Attributes associated with Test Energy and the PV Energy or Facility Energy (as applicable) during the Delivery Term are exclusively dedicated to and vested in Buyer. Seller represents and warrants that Seller holds the rights to all Green Attributes from the Facility, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the Facility.

(c) Energy and Ancillary Services Products. If, at any time during the Contract Term, Buyer requests Seller to provide any new or different Energy related products 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) Energy. Title to and risk of loss related to the Facility Energy, shall pass and transfer from Seller to Buyer at the Delivery Point. Seller warrants that all Product delivered to Buyer is free and clear of all liens, security interests, claims and encumbrances of any kind.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

4.3 **Forecasting**. Seller shall provide the forecasts described below. Seller shall use commercially reasonable efforts to forecast accurately and to transmit such information in a format reasonably acceptable to Buyer (or Buyer's designee).

(a) Annual Forecast of PV Energy. No less than forty-five (45) days before (i) the first day of the first Contract Year of the Delivery Term and as updated by Seller from time to time thereafter in its discretion or as may be required below, and (ii) the beginning of each calendar year during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected PV Energy, by hour, for the following calendar year in a form substantially similar to the table found in Exhibit F, or as reasonably requested by Buyer (the "**Annual Forecast**").

(b) Day-Ahead Forecast. Seller shall take commercially reasonable actions to enable Buyer's SC to receive a CAISO VER day-ahead forecast. Seller shall also provide (or arrange for an Approved Forecast Vendor to provide) to Buyer's SC, 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, a non-binding forecast of the hourly expected total amount of PV Energy capable of being produced by the Generating Facility (not taking into account any limitations on the ability to deliver such Energy to the Delivery Point or to the Storage Facility) for each hour of the immediately succeeding day ("**Day-Ahead Forecast**"). A Day-Ahead Forecast provided in a day prior to any non-Business Day(s) shall include non-binding forecasts for the immediately following day, each succeeding non-Business Day and the next Business Day. Each Day-Ahead Forecast shall clearly identify, for each hour, Seller's (or the Approved Forecast Vendor's) best estimate of the PV Energy capable of being produced by the Generating Facility (not taking into account any limitations on the ability to deliver such Energy to the Delivery Point or to the Storage Facility). Such Day-Ahead Forecasts shall be sent to Buyer's on-duty Scheduling Coordinator. If Seller (or the Approved Forecast Vendor) 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 or the Annual Forecast or Buyer's best estimate based on information reasonably available to Buyer.

(c) Real-Time Forecasts. Seller shall take commercially reasonable actions to enable Buyer's SC to receive a CAISO VER intra-day forecast. So long as the CAISO is providing such VER intra-day forecast, Seller shall have no other intra-day or real-time forecasting

obligations except as set forth in this Section 4.3(c). Seller shall notify Buyer's SC of any changes from the Day-Ahead Forecast of one (1) MW or more in the hourly expected amount of available Installed PV Capacity or available Effective Storage Capacity ("**Real-Time Forecast**"), in each case, whether due to Forced Facility Outage, Force Majeure Event or other cause, as soon as reasonably possible, but no later than one (1) hour prior to the deadline for submitting schedules to the CAISO in accordance with the rules for participation in the Real-Time Market. If the hourly expected amount of available Installed PV Capacity or available Effective Storage Capacity changes by at least one (1) MW as of a time that is less than one (1) hour prior to the Real-Time Market deadline, but before such deadline, then Seller must notify (or arrange for an Approved Forecast Vendor to notify) Buyer's SC as soon as reasonably possible. Such Real-Time Forecasts of available Installed PV Capacity or available Effective Storage Capacity shall contain information regarding the beginning date and time of the event resulting in the change in any PV 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's SC. Such Real-Time Forecasts shall be communicated in a method acceptable to Buyer's SC; *provided*, Buyer specifies the method no later than sixty (60) days prior to the effective date of such requirement. In the event Buyer fails to provide Notice of an acceptable method for communications under this Section 4.3(c), then Seller (or the Approved Forecast Vendor, as applicable) shall send such communications by telephone and e-mail to Buyer.

(d) Forced Facility Outages. Notwithstanding anything to the contrary herein, Seller shall use commercially reasonable efforts to notify Buyer's on-duty Scheduling Coordinator of Forced Facility Outages within ten (10) minutes of the commencement of the Forced Facility Outage, including changes to PMAX, PMIN, or telemetry, and shall notify Buyer of the expected timeframe of such Forced Facility Outage. Seller shall keep Buyer informed of any developments that will affect either the duration of the Forced Facility Outage or the availability of the Facility during or after the end of the outage.

(e) Forecasting Penalties. So long as the CAISO is providing VER day-ahead and intra-day forecasts, Seller shall have no liability under this Section 4.3(e). If the CAISO is not providing VER day-ahead and intra-day forecasts as a result of any failure by Seller of its obligations under this Agreement, then in the event Seller does not in a given hour provide, or Seller has failed to arrange for an Approved Forecast Vendor to provide, the Day-Ahead Forecast required in Section 4.3(b) or the Real-Time Forecast required in Section 4.3(c), and due to such failures Buyer incurs a loss or penalty resulting from its scheduling activities with respect to PV Energy during such hour, Seller shall be responsible for a "**Forecasting Penalty**" for each such hour equal to the product of (A) the absolute difference (if any) between (i) the expected PV Energy for such hour (which, assumes no Charging Energy or Discharging Energy in such hour) set forth in the most recent Day-Ahead Forecast (or Annual Forecast to the extent no Day-Ahead Forecast was Delivered to Buyer), and (ii) the actual PV Energy for such hour (absent any Charging Energy and Discharging Energy), multiplied by (B) the absolute value of the Real-Time Price in such hour. Settlement of Forecasting Penalties shall occur as set forth in Article 8 of this Agreement.

(f) CAISO Tariff Requirements. Seller will comply with all obligations applicable to Hybrid Resources under the CAISO Tariff and the Eligible Intermittent Resource Protocol, if applicable, including providing appropriate operational data, metering and telemetry

data, and meteorological data, and will fully cooperate with Buyer, Buyer's SC, and CAISO, in providing all data, information, and authorizations required thereunder.

(g) Meteorological and Storage Facility Status Data. Seller shall provide to Buyer's SC the following real-time data at a granularity of no less than five (5)-minutes:

(i) Generating Facility point-of-array irradiance;

(ii) PV Energy delivered to the Generating Facility Meter;

(iii) Ambient temperature at the Site;

(iv) Storage Facility operational capacity;

(v) State of Charge;

(vi) Stored Energy Level; and

(vii) ADS and AGC set points.

4.4 **Dispatch Down/Curtailment**.

(a) General. Seller agrees to reduce the amount of Facility Energy by the amount and for the period set forth in any Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment; *provided*, Seller is not required to reduce such amount to the extent it is inconsistent with the limitations of the Facility set out in the Operating Restrictions; *provided further*, delivery of excess Facility Energy during a Settlement Interval in which the Generating Facility and/or Storage Facility is ramping down to the Dispatch Operating Target or Operating Instruction shall not be considered a failure by Seller to comply with a Curtailment Order, Buyer Curtailment Order, or notice received from CAISO in respect of a Buyer Bid Curtailment, provided that the Generating Facility and/or Storage Facility meets the Dispatch Operating Target or Operating Instruction as required by the CAISO Tariff.

(b) Buyer Curtailment. Buyer shall have the right to order Seller to curtail deliveries of Facility Energy through Buyer Curtailment Orders; *provided*, Buyer shall pay Seller for all Deemed Delivered Energy resulting from a Buyer Curtailment Order in excess of the Curtailment Cap at the Renewable Rate, subject to the limitations of Section (b) of Exhibit C.

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

Order.

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

4.5 **Energy Management**.

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

(b) Charging Notices. 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 causing Charging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. Each Charging Notice issued in accordance with this Agreement will be effective unless and until Buyer's SC or the CAISO modifies such Charging Notice by providing Seller with an updated Charging Notice.

(c) No Unauthorized Charging. Seller shall not charge the Storage Facility during the Delivery Term other than (i) pursuant to a valid Charging Notice (it being understood that Seller may adjust a Charging Notice to the extent necessary to maintain compliance with the Operating Restrictions), (ii) in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), (iii) pursuant to a notice from the Transmission Provider or Governmental Authority, or (iv) any PV Energy that Seller cannot deliver to the Delivery Point (which Seller shall cause to occur even in the absence of a Charing Notice), unless expressly instructed not to charge the Storage Facility by Buyer pursuant to a Buyer Curtailment Order or

the CAISO pursuant to a Curtailment Order, and subject to there being sufficient available charging capacity in the Storage Facility to receive such PV Energy.

(d) No Unauthorized Discharging. 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 Discharging Notice to the extent necessary to maintain compliance with the Operating Restrictions), or in connection with a Seller Initiated Test (including Facility maintenance or a Storage Capacity Test), or pursuant to a notice from the Transmission Provider or Governmental Authority. 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 causing Discharging Notices to be issued, subject to the requirements and limitations set forth in this Agreement. 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) Curtailments. Notwithstanding anything in this Agreement to the contrary, during any Settlement Interval, Curtailment Orders, Buyer Curtailment Orders, Buyer Bid Curtailments and actions taken to maintain compliance with the Operating Restrictions applicable to such Settlement Interval shall have priority over any Charging Notices or 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, the Operating Restrictions or other instruction or direction from Buyer or its SC or a Governmental Authority or the Transmission Provider. Buyer shall have the right, but not the obligation, to provide Seller with updated Charging Notices and Discharging Notices during any Buyer Curtailment Order, Buyer Bid Curtailment or Curtailment Order.

(f) Unauthorized Charges and Discharges. If Seller or any third party charges, discharges or otherwise uses the Storage Facility other than as permitted hereunder or as expressly addressed in Section 4.5(g), it shall be a breach by Seller and Seller shall hold Buyer harmless from, and indemnify Buyer against, all actual costs or losses associated therewith, and be responsible to Buyer for any damages arising therefrom and, if Seller fails to implement procedures reasonably acceptable to Buyer to prevent any further occurrences of the same, then the failure to implement such procedures shall be an Event of Default under Article 11.

(g) CAISO Dispatches. During the Delivery Term, CAISO Dispatches shall have priority over any Charging Notice or Discharging Notice issued by Buyer's SC, and Seller shall have no liability for violation of this Section 4.5 or any Charging Notices or Discharging Notice if and to the extent such violation is caused by Seller's compliance with any CAISO Dispatch. During any time interval during the Delivery Term in which the Storage Facility is capable of responding to a CAISO Dispatch, but the Storage Facility deviates from a CAISO Dispatch other than for reasons related to maintaining compliance with the Operating Restrictions, as permitted pursuant to Sections 4.5(c) or 4.5(d) or as permitted pursuant to the CAISO Tariff within the applicable tolerance band established by the CAISO for Imbalance Energy that does not result in CAISO penalties, Seller shall be responsible for all CAISO charges and penalties resulting from such deviation (in addition to any Buyer remedy related to overcharging of the Storage Facility as set forth in Section 4.5(c)). To the extent the Storage Facility is unable to respond to

ADS signals during any Calculation Interval, then as an exclusive remedy, such Calculation Interval shall be deemed an Unavailable Calculation Interval for purposes of calculating the YTD Annual Storage Capacity Availability.

(h) Pre-Commercial Operation Date Period, etc. Prior to the Commercial Operation Date, Buyer shall have no rights to issue or cause to be issued Charging Notices or Discharging Notices, and Seller shall have exclusive rights to charge and discharge the Storage Facility; *provided*, prior to the Commercial Operation Date Seller shall only charge and discharge the Storage Facility in connection with installation, commissioning and testing of the Storage Facility.

(i) Station Use. Notwithstanding anything to the contrary in this Agreement, the Parties acknowledge (i) Seller is responsible for providing all Energy to serve Station Use (including paying the cost of any Energy from the grid to serve Station Use), (ii) the supply of such Station Use shall not be deemed a violation of this Agreement, including Sections 4.5(c), (d), and (f), and (iii) Station Use may not be supplied from PV Energy, Charging Energy or Discharging Energy.

4.6 **Reduction in Delivery Obligation**.

(a) Facility Maintenance. Without limiting Sections 3.1 or Exhibit G, or any rights expressly provided hereunder of Seller in relation to the operation of the Facility:

(i) Seller shall provide to Buyer written schedules for Planned Outages for each of the Generating Facility and Storage Facility for each Contract Year no later than thirty (30) days prior to the first day of the applicable Contract Year. Buyer may provide comments on the proposed Planned Outage schedule no later than ten (10) days after receiving any such schedule, and Seller shall in good faith take into account any such comments. Seller shall 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 reduce deliveries of Product during any period of such Planned Outages.

(ii) If reasonably required in accordance with Prudent Operating Practices, Seller may perform maintenance at a different time than maintenance scheduled pursuant to Section 4.6(a)(i). Seller shall provide Notice to Buyer within the time period determined by the CAISO for the Facility, as a Resource Adequacy Resource that is subject to the Availability Standards, to qualify for an "Approved Maintenance Outage" under the CAISO Tariff (or such shorter period as may be reasonably acceptable to Buyer based on the likelihood of dispatch by Buyer), and Seller shall exercise best efforts to limit maintenance repairs performed pursuant to this Section 4.6(a)(ii) to periods when Buyer does not reasonably believe the Generating Facility and/or Storage Facility, as applicable, will be dispatched.

(iii) Notwithstanding anything in this Agreement to the contrary, no Planned Outages of the Generating Facility or Storage Facility shall be scheduled or planned during the hours of 6 a.m. to 10 p.m. from each June 1 through September 30 during the Delivery Term, unless (A) approved by Buyer in writing in its sole discretion, (B) with respect to the Generating Facility, performed during non-daylight hours, or (C) to the extent performed pursuant

to manufacturer requirements in order to maintain equipment warranties. In the event that Seller has a previously Planned Outage that becomes coincident with a System Emergency, Seller shall make all commercially reasonable efforts to reschedule such Planned Outage if requested to do so by Buyer.

(b) Forced Facility Outage. Seller shall be permitted to reduce deliveries of Product during any Forced Facility Outage. Seller shall provide Buyer with Notice and the expected duration (if known) of any Forced Facility Outage; *provided*, Seller may provide such Notice (i) pursuant to Seller's forecasts provided to Buyer pursuant to Section 4.3, or (ii) through compliance with CAISO's outage reporting protocols.

(c) System Emergencies and other Interconnection Events. Seller shall be permitted to reduce deliveries of Product during any period of System Emergency, Transmission System 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) Force Majeure Event. Seller shall be permitted to reduce deliveries of Product during any Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10.

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

Notwithstanding anything in this Section 4.6 to the contrary, any such reductions in Product deliveries shall not excuse (i) the Storage Facility's unavailability for purposes of calculating the Annual Storage Capacity Availability to the extent the Storage Facility otherwise has an Unavailable Calculation Interval under Exhibit P, or (ii) in the case of Sections 4.6(a), (b) and (e), Seller's obligation to deliver Capacity Attributes.

4.7 **Guaranteed Energy Production**. During each Performance Measurement Period during the Delivery Term, Seller shall deliver to Buyer an amount of Adjusted Facility Energy, not including any Excess MWh, equal to no less than the Guaranteed Energy Production (as defined below). "**Guaranteed Energy Production**" means an amount of Adjusted Facility Energy, as measured in MWh, equal to one hundred seventy percent (170%) of the average annual Expected Energy for the two (2) Contract Years constituting such Performance Measurement Period. For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Buyer the sum of (a) any Deemed Delivered Energy, plus (b) 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 NP 15 EZ Gen Hub under a Day-Ahead Schedule as an IST within ninety (90) days after the conclusion of the applicable Performance Measurement Period (i) upon a schedule reasonably acceptable to Buyer, and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement.

4.8 **Storage Facility Availability; Ancillary Services**.

(a) During the Delivery Term, the Storage Facility shall maintain an Annual Storage Capacity Availability during each Contract Year of no less than ninety-seven percent (97%) (the "**Guaranteed Storage Availability**"), which Annual Storage Capacity Availability shall be calculated in accordance with Exhibit P.

(b) During the Delivery Term, the Storage Facility shall maintain an Efficiency Rate of no less than the Guaranteed Efficiency Rate. Buyer's sole remedy for an Efficiency Rate that is less than the Guaranteed Efficiency Rate is reimbursement of Buyer's excess Energy costs pursuant to Section (e) of Exhibit C.

(c) Buyer's exclusive remedies for Seller's failure to achieve the Guaranteed Storage Availability are (i) the adjustment of Seller's payment for the Product by application of the Capacity Availability Factor (as set forth in Exhibit C), and (ii) in the case of a Seller Event of Default as set forth in Section 11.1(b)(iv), the applicable remedies set forth in Article 11.

(d) Upon Buyer's reasonable request, Seller shall submit the Storage Facility for additional CAISO Certification so that the Storage Facility may provide additional Ancillary Services that the Facility is at the relevant time actually physically capable of providing consistent with the definition of Ancillary Services herein, provided that Buyer has agreed to reimburse Seller for any material costs Seller incurs in connection with such additional CAISO Certification.

4.9 **Storage Facility Testing**.

(a) Storage Capacity Tests. Prior to the Commercial Operation Date, Seller shall schedule and complete a Commercial Operation Storage Capacity Test in accordance with Exhibit O. Thereafter, Seller and Buyer shall have the right to run additional Storage Capacity Tests in accordance with Exhibit O.

(i) Buyer shall have the right to send one or more representative(s) to witness all Storage Capacity Tests, subject to applicable NERC requirements and other applicable Laws.

(ii) Following each Storage Capacity Test, Seller shall submit a testing report in accordance with Exhibit O. If the actual capacity or efficiency rate determined pursuant to a Storage Capacity Test varies from the then-current Effective Storage Capacity or Efficiency Rate, as applicable, then the actual capacity and/or efficiency rate, as applicable, determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and/or Efficiency Rate at the beginning of the day following the completion of the test for all purposes under this Agreement.

(b) Additional Testing. 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 Automated Dispatches.

(c) Buyer or Seller Initiated Tests. Any testing of the Storage Facility requested by Buyer after the Commercial Operation Storage Capacity Tests and all required annual tests

pursuant to Section B of Exhibit O shall be deemed Buyer-instructed dispatches of the Facility ("**Buyer Dispatched Test**"). Any test of the Storage Facility that is not a Buyer Dispatched Test (including all tests conducted prior to Commercial Operation, any Commercial Operation Storage Capacity Tests, any Storage Capacity Test conducted if the Effective Storage Capacity immediately prior to such Storage Capacity Test is below seventy percent (70%) of the Installed Storage Capacity, any test required by CAISO (including any test required to obtain or maintain CAISO Certification), and other Seller-requested discretionary tests or dispatches, at times and for durations reasonably agreed to by Buyer, that Seller deems necessary for purposes of reliably operating or maintaining the Storage Facility or for re-performing a required test within a reasonable number of days of the initial required test (considering the circumstances that led to the need for a retest)) shall be deemed a "**Seller Initiated Test**".

(i) For any Seller Initiated Test, other than Storage Capacity Tests required by Exhibit O for which there is a stated notice requirement, 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).

(ii) No Charging Notices or Discharging Notices shall be issued during any Seller Initiated Test or Buyer Dispatched Test except as reasonably requested by Seller or Buyer to implement the applicable test. Periods during which Buyer Dispatched Tests render the Storage Facility (or any portion thereof, as applicable) unavailable shall be excluded for purposes of calculating the Annual Storage Capacity Availability. 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.

(d) Testing Costs and Revenues.

(i) For all Buyer Dispatched Tests, Buyer shall direct only Charging Energy to be used to charge the Storage Facility, Buyer shall be entitled to all CAISO revenues associated with a Storage Facility discharge during a Buyer Dispatched Test, and Buyer shall pay Seller the Renewable Rate for all Adjusted Facility Energy associated with such discharge. For all Seller Initiated Tests, the Adjusted Facility Energy associated with such Charging Energy shall be calculated in a manner such that there is no "gross up" benefit to Seller for Storage Facility efficiency losses associated with such Charging Energy, and Seller shall be entitled to all CAISO revenues (but not the Renewable Rate) associated with a Storage Facility discharge, but all Green Attributes associated therewith shall be for Buyer's account at no additional cost to Buyer.. Buyer shall pay to Seller, in the month following Buyer's receipt of such CAISO revenues and otherwise in accordance with Exhibit C, all applicable CAISO revenues received by Buyer and associated with the discharge Energy associated with such Seller Initiated Test.

(ii) Buyer shall be responsible for all costs, expenses and fees payable or reimbursable to its representative(s) witnessing any Facility test.

(iii) Except as set forth in Sections 4.9(d)(i) and (ii), all other costs of any testing of the Storage Facility shall be borne by Seller.

4.10 **WREGIS**. 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 PV Energy or Facility Energy (as applicable) 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 amounts of PV Energy or Facility Energy (as applicable) generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the PV Energy or Facility Energy (as applicable) for such calendar month as evidenced by the Facility's metered data.

(d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 8.2, Buyer shall make an invoice payment for a given month in accordance with Section 8.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.10. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 8.2.

(e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the PV Energy or Facility Energy (as applicable) for the same calendar month (taking into account the timing of WREGIS' issuance of WREGIS Certificates in the normal course) ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused by, or is the result of any action or inaction of, Seller, then the amount of PV Energy or Facility Energy (as applicable)

in the Deficient Month shall be reduced by three (3) times the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller next coming due under Article 8 and the Guaranteed Energy Production for the applicable Contract Year; *provided*, such adjustment shall not apply to the extent that Seller either (x) resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month or (y) provides Replacement Green Attributes (as defined in Exhibit G) within ninety (90) days after the Deficient Month (i) upon a schedule reasonably acceptable to Buyer and (ii) provided that such deliveries do not impose additional costs upon Buyer for which Seller refuses to provide reimbursement. Without limiting Seller's obligations under this Section 4.10, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

(f) If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.10 after the Effective Date, the Parties promptly shall modify this Section 4.10 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the PV Energy or Facility Energy (as applicable) in the same calendar month.

(g) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in WREGIS will be taken prior to the first Energy delivery under this Agreement (to the extent such steps are reasonably capable of being taken prior to the first delivery under this Agreement).

ARTICLE 5
TAXES

5.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to the Facility or on or with respect to the sale and making available of Product to Buyer, that are imposed on Product prior to its delivery to Buyer at the time and place contemplated under this Agreement. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and after its delivery to Buyer at the time and place contemplated under this Agreement (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Product hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation to evidence such exemption or exclusion within thirty (30) days after the date Buyer makes such claim. Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes for which Buyer is responsible hereunder and from which Buyer claims it is exempt.

5.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without

receiving due compensation therefor from the other Party. All Product delivered by Seller to Buyer hereunder shall be a sale made at wholesale, with Buyer reselling such Product.

ARTICLE 6
MAINTENANCE OF THE FACILITY

6.1 **Maintenance of the Facility**. Seller shall, as between Seller and Buyer, be solely responsible for the operation and maintenance of the Facility and the delivery of Product and shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of the Facility and the generation and sale of Product.

6.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of the Facility. If Seller becomes aware of any circumstances relating to the Facility that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified in Exhibit N Notice of such condition. Such action may include disconnecting and removing all or a portion of the Facility or suspending the supply of Facility Energy to the Delivery Point.

6.3 **Shared Facilities**. The Parties acknowledge and agree that certain of the Shared Facilities and Interconnection Facilities, and Seller's rights and obligations under the Interconnection Agreement, may be subject to certain shared facilities and/or co-tenancy agreements to be entered into among Seller, the Transmission Provider, 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*, such agreements (i) shall permit Seller to perform or satisfy, and shall not purport to limit, its obligations hereunder and (ii) provide for separate metering of the Facility.

ARTICLE 7
METERING

7.1 **Metering**. Unless the Parties agree otherwise pursuant to Section 3.13, the Facility shall have one CAISO Resource ID for the Facility. Seller shall measure the amount of PV Energy using the Generating Facility Meter, Seller shall measure the Charging Energy and the Discharging Energy using the Storage Facility Meter, and Seller shall measure the amount of Facility Energy using the Facility Meter. Seller shall separately meter or account for all Station Use. All meters shall be operated pursuant to applicable CAISO-approved calculation methodologies and maintained at Seller's cost. Subject to meeting any applicable CAISO requirements, the Facility Meter (but not the Generating Facility Meter or the Storage Facility Meter) shall be programmed to adjust for all Electrical Losses to the Delivery Point in a manner that complies with the CAISO Tariff and subject to Buyer's prior written approval, not to be unreasonably withheld. Metering shall be consistent with the Metering Diagram set forth as Exhibit R. Each Storage Facility Meter, Generating Facility Meter and Facility Meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer, and consents to Buyer obtaining from CAISO the CAISO meter data directly relating to the Facility and all inspection, testing and

calibration data and reports. Seller and Buyer, or Buyer's Scheduling Coordinator, shall cooperate to allow both Parties to retrieve the meter reads from the CAISO Market Results Interface (MRI-S) and/or directly from the CAISO meter(s) at the Facility.

7.2 **Meter Verification**. Annually, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller shall make commercially reasonable efforts to cause the meter to be tested. The tests shall be conducted by independent third parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period so long as such adjustments are accepted by CAISO and WREGIS; *provided*, such period may not exceed twelve (12) months.

ARTICLE 8
INVOICING AND PAYMENT; CREDIT

8.1 **Invoicing**. Seller shall use commercially reasonable efforts to deliver an invoice to Buyer for Product no later than the tenth (10^{th}) day of each month for the previous calendar month. Each invoice shall (a) reflect records of metered data, including (i) 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, Charging Energy, Discharging Energy, Facility Energy, Replacement RA and Replacement Product delivered to Buyer (if any); for each day that is subject to the invoice, the Stored Energy Level (in MWh) at the point in time when the PV Energy delivered to the Delivery Point first reached the Interconnection Capacity Limit, the calculation of each day's Deemed Delivered Energy (if any) that is not covered by the Curtailment Cap, if applicable; the calculation of Adjusted Facility 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, and (ii) data showing a calculation of the Monthly Capacity Payment and other relevant data for the prior month; and (b) be in a format reasonably specified by Buyer, covering the Product provided in the preceding month determined in accordance with the applicable provisions of this Agreement. Buyer shall, and shall cause its Scheduling Coordinator to, provide Seller with all reasonable access (including, in real time, to the maximum extent reasonably possible) to any records, including invoices or settlement data from the CAISO, forecast data and other information, all as may be necessary from time to time for Seller to prepare and verify the accuracy of all invoices.

8.2 **Payment**. Buyer shall make payment to Seller for Product (and any other amounts due) by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after Buyer's receipt of each invoice; *provided*, if such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one Party to another is not paid on or before its applicable due

date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual Interest Rate equal to the prime rate published on the date of the invoice in The Wall Street Journal (or, if The Wall Street Journal is not published on that day, the next succeeding date of publication), plus two percent (2%) (the "**Interest Rate**"). If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

8.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least two (2) years or as otherwise required by Law. Upon fifteen (15) days' Notice to the other Party, either Party shall be granted reasonable access to the accounting books and records within the possession or control of the other Party pertaining to all invoices generated pursuant to this Agreement.

8.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 8.5 or an adjustment to an amount previously invoiced or paid is required due to a correction of data by the CAISO, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. 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 at the Interest Rate, until settled in full, in accordance with Section 8.2, accruing from the date on which the adjusted amount should have been due.

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

8.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement or otherwise arising out of this Agreement,

including any related damages calculated pursuant to Exhibits B and P, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

8.7 **Seller's Development Security**. To secure its obligations under this Agreement, Seller shall deliver the Development Security to Buyer within ten (10) Business Days after the Original 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. Upon the earlier of (a) Seller's delivery of the Performance Security, or (b) sixty (60) days after termination of this Agreement, Buyer shall return the Development Security to Seller, less the amounts drawn in accordance with this Agreement.

8.8 **Seller's Performance Security**.

(a) To secure its obligations under this Agreement, Seller shall deliver Performance Security to Buyer on or before the Commercial Operation Date. If the Performance Security is not in the form of cash or Letter of Credit, it shall be substantially in the form set forth in Exhibit L. Seller shall maintain the Performance Security in full force and effect, and Seller shall within five (5) Business Days after any draw thereon replenish the Performance Security in the event Buyer collects or draws down any portion of the Performance Security for any reason permitted under this Agreement other than to satisfy a Termination Payment, until the following have occurred: (a) the Delivery Term has expired or terminated early; and (b) all payment obligations of Seller 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.

(b) 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.

8.9 **First Priority Security Interest in Cash or Cash Equivalent Collateral**. To secure its obligations under this Agreement, and until released as provided herein, Seller hereby grants to Buyer a present and continuing first-priority security interest ("**Security Interest**") in, and lien on (and right to net against), and assignment of the Development Security, Performance Security, any other cash collateral and cash equivalent collateral posted pursuant to Sections 8.7 and 8.8 and any and all interest thereon or proceeds resulting therefrom or from the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of Buyer, and Seller agrees to take all action as Buyer reasonably requires in order to perfect Buyer's Security Interest in, and lien on (and right to net against), such collateral and any and all proceeds resulting therefrom or from the liquidation thereof. Upon or any time after the occurrence of an Event of Default caused by Seller, an Early Termination Date resulting from an Event of Default caused by Seller, or an occasion provided for in this Agreement where Buyer is authorized to retain all or a

portion of the Development Security or Performance Security, Buyer may do any one or more of the following (in each case subject to the final sentence of this Section 8.9):

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

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

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

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

8.10 **Buyer's Covenants**.

(a) Buyer's Reporting of Financial and Credit Information. Beginning on the first full calendar quarter of the Contract Term and continuing until the expiration of the Contract Term, Buyer shall provide to Seller the following reports and information:

(i) within sixty (60) days after the end of each fiscal quarter: (1) the number of customers of Buyer by customer category (including retail, commercial and industrial) as of the end of such fiscal quarter, (2) Buyer's Historical Load Served for the prior quarter and (3) unaudited quarterly financial statements of Buyer; and

(ii) within one hundred twenty (120) days after the end of each fiscal year, annual audited financial statements of Buyer (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.

(b) Cooperation with Financing Parties. Buyer shall cooperate with Seller and any of Seller's financing counterparties to execute and arrange for the delivery of certificates, consents, opinions, estoppels, direct agreements, amendments and any other documents and information reasonably requested in connection with the debt or equity (including tax equity) financing of the Facility.

8.11 **Escrow Account**.

(a) If requested by Seller, the Parties shall negotiate in good faith and enter into a three-party escrow arrangement (an "**Escrow Agreement**") with a mutually agreeable financial institution or other creditworthy escrow agent pursuant to a written agreement under which Seller shall deposit any cash to be paid to or provided to Buyer as Development Security, Performance Security, Commercial Operation Delay Damages and Daily Delay Damages, if applicable, (an

"**Escrow Account**").

(b) Buyer shall have the unconditional right to draw on the Development Security, Performance Security, Commercial Operation Delay Damages and Daily Delay Damages as expressly set forth in this Agreement and the terms of the Escrow Agreement.

(c) Seller shall have the unconditional right to withdraw funds from the Escrow Account upon the occurrence of a failure by Buyer to make any payment to Seller when due under this Agreement, and Buyer agrees to release its Security Interest with respect to such funds (and to take all action required to effectuate such release). Within ten (10) days following any such draw by Seller, Buyer shall replenish the Escrow Account to its prior amount.

ARTICLE 9
NOTICES

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

9.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail or other electronic means) at the time indicated by the time stamp upon delivery and, if after 5 pm, on the next Business Day; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 10
FORCE MAJEURE

10.1 **Definition**.

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of 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; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; changes in Law that render this Agreement or any provisions hereof incapable of (or delayed in) being performed or administered civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions or changes in Law that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including an increase in component or compliance costs for any reason, including foreign or domestic tariffs, Buyer's ability to buy Product 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, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility, including the lack of wind, sun or other fuel source of an inherently intermittent nature, except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility; (vii) any equipment failure, except if such equipment failure is caused by a Force Majeure Event; or (viii) any action or inaction by any third party, including Transmission Provider, that delays or prevents the approval, construction or placement in service of any Interconnection Facilities or Network Upgrades, except to the extent caused by a Force Majeure Event.

10.2 **No Liability If a Force Majeure Event Occurs**. Except as provided in Section 4 of Exhibit B, neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with commercially reasonable speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use commercially reasonable speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the Party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

10.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other

Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

10.4 **Termination Following Force Majeure Event**.

(a) At any time prior to the Commercial Operation Date, if the cumulative extensions granted under the Development Cure Period following the Effective Date of this Second Amended and Restated Renewable Power Purchase Agreement (other than the extensions granted pursuant to clause 4(c) in Exhibit B) equal or exceed one hundred twenty (120) days, and Seller has demonstrated to Buyer's reasonable satisfaction that such delays did not result from Seller's commercially unreasonable actions (or failure to take commercially reasonable actions), then Seller may terminate this Agreement upon Notice to Buyer. Upon 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 (ii) that Seller will pay to Buyer the total amount of all payments received by Seller to cover its Incremental Costs and/or Non-Incremental Costs, as applicable, pursuant to Section 3.13(c). Buyer shall promptly return to Seller any Development Security then held by Buyer, less any amounts drawn in accordance with this Agreement. For avoidance of doubt, Development Cure Period days approved under the Original PPA and A&R PPA prior to the Effective Date of this Second Amended and Restated Renewable Power Purchase Agreement shall not apply to this Section 10.4(a). For further avoidance of doubt, any termination in accordance with this Section ARTICLE 213.4(a) is subject to Section 11.6.

(b) 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 in any material respect, and the impacted Party has claimed and received relief from performance of its obligations for a consecutive twelve (12) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party. Upon any such termination, neither Party shall have any liability to the other Party, save and except for those obligations specified in Section 2.1(b), and Buyer shall promptly return to Seller any Performance Security then held by Buyer, less any amounts drawn in accordance with this Agreement.

ARTICLE 11
DEFAULTS; REMEDIES; TERMINATION

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

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

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

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof (or such longer additional period, not to exceed an additional sixty (60) days, if the Defaulting Party is unable to remedy such default within such initial thirty (30)-day 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 any provision hereof that provides for a liquidated or other exclusive remedy, the exclusive remedy for which shall be that set forth in such provision) 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) day period despite exercising commercially reasonable efforts);

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Article 14, if 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 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 (A) achieve Construction Start on or before the Guaranteed Construction Start Date as may be extended by Seller's payment of Daily Delay Damages pursuant to Section 1(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B, or (B) achieve Commercial Operation on or before the Guaranteed Commercial Operation Date, as such date may be extended by Seller's payment of Commercial Operation Delay Damages pursuant to Section 2(b) of Exhibit B and/or a Development Cure Period pursuant to Section 4 of Exhibit B;

(iii) if, in any Contract Year beginning with the second Contract Year, the Adjusted Energy Production (calculated in accordance with Exhibit G) for such period is not at least fifty percent (50%) of the Expected Energy for such Contract Year, 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 fifty percent (50%) 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 ("**Cure Plan**") and (y) complete such Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(iv) if, in any two (2) consecutive Contract Years during the Delivery Term, the Annual Storage Capacity Availability multiplied by the weighted average Effective Storage Capacity of the applicable period 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 such 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; *provided*, in the event of a Force Majeure Event, so long as Seller complies with the applicable requirements of Article 10, any unavailability of the Storage Facility caused by a Force Majeure Event for which Seller is the claiming party shall be excluded from the calculation of Annual Storage Capacity Availability and weighted average Effective Storage Capacity for purposes of determining whether a Seller Event of Default has occurred under this Section 11.1(b)(iv). If a Force Majeure Event prevents Seller from completing a Storage Cure Plan within one hundred eighty (180) days, the time period for Seller to complete such Storage Cure Plan shall be extended by the period of such Force Majeure Event, up to an additional one hundred eighty (180) days;

(v) if, over any rolling twelve (12) month period, the average Efficiency Rate is less than seventy percent (70%) and Seller fails to (a) 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 such seventy percent (70%) 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 ("**RTE Cure Plan**") and (y) complete such RTE Cure Plan in all material respects as set forth therein, including within the timeframe set forth therein;

(vi) failure by Seller to satisfy the collateral requirements pursuant to Sections 8.7 or 8.8 within five (5) Business Days after Notice from Buyer, including the failure to replenish the Performance Security amount in accordance with this Agreement in the event Buyer draws against it for any reason other than to satisfy a Termination Payment;

(vii) 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;

(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.

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

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

(b) to accelerate all amounts owing between the Parties, and to collect as liquidated damages (i) the Damage Payment, or (ii) the Termination Payment, as applicable, in each case calculated in accordance with Section 11.3 below;

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

(d) to suspend performance; and

(e) to exercise any other right or remedy available at law or in equity, including specific performance or injunctive relief, except to the extent such remedies are expressly limited under this Agreement; *provided*, that payment by the Defaulting Party of the Damage Payment or Termination Payment, as applicable, shall constitute liquidated damages and the Non-Defaulting Party's sole and exclusive remedy for any Terminated Transaction and the Event of Default related thereto. For the avoidance of doubt, any termination by Buyer in accordance with this Section 11.2 is subject to Section 11.6.

11.3 **Damage Payment; Termination Payment**. If an Early Termination Date has been declared, the Non-Defaulting Party shall calculate, in a commercially reasonable manner, the Damage Payment or Termination Payment, as applicable, in accordance with this Section 11.3.

(a) Damage Payment Prior to Commercial Operation Date. If the Early Termination Date occurs before the Commercial Operation Date, then the Damage Payment shall be calculated in accordance with this Section 11.3(a).

(i) If Seller is the Defaulting Party, then the Damage Payment shall be owed to Buyer and shall be equal to the sum of (A) entire Development Security amount and any interest accrued thereon, plus (B) the total amount of all Delay Damages accrued and unpaid as of the Early Termination Date, plus (C) the total amount of all payments received by Seller to cover its Incremental Costs and/or Non-Incremental Costs, as applicable, pursuant to Section 3.13(c), if any. Buyer shall be entitled to immediately retain for its own benefit those funds held as Development Security and any interest accrued thereon, and any amount of Development Security that Seller has not yet posted with Buyer will be immediately due and payable by Seller to Buyer. There will be no amounts owed to Seller. The Parties agree that Buyer's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Seller's default

would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(i) are a reasonable approximation of Buyer's harm or loss.

(ii) If Buyer is the Defaulting Party, then the Damage Payment shall be owed to Seller and shall equal (A) the sum of (i) all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) incurred or paid by Seller or its Affiliates, from the Original Effective Date through the Early Termination Date, directly in connection with the Facility (including in connection with acquisition, development, financing and construction thereof) plus (ii) without duplication of any costs or expenses covered by preceding clause (i), all actual, documented and verifiable costs and expenses (including out-of-pocket administrative expenses and cost of equity funding (but excluding overhead)) which have been actually incurred, or become payable, by Seller or its Affiliates between the Early Termination Date and the date that Notice of the Damage Payment is provided by Seller to Buyer pursuant to Section 11.4, directly in connection with the Facility and arising out of the termination of this Agreement, including all Facility-related debt and other financing repayment obligations (and including all pre-payment penalties, accelerated payments, make-whole payments and breakage costs), and all other termination payments and other similar or related payments, costs or expenses in connection with the Facility, including in connection with financing, construction and equipment supply contracts, land rights contracts, and other Facility contracts and matters, in each case pursuant to and provided for in agreements that are in effect as of the Early Termination Date or entered into thereafter in order to mitigate or minimize the aggregate costs and expenses hereunder, less (B) the sum of (i) fair market value (determined in a commercially reasonable manner by third-party independent evaluator mutually agreed by the Parties (or absent such agreement, by a third-party independent evaluator mutually agreed by two independent evaluators, one selected by each of the Parties), but at Buyer's sole cost), net of all Facility-related liabilities and obligations (without duplication of any of the liabilities and obligations set forth in Section 11.3(a)(ii)(A)), of (a) all Seller's assets if sold individually, or (b) the entire Facility, whichever is greater, regardless of whether or not any Seller asset or the entire Facility is actually sold or disposed of plus (ii) the total amount of all payments received by Seller to cover its Incremental Costs and/or Non-Incremental Costs, as applicable, pursuant to Section 3.13(c), if any, that have not, as of the Early Termination Date, either been paid to third parties or accrued for payment to third parties. There will be no amount owed to Buyer. The Parties agree that Seller's damages in the event of an Early Termination Date prior to the Commercial Operation Date caused by Buyer's default would be difficult or impossible to determine and that the damages set forth in this Section 11.3(a)(ii) are a reasonable approximation of Seller's harm or loss.

(b) Termination Payment On or After the Commercial Operation Date. The payment owed by the Defaulting Party to the Non-Defaulting Party for a Terminated Transaction occurring after the Commercial Operation Date ("**Termination Payment**") 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 Seller is the Defaulting Party, then the Termination Payment shall also include the total amount of all payments received by Seller to cover its Incremental Costs and/or Non-Incremental Costs, as applicable, pursuant to Section 3.13(c), if any. 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 (i) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (ii) the Termination Payment described in this Section 11.3(b) is a reasonable and appropriate approximation of such damages, and (iii) the Termination Payment described in this Section 11.3(b) is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

11.4 **Notice of Payment of Termination Payment or Damage Payment**. As soon as practicable after a Terminated Transaction, but in no event later than sixty (60) days after the Early Termination Date (or such longer additional period, not to exceed an additional sixty (60) days, if the Non-Defaulting Party is unable to calculate the Termination Payment or Damage Payment, as applicable, within such initial sixty (60) days period despite exercising commercially reasonable efforts), Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Damage Payment or Termination Payment, as applicable, and whether the Termination Payment or Damage Payment, as applicable, 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 or Damage Payment, as applicable, shall be made to or from the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

11.5 **Disputes with Respect to Termination Payment or Damage Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment or Damage Payment, as applicable, 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 or Damage Payment, as applicable, provide to the Non-Defaulting Party a detailed written explanation of the basis for such dispute. Disputes regarding the Termination Payment or Damage Payment, as applicable, shall be determined in accordance with Article 15.

11.6 **Limitation on Seller's Ability to Make or Agree to Third-Party Sales from the Facility after Early Termination Date**. If the Agreement is terminated by either Party prior to the Commercial Operation Date for any reason other than due to Buyer'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, unless prior to selling, marketing or delivering such Product, or entering into the agreement to sell, market or deliver such Product to a party other than Buyer, Seller or Seller's Affiliates provide Buyer with a written offer to sell the Product on terms and conditions materially similar to the terms and conditions contained in this Agreement (including price), and Buyer fails to accept such offer within forty-five (45) days of Buyer's receipt thereof. Neither Seller nor Seller's Affiliates may sell or transfer the Facility, or any part thereof, or land rights or interests in the Site (including the interconnection queue position of the Facility) so long as the limitations

contained in this Section 11.6 apply, unless the transferee agrees to be bound by the terms set forth in this Section 11.6 pursuant to a written agreement reasonably approved by Buyer. Seller shall indemnify and hold Buyer harmless from all benefits lost and other damages sustained by Buyer as a result of any breach by Seller of its covenants contained within this Section 11.6.

11.7 **Rights and Remedies are Cumulative**. Except as set forth in Section 4.8 and except where liquidated damages or other remedy are explicitly provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 11 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

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

11.9 **Buyer and Seller Pre-COD Termination Rights**.

(a) At any time prior to the earlier of (a) the Commercial Operation Date, and (b) Seller's acceptance of any payments to cover its Incremental Costs and/or Non-Incremental Costs, as applicable, pursuant to Section 3.13(c), Seller may for any reason, by Notice to Buyer pursuant to this Section 11.9, terminate this Agreement. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9 (a), Buyer shall be entitled (i) to liquidate and retain all Development Security, and (ii) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date, and (iii) to receive from Seller (and Seller shall be obligated to reimburse to Buyer) the total amount of all payments received by Seller to cover its Incremental Costs and/or Non-Incremental Costs, as applicable, pursuant to Section 3.13(c), if any.

(b) Within ten (10) Business Days after Seller's receipt from the CAISO of a Full Capacity Deliverability Status Finding or a Full Capacity Deliverability Status Failure, Seller shall provide Buyer Notice of the same, and if such Notice is of a Full Capacity Deliverability Status Failure, then Buyer may, by Notice to Seller provide within (10) Business Days after receipt of Seller's Notice, terminate this Agreement. If the CAISO has not sent Seller a Full Capacity Deliverability Status Finding or a Full Capacity Deliverability Status Failure by December 31, 2026, then Buyer may, by Notice to Seller within (10) Business Days terminate this Agreement. If CAISO has not sent Seller a Full Capacity Deliverability Status Finding or a Full Capacity Deliverability Status Failure by June 15, 2026, then the Milestones in the Cover Sheet shall be extended on a day for day basis until the earlier of a maximum of one hundred ninety-nine (199) days and the date CAISO sends Seller a Full Capacity Deliverability Status Finding or a Full Capacity Deliverability Status Failure. As Buyer's sole right and remedy (and Seller's sole liability and obligation) arising out of any such termination under this Section 11.9(b), Buyer shall be entitled (i) to liquidate and retain fifty percent (50%) of the Development Security, and (ii) to collect from Seller (and Seller shall be obligated to pay to Buyer) the total amount of all Delay Damages accrued and unpaid as of the Agreement termination date, and (iii) to receive from Seller (and Seller shall be obligated to reimburse to Buyer) the total amount of all payments received by Seller to cover its Incremental Costs and/or Non-Incremental Costs, as applicable, pursuant to Section 3.13(c), if any.

(c) Notwithstanding anything in this Agreement to the contrary, prior to the Commercial Operation Date, Seller's aggregate liability under this Agreement shall not exceed an amount equal to the sum of (i) one and one half (1.5) times the Development Security plus, (ii) the total amount of all payments received by Seller to cover its Incremental Costs and/or Non-Incremental Costs, as applicable, pursuant to Section 3.13(c), if any. For the avoidance of doubt, any termination in accordance with this Section 11.9 is subject to Section 11.6.

ARTICLE 12
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES

12.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF (A) AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, (B) AN ARTICLE 16 INDEMNITY CLAIM, (C) INCLUDED IN A LIQUIDATED DAMAGES CALCULATION, OR (D) RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT, 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 OR OTHERWISE.

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, INCLUDING UNDER SECTIONS 3.8, 4.7, 4.8, 11.2 AND 11.3, AND AS PROVIDED IN EXHIBIT B, EXHIBIT C, 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 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary 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.

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

(a) Buyer is a joint powers authority and a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission, 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, including but not limited to community choice aggregation, the Joint Powers Act, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

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

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

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

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

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

13.4 **Workforce Development**. The Parties acknowledge that in connection with Buyer's renewable energy procurement efforts, including entering into this Agreement, Buyer is committed to creating community benefits, which includes engaging a skilled and trained workforce and targeted hires. Accordingly, prior to the Guaranteed Construction Start Date, Seller shall ensure that work performed in connection with construction of the Facility will be conducted using a project labor agreement, community workforce agreement, work site agreement, collective bargaining agreement, or similar agreement providing for terms and conditions of employment with applicable labor organizations, and shall remain compliant with such agreement in accordance with the terms thereof. Seller shall comply with all federal, state and local laws, statutes, ordinances, rules and regulations, and the orders and decrees of any courts or administrative bodies or tribunals, including, without limitation employment discrimination laws and prevailing wage laws. Seller shall complete the "Supplier Diversity and Labor Practices" questionnaire provided by Buyer, and Seller agrees to comply with similar regular reporting requirements related to diversity and labor practices.

13.5 **Support for Pollinators**. Seller agrees to maintain the Site and to design, construct and operate the Facility in a manner that provides healthy habitats for bees, bats, butterflies, hummingbirds and other pollinators by undertaking the following pollinator habitat creation, restoration, and protection efforts:

(a) Seller shall provide to Buyer before the Construction Start Date a written narrative that describes the vegetation design and management plan for the Site, including landscape drawings and seed/plant listing.

(b) Within thirty (30) days of the Commercial Operation Date, Seller shall provide to Buyer a pollinator-friendly solar scorecard in the form attached as Exhibit S ("**Pollinator Scorecard**"). Seller shall use commercially reasonable efforts to achieve and maintain a score of at least seventy (70) on the Pollinator Scorecard during the Delivery Term.

(c) Within sixty (60) days after the end of each third (3rd) Contract Year during the Delivery Term, Seller shall provide to Buyer an updated Pollinator Scorecard.

(d) Seller shall use commercially reasonable efforts to consider, but is not required to implement, the following solar array design elements to encourage and support pollinator-friendly habitats: (i) 36-inch minimum height above ground of the lowest edge of the solar panels; (ii) burying conduits and wiring with homeruns tight to bottom of panels; (iii) designing inter-row access/spacing to enable vegetation management; and (iv) utilizing BeeWhere registration (https://beewherecalifornia.com/register-here/) if bee hives are placed at the Site.

ARTICLE 14
ASSIGNMENT

14.1 **General Prohibition on Assignments**. Except as provided below in this Article 14, neither Party may voluntarily assign this Agreement or its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed. Any 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*, 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 the 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 **Collateral Assignment**. Subject to the provisions of this Section 14.2, Seller has the right to assign this Agreement as collateral for any financing or refinancing of the Facility. In connection with any financing or refinancing of the Facility by Seller or any of Seller's Affiliates, Buyer shall in good faith work with Seller and Lender to agree upon a consent to collateral assignment of this Agreement ("**Collateral Assignment Agreement**"). The Collateral Assignment Agreement must be in form and substance agreed to by Buyer, Seller and Lender, with such agreement not to be unreasonably withheld, and must include, among others, the following provisions (with such changes as may be reasonably requested by Lenders):

(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*, 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 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.

(c) 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;

(d) Lender will have the right to cure an Event of Default on behalf of Seller, only if Lender sends a written notice to Buyer before the later of (i) the expiration of any cure period, and (ii) five (5) Business Days after Lender's receipt of notice of such Event of Default from Buyer, indicating Lender's intention to cure. Lender must remedy or cure the Event of Default within the cure period under this Agreement and any additional cure periods agreed in the Collateral Assignment Agreement up to a maximum of ninety (90) days (or one hundred eighty (180) days in the event of a Bankruptcy of Seller or any foreclosure or similar proceeding if required by Lender to cure any Event of Default);

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

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

(g) If Lender directly 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 remaining 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) 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;

(h) If Lender elects to sell or transfer the Facility (after Lender directly 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 remaining 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

(i) Subject to Lender's cure of any Events of Defaults under the Agreement required to be cured in accordance with Section 14.2(g), if (i) this Agreement is rejected in Seller's Bankruptcy or otherwise terminated in connection therewith Lender shall have the right to elect within forty-five (45) days after such rejection or termination, to enter into a replacement agreement with Buyer having substantially the same terms as this Agreement for the remaining term thereof, or (ii) if Lender or its designee, directly or indirectly, takes possession of, or title to, the Facility (including possession by a receiver or title by foreclosure or deed in lieu of foreclosure) after any such rejection or termination of this Agreement, promptly after Buyer's written request, Lender must itself or its designee must 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 **Permitted Assignment by Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller or (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); if, and only if:

(i) the assignee is a Permitted Transferee;

(ii) Seller has given Buyer Notice at least 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 and agreement by the assignee have 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*, 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 **Buyer Financing Assignment**. Notwithstanding anything to the contrary, Buyer may make a limited assignment to an entity ("**Limited Assignee**") that has, or provides a parent guaranty in form and substance reasonably acceptable to Seller from an entity with, an Investment Grade Credit Rating of Buyer's right to receive Product (which shall not be for retail sale) and its obligation to make payments to Seller, which assignment (a) shall be in a form reasonably agreed upon between Seller and Buyer and (b) is acceptable to the Lenders. Provided that Buyer delivers a proposed assignment agreement complying with the previous sentence, Seller agrees to comply with Limited Assignee's reasonable requests for know-your-customer and similar account opening information and documentation with respect to Seller, including but not limited to information related to forecasted generation and compliance with anti-money laundering rules, the Dodd-Frank Act, the Commodity Exchange Act, the Patriot Act and similar rules, regulations, requirements and corresponding policies. Limited Assignee and Buyer shall comply with all reasonable requests received by any Lender in connection with such limited assignment. Notwithstanding anything to the contrary herein, Buyer shall have the right to release and/or publish information related to any assignment made in accordance with this Section 14.5; *provided*, Buyer shall (i) provide a draft of the information it intends to release to Seller in accordance with Section 18.5, and (ii) not be permitted to release and/or publish any Confidential Information.

ARTICLE 15
DISPUTE RESOLUTION

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

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

15.3 **Attorneys' Fees**. In any proceeding brought to enforce this Agreement or because of the breach by any Party of any covenant or condition herein contained, the prevailing Party shall be entitled to reasonable attorneys' fees (including reasonably allocated fees of in-house counsel) in addition to court costs and any and all other costs recoverable in said action.

ARTICLE 16
INDEMNIFICATION

16.1 **Indemnification**.

(a) Each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, employees and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, and expenses (including reasonable attorneys' fees) (i) 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, or (ii) for third-party claims resulting from the Indemnifying Party's breach (including inaccuracy of any representation of warranty made hereunder), performance or non-performance of its obligations under this Agreement.

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

16.2 **Claims**.

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

ARTICLE 17
INSURANCE

17.1 **Insurance**

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations and personal injury insurance, in a minimum amount of One Million Dollars ($1,000,000) per

occurrence, and an annual aggregate of not less than Two Million Dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and including Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of Five Million Dollars ($5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Employers' Liability insurance shall not be less than One Million Dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With regard to bodily injury by disease, the One Million Dollar ($1,000,000) policy limit will apply to each employee.

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

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

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

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than One Million Dollars ($1,000,000); (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance for bodily injury and property damage with limits of One Million Dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 17.1(f).

(g) Evidence of Insurance. Within ten (10) days after execution of the Agreement and upon annual renewal thereafter, Seller shall deliver to Buyer certificates of insurance evidencing such coverage. Such certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. The general liability, auto liability and worker's compensation policies shall be endorsed with a waiver of subrogation in favor of Buyer for all work performed by Seller, its employees, agents and sub-contractors.

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

ARTICLE 18
CONFIDENTIAL INFORMATION

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

18.2 **Duty to Maintain Confidentiality**.

(a) The Party receiving Confidential Information (the "**Receiving Party**") from the other Party (the "**Disclosing Party**") shall not disclose Confidential Information to a third party (other than the Party's employees, lenders, counsel, accountants, directors or advisors, or any such representatives of a Party's Affiliates, who have a need to know such information and have agreed to keep such terms confidential) except in order to comply with any applicable Law, regulation, or any exchange, control area or independent system operator rule or in connection with any court or regulatory proceeding applicable to such Party or any of its Affiliates; *provided*, each Party shall, to the extent practicable, use reasonable efforts to prevent or limit the disclosure. The Parties shall be entitled to all remedies available at law or in equity to enforce, or seek relief in connection with, this confidentiality obligation. The Parties agree and acknowledge that nothing in this Section 18.2 prohibits a Party from disclosing any one or more of the commercial terms of a transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index.

(b) The Parties acknowledge and agree that the Agreement and any transactions entered into in connection herewith are subject to the requirements of the California Public Records Act (Government Code Section 6250 et seq.). In order to designate information as confidential, the Disclosing Party must clearly stamp and identify the specific portion of the material designated with the word "Confidential." The Parties agree not to over-designate material as Confidential Information. Over-designation includes stamping whole agreements, entire pages or series of pages as "Confidential" that clearly contain information that is not Confidential Information.

(c) Upon request or demand of any third person or entity not a Party hereto to Buyer pursuant to the California Public Records Act for production, inspection and/or copying of Confidential Information ("**Requested Confidential Information**"), Buyer will as soon as practical notify Seller in writing via email that such request has been made. Seller will be solely responsible for taking at its sole expense whatever legal steps are necessary to prevent release of the Requested Confidential Information to the third party by Buyer. If Seller takes no such action after receiving the foregoing notice from Buyer, Buyer shall, at its discretion, be permitted to comply with the third party's request or demand and is not required to defend against it. If Seller does take or attempt to take such action, Buyer shall provide timely and reasonable cooperation to Seller, if requested by Seller, and Seller agrees to indemnify and hold harmless Buyer, its officers, employees and agents ("**Buyer's Indemnified Parties**"), from any claims, liability, award of attorneys' fees, or damages, and to defend any action, claim or lawsuit brought against any of Buyer's Indemnified Parties for Buyer's refusal to disclose any Requested Confidential Information.

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

18.4 **Further Permitted Disclosure**. Notwithstanding anything to the contrary in this Article 18, Confidential Information may be disclosed by the Receiving Party to any of its or its Affiliates' agents, consultants, contractors, trustees, or actual or potential financing parties (including, in the case of Seller, its Lender(s)), so long as such Person to whom Confidential Information is disclosed agrees in writing to be bound by confidentiality provisions that are at least as restrictive as this Article 18 to the same extent as if it were a Party.

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

ARTICLE 19
MISCELLANEOUS

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

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

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

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

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

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

Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under applicable Law.

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

19.8 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party, and, if delivery is made by electronic format, the executing Party shall promptly deliver, via overnight delivery, a complete original counterpart that it has executed to the other Party, but this Agreement shall be binding on and enforceable against the executing Party whether or not it delivers such original counterpart.

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

19.10 **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 of 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 **Change in Electric Market Design**. If, after the Effective Date, a change in the CAISO Tariff renders this Agreement or any provisions hereof incapable of being performed or administered, then either 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 (or, in the case of preceding clause (ii), to maintain Seller's level of burdens or obligations under Section 3.8), in each case while attempting to preserve to the maximum extent possible the overall 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 the unaffected provisions of this Agreement shall remain in full force and effect during any period of such negotiation or dispute resolution.**Further Assurances**. Each of the Parties hereto agrees to provide such information, execute and deliver any instruments and documents and to take such other actions as may be necessary or reasonably requested by the other Party which are not inconsistent with the provisions of this Agreement and which do not involve the assumptions of obligations other than those provided for in this Agreement, to give full effect to this Agreement and to carry out the intent of this Agreement.

[Signatures on following page]

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

GIBSON RENEWABLES LLC		VALLEY CLEAN ENERGY ALLIANCE	
By:	_____	By:	_____
Name:	_____	Name:	_____
Title:	_____	Title:	_____

Signature Page

EXHIBIT A

FACILITY DESCRIPTION

Site Name: Gibson Solar

Site includes all or some of the following APNs: 049-100-035

City: Madison

County: Yolo

Zip Code: 95653

Latitude and Longitude: 38.680812°, -121.986841°

Facility Description: Gibson Solar facility will be constructed on a 147-acre vacant parcel of land located on State Highway 16 approximately 1 mile west of County Road 89 in an unincorporated area of Yolo County. It will consist of a 13 MW_{AC} (26.0 MW_{DC} solar photovoltaic Generating Facility DC-coupled with a 65 MWh (13 MW_{AC} x 5 hours) battery energy Storage Facility.

Delivery Point: Pnode for the Facility, and as reflected on the Metering Diagram in Exhibit R

Generating Facility Metering Points: See Metering Diagram in Exhibit R

Storage Facility Metering Points: See Metering Diagram in Exhibit R

P-node: As established by the CAISO.

Transmission Provider: Pacific Gas & Electric Company

Additional Information: See Site diagram on the next page.

Exhibit A - 2

EXHIBIT B

FACILITY CONSTRUCTION AND COMMERCIAL OPERATION

1. **Construction of the Facility**.

   a. "**Construction Start**" will occur upon Seller's acquisition of all applicable regulatory authorizations, approvals and permits for the construction of the Facility, and once Seller has engaged all contractors and ordered all essential equipment and supplies as, in each case, can reasonably be considered necessary so that physical construction of the Facility may begin and proceed to completion without foreseeable interruption of material duration, and has executed an engineering, procurement, and construction contract and issued thereunder a final notice to proceed that authorizes the contractor to mobilize to Site and begin physical construction (including, at a minimum, excavation for foundations or the installation or erection of improvements) at the Site. The date of Construction Start will be evidenced by and subject to Seller's delivery to Buyer of a certificate substantially in the form attached as Exhibit J hereto, and the date certified therein shall be the "**Construction Start Date**." Seller shall cause Construction Start to occur no later than the Guaranteed Construction Start Date.

   b. Seller may extend the Guaranteed Construction Start Date by paying Daily Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Construction Start Date, not to exceed a total of one hundred twenty (120) days of extensions by such payment of Daily Delay Damages (the "**Construction Start Permitted Delay Days**"). On or before the date that is ten (10) days prior to the then-current Guaranteed Construction Start Date Seller shall provide notice and payment to Buyer of the Daily Delay Damages for the number of days of extension to the Guaranteed Construction Start Date. If Seller achieves Commercial Operation on or before the Guaranteed Commercial Operation Date (including any extensions to such date resulting from Seller's payment of Commercial Operation Delay Damages, or as may be extended pursuant to a Development Cure Period), then Buyer shall refund to Seller all Daily Delay Damages paid by Seller.

2. **Commercial Operation of the Facility**. "**Commercial Operation**" means the condition existing when Seller has fulfilled all of the conditions precedent in Section 2.2 of the Agreement and provided Notice to Buyer substantially in the form of Exhibit H (the "**COD Certificate**").

   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 ninety (90) days before the anticipated Commercial Operation Date.

   b. Seller may extend the Guaranteed Commercial Operation Date by paying Commercial Operation Delay Damages to Buyer for each day Seller desires to extend the Guaranteed Commercial Operation Date, not to exceed a total of the

greater of (a) sixty (60) days or (b) an amount equal to one hundred twenty (120) days less the amount of Construction Start Permitted Delay Days that Seller elected to use to extend the Guaranteed Construction Start Date, of extensions by such payment of Commercial Operation Delay Damages (the "**Commercial Operation Start Permitted Delay Days**"). On or before the date that is ten (10) days prior to the then-current Guaranteed Commercial Operation Date Seller shall provide Notice and payment to Buyer of the Commercial Operation Delay Damages for the number of days of extension to the Guaranteed Commercial Operation Date. In no event shall Seller be obligated to pay aggregate Commercial Operation Delay Damages in excess of the Development Security amount required hereunder. The Parties agree that Buyer's receipt of Commercial Operation Delay Damages during the Commercial Operation Start Permitted Delay Days shall be Buyer's sole and exclusive remedy 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 receive a Damage Payment upon exercise of Buyer's default right pursuant to Section 11.2. If Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date as extended by the payment of Commercial Operation Delay Damages, Buyer shall refund to Seller the Commercial Operation Delay Damages for each day Seller achieves Commercial Operation prior to the Guaranteed Commercial Operation Date times the Commercial Operation Delay Damages, not to exceed the total amount of Commercial Operation Delay Damages paid by Seller pursuant to this Section 2(b).

3. **Termination for Failure to Achieve Commercial Operation**. If the Facility has not achieved Commercial Operation on or before the Guaranteed Commercial Operation Date (as may be extended hereunder), Buyer may elect to terminate this Agreement in accordance with Sections 11.1(b)(ii) and 11.2.

4. **Extension of the Guaranteed Dates**. The Guaranteed Construction Start Date and the Guaranteed Commercial Operation Date shall, subject to notice and documentation requirements set forth below, be automatically extended on a day-for-day basis (the "**Development Cure Period**") for the duration of any and all delays arising out of the following circumstances to the extent the following circumstances are not the result of Seller's failure to take all commercially reasonable actions to meet its requirements and deadlines:

   a. a Force Majeure Event occurs; or

   b. the Interconnection Facilities or Reliability Network Upgrades are not complete and ready for the Facility to receive approval for initial synchronization and to connect and sell Product at the Delivery Point by the date that is sixty (60) days prior to the Guaranteed Commercial Operation Date, despite the exercise of diligent and commercially reasonable efforts by Seller; or

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

acknowledged that an extension under this paragraph (c) shall not limit other rights and remedies Seller may have for any Buyer default).

Notwithstanding anything in this Agreement to the contrary, the cumulative extensions granted under the Development Cure Period (other than the extensions granted pursuant to clause 4(c) above) shall not exceed one hundred twenty (120) days, for any reason, including a Force Majeure Event; *provided*, the cumulative extensions granted to the Guaranteed Commercial Operation Date by the payment of Commercial Operation Delay Damages and any Development Cure Period(s) (other than the extensions granted pursuant to clause 4(c) above) shall not exceed two hundred ten (210) days. Upon request from Buyer, Seller shall provide documentation demonstrating to Buyer's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.

5. **Failure to Reach Guaranteed PV Capacity or Guaranteed Storage 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 ninety (90) 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-1 hereto specifying the new Installed PV Capacity. If Seller fails to construct the Guaranteed PV Capacity by such date, Seller shall pay "**PV Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW_{DC} that the Guaranteed PV Capacity exceeds the Installed PV Capacity.

   b. *Guaranteed Storage Capacity*. If, at Commercial Operation, the Installed Storage Capacity is less than one hundred percent (100%) of the Guaranteed Storage Capacity, Seller shall have ninety (90) 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 greater than) one hundred percent (100%) of the Guaranteed Storage Capacity, and Seller shall provide to Buyer a new certificate substantially in the form attached as Exhibit I-1 hereto specifying the new Installed Storage Capacity. If Seller fails to construct the Guaranteed Storage Capacity by such date, Seller shall pay "**Storage Capacity Damages**" to Buyer, in an amount equal to [redacted] for each MW_{AC} at five (5) hours of continuous discharge that the Guaranteed Storage Capacity exceeds the Installed Storage Capacity.

   Capacity Damages shall not be offset or reduced by the payment of Development Security, Performance Security, Delay Damages, or any other form of liquidated damages under this Agreement.

6. **Buyer's Right to Draw on Development Security**. If Seller fails to timely pay any Daily Delay Damages or Commercial Operation Delay Damages, Buyer may draw upon the Development Security to satisfy Seller's payment obligation thereof.

EXHIBIT C

COMPENSATION

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

(a) Renewable Rate. Buyer shall pay Seller the Renewable Rate for each MWh of Adjusted Facility Energy, plus Deemed Delivered Energy (excluding any Deemed Delivered Energy resulting from Buyer Curtailment Orders up to the Curtailment Cap in each Contract Year), if any, up to one hundred fifteen percent (115%) of the Expected Energy for such Contract Year.

(b) Excess Contract Year Deliveries Over 115%. Notwithstanding the foregoing, if at any point in any Contract Year, the amount of Adjusted Facility Energy plus Deemed Delivered Energy for which Buyer has paid the Renewable Rate exceeds one hundred fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy and/or Deemed Delivered Energy over one hundred fifteen percent (115%) of the Expected Energy for such Contract Year shall be [redacted]/MWh.

(c) Excess Settlement Interval Deliveries. If during any Settlement Interval, Seller delivers Adjusted Facility Energy in excess of the product of the Interconnection Capacity Limit and the duration of the Settlement Interval, expressed in hours ("**Excess MWh**"), then the price applicable to all such Excess MWh in such Settlement Interval shall be [redacted] 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.

(d) Monthly Capacity Payment.

(i) Each calendar 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 Storage Rate x Effective Storage Capacity. Such payment constitutes the entirety of the amount due to Seller from Buyer for the Storage Product. If the Effective Storage Capacity and/or Efficiency Rate are adjusted pursuant to a Storage Capacity Test other than on the first day of a calendar month, payment shall be calculated separately for each portion of the month in which the different Effective Storage Capacity and/or Efficiency Rate are applicable.

(ii) Storage Capacity Availability Payment True-Up. Each month during the Delivery Term, Seller shall calculate the year-to-date (YTD) Annual Storage Capacity Availability for the applicable Contract Year in accordance with Exhibit P. If (A) such YTD Annual Storage Capacity Availability is less than ninety percent (90%), or (B) the final Annual Storage Capacity Availability is less than the Guaranteed Storage Availability, Seller shall (1) provide a credit to Buyer on Seller's next monthly invoice for the Storage Capacity Availability Payment True-Up Amount (the "**Storage Capacity Availability Payment True-Up**"), and (2) provide Buyer 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, Seller shall not be obligated to provide a credit to Buyer for any Storage Capacity Availability Payment True-Up Amount, except

as set forth in the following sentence. If Seller credits to Buyer 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, Seller shall charge to Buyer the positive value of such amount together with the next Monthly Capacity Payment owed by Buyer.

"**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 Annual Storage Capacity Availability times the Effective Storage Capacity is equal to or greater than the Guaranteed Storage Availability times the Effective Storage Capacity, then:

Capacity Availability Factor = 0

(B) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than the Guaranteed Storage Availability times the Effective Storage Capacity, but greater than or equal to seventy percent (70%) of the Installed Storage Capacity, then:

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

(C) If the YTD Annual Storage Capacity Availability times the Effective Storage Capacity is less than seventy percent (70%) of the Installed Storage Capacity, then:

Capacity Availability Factor = (Guaranteed Storage Availability – YTD Annual Storage Capacity Availability) * 1.5 – (Force Majeure Unavailability * 0.5)

"**Force Majeure Unavailability**" means total YTD unavailable Calculation Intervals that resulted from a Force Majeure Event for which Seller is the claiming party divided by the total YTD Calculation Intervals.

(e) Liquidated Damages for Failure to Achieve Guaranteed Efficiency Rate. If during any month during the Delivery Term, the Efficiency Rate for such month is less than the Guaranteed Efficiency Rate, Seller shall owe liquidated damages to Buyer, which damages shall

be calculated by multiplying (i) the total Charging Energy for such month, times (ii) the percentage amount by which the Efficiency Rate is less than the Guaranteed Efficiency Rate, times (iii) the Renewable Rate.

(f) Test Energy. Test Energy is compensated in accordance with Section 3.6.

(g) Tax Credits. 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 construction of the Facility (or any portion thereof) or the sale of Facility Energy is eligible for, or receives Tax Credits during the Contract Term.

EXHIBIT D

SCHEDULING COORDINATOR RESPONSIBILITIES

Scheduling Coordinator Responsibilities.

(i) Buyer as Scheduling Coordinator for the Facility. Upon Initial Synchronization of the Facility to the CAISO Grid, Buyer shall be the Scheduling Coordinator or designate a qualified third party to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of Test Energy and the Product at the Delivery Point. At least thirty (30) days prior to the Initial Synchronization of the Facility to the CAISO Grid, (i) Seller shall take all actions and execute and deliver to Buyer and the CAISO all documents necessary to authorize or designate Buyer (or Buyer's designee) as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid, and (ii) Buyer shall, and shall cause its designee to, take all actions and execute and deliver to Seller and the CAISO all documents necessary to authorize or designate Buyer or its designee as the Scheduling Coordinator for the Facility effective as of the Initial Synchronization of the Facility to the CAISO Grid. On and after Initial Synchronization of the Facility to the CAISO Grid, Seller shall not authorize or designate any other party to act as the Facility's Scheduling Coordinator, nor shall Seller perform for its own benefit the duties of Scheduling Coordinator, and Seller shall not revoke Buyer's authorization to act as the Facility's Scheduling Coordinator unless agreed to by Buyer. Buyer (as the Facility's SC) shall submit bids 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, real-time or other market basis that may develop after the Effective Date, as determined by Buyer consistent with the CAISO Tariff.

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

(iii) CAISO Costs and Revenues. Except as otherwise set forth in this paragraph, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for CAISO costs (including penalties, Imbalance Energy costs or revenues, and other charges) and shall be entitled to all CAISO revenues (including credits, Imbalance Energy revenues or costs, and other payments), including revenues associated with CAISO dispatches, bid cost recovery, Inter-SC Trade credits, or other credits in respect of the Product Scheduled or delivered from the Facility. 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 Seller and for Seller's account and that any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for

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

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

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

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

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

(viii) NERC Reliability Standards. Buyer (as Scheduling Coordinator) shall cooperate reasonably with Seller, or cause its designated SC to 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) or its designated SC, as applicable, has provided to the CAISO related to the Facility or actions taken by Buyer (as

Scheduling Coordinator) or its designated SC, as applicable, related to Seller's compliance with NERC reliability standards.

EXHIBIT E

PROGRESS REPORTING FORM

Each Progress Report must include the following items:

1. Executive Summary.

2. Facility description.

3. Site plan of the Facility.

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

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

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

7. Forecast of activities scheduled for the current calendar quarter.

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

9. List of issues that are reasonably likely to affect Seller's Milestones.

10. A status report of start-up activities including a forecast of activities ongoing and after start-up, a report on Facility performance including performance projections for the next twelve (12) months.

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

12. Pictures, in sufficient quantity and of appropriate detail, in order to document construction and startup progress of the Facility, the interconnection into the Transmission System and all other interconnection utility services.

13. Workforce Development or Supplier Diversity Reporting (if applicable). Format to be provided by Buyer.

14. Any other documentation reasonably requested by Buyer.

EXHIBIT F

FORM OF ANNUAL EXPECTED AVAILABLE GENERATING FACILITY CAPACITY REPORT

[MW Per Hour]

	1:00	2:00	3:00	4:00	5:00	6:00	7:00	8:00	9:00	10:00	11:00	12:00	13:00	14:00	15:00	16:00	17:00	18:00	19:00	20:00	21:00	22:00	23:00	24:00
JAN																								
FEB																								
MAR																								
APR																								
MAY																								
JUN																								
JUL																								
AUG																								
SEP																								
OCT																								
NOV																								
DEC																								

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

EXHIBIT G

GUARANTEED ENERGY PRODUCTION DAMAGES CALCULATION

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

[(A – B) * (C – D)]

where:

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

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

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

D = the Renewable Rate, in $/MWh

"**Adjusted Energy Production**" shall mean the sum of the following: Adjusted Facility Energy + Deemed Delivered Energy + Lost Output + Replacement Product.

"**Replacement Energy**" means energy produced by a facility other than the Facility, that is provided by Seller to Buyer as Replacement Product, in an amount equal to the amount of Replacement Green Attributes provided by Seller as Replacement Product for the same Performance Measurement Period.

"**Replacement Green Attributes**" means PCC1 Renewable Energy Credits with the same year of production as the Renewable Energy Credits that would have been generated by the Facility.

"**Replacement Product**" means (a) Replacement Energy, and (b) Replacement Green Attributes in an amount not to exceed ten percent (10%) of the Expected Energy for the previous Contract Year.

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

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

EXHIBIT H

FORM OF COMMERCIAL OPERATION DATE CERTIFICATE

This certification ("**Certification**") of Commercial Operation is delivered by _____[*licensed professional engineer*] ("**Engineer**") to Valley Clean Energy Alliance, a California joint powers authority (**"Buyer"**) in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Gibson Renewables LLC, a California limited liability company and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

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

13.4 The Generating Facility is fully operational, reliable and interconnected, fully integrated and synchronized with the Transmission System.

13.4 Seller has installed equipment for the Generating Facility with an Installed PV Capacity of no less than ninety-five percent (95%) of the Guaranteed PV Capacity.

13.4 Seller has installed equipment for the Storage Facility with an Installed Storage Capacity of no less than ninety-five percent (95%) of the Guaranteed Storage Capacity.

13.4 Authorization to parallel the Facility was obtained by the Transmission Provider, [Name of Transmission Provider as appropriate] on___[DATE]____.

13.4 The Transmission Provider has provided documentation supporting full unrestricted release for Commercial Operation by [Name of Transmission Provider as appropriate] on _____[DATE]_____.

13.4 The CAISO has provided notification supporting Commercial Operation, in accordance with the CAISO Tariff on _____[DATE]_____.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT I-1

FORM OF INSTALLED CAPACITY CERTIFICATE

This certification ("**Certification**") of installed capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("**Engineer**") to Valley Clean Energy Alliance, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Gibson Renewables LLC, a California limited liability company and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The installed nameplate capacity of the Generating Facility is __ MW_{DC} ("**Installed PV Capacity**");

(b) The Commercial Operation Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW_{AC} to the Delivery Point at five (5) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O (the "**Installed Storage Capacity**"); and

(c) The Commercial Operation Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT I-2

FORM OF EFFECTIVE STORAGE CAPACITY CERTIFICATE

This certification ("**Certification**") of Effective Storage Capacity and related characteristics of the Facility is delivered by [licensed professional engineer] ("**Engineer**") to Valley Clean Energy Alliance, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Gibson Renewables LLC, a California limited liability company and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

I hereby certify the following:

(a) The Storage Capacity Test demonstrated a maximum dependable operating capability to discharge electric energy of __ MW_{AC} to the Delivery Point at five (5) hours of continuous discharge, in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O of the Agreement (the "**Effective Storage Capacity**"); and

(b) The Storage Capacity Test demonstrated (i) a Battery Charging Factor of __%, and (ii) a Battery Discharging Factor of __%, each in accordance with the testing procedures, requirements and protocols set forth in Section 4.9 and Exhibit O.

EXECUTED by **[**LICENSED PROFESSIONAL ENGINEER**]**

this _____ day of _____, 20__.

[LICENSED PROFESSIONAL ENGINEER**]**

By:_____

Its:_____

Date:_____

EXHIBIT J

FORM OF CONSTRUCTION START DATE CERTIFICATE

This certification of Construction Start Date ("**Certification**") is delivered by Gibson Renewables LLC, a California limited liability company ("**Seller**") to Valley Clean Energy Alliance, a California joint powers authority ("**Buyer**") in accordance with the terms of that certain Renewable Power Purchase Agreement dated _____ ("**Agreement**") by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller hereby certifies and represents to Buyer the following:

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

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

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

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

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

GIBSON RENEWABLES LLC

By:_____
Its:_____

Date:_____

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:

APPLICANT DETAILS TO BE PROVIDED

Beneficiary:

Valley Clean Energy Alliance, a California joint powers authority

[Address]

Ladies and Gentlemen:

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

Funds under this Letter of Credit are available to Beneficiary by presentation on or before the Expiration Date of a dated statement signed by your duly authorized signatory -, 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. [XXXXXXX] ("Drawing Certificate").

The Drawing Certificate may be presented by (a) physical delivery, or (b) facsimile to [bank fax number [XXX-XXX-XXXX]] confirmed by [e-mail to [*bank email address*]] (if presented by fax it must be followed up by a phone call to us at [XXXXXX] or [XXXXXX] to confirm receipt). The drawing will be effective upon our receipt of the original documents at the above noted address.

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 documents presented under and in compliance with the terms of this Letter of Credit 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 registered mail or 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 is subject to the Uniform Customs and Practice for Documentary Credits (2007 Revision) International Chamber of Commerce Publication No. 600 (the "UCP"), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Articles 14(b) and 36 of the UCP, in which case the terms of this Letter of Credit shall govern. In the event of an act of God, riot, civil commotion, insurrection, war or any other cause beyond Issuer's control (as defined in Article 36 of the UCP) that interrupts Issuer's business and causes the place for presentation of the Letter of Credit to be closed for business on the last day for presentation, the Expiration Date of the Letter of Credit will be automatically extended without amendment to a date thirty (30) calendar days after the place for presentation reopens for business.

Please address all correspondence regarding this Letter of Credit to the attention of the 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-XXX-XXXX] and have this Letter of Credit available.

All notices to Beneficiary shall be in writing and are required to be sent by certified letter, overnight courier, or delivered in person to: Valley Clean Energy Alliance, Chief Operating Officer, [Address]. Only notices to Beneficiary meeting the requirements of this paragraph shall be considered valid. Any notice to Beneficiary which is not in accordance with this paragraph shall be void and of no force or effect.

[Bank Name]

_____

[Insert officer name]

[Insert officer title]

Exhibit A: (DRAW REQUEST SHOULD BE ON BENEFICIARY'S LETTERHEAD)

Drawing Certificate

[Insert Bank Name and Address]

Ladies and Gentlemen:

The undersigned, a duly authorized representative of Valley Clean Energy Alliance, a California joint powers authority, [Buyer address], as beneficiary (the "Beneficiary") of the Irrevocable Letter of Credit No. [XXXXXXX] (the "Letter of Credit") issued by [insert bank name] (the "Bank") by order of _____ (the "Applicant"), hereby certifies to the Bank as follows:

1. Applicant and Beneficiary are party to that certain Agreement dated as of _____, (the "Agreement").

2. Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____ because a Seller Event of Default (as such term is defined in the Agreement) or other occasion provided for in the Agreement where Beneficiary is authorized to draw on the letter of credit has occurred.

OR

Beneficiary is making a drawing under this Letter of Credit in the amount of U.S. $_____, which equals the full available amount under the Letter of Credit, because we have received notice from the Bank that you have elected not to extend the Expiration Date of the Letter of Credit beyond its current Expiration Date and Applicant is required to maintain the Letter of Credit in force and effect beyond the expiration date of the Letter of Credit but has failed to provide Beneficiary with a replacement Letter of Credit or other acceptable instrument within thirty (30) days prior to such expiration date.

3. The undersigned is a duly authorized representative of Valley Clean Energy Alliance, a California joint powers authority and is authorized to execute and deliver this Drawing Certificate on behalf of Beneficiary.

You are hereby directed to make payment of the requested amount to Valley Clean Energy Alliance, a California joint powers authority by wire transfer in immediately available funds to the following account:

[Specify account information]

Valley Clean Energy Alliance

_____

Name and Title of Authorized Representative

Date_____

EXHIBIT L
FORM OF GUARANTY

This Guaranty (this ***"Guaranty"***), is entered into as of _____, ____ (the ***"Effective Date"***), by and between [_____], a [_____] (***"Guarantor"***), in favor of VALLEY CLEAN ENERGY ALLIANCE, a California joint powers authority (***"Counterparty"***).

RECITALS

WHEREAS, Counterparty and [_____], a [_____] (***"Obligor"***) have entered into that certain Renewable Power Purchase Agreement dated as of _____, ____ (as amended, restated or otherwise modified from time to time, the ***"Agreement"***); and

WHEREAS, Guarantor will directly or indirectly benefit from the transaction to be entered into between Obligor and Counterparty pursuant to the Agreement.

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

NOW THEREFORE, in consideration of the foregoing premises and as an inducement for Counterparty's execution, delivery and performance of the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Guarantor hereby agrees for the benefit of Counterparty as follows:

1. ***Guaranty.*** Subject to the terms and provisions hereof, Guarantor hereby absolutely and irrevocably guarantees the timely payment when due of all obligations owing by Obligor to Counterparty arising pursuant to the Agreement (and giving effect to any applicable grace or cure period) on or after the Effective Date (the ***"Guaranteed Obligations"***). This Guaranty shall constitute a guarantee of payment and not merely of collection. The liability of Guarantor under this Guaranty shall be primary to the Guarantor and unconditional subject to the following limitations:

(a) Notwithstanding anything herein or in the Agreement to the contrary, the maximum aggregate obligation and liability of Guarantor under this Guaranty, and the maximum recovery from Guarantor under this Guaranty, shall in no event exceed _____ Dollars ($_____), exclusive of Counterparty's costs of collection and enforcement under Section 1(b) (the ***"Maximum Recovery Amount"***). This Guaranty is a continuing guaranty of payment and shall apply to all Guaranteed Obligations whenever arising.

(b) The obligation and liability of Guarantor under this Guaranty is specifically limited to payments expressly required to be made under the Agreement, as well as costs of collection and enforcement of this Guaranty (including reasonable attorney's fees) to the extent reasonably and actually incurred by the Counterparty. In no event, however, shall Guarantor be liable for or obligated to pay any consequential, indirect, incidental, lost profit, special, exemplary, punitive, equitable or tort damages, except to the extent such damages are allowed under the Agreement.

2. ***Demands and Payment.***

(a) If Obligor fails to pay any Guaranteed Obligation to Counterparty when such Obligation is due and owing under the Agreement, Counterparty may present a written demand to Guarantor calling for Guarantor's payment of such Guaranteed Obligation pursuant to this Guaranty (a ***"Payment Demand"***).

(b) Guarantor's obligation hereunder to pay any particular Guaranteed Obligation(s) to Counterparty is conditioned upon Guarantor's receipt of a Payment Demand from Counterparty satisfying the following requirements: (i) such Payment Demand must identify the specific Guaranteed Obligation(s) covered by such demand, the specific date(s) upon which such Guaranteed Obligation(s) became due and owing under the Agreement, and the specific provision(s) of the Agreement pursuant to which such Guaranteed Obligation(s) became due and owing; (ii) such Payment Demand must be delivered to Guarantor in accordance with Section 9 below; and (iii) the specific Guaranteed Obligation(s) addressed by such Payment Demand must remain due and unpaid at the time of such delivery to Guarantor.

(c) After issuing a Payment Demand in accordance with the requirements specified in Section 2(b) above, Counterparty shall not be required to issue any further notices or make any further demands with respect to the Guaranteed Obligation(s) specified in that Payment Demand, and Guarantor shall be required to promptly make payment with respect to the Guaranteed Obligation(s) specified in that Payment Demand, but in no event later than ten (10) Business Days after Guarantor receives such demand. As used herein, the term "Business Day" shall mean all weekdays (i.e., Monday through Friday) other than any weekdays during which commercial banks or financial institutions are authorized to be closed to the public in the State of California or the State of New York.

3. ***Representations and Warranties.*** Guarantor represents and warrants that:

(a) it is a ***[_____]*** duly organized and validly existing under the laws of the State of ***[_____]*** and has the corporate power and authority to execute, deliver and carry out the terms and provisions of the Guaranty;

(b) no authorization, approval, consent or order of, or registration or filing with, any court or other governmental body having jurisdiction over Guarantor is required on the part of Guarantor for the execution and delivery of this Guaranty; and

(c) this Guaranty constitutes a valid and legally binding agreement of Guarantor, enforceable against Guarantor in accordance with the terms hereof, except as the enforceability thereof may be limited by the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

4. ***No Counterclaims or Setoffs; Deferral of Defenses.*** The obligations of the Guarantor to the Counterparty hereunder shall not be subject to any counter-claim, set-off, withholding, or deduction unless required by applicable law, and shall not be affected by any circumstance which constitutes a legal or equitable discharge of a guarantor other than the

satisfaction of the Guaranteed Obligations. A separate action or actions may be brought against the Guarantor whether or not any action is brought against the Obligor under the Agreement and whether or not the Obligor is joined in any such action or actions. Guarantor reserves to itself all rights, setoffs, counterclaims and other defenses to which Obligor is or may be entitled arising from or out of the Agreement, except for defenses (if any) based upon the bankruptcy, insolvency, dissolution or liquidation of Obligor, any lack of power or authority of Obligor to enter into and/or perform the Agreement, and other defenses expressly waived by in this Guaranty.

5. ***Amendments.*** Guarantor agrees that the Counterparty and the Obligor may modify, amend and supplement the Agreement and that the Counterparty may delay or extend the date on which any payment must be made pursuant to the Agreement or delay or extend the date on which any act must be performed by the Obligor thereunder, waive, exercise or refrain from exercising any rights against the Obligor, or subordinate any obligation or liability of the Obligor to the Counterparty, including any security therefor, all without notice to or further assent by the Guarantor, who shall remain bound by this Guaranty, notwithstanding any such act by the Counterparty. No term or provision of this Guaranty shall be amended, modified, altered, waived or supplemented except in a writing signed by Guarantor and Counterparty; *provided*, however, that an amendment to this Guaranty extending the termination date of this Guaranty shall not be effective unless and until it is executed solely by Guarantor.

6. ***Waivers and Consents.*** Subject to and in accordance with the terms and provisions of this Guaranty:

(a) Guarantor hereby expressly waives diligence, presentment, protest, notice, acceleration, dishonor and acceptance of this Guaranty and demand concerning the liabilities of Guarantor, and any right to require that any action or proceeding be brought against Obligor or any other person, or to require that Counterparty seek enforcement of any performance against Obligor or any other person, prior to any action against Guarantor under the terms hereof or to subrogate to any claims the Counterparty may have against the Obligor or the Obligor may have against the Counterparty.

(b) No delay by Counterparty in the exercise of (or failure by Counterparty to exercise) any rights hereunder shall operate as a waiver of such rights, a waiver of any other rights or a release of Guarantor from its obligations hereunder (with the understanding, however, that the foregoing shall not be deemed to constitute a waiver by Guarantor of any rights or defenses which Guarantor may at any time have pursuant to or in connection with any applicable statutes of limitation).

(c) Without notice to or the consent of Guarantor, and without impairing or releasing Guarantor's obligations under this Guaranty, Counterparty may: (i) change the manner, place or terms for payment of all or any of the Obligations (including renewals, extensions or other alterations of the Obligations); (ii) release Obligor or any person (other than Guarantor) from liability for payment of all or any of the Obligations; or (iii) receive, substitute, surrender, exchange or release any collateral or other security for any or all of the Obligations.

7. ***Reinstatement.*** Guarantor agrees that this Guaranty shall continue to be effective

or shall be reinstated, as the case may be, if all or any part of any payment made hereunder is at any time avoided or rescinded or must otherwise be restored or repaid by Counterparty as a result of the bankruptcy or insolvency of Obligor, all as though such payments had not been made.

8. ***Termination.*** This Guaranty shall remain in full force and effect until the earlier of (i) such time as all of the Guaranteed Obligations have been fully discharged; (ii) the satisfaction of all obligations of the Obligor under the Agreement; (iii) the Guarantor or Obligor causes this Guaranty to be replaced with one or a combination of cash, a fully effective letter of credit and/or another fully effective guaranty similar in form and substance to this Guaranty and by a party otherwise meeting the criteria set forth in the definition of Guarantor in the Agreement, or (iv) the twentieth (20th) anniversary of the first day of the first month following the Commercial Operation Date under the Agreement; provided that no such termination shall affect Guarantor's liability with respect to any Obligations arising under this Agreement prior to the time such termination is effective, which Obligations shall remain subject to this Guaranty.

9. ***Notices.*** Any Payment Demand, notice, request, instruction, correspondence or other document to be given hereunder (herein collectively called "Notice") by Counterparty to Guarantor, or by Guarantor to Counterparty, as applicable, shall be in writing and may be delivered either by (i) U.S. certified mail with postage prepaid and return receipt requested, or (ii) recognized nationwide courier service with delivery receipt requested, in either case to be delivered to the following address (or to such other U.S. address as may be specified via Notice provided by Guarantor or Counterparty, as applicable, to the other in accordance with the requirements of this Section 9):

To Guarantor:

_____
_____
_____
_____

To Counterparty:

_____
_____
_____
_____

Any Notice given in accordance with this Section 9 will (i) if delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient on such date, and (ii) if not delivered during the recipient's normal business hours on any given Business Day, be deemed received by the designated recipient at the start of the recipient's normal business hours on the next Business Day after such delivery.

10. ***Miscellaneous.***

(a) This Guaranty shall in all respects be governed by, and construed in accordance with, the laws of the State of California.

(b) This Guaranty shall be binding upon Guarantor and its successors and permitted assigns and inure to the benefit of and be enforceable by Counterparty and its successors and permitted assigns. Guarantor may not assign this Guaranty in part or in whole without the prior written consent of Counterparty. Counterparty may not assign its rights or benefits under this Guaranty in part or in whole without the prior written consent of Guarantor; provided that the Counterparty may, without prior notice to Guarantor or Obligor, make such an assignment, in conjunction with the grant or enforcement of a security interest or if otherwise required to do so under the terms of a mortgage or indenture to which Counterparty is or becomes a party.

(c) This Guaranty embodies the entire agreement and understanding between Guarantor and Counterparty and supersedes all prior agreements and understandings relating to the subject matter hereof.

(d) The headings in this Guaranty are for purposes of reference only and shall not affect the meaning hereof. Words importing the singular number hereunder shall include the plural number and vice versa, and any pronouns used herein shall be deemed to cover all genders. The term "person" as used herein means any individual, corporation, partnership, joint venture, limited liability company, association, joint-stock company, trust, unincorporated association, or government (or any agency or political subdivision thereof).

(e) Wherever possible, any provision in this Guaranty which is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective only to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof, and any such prohibition or unenforceability in any one jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction.

(f) EACH OF COUNTERPARTY (BY ITS ACCEPTANCE OF THIS GUARANTY) AND GUARANTOR HEREBY IRREVOCABLY, INTENTIONALLY AND VOLUNTARILY WAIVES THE RIGHT TO TRIAL BY JURY WITH RESPECT TO ANY LEGAL PROCEEDING BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH, THIS GUARANTY OR THE AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PERSON RELATING HERETO OR THERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY.

IN WITNESS WHEREOF, the Guarantor has executed this Guaranty on _____, 20__, but it is effective as of the Effective Date

[Guarantor]

By:_____
Name:_____

EXHIBIT M

FORM OF REPLACEMENT RA NOTICE

This Replacement RA Notice (this "**Notice**") is delivered by Gibson Renewables LLC, a California limited liability company ("**Seller**") to Valley Clean Energy Alliance, 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 of the Agreement, Seller hereby provides the below Replacement RA product information:

Unit Information[1]

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

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

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

GIBSON RENEWABLES LLC

By:_____
Its:_____

Date:_____

EXHIBIT N

NOTICES

GIBSON RENEWABLES ("Seller")	**VALLEY CLEAN ENERGY ALLIANCE** ("Buyer")
All Notices: Street: 100 First Stamford Place, Suite 302 City: Stamford, CT 06902 Attn: Jason Maur Phone: [redacted] Email: [redacted]	**All Notices:** Street: 604 2Nd Street City: Davis, CA 95616 Attn: [redacted] Phone: [redacted] Email: [redacted] cc: [redacted]
Reference Numbers: Duns: Federal Tax ID Number: [redacted]	**Reference Numbers:** Duns: 081110816 Federal Tax ID Number: [redacted]
Invoices: Attn: [redacted] Phone: [redacted] E-mail: [redacted]	**Invoices:** Attn: [redacted] Phone: [redacted] E-mail: [redacted] cc: [redacted] cc: [redacted]
Scheduling: Attn: [redacted] Phone: [redacted] E-mail: [redacted]	**Scheduling:** Attn: TBD Phone: TBD Email: TBD
Confirmations: Attn: [redacted] Phone: [redacted] E-mail: [redacted]	**Confirmations:** Attn: [redacted] Phone: [redacted] Email: [redacted] cc: [redacted]
Payments: Attn: [redacted] Phone: [redacted] E-mail: [redacted]	**Payments:** Attn: [redacted] Phone: [redacted] E-mail: [redacted] cc: [redacted] cc: [redacted]

GIBSON RENEWABLES ("Seller")	**VALLEY CLEAN ENERGY ALLIANCE** ("Buyer")
Wire Transfer: BNK: Stearns Bank NA ABA: TBD ACCT: 9510128169 Routing Number: 091910455	**Wire Transfer:** BNK: River City Bank ABA: 121133416 ACCT: 2814556206

EXHIBIT O

STORAGE CAPACITY TESTS

Storage Capacity Test Notice and Frequency

A. Commercial Operation Storage Capacity Test(s). 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 Exhibit B) shall be performed in accordance with this Exhibit O and shall establish the Installed Storage Capacity and initial Efficiency Rate hereunder based on the actual capacity and capabilities 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), at least fifteen (15) days in advance of the start of each Contract Year, upon no less than ten (10) Business Days prior Notice to Buyer, Seller shall schedule and complete a Storage Capacity Test. In addition, Buyer shall have the right to require a retest of the Storage Capacity Test at any time upon no less than five (5) Business Days prior Notice to Seller if Buyer provides data with such Notice reasonably indicating that the then-current Effective Storage Capacity or Efficiency Rate have varied materially from the results of the most recent prior Storage Capacity Test. Seller shall have the right to run a retest of any Storage Capacity Test at any time upon five (5) Business Days' prior Notice to Buyer (or any shorter period reasonably acceptable to Buyer consistent with Prudent Operating Practice).

C. Test Results and Re-Setting of Effective Storage Capacity and Efficiency Rate. No later than five (5) days following any 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(a)(ii) of the Agreement and Part II(I) below, after the Commercial Operation Storage Capacity Test(s), the Effective Storage Capacity (up to, but not in excess of, the Installed Storage Capacity) and Efficiency Rate determined pursuant to such Storage Capacity Test shall become the new Effective Storage Capacity and Efficiency Rate at the beginning of the day following the completion of the test for calculating the Contract Price and all other purposes under this Agreement.

Capacity Test Procedures

PART I. GENERAL.

A. Each Capacity Test shall be conducted in accordance with Prudent Operating Practices, the Operating Restrictions, and the provisions of this Exhibit O. For ease of reference, a Capacity Test is sometimes referred to in this Exhibit O as a "**CT**". Buyer or its representative may be present for the CT and may, for informational purposes only, use its own metering equipment (at Buyer's sole cost).

B. Conditions Prior to Testing.

(1) EMS Functionality. The EMS shall be successfully configured to receive data from the Battery Management System (BMS), exchange data with the Buyer SCADA device, and transfer data to the database server for the calculation, recording and archiving of data points.

(2) Communications. The Remote Terminal Unit (RTU) testing should be successfully completed prior to any testing. The interface between Seller's RTU and the SCADA Systems should be fully tested and functional prior to starting any testing, including verification of the data transmission pathway between the Seller's RTU and Seller's EMS interface and the ability to record SCADA Systems data.

(3) Commissioning Checklist. 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 EMS are configured.

(4) Generating Facility Conditions. Any CTs requiring the availability of Charging Energy may be conducted when the Generating Facility is producing at a rate equal to or above the Effective Storage Capacity continuously for a five (5)-hour period (the "**Generating Facility Testing Condition**"); *provided*, Seller may waive such Generating Facility Testing Condition at its sole discretion. Any CTs that are required or allowed to occur under this Exhibit O that take place in the absence of the Generating Facility Testing 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 CT and/or the Battery Charging Factor definition, which adjustment(s) shall be commensurate with then-existing irradiance limitations.

PART II. REQUIREMENTS APPLICABLE TO ALL CAPACITY TESTS.

A. Test Elements. Each CT shall include at least the following individual test elements, which must be conducted in the order prescribed in Part III of this Exhibit O, unless the Parties mutually agree to deviations therefrom (including pursuant to part I.B.4). The Parties acknowledge and agree that should Seller fall short of demonstrating one or more of the Test Elements as specified below, the CT will still be deemed "complete," and any adjustments necessary to the Effective Storage Capacity resulting from such Test, if applicable, will be made in accordance with this Exhibit O (including pursuant to Part I.B.4.).

(1) Electrical output at maximum discharging level (MW_{AC}) for five (5) continuous hours; and

(2) Electrical input at maximum charging level at the Storage Facility Meter (MW_{AC}), as sustained until the SOC reaches at least 90%, continued by the electrical input at a rate up to the maximum charging level at the Storage

Facility Meter (MW_{AC}), as sustained until the SOC reaches 100%, not to exceed six and a quarter (6.25) hours of total charging time, as may be adjusted per Part I.B.4 above, if applicable.

B. Parameters. During each CT, the following parameters shall be measured and recorded simultaneously for the Storage Facility, at two (2) second intervals:

(1) Time;

(2) Net electrical energy output to the Storage Facility Meters (kWh) (i.e., to each measurement device making up the Storage Facility Meter);

(3) Net electrical energy input from the Storage Facility Meters (kWh) (i.e., from each measurement device making up the Storage Facility Meter);

(4) SOC (%)

C. Site Conditions. During each CT, the following conditions at the Site shall be measured and recorded simultaneously at thirty (30) minute intervals:

(1) Relative humidity (%);

(2) Barometric pressure (inches Hg) near the horizontal centerline of the Storage Facility; and

(3) Ambient air temperature (°F).

D. Test Showing. Each CT shall record and report the following datapoints:

(1) That the CT successfully started;

(2) The maximum sustained discharging level for five (5) consecutive hours pursuant to A(1) above, including, if applicable, as adjusted pursuant to Part I.B.4 above;

(3) The maximum sustained charging level for six and a quarter (6.25) consecutive hours pursuant to A(2) above, including, if applicable, as adjusted pursuant to Part I.B.4 above;

(4) Amount of time between the Storage Facility's electrical output going from 0 to the maximum sustained discharging level registered during the Test (for purposes of calculating the Ramp Rate);

(5) Amount of time between the Storage Facility's electrical input going from 0 to the maximum sustained charging level registered during the Test (for purposes of calculating the Ramp Rate);

(6) Amount of Charging Energy registered at the Storage Facility Meter, to go from 0% SOC to 100% SOC;

(7) Amount of Discharging Energy registered at the Storage Facility Meter, to go from 100% SOC to 0% SOC.

E. Test Conditions.

(1) General. At all times during a CT, the Storage Facility shall be operated in compliance with Prudent Operating Practices, the Operating Restrictions, and all operating protocols recommended, required or established by the manufacturer for the Storage Facility.

(2) Abnormal Conditions. Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if abnormal operating conditions that prevent the testing or recordation of any required parameter occur during a CT (including ambient air temperature above 40° Celsius or below 0° Celsius), Seller may postpone or reschedule all or part of such CT in accordance with Part II.F below.

(3) Instrumentation and Metering. Seller shall provide all instrumentation, metering and data collection equipment required to perform the CT. 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. Incomplete Test. Except with respect to CTs impacted by the non-occurrence of a Generating Facility Testing Condition and addressed pursuant to Part I.B.4, if any CT is not completed in accordance herewith, Buyer may in its sole discretion: (i) accept the results up to the time the CT stopped without any modification to the Effective Storage Capacity or Efficiency Rate pursuant to Section I below; (ii) require that the portion of the CT not completed, be completed within a reasonable specified time period; or (iii) require that the CT be entirely repeated. Notwithstanding the above, if Seller is unable to complete a CT due to a Force Majeure Event or the actions or inactions of Buyer or the CAISO or the Transmission Provider, Seller shall be permitted to reconduct such CT on dates and at times reasonably acceptable to the Parties.

G. Test Report. Within five (5) Business Days after the completion of any CT, Seller shall prepare and submit to Buyer a written report of the results of the CT, which report shall include:

(1) A record of the personnel present during the CT that served in an operating, testing, monitoring or other such participatory role;

(2) The measured and calculated data for each parameter set forth in Part II.A through D, including copies of the raw data taken during the test; and

(3) Seller's statement of either Seller's acceptance of the CT or Seller's rejection of the CT results and reason(s) therefor.

Within five (5) Business Days after receipt of such report, Buyer shall notify Seller in writing of either Buyer's acceptance of the CT results or Buyer's rejection of the CT and reason(s) therefor.

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

H. Supplementary Capacity Test Protocol. 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 Exhibit O with modifications and additional and supplementary details, procedures and requirements applicable to Capacity Tests based on the then-current design, equipment and vendor selection for the Storage Facility ("**Supplementary Capacity Test Protocol**"). Thereafter, from time to time, Seller may deliver to Buyer for its review and approval (such approval not to be unreasonably delayed or withheld) any Seller recommended modifications and updates to the then-current Supplementary Capacity Test Protocol. The initial Supplementary Capacity Test Protocol (and each update thereto), once approved by Buyer, shall be deemed an amendment to this Exhibit O.

I. Adjustment to Effective Storage Capacity and Efficiency Rate. The Effective Storage Capacity and Efficiency Rate shall be updated as follows:

(1) The total amount of Discharging Energy delivered to the Delivery Point (expressed in MWh AC) during the first five (5) hours of discharge (up to, but not in excess of, the product of (i) (a) the Guaranteed Storage Capacity (in the case of a Commercial Operation Storage Capacity Test, including under Section 5 of Exhibit B) or (b) the Installed Storage Capacity (in the case of any other Storage Capacity Test), multiplied by (ii) five (5) hours) shall be divided by five (5) hours to determine the Effective Storage Capacity, which shall be expressed in MW_{AC}, and shall be the new Effective Storage Capacity in accordance with Section 4.9(a)(ii) of the Agreement.

(2) The total amount of Discharging Energy (as reported under Section II.D(7) above) divided by the total amount of Charging Energy (as reported under Section II.D(6) above), and expressed as a percentage, shall be recorded as the new Efficiency Rate; *provided*, for the purpose of determing the Efficiency Rate pursuant to this paragraph, the amount of Discharging Energy and Charging Energy shall not be adjusted for Electrical Losses occuring between the Storage Facility Meters and the Delivery Point.

PART III. INITIAL SUPPLEMENTARY CAPACITY TEST PROTOCOL.

A. **Effective Storage Capacity and Efficiency Rate Test**

- Procedure:

(1) System Starting State: The Storage Facility will be in the on-line state at 0% SOC.

(2) Record the initial value of the Storage Facility SOC.

(3) Command a real power charge that results in an AC power of Storage Facility's maximum charging level and continue charging until the earlier of (a) the Storage Facility has reached 100% SOC or (b) six and a quarter (6.25) hours have lapsed since the Storage Facility commenced charging.

(4) Record and log the Storage Facility SOC after the earlier of (a) the Storage Facility has reached 100% SOC or (b) six and a quarter (6.25) hours of continuous charging. Such data point shall be used for purposes of calculation of the Battery Charging Factor.

(5) Record and log the AC energy charged to the Storage Facility as measured at the Storage Facility Meter (without adjusting for Electrical Losses) ("**Energy In**").

(6) Following an agreed-upon rest period (taking into account operating conditions of the Facility and the Interconnection Capacity Limit), command a real power discharge that results in an AC power output of the Storage Facility's maximum discharging level and maintain the discharging state until the earlier of (a) the Facility has discharged at the maximum discharging level for five (5) consecutive hours, (b) the Storage Facility has reached 0% SOC, or (c) the sustained discharging level is at least 2% less than the maximum discharging level.

(7) Record the Storage Facility SOC after five (5) hours of continuous discharging. Such data point shall be used for purposes of calculation of the Battery Discharging Factor. If the Storage Facility SOC remains above zero percent (0%) after discharging at a rate at or above the Guaranteed Storage Capacity (or at or above the Installed Storage Capacity after a Commercial Operation Storage Capacity Test) for five (5) consecutive hours pursuant to Part III.A.6(a), the SOC will be deemed 0 for purposes of calculating the Battery Discharging Factor.

(8) Record the AC Energy discharged (in MWh) as measured at the Storage Facility Meter. Such data point shall be used for purposes of calculation the Effective Storage Capacity.

(9) If the Storage Facility has not reached 0% SOC pursuant to Part III.A.6, continue discharging the Storage Facility until it reaches a 0% SOC.

(10) Record the AC Energy discharged (in MWh) as measured at the Storage Facility Meter for determining the Effective Storage Capacity. "**Energy Out**" means that total AC Energy discharged (in MWh) as measured at the Storage Facility Meter (without adjusting for Electrical Losses) from the

commencement of discharging pursuant to Part III.A.5 until the Storage Facility has reached a 0% SOC pursuant to either Part III.A.6 or Part III.A.9, as applicable.

- Test Results

    (1) The resulting Efficiency Rate is calculated as Energy Out/Energy In, with Energy Out/Energy In measured at the Storage Facility Meter (without adjusting for Electrical Losses).

    (2) The resulting Effective Storage Capacity measurement is the sum of the total Discharging Energy at the Storage Facility Meter divided by five (5) hours.

B. **AGC Discharge Test**

- Purpose: This test will demonstrate the AGC discharge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Up (as defined in the CAISO Tariff).
.

- System starting state: The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR. The EMS will be configured to follow a predefined agreed-upon active power profile.

- Procedure:

    (1) Record the Storage Facility active power level at the Storage Facility Meter.

    (2) Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.

    (3) Record the Storage Facility active power response (in seconds).

- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

C. **AGC Charge Test**

- Purpose: This test will demonstrate the AGC charge capability to achieve the Storage Facility's ramp consistent with the AGC signal transmitted to the RIG by the CAISO and response requirements for Regulation Down (as defined in the CAISO Tariff.)

- This AGC Charge Test may only be performed while there is anticipated to be sufficient Charging Energy for the duration of the test.

- System starting state: The Storage Facility will be in the on-line state at 40% to 60% SOC and at an initial active power level of 0 MW and reactive power level of 0 MVAR.

The Storage Facility control system will be configured to follow a predefined agreed-upon active power profile.

- Procedure:

    (1) Record the Storage Facility active power level at the Storage Facility Meter.

    (2) Command the Storage Facility to follow a simulated CAISO RIG signal for ten (10) minutes.

    (3) Record the Storage Facility active power response (in seconds).

- System end state: The Storage Facility will be in the on-line state and at a commanded active power level of 0 MW.

EXHIBIT P

ANNUAL STORAGE CAPACITY AVAILABILITY CALCULATION

(a) Following the end of each calendar month during the Delivery Term, Seller shall calculate the year-to-date (YTD) "**Annual Storage Capacity Availability**" for the current Contract Year using the formula set forth below:

$$\text{Annual Storage Capacity Availability (\%)} = 1 - \frac{\text{Unavailable Calculation Intervals}}{\text{Total YTD Calculation Intervals}}$$

"**Calculation Interval**" or "**C.I.**" means each successive five-minute interval but excluding all such intervals which by the express terms of the Agreement are disregarded or excluded.

"**Unavailable Calculation Intervals**" means the sum of year-to-date unavailable Calculation Intervals for the applicable Contract Year, where for each Calculation Interval:

$$\text{Unavailable Calculation Interval} = 1 \text{ C.I. x } \left(1 - \text{the lesser of: } \frac{A}{\text{Effective Storage Capacity}} \text{ or } \frac{\text{Storage Capability (MWh)}}{\text{Effective Storage Capacity x 4 hrs}} \right)$$

"**A**" is the "Available Effective Storage Capacity," which shall be calculated as the sum of the available capacity, in MW_{AC}, expected from each Storage Facility inverter in such Calculation Interval (based on normal operating conditions pursuant to the manufacturer's guidelines), but "A" shall never exceed the Effective Storage Capacity.

"**Storage Capability**" means the sum of the following (taking into account the SOC at the time of calculation): (i) the energy throughput capability in MWhs in the applicable Calculation Interval that the Storage Facility is available to be charged (calculated as the available battery charging capability (in MWh) at the applicable Calculation Interval x the Battery Charging Factor) and (ii) the energy throughput capability in MWhs at the applicable Calculation Interval that the Storage Facility is available to be discharged (calculated as the available battery discharging capability (in MWh) at the applicable Calculation Interval x the Battery Discharging Factor). In calculating Storage Capability, the "available battery charging capability" and "available battery discharging capability" are calculated as the product of (1) the count of available system cells in such Calculation Interval multiplied by (2) the capability, in MWh, expected from each such system cell (based on actual normal operating conditions pursuant to the manufacturer's guidelines.).

"**Total YTD Calculation Intervals**" means, for each applicable Contract Year, the total

number of Calculation Intervals year-to-date up through and including the month for which the Annual Storage Capacity Availability is being calculated.

Seller shall provide Buyer with Notice of the Annual Storage Capacity Availability calculated within ten (10) Business Days after the end of each calendar month during the Delivery Term. Buyer shall within ten (10) Business Days after receipt of such Notice approve or dispute such calculation; provided, if Buyer does not dispute such calculation, Buyer shall be deemed to have approved such calculation. Any disputes arising under this paragraph shall be resolved in accordance with Section 15.2 of the Agreement.

(b) The "available Effective Storage Capacity" and "Storage Capability" in the above calculations shall be the lower of (i) such amounts reported by Seller's real-time EMS data feed to Buyer for the Storage Facility for such Calculation Interval, and (ii) (A) for "available Effective Storage Capacity," such amount equal to the Effective Storage Capacity minus the amount of unavailable capacity (in MWs) identified by Seller in an applicable Unavailability Notice for such Calculation Interval, and (B) for "Storage Capability," such amount equal to (1) the Effective Storage Capacity multiplied by five (5) hours minus (2) the unavailable MWhs of battery charging and discharging capability identified by Seller in an applicable Unavailability Notice for such Calculation Interval. Except as otherwise expressly provided in this Agreement, the calculations of "available Effective Storage Capacity" and "Storage Capability" in the foregoing shall be based solely on the availability of the Storage Facility to charge or discharge Energy between the Storage Facility and the Generating Facility or Delivery Point, as applicable (excluding for reasons at the high-voltage side of the Delivery Point or beyond).

(c) After three hundred sixty-five (365) Cycles have occurred in a given Contract Year, any additional Calculation Intervals during such Contract Year shall be deemed to be fully available and Seller shall use commercially reasonable efforts to move any upcoming Planned Outages to such period of time.

EXHIBIT Q

OPERATING RESTRICTIONS

The Parties will develop and finalize the Operating Restrictions prior to the Commercial Operation Date; *provided*, the Operating Restrictions (i) may not be materially more restrictive of the operation of the Storage Facility than as set forth below, unless agreed to by Buyer in writing, (ii) will, at a minimum, include the rules, requirements and procedures set forth in this Exhibit Q, (iii) will include protocols and parameters for Seller's operation of the Storage Facility in the absence of Charging Notices, Discharging Notices or other similar instructions from Buyer relating to the use of the Storage Facility, and (iv) may include Storage Facility Scheduling, Operating Restrictions and Communications Protocols. Notwithstanding anything herein to the contrary, Seller acknowledges that Buyer intends to use this Agreement to meet Buyer's procurement requirement pursuant to CPUC Decision 21-06-035, Ordering Paragraph 6 (June 24, 2021), and if any of the Operating Restrictions prevent Buyer from meeting such requirement, Seller agrees to discuss with Buyer reasonable changes to this Exhibit Q that would allow Buyer to meet such requirement; *provided*, Seller shall not be required to agree to any changes that are reasonable anticipated to have more than a *de minimus* negative financial impact on Seller unless Buyer agrees to keep Seller whole.

I. STORAGE FACILITY OPERATING RESTRICTIONS

File Update Date:	**[XX/XX/20XX]**	
Technology:	**Lithium Iron Phosphate (LFP) Battery Storage**	
Storage Unit Name:	**TBD**	
A. Contract Capacity		
Guaranteed Storage Capacity (MW_{AC}):	13	
Effective Storage Capacity (MW_{AC}):	[TBD]	
B. Total Unit Dispatchable Range Information		
Interconnect Voltage (kV)	21	
Maximum Storage Level (MWh):	65	
Minimum Storage Level (MWh):	0.0	
Stored energy capability (MWh):	[TBD]	
Maximum Discharge (MW_{AC}):	13	
Maximum Charge (MW_{AC}):	13	
Guaranteed Efficiency Rate:	See Cover Sheet	
Maximum energy throughput (BET) (MWh/year):	365 Cycles per year	
C. Charge and Discharge Rates		
Mode	**Maximum (MW_{AC})**	**Ramp Rate Description**
Energy (Charge)	13	Pmax within 500 milliseconds
Energy (Discharge)	13	Pmax within 500 milliseconds
D. Ancillary Services		
Frequency regulation is included:	Yes	
Spin is included:	Yes	
E. Additional Restrictions		
1. The Storage Facility shall be charged exclusively with PV Energy.		

2. 365 Cycles per Contract Year maximum.
3. Seller shall not be required to operate the Facility in a manner that would cause Facility Energy to exceed the Interconnection Capacity Limit.
4. Average resting SOC of the Storage Facility in each Contract Year must be less than 50%. Stored Energy Level may not remain below 5% for more than 24 consecutive hours.
5. Maximum ambient operating temperature without de-rate: 45° C. The rated power of the Facility shall be reduced by 0.3% per each Degree C above the maximum ambient operating temperature, up to 50° C, at which point the Facility may shut down in Seller's discretion; *provided*, any such de-rate or Facility shut down shall not be considered in calculating any Annual Storage Capacity Availability under Exhibit P.
6. Minimum ambient operating temperature without de-rate: -10 Degrees C. Below – 10 C, the Facility may shut down in Seller's discretion; *provided*, any such derate or Facility shut down shall not be considered in calculating any Annual Storage Capacity Availability under Exhibit P.

EXHIBIT R

METERING DIAGRAM

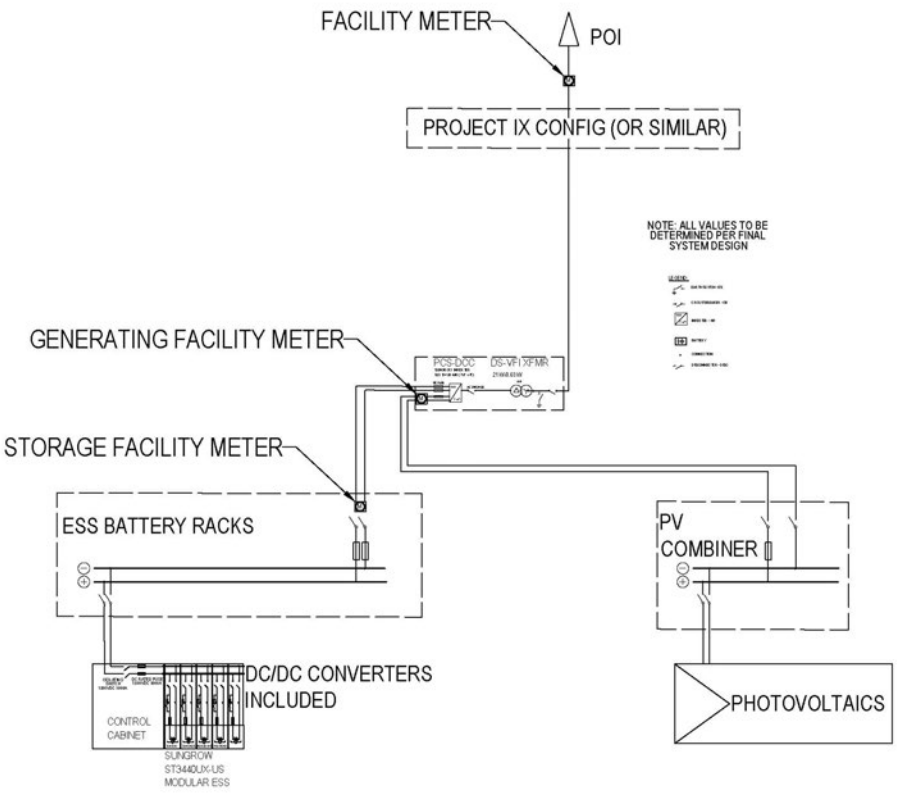


EXHIBIT S

FORM OF POLLINATOR SCORECARD

Northern California / Oregon

Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.

1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY POLLINATOR-FRIENDLY WILDFLOWERS

- ☐ 31-45 % +5 points
- ☐ 46-60 % +10 points
- ☐ 61+ % +15 points

Total points ☐

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- ☐ 26-50% +5 points
- ☐ 51-75%. +10 points
- ☐ 76-100% +15 points

Total points ☐

3. PLANNED SPECIES DIVERSITY (total # of species in re-vegetation, including native grasses)

- ☐ 9-11 species +5 points
- ☐ 12-15 species +10 points
- ☐ 16 or more species +15 points

Total points ☐

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check all that apply)

- ☐ Spring (March-May) +5 points
- ☐ Summer (June-August) +5 points
- ☐ Fall (September-November) +5 points
- ☐ Winter (December-February) +5 points

Total points ☐

Note: Check local resources for data on bloom seasons

5. ADDITIONAL HABITAT COMPONENTS WITHIN .25 MILES (check all that apply)

- ☐ Native bunch grasses, leaf litter, woody debris, bare ground +2 points
- ☐ Native trees/shrubs +2 points
- ☐ Clean, perennial water sources +2 points
- ☐ Created nesting feature(s) (i.e., native bee houses) +2 points

Total points ☐

6. SITE PLANNING AND MANAGEMENT

- ☐ Detailed establishment and management plan developed with funding/ contract to implement. + 15 points
- ☐ Signage legible from a distance of 40 feet or more stating "pollinator friendly solar habitat" (at least 1 every 20ac.). +5 points

Total points ☐

7. RE-VEGETATION

- ☐ Seed is applied at 50 PLS (Pure Live Seed) per square foot +5 points
- ☐ 20% or more of the native species' seed has a local genetic origin within 175 miles of the site +5 points
- ☐ For sites located 5 miles or further east of the coastline, re-vegetation includes 1% native milkweed +10 points

Total points ☐

8. PESTICIDE RISK

- ☐ Planned on-site insecticide use or use of plant material pre-treated with insecticides (excluding buildings/ electrical boxes, etc.) -40 points
- ☐ Perpetual bare ground under the panels due to ongoing herbicide treatment (beyond site preparations), no re-vegetation planned, or gravel installation -40 points
- ☐ Communication/registration with Local chemical applicators about need to prevent drift from adjacent areas +10 points

Total points ☐

9. OUTREACH/EDUCATION

- ☐ Site is part of a study with a university, research lab, or conservation organization +5 points

Grand total ☐

Provides Exceptional Habitat >85
Meets Pollinator Standards 70-84

Project Name:
Vegetation Consultant:
Project Location:
Total acres (array and open area):
Projected Seeding Date:

Note: Percent "cover" should be based on the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.

POLLINATOR PARTNERSHIP

Fresh Energy

Pollinator-friendly solar scorecard

The entomologist-approved standard for what constitutes "beneficial to pollinators" within the managed landscape of a PV solar facility.

1. PERCENT OF PROPOSED SITE VEGETATION COVER TO BE DOMINATED BY WILDFLOWERS

- ☐ 31-45 % +5 points
- ☐ 46-60 % +10 points
- ☐ 61+ % +15 points

Total points ☐

Note: Projects may have "array" mixes and diverse open area/ border mixes; forb dominance should be averaged across the entire site. The dominance should be calculated from total numbers of forb seeds vs. grass seeds (from all seed mixes) to be planted.

2. PLANNED % OF SITE DOMINATED BY NATIVE SPECIES COVER

- ☐ 26-50% +5 points
- ☐ 51-75%. +10 points
- ☐ 76-100% +15 points

Total points ☐

3. PLANNED COVER DIVERSITY (# of species in seed mixes; numbers from upland and wetland mixes can be combined)

- ☐ 10-19 species +5 points
- ☐ 20-25 species +10 points
- ☐ 26 or more species +15 points

Total points ☐

Note: exclude invasives from species totals.

4. PLANNED SEASONS WITH AT LEAST 3 BLOOMING SPECIES PRESENT (check/add all that apply)

- ☐ Spring (April-May) +5 points
- ☐ Summer (June-August) +5 points
- ☐ Fall (September-October) +5 points

Total points ☐

Note: Check local resources for data on bloom seasons

5. AVAILABLE HABITAT COMPONENTS WITHIN .25 MILES (check/add all that apply)

- ☐ Native bunch grasses for nesting +2 points
- ☐ Native trees/shrubs for nesting +2 points
- ☐ Clean, perennial water sources +2 points
- ☐ Created nesting feature/s (bee blocks, etc.) +2 points

Total points ☐

6. SITE PLANNING AND MANAGEMENT

- ☐ Detailed establishment and management plan developed with funding/contract to implement +15 points
- ☐ Signage legible at 40 or more feet stating "pollinator friendly solar habitat" (at least 1 every 20ac.) +5 points

Total points ☐

7. SEED MIXES

- ☐ Mixes are composed of at least 40 seeds per square foot +5 points
- ☐ All seed genetic origin within 175 miles of site +5 points
- ☐ At least 2% milkweed cover to be established from seed/plants +10 points

Total points ☐

8. INSECTICIDE RISK

- ☐ Planned on-site insecticide use or pre-planting seed/plant treatment (excluding buildings/ electrical boxes, etc.) -40 points
- ☐ Perpetual bare ground under the panels as a result of pre and post emergent herbicide. -40 points
- ☐ Communication/registration with local chemical applicators about need to prevent drift from adjacent areas. +10 points

Total points ☐

9. OUTREACH/EDUCATION

- ☐ Site is part of a study with a college, university, or research lab. +5 points

Grand total ☐

Provides Exceptional Habitat	**>85**
Meets Pollinator Standards	**70-84**

Project Name:
Vegetation Consultant:
Project Location:
Total acres (array and open area):
Projected Seeding Date:

Note: Percent "cover" should be based on "absolute cover" (the percent of the ground surface that is covered by a vertical projection of foliage as viewed from above). To measure cover diversity use plots, and/or transects in addition to meander searches. Wildflowers in question 1 refer to "forbs" (flowering plants that are not woody or graminoids) and can include introduced clovers and other non-native, non-invasive species beneficial to pollinators.

Fresh Energy

EXHIBIT T

PRICE INDEXATION CALCULATION

1. General. The Parties acknowledge and agree that:

(a) The "**PV System Base Price**" means (and is equal to) the initial unadjusted Renewable Rate as set forth on the Cover Sheet as of the Effective Date, and has been agreed by the Parties based upon Seller's estimate, as of the Effective Date, of [redacted] for *the total PV module supply cost, total inverter supply cost, total tracker supply cost, total EPC (engineering, procurement and construction) cost and fifty percent (50%) of the total main power transformer supply cost,* including all amounts payable under any supply agreement(s) for such equipment. Such estimated total supply cost amount is herein referred to as the "**Estimated PV System Costs**", which amount is [redacted]/Wdc (the "**PV System Budget**"), and the total amount of such PV equipment supply costs that are actually incurred by Seller and its Affiliates is herein referred to as the "**Actual PV System Costs**". In the event that the Actual PV System Costs fall in between 2 CapEx reference points in the table located in Annex 1 to Exhibit T, the Storage Rate shall be interpolated accordingly.

(b) The "**BESS Base Price**" means (and is equal to) the initial unadjusted Storage Rate as set forth on the Cover Sheet as of the Effective Date, and has been agreed by the Parties based upon Seller's estimate, as of the Effective Date, of [redacted] for *the total battery system supply cost (including batteries and related HVAC, fire suppression, Battery Management System (BMS), and systems containers/enclosures), total EPC (engineering, procurement and construction) cost and fifty percent (50%) of the total main power transformer supply cost,* including all amounts payable under any supply agreement(s) for such equipment. Such estimated total supply cost amount is herein referred to as the "**Estimated BESS Costs**", which amount is [redacted]/kWh (the "**BESS Budget**"), and the total amount of such battery equipment supply costs that are actually incurred by Seller and its Affiliates is herein referred to as the "**Actual BESS Costs**". In the event that the Actual BESS Costs fall in between 2 CapEx reference points in the table located in Annex 1 to Exhibit T, the Storage Rate shall be interpolated accordingly.

2. Construction Start Updates.

(a) Generating Facility. At any time on or prior to the Construction Start Date, Seller shall provide a certificate executed by an authorized Seller officer to Buyer certifying as to the then current and updated (as of the date of such certificate) Estimated PV System Costs ("**Cost Certificate**"), which Cost Certificate shall be accompanied with an updated PV System Budget and copies of purchase orders and/or invoices reflecting such updated PV System Budget. If, as of the date of such Cost Certificate, there has been a change in the Estimated PV Costs from the Effective Date to date of such Cost Certificate, then (subject to the below provisions) the Renewable Rate shall be increased or decreased (as applicable) in accordance with the table set forth in Annex 1 to this Exhibit T; *provided* that the adjustment pursuant to this Section (2)(a) shall

not result in adjusting the Renewable Rate above the Renewable Rate Ceiling or below the Renewable Rate Floor.

(b) Storage Facility. At any time on or prior to the Construction Start Date, Seller shall provide a Cost Certificate to Buyer certifying as to the then current and updated (as of the date of such certificate) Estimated BESS Costs, which Cost Certificate shall be accompanied with an updated BESS Budget and copies of purchase orders and/or invoices reflecting such updated BESS Budget. If, as of the date of such Cost Certificate, there has been a change in the Estimated BESS Costs from the Effective Date to the date of such Cost Certificate, then (subject to the below provisions) the Storage Rate shall be increased or decreased (as applicable) in accordance with the table set forth in Annex 1 to this Exhibit T; *provided* that the adjustment pursuant to this Section (2)(b) shall not result in adjusting the Storage Rate above the Storage Rate Ceiling or below the Storage Rate Floor.

3. Renewable Rate Ceiling and Floor.

(a) Renewable Rate Ceiling. In no event may the Renewable Rate be adjusted above [redacted]/MWh (the "**Renewable Rate Ceiling**").

(b) Renewable Rate Floor. In no event may the Renewable Rate be adjusted below [redacted]/MWh (the "**Renewable Rate Floor**").

4. Storage Rate Ceiling and Floor.

(a) Storage Rate Ceiling. In no event may the Storage Rate be adjusted above [redacted]/kW-month (the "**Storage Rate Ceiling**") or in the case that the Solar Property Tax Exclusion has been repealed or sunset, [redacted]/MWh.

(b) Storage Rate Floor. In no event may the Storage Rate be adjusted below [redacted]/kW-month (the "**Storage Rate Floor**").

5. Commercial Operation Date Pricing and Reconciliation. At least thirty (30) days prior to the date that Seller reasonably expects to achieve Commercial Operation, Seller shall provide to Buyer an updated Cost Certificate, accompanied with an updated final PV System Budget and an updated final BESS Budget, and certifying as to (i) the final Actual PV System Costs and the final Actual BESS Costs and (ii) the final Renewable Rate and final Storage Rate based on the adjustment formula calculations set forth in Sections (2)(a) and (2)(b) above; provided that (a) the final Actual PV System Costs for purposes of determining the Renewable Rate shall not be more or less than [redacted]/W than the Estimated PV Costs determined pursuant to Section (2)(a) above, and (b) the final Actual BESS Costs for purposes of determining the Storage Rate shall not be more or less than [redacted]/kWh than the Estimated BESS Costs determined pursuant to Section (2)(b) above; provided further that the adjustments pursuant to this Section (5) shall not result in adjusting the Renewable Rate above the Renewable Rate Ceiling or below the Renewable Rate Floor, or adjusting the Storage Rate above the Storage Rate Ceiling or below the Storage Rate Floor.

6. Buyer Audit Rights. If requested by Buyer, Buyer shall have the right, through an independent auditor of Buyer's choosing, to audit and confirm the accuracy of any of the pricing or budget information provided by Seller pursuant to the Cost Certificates delivered to establish the Renewable Rate and Storage Rate in accordance Sections 2 and 5 above, it being understood that there will be no more than two audits. If requested by either Party, the Parties shall cooperate to agree upon written procedures that shall control any such audit, including (a) confidentiality restrictions, it being agreed that the sole focus of the auditor is to confirm the accuracy of the information provided by Seller in connection with the applicable Cost Certificates, all contracts and other information provided by Seller in connection with the audit are confidential and proprietary to Seller and the auditor shall not share or disclose any of the same to Buyer or any other party, (b) timing for completion of the audit, it being the Parties' intent that any such audit be concluded within thirty (30) days after auditor has received all documents and supporting information necessary to audit and confirm the accuracy of any of the pricing or budget information provided by Seller pursuant to such Cost Certificate, (c) the tolling and extension of any relevant time periods under this Exhibit T during the pendency of an audit, (d) the sharing by the Parties of the expenses of the auditor and (e) the resolution of any related disputes pursuant to Section 15.2 of the Agreement.

7. Cooperation and Further Assurances. Each Party agrees to cooperate in good faith to carry out the intent of this Exhibit T, including to execute and deliver all further confirmations and documents, and take all further actions not inconsistent with the provisions of this Exhibit T as requested by the other as may be reasonably necessary to effectuate the purposes and intent hereof.

Annex 1 to Exhibit T

Estimated / Actual Solar and BESS Costs and Corresponding Renewable Rate and Storage Rate:

Solar			***BESS***	
$/W	***$/MWh***		***$/kWh***	***$1kW-mo***
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]		[redacted]	[redacted]
[redacted]	[redacted]			
[redacted]	[redacted]			
[redacted]	[redacted]			
[redacted]	[redacted]			
[redacted]	[redacted]			

VALLEY CLEAN ENERGY ALLIANCE

Staff Report – Item 15

TO: Board of Directors

FROM: Mitch Sears, Chief Executive Officer
Yvonne Hunter, Legislative and Program Specialist

DATE: April 9, 2026

RECOMMENDATION
Ratify Valley Clean Energy's positions on the following bills:

A. Support: AB 1761 (Rogers). Improving PCIA Transparency. (CalCCA Sponsored);
B. Support: SB 1138 (Padilla). Resource Adequacy (RA) Transactability. (CalCCA Sponsored); and,
C. Oppose Unless Amended: AB 2383 (Zbur). Large Load Rate Setting Authority.

BACKGROUND/ANALYSIS
VCE's procedure for taking positions on legislation includes an expedited process that enables VCE to adopt a position when the legislative timeline necessitates quick action in order for VCE to effectively engage in the legislative process. In such instances, review and recommendations by the Legislative and Regulatory Task Group, the CAC and action by the full VCE Board is not feasible. The expedited procedure specifies that staff consult with the Chair of the VCE board about the recommended positions.

These three bills fit the criteria for the expedited process, as letters of support and opposition needed to be submitted to the legislative committees and authors and committee testimony given by VCE's lobbyist before the Board could act. The following provides information about the three bills, the rationale behind the adopted positions and the status of the bills as of this writing.

Support Bills
CalCCA is sponsoring two bills this legislative year to address issues of importance to CCAs, including VCE. Details about each bill are included in the attached summaries prepared by CalCCA.

- AB 1761 (Rogers) would improve transparency to how the Power Charge Indifference Adjustment (PCIA) is calculated.
  Status: Passed Assembly Committee on Energy and Utilities 15-0; pending in Assembly Appropriations Committee

- SB 1188 (Padilla) would allow load serving entities like VCE to transact RA load obligations on an hourly basis to align with the new slice-of-day Resource Adequacy (RA) program.
  Status: Hearing April 7, Senate Committee on Energy, Utilities & Communications

VCE's Legislative and Regulatory Platform includes the following provisions related to PCIA and Resource Adequacy. The support positions are consistent with the Platform.

Power Cost Indifference Adjustment (PCIA)

- *Support CalCCA efforts to increase the transparency of IOU electricity contracts and any other factors that provide the basis for PCIA charges that VCE (and its customers) and other CCAs must pay.*

Resource Adequacy

- *Support policies to create a transparent, cost-effective, functional central procurement process for residual Resource Adequacy needs.*
- *Support policies that would modify the RA waiver and penalty processes so that they more realistically reflect the constraints in the RA markets that CCAs and other Load Serving Entities face.*

Oppose Unless Amended Bill

- AB 2383 (Zbur) would direct the CPUC to adopt a rate schedule and related requirements for large loads (defined as 20MW or more) that all load serving entities, including IOUs and CCAs, must follow in the rates and contracts adopted for serving the large load. Thus, AB 2383 would remove CCAs' rate-setting authority for these types of customers and grant that authority to the CPUC for the large-load facilities envisioned in the bill.

  The requested amendment is to delete the provisions that grant the CPUC rate setting authority over CCAs. VCE is working with CalCCA and other CCAs on securing this amendment.
  Status: Hearing April 8, Assembly Committee on Energy and Utilities

VCE's Legislative and Regulatory Platform includes the following provisions related to Governance and Statutory Authority. An oppose unless amended position on AB 2383 is consistent with the Platform.

1. Governance and Statutory Authority

   VCE will:

   a. *Oppose policies that limit the local decision-making authority for CCAs, including, but not limited to, program design, rate-setting authority and procurement of energy and capacity to serve their customers and meet state requirements.*
   b. *Oppose policies that limit VCE's ability to effectively serve its customers.*

In addition, in 2025, the VCE Board adopted a large load policy that would, in essence, be preempted by AB 2383.

CONCLUSION
For the reasons described, staff recommends that the board ratify the VCE positions on these three bills:

- AB 1761 – support
- SB 1138 -- support
- AB 2383 – oppose unless amended

Attachment
1. AB 1761 and SB 1188 background materials

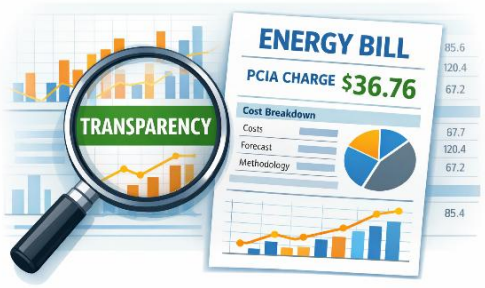
AB 1761: Improving Energy Bill Transparency

CalCCA is sponsoring AB 1761, authored by Assemblymember Chris Rogers (D-Santa Rosa), which brings transparency to the way the Power Charge Indifference Adjustment (PCIA), a charge on nearly all energy bills, is calculated.

Background

Electricity bills in California are on the rise, in part due to challenging market conditions and outdated and inefficient regulatory policies. Families and businesses are feeling the impact. Lawmakers and regulators need practical, consumer-focused solutions that ensure customers do not pay more than their fair share.

One tool to ensure customers receive energy bills that are fair and accurate is increased transparency in how PCIA charges are calculated. The PCIA is a fee designed to ensure customers who leave utility generation service, like customers of a Community Choice Aggregator (CCA) or Energy Service Provider (ESP), pay their portion of legacy power costs. But since the PCIA was implemented, there has been no consistent standard for what data must be made available in any CPUC process or proceeding where the PCIA, or a related charge, is set.



Problem

CCAs, ESPs, and their customers must pay the PCIA charge but often lack access to the data, assumptions, and methods used to set it. This transparency problem leads to disputes, inefficiencies, and unexpected rate impacts for customers. More specifically:

- ✓ Disclosures vary by utility and by CPUC proceeding, resulting in repeated fights between CCAs and Investor-Owned Utilities (IOUs) over data access and increased administrative inefficiencies as the CPUC resolves disputes on a case-by-case basis.
- ✓ Utilities sometimes make mistakes. In a 2019 PG&E proceeding, CalCCA identified $73 million in errors (including a $16 million increase for CCA customers). In a recent proceeding, PG&E identified an accounting error that would have cost CCA customers $217 million.
- ✓ In an ongoing PCIA Rulemaking, the Commission withheld information on the evidence underlying their proposal and the rate impacts of a proposed change. The CPUC did not respond to a Public Records Act request for the information.

Without adequate transparency, CCAs and ESPs are unable to verify the accuracy of the PCIA charges that their customers must pay and cannot confidently forecast rate — both of which are affordability tools needed to protect customers from unexpected rate increases.

Solution

AB 1761 proposes amending the Public Utilities Code to require the CPUC and IOUs to disclose all data used to calculate PCIA costs, including cost inputs, forecasting assumptions, and methodologies. The bill would also ensure that when parties make proposals in a proceeding to change the PCIA they provide all the underlying data informing that proposal. Sensitive information would remain protected through Commission-approved nondisclosure agreements — a practice already used to protect sensitive information in other compliance areas.

Greater transparency allows CCAs and ESPs to better advocate for their customers and assess proposals to change the PCIA. It also can inform cost forecasts and shield customers from sudden rate swings. It reduces repeated fights over information, improves regulatory efficiency, and encourages utilities to verify calculations since the underlying data would be open to review. Costs to implement the proposal are miniscule, as most of this information already exists, while the benefits for rate, accuracy, stability, and consumer protection are substantial. This proposal strengthens confidence that customers pay their fair share — and not more.

For more on the PCIA go to: https://cal-cca.org/pcia/.

SB 1138: Lowering the Cost of California's RA Program

CalCCA is sponsoring SB 1138, authored by Senator Steve Padilla (D-San Diego), so that California's load serving entities (LSEs) have the flexibility to transact load obligations at the hourly level in order to reduce millions of dollars in unnecessary costs to consumers — without compromising reliability.

Background

At a time of rising electricity bills and challenging market conditions, California's resource adequacy (RA) program is transitioning to a new Slice-of-Day (SOD) framework. Previously, LSEs (community choice aggregators, investor-owned utilities and energy service providers) were required to meet a monthly RA obligation using resources accredited with a monthly RA contribution. In the new SOD framework, LSE obligations are based on the 24 hours of the peak day in each month. LSEs must show resources sufficient to meet load obligations in each hour, including excess resources to charge storage on the peak day.

Under existing rules, LSEs are restricted in how they can transact with other entities to ensure compliance. Adjustments to an LSE's portfolio are limited to transacting product for the whole month even though obligations are unique to each hour. This mismatch means LSEs must purchase more RA than they need to meet their obligations, creating artificial market scarcity and unnecessarily driving up RA demand (and prices). It's akin to having to buy a crate of oranges when you only need a few slices. The net result is tens of millions of dollars in unnecessary costs that fall to California ratepayers.

Problem

During the SOD transition, LSEs submitted portfolios of resources to meet hourly obligations for a 2024 test year and for the binding 2025 year-ahead requirements. From these submittals, CalCCA observed that individual LSEs were short in some hours, requiring them to purchase additional RA resources to meet requirements, while other LSEs had excess capacity in those hours. Trading between LSEs would be sufficient to meet reliability requirements without needing to purchase additional RA.

From this early experience, it is apparent that restrictions on trading create artificial market scarcity and unnecessarily drive-up demand for already scarce RA products. LSEs have been penalized for non-compliance even though other LSEs showed excesses that could cover their shortages in the non-compliant hours.

Solution

At a time of rapidly rising costs in the electricity sector, policymakers should provide LSEs maximum flexibility in how they contribute their fair share to keep the overall system reliable. SB 1138 would lower the costs to consumers of California's RA trading program by allowing LSEs to transact RA load obligations on an hourly basis to align with the new slice-of-day RA program.

With hourly load obligation trading, an LSE that has excess resources in an hour could offer to take on a share of the obligation of an LSE that is short in the same hour. By trading load obligations, LSEs could avoid **$105 million** in purchases of excess RA resources for the summer of 2025. This reduction in RA demand puts downward pressure on RA prices for all California LSEs, potentially reducing RA costs by an additional **$77 million** per year.

Benefits

Enabling hourly load obligation trading:

- ✓ Promotes efficiency: LSEs with excess resources in one hour could trade with LSEs that are short, reducing the need to purchase additional RA.
- ✓ Delivers affordability: In 2025, hourly trading could have lowered RA costs for consumers by avoiding $105 million in excess RA purchases for summer 2025 and potentially saving an additional $77 million annually.
- ✓ Maintains LSE Responsibility: Creates a new procurement product rather than offering relief from meeting existing requirements.
- ✓ Requires limited administrative oversight: Trades can be executed bilaterally with existing RA tracking tools, making the system administratively simple while maintaining each LSE's full responsibility to meet obligations.