

RENEWABLE ENERGY PURCHASE AND SALE AGREEMENT

between

**The City of Santa Clara
(d/b/a Silicon Valley Power)**

and

Energia Sierra Juarez U.S., LLC

Dated: October 18, 2022

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RENEWABLE ENERGY PURCHASE AND SALE AGREEMENT

between

The City of Santa Clara (d/b/a Silicon Valley Energy)

and

Energia Sierra Juarez U.S., LLC

PREAMBLE

This Renewable Energy Purchase and Sale Agreement (the “**Agreement**”) is made and entered into this 18th day of October, 2022 (the “**Effective Date**”), by and between the City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power with its principal place of business located at 1500 Warburton Avenue, Santa Clara, CA 95050 (“**SVP**” or “**Buyer**”), and Energia Sierra Juarez U.S., LLC, a Delaware limited liability company with its principal place of business located at 488 8th Avenue, San Diego, CA 92101 (“**Seller**”). Buyer and Seller may be referred to individually as a “**Party**,” or collectively as the “**Parties**.” Capitalized terms in this Agreement shall have the meanings set forth in Article I.

RECITALS

WHEREAS,

- A. Seller and its Affiliates are involved in developing on the Site an approximately three hundred (300) megawatt net (measured at the Delivery Point) wind-powered generating facility (the “**Facility**”), as more particularly described in Exhibit A;
- B. Seller desires to arrange for sale, and Buyer desires to purchase, on the terms set forth in this Agreement, all of the output of energy from the Facility, and all related Environmental Attributes, Capacity Attributes, and Resource Adequacy Attributes (as each term is defined herein);
- C. Buyer and Seller desire to enter into this Agreement to confirm the specific terms and conditions of the purchase and sale of energy and other products from the Facility.

Now, therefore, the Parties agree as follows:

ARTICLE I

DEFINITIONS AND INTERPRETATION

Section 1.01 DEFINITIONS

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

“**Acceptable Security**” means Security hereunder in the form of either cash or a Letter of Credit, at Seller’s election. If Seller provides cash as Acceptable Security, that cash shall be held in an escrow account pursuant to an agreement with a Qualified Issuer in the form and substance satisfactory to Buyer.

“Actual Annual Availability” means, for each Contract Year, an amount (expressed as a percentage) calculated as the quotient of (a) the sum of the Available Hours for each of the Wind Turbines comprising the Facility for such Contract Year, divided by (b) the product of the total number of Wind Turbines comprising the Facility and the total number of hours in such Contract Year. An example of such calculation is set forth in Exhibit D.

“Adjustment Period” has the meaning set forth in Section 7.02.

“Affiliate” means, with respect to a Party, any entity that, directly or indirectly, through one or more intermediaries, controls, or is controlled by, or is under common control with such Party. For purposes of this Agreement, “control” means the direct or indirect ownership of fifty-one percent (51%) or more of the outstanding capital stock or other equity interests having ordinary voting power.

“Agreed Compliance Costs” has the meaning set forth in Section 6.03.

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

“Applicable Law(s)” 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 of the United States of America or any other applicable jurisdiction.

“Available Hours” means, for each Wind Turbine comprising the Facility for each Contract Year, the aggregate number of hours during such Contract Year that such Wind Turbine is available to produce Energy, as determined by Seller's SCADA system used for reporting availability; provided, that such each Wind Turbine will be deemed to be available to produce Energy during all Excused Periods even if such Wind Turbine is recorded as unavailable in Seller's SCADA system.

“Balancing Authority” means the entity responsible for the reliable planning and operation of the bulk electric system in a defined area.

“Balancing Authority Area” means the system of transmission lines and associated facilities that is operated by a Balancing Authority and for which the Balancing Authority has operational control and responsibility for grid reliability of the bulk electric system.

“Business Day” means any day except any Saturday, Sunday, any day which is a federal legal holiday in the United States or any day on which banking institutions in the State of California are authorized or required by U.S. Applicable Law or other governmental action to close, or days that are NERC Holidays. Unless designated as “Business Days,” all daily references in this Agreement shall be to calendar days.

“Buy-Down Damages” has the meaning set forth in Section 2.04(c).

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

“Buyer Bid Curtailment” has the meaning set forth in Section 4.04(b).

“Buyer Credit Downgrade” has the meaning set forth in Section 13.05.

“CAISO” means the California Independent System Operator, or its successor.

“CAISO Tariff” means the California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff (Open Access Transmission Tariff), as it may be amended, supplemented or replaced (in whole or in part) from time to time.

“Capacity Attributes” means any defined characteristics intended to value any aspect of the capacity of the Facility to produce any and all Net Electrical Output under U.S. Applicable Law.

“CEC” means the California Energy Commission.

“CEC Certification” means that the California Energy Commission (or its successor agency) has certified that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility qualifies as generation from an ERR for purposes of the Facility.

“CEC Pre-Certification” means that the California Energy Commission (or its successor agency) has pre-certified that the Facility is an ERR for purposes of the California Renewables Portfolio Standard and that all Energy produced by the Facility qualifies as generation from an ERR for purposes of the Facility.

“Change in Compliance Costs” means any change, amendment, repeal or enactment of any U.S. Applicable Law occurring after the Effective Date which increases Seller’s costs, or results in any charges or penalties imposed on Seller above or beyond the costs, charges or penalties, that are expected by Seller as of the Effective Date, for Seller to comply with its obligations under this Agreement relating to the following:

- (i) obtaining, maintaining, conveying or transferring to Buyer any of (a) Environmental Attributes, (b) Capacity Attributes, (c) Resource Adequacy Attributes or (d) Energy; or
- (ii) the Facility’s qualification and certification by the CEC as an ERR, or the Facility’s output qualification under the requirements of the California Renewables Portfolio Standard.

Notwithstanding the foregoing, Change in Compliance Costs shall not include the costs, charges or penalties resulting from Seller’s sole negligence or bad acts.

“Claiming Party” has the meaning set forth in Section 5.01.

“Compliance Cost Cap” has the meaning set forth in Section 6.03.

“Construction Security” has the meaning set forth in Section 13.02.

“Contract Capacity” means the net capacity of the Facility at the Delivery Point. Based on the Expected Nameplate Capacity, and anticipated electrical losses from the Site to the Delivery

Point, the Contract Capacity is expected to be three hundred megawatts (300 MW) on the Initial Delivery Date. If the Total Nameplate Capacity as of the Initial Delivery Date is declared by partial completion under Section 2.04, Seller shall by notice to Buyer provide a revised calculation and declaration of the then effective Contract Capacity.

“Contract Price” has the meaning set forth in Exhibit B.

“Contract Year” means each twelve (12) consecutive month period beginning on the Initial Delivery Date, so that the first Contract Year begins at 12:00 AM Pacific Prevailing Time on (and includes) the Initial Delivery Date and ends at 11:59 PM Pacific Prevailing Time on (and includes) the day preceding the first anniversary of the Initial Delivery Date, and each successive twelve (12) month period thereafter during the Delivery Term.

“Costs” has the meaning set forth in Section 9.03(b)(iv).

“CPUC” means the California Public Utilities Commission.

“Daily Delay Damages” means an amount equal to (a) the Initial Security amount required hereunder, divided by (b) one hundred eighty (180).

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

“Deemed Generated Energy” means the quantity of electric energy, expressed in MWh, that Seller reasonably calculates would have been produced by the Facility and made available at the Delivery Point during a relevant measurement period (including during any ramp-down or ramp-up periods). Seller shall calculate the amount of Deemed Generated Energy in accordance with Exhibit G.

“Defaulting Party” has the meaning set forth in Section 9.01.

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

“Delivery Point” means SDG&E’s East County (ECO) Substation located in southeastern San Diego County, California.

“Delivery Term” means the period of twenty (20) years commencing on the Initial Delivery Date and ending on the last day of the twentieth (20th) Contract Year.

“Delivery Term Security” has the meaning set forth in Section 13.03.

“EA Agency” means any Governmental Authority of the United States of America that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including, but not limited to, the Clean Air Markets Division of the United States Environmental Protection Agency, the CEC, the CPUC, WREGIS, the California Air Resources Board, and any successor agency thereto.

“Economic Bid” means a CAISO bid that includes quantity (MWh or MW) and price (\$) for specified trading hours.

“Effective Date” has the meaning set forth in the Preamble.

“Energy” means electrical energy measured in megawatt-hours (MWh).

“Energy Only Deliverability Status” or **“EODS”** has the meaning set forth in the CAISO Tariff.

“Environmental Attributes” means RECs, and all other current or future credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, named, registered, created, measured, allocated or validated (a) that are at any time recognized or deemed of value (or both) by Buyer, and recognized under U.S. Applicable Law or any voluntary or mandatory program of any other Governmental Authority and (b) that are attributable to (i) generation of electricity by the Facility during the Delivery Term required to be delivered by Seller to Buyer during the Delivery Term and (ii) the emissions or other environmental characteristics of such generation or its displacement of conventional or other types of Energy generation. Environmental Attributes include REC’s 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 Applicable 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. Notwithstanding the foregoing, Environmental Attributes do not include (i) any energy, capacity, reliability or other power attributes from the Facility, (ii) tax or similar credits associated with the construction, operation or ownership 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 any U.S. Applicable Law.

“ERR or Eligible Renewable Resource” means an Eligible Renewable Energy Resource as defined by California Public Utilities Code Section 399.12 and California Public Resources Code Section 25741, as either code provision is amended or supplemented from time to time.

“Event of Default” has the meaning set forth in Section 9.01.

“Excused Period(s)” means, for each Wind Turbine at the Facility, those periods in which such Wind Turbine was unavailable or curtailed due to: (a) a System Emergency, (b) curtailment taken by the Transmission Provider, (c) any direction, order or instruction by CAISO or other Governmental Authority (or similar entity) which results in a curtailment of the Facility that is not the result of the fault or negligence of Seller, (d) a Force Majeure Event, (e) any curtailment directed by Buyer or its SC under this Agreement, (f) any Intervention or (g) downtime due to, or the result of (i) a scheduled outage under an Outage Schedule, (ii) weather related conditions such as temperature, wind speed, etc., that are outside of the operating parameters of the Wind Turbines, (iii) any Event of Default, default or negligence by Buyer or (iv) delays in the replacement of damaged or defective Facility equipment due to the unavailability thereof on a reasonably expeditious basis not due to the breach or negligence of Seller.

“Expected Initial Delivery Date” has the meaning set forth in Section 2.03(a).

“Expected Nameplate Capacity” means the projected aggregate nameplate capacity (as of the Effective Date) of the Wind Turbines that will yield a Contract Capacity of 300 MW, which (as of the Effective Date) is approximately 305-310 MW; the final Expected Nameplate Capacity will be determined by Seller prior to the NTP Date based on final Facility engineering and notified by Seller to Buyer.

“Facility” means the electricity generation and transmission facilities located on the Site as more particularly described in Exhibit A, owned and/or leased by Seller and its Affiliates, together with all materials, equipment, systems, structures, features and improvements necessary to produce and deliver electricity to the Delivery Point.

“Facility Meter” means the CAISO certified revenue quality Meter (or Meters) at the Delivery Point, or if not at the Delivery Point, as adjusted by CAISO for deliveries at the Delivery Point.

“Final Completion Date” has the meaning set forth in Section 2.04(a).

“Force Majeure” or “Force Majeure Event” means any event or circumstance that is not in the reasonable control of, or the result of the negligence of, the Party claiming Force Majeure, that prevents or delays the ability of such Party from performing obligations under this Agreement, and which such Party is unable to overcome or cause to be avoided by the exercise of reasonable due diligence. To the extent meeting the foregoing requirements, Force Majeure shall include (without limitation) riot, insurrection, vandalism, war, mobilization, explosion, strike, civil disturbances, national emergency, fire, flood, earthquake, storm, lightning, tsunami, or other acts of God, backwater caused by flood, act of the public enemy, terrorism, epidemic or pandemic (including COVID-19 or variants), change in Applicable Law, or any action, inaction or delay by any Governmental Authority. Under no circumstances shall the following constitute an event of Force Majeure: (a) either Party’s financial incapacity, (b) Seller’s ability to sell electric Energy, Capacity Attributes, or Environmental Attributes at a more favorable price or under more favorable conditions or Buyer’s ability to acquire electric Energy, Capacity Attributes, or Environmental Attributes at a more favorable price or under more favorable conditions or other economic reasons, (c) Forced Outages to the extent such are not caused or exacerbated by an event of Force Majeure as described above, (d) delays or nonperformance of equipment suppliers, except to the extent that such delays or nonperformance were due to circumstances that would themselves constitute Force Majeure, (e) delays in obtaining Facility related permits or approvals from Governmental Authorities due to Seller’s breach, negligence or failure to use reasonable efforts, or (f) any other economic hardship or changes in market conditions affecting the economics of either Party.

“Forced Outages” has the meaning given to it in Section 4.05(b).

“Full Capacity Deliverability Status” or “FCDS” has the meaning set forth in the CAISO Tariff.

“Future Environmental Attributes” has the meaning set forth in Section 4.02(f).

“Gains” has the meaning set forth in Section 9.03(b)(iii).

“Good Operating Practice” means any of the practices, methods, and acts engaged in or approved by a significant portion of the electric industry in the United States of America during the relevant time period, or any of the practices, methods, and acts which, in the exercise of reasonable judgment in the 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. Good Operating Practice is not intended to be limited to the optimum practice, method, or act, to the exclusion of all others, but rather is intended to include acceptable practices, methods, and acts generally accepted in the industry.

“Governmental Approvals” has the meaning set forth in Section 2.02(f).

“Governmental Authority” means any federal, state, local, municipal or other government, governmental department, commission, board, bureau, agency, or instrumentality, or any judicial, regulatory or administrative body, having jurisdiction as to the Facility or Parties, their respective assets, or matter in question.

“Governmental Charges” has the meaning set forth in Section 6.02.

“Guaranteed Availability” means ninety-two percent (92%).

“Independent Engineer” means any of DNV GL, Black and Veatch, AWS Truepower, Leidos, Burns & McDonnell, or any other independent engineer reasonably designated by Seller.

“Initial Delivery Date” has the meaning set forth in Section 2.02.

“Initial Delivery Date Notice” has the meaning set forth in Section 2.02.

“Initial Security” has the meaning set forth in Section 13.01.

“Initial Synchronization” means the first delivery of Net Electrical Output from the Facility to the Delivery Point.

“Interconnection Facilities” means the interconnection facilities, control and protective devices and metering facilities required to connect the Facility with the Transmission System in order to meet the terms and conditions of this Agreement.

“Interconnection Facilities Agreement” means an agreement for the Facility with Transmission Provider (and CAISO, if necessary) which allows the Facility to interconnect to the Transmission Provider’s transmission system.

“Interest Rate” means, as of any date, the lesser of: (i) the per annum rate of interest equal to the prime lending rate as may from time to time be published in the *Wall Street Journal* under “Money Rates” on such day (or if not published on such day on the most recent preceding day on which published) plus two percent (2%); and (ii) the maximum rate permitted by Applicable Law.

“Intervention” means a restriction, prohibition or intervention placed upon the Facility or the use of the Facility by an applicable Governmental Authority with regulatory authority over the

Facility regarding any “take” of any animal under any Applicable Law related to wildlife protection, which such action, restriction, prohibition or intervention prevents Seller from delivering Renewable Energy in accordance with this Agreement.

“Letter of Credit” means an irrevocable, nontransferable standby letter of credit, substantially in the form of Exhibit M, provided from an issuer that is either a U.S. commercial bank or a U.S. branch of a foreign bank with the bank having a credit rating of at least (a) “A-”, or equivalent from S&P, Fitch, or Moody’s, if such entity is rated by at least two of the ratings agencies; or (b) “AA-”, or equivalent, from S&P, Fitch, or Moody’s, if such entity is rated by only one of the ratings agencies. The foregoing bank shall be known as a “Qualified Issuer.” The applicant must bear the costs of all Letters of Credit.

“Letter of Credit Default” means with respect to a Letter of Credit, the occurrence of any of the following events:

(a) The issuer of the Letter of Credit fails to comply with or perform its obligations under such Letter of Credit;

(b) The issuer of the Letter of Credit disaffirms, disclaims, repudiates, or rejects, in whole or in part, or challenges the validity of, the Letter of Credit;

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

(d) The Party providing the Letter of Credit fails to provide an extended or replacement Letter of Credit within twenty (20) Business Days before the Letter of Credit expires or terminates;

(e) The issuer of the Letter of Credit becomes Bankrupt; or

(f) The issuer has a Letter of Credit Derating event;

provided, no Letter of Credit Default will be treated as having occurred or be continuing in any event with respect to a Letter of Credit after the time such Letter of Credit is required to be canceled or returned to a Party in accordance with the terms of this Agreement.

“Letter of Credit Derating” means the issuer of a Letter of Credit fails to maintain a Credit Rating of at least (a) “A-”, or equivalent, from S&P, Fitch, or Moody’s, if such entity is rated by at least two of the ratings agencies; or (b) “AA-”, or equivalent, from S&P, Fitch, or Moody’s, if such entity is rated by only one of the ratings agencies.

“Losses” has the meaning set forth in Section 9.03(b)(ii).

“Meter Service Agreement” means a contract with CAISO for the Facility that delineates the terms and conditions for operations and the participation in CAISO’s markets, including requirements for Facility metering and telemetry.

“Meters” means the physical metering devices, data processing equipment and apparatus associated with the meters owned by Seller or Transmission Provider or its designee, and used to

determine the quantities of Energy generated by the Facility and to record other related parameters required for the reporting of data to Seller.

“Milestone” has the meaning set forth in Section 2.03(a).

“Milestone Action Plan” has the meaning set forth in Section 2.03(d).

“Milestone Date” has the meaning set forth in Section 2.03(a).

“MW” or **“megawatt”** means 1,000 Kilowatts AC of electric energy generating capacity.

“MWh” means 1,000 kWh AC of electric energy.

“NERC” means The North American Electric Reliability Corporation, or successor organization.

“Net Electrical Output” means the Energy output of the Facility (measured in MWhs) delivered to the Delivery Point, as measured by the Facility Meter.

“Net Outstanding Amounts” has the meaning set forth in Section 9.03(b)(v).

“NTP Date” means the date on which Seller or its Affiliate delivers a full notice to proceed to the primary EPC Contractor for the Facility. Seller shall provide notice to Buyer of the occurrence of the NTP Date within five (5) days thereafter.

“Outage” means a physical state in which all or a portion of the Facility is unavailable to provide Energy to the Delivery Point, including any derating or reduction in the capacity of the Facility, whether planned or unplanned.

“Outage Schedule” has the meaning set forth in Section 4.05(a).

“Output” means (i) the Contract Capacity and all associated Capacity Attributes and Resource Adequacy Attributes, (ii) the Net Electrical Output and (iii) all Environmental Attributes.

“Outside Guaranteed Initial Delivery Date” has the meaning set forth in Section 2.03(a).

“Partial Capacity Deliverability Status” or **“PCDS”** has the meaning set forth in the CAISO Tariff.

“Partial Delay Damages” means partial Daily Delay Damages payable by Seller to Buyer due to Seller achieving the Initial Delivery Date with a Total Nameplate Capacity that is less than the Expected Nameplate Capacity, in accordance with Section 2.04.

“Participating Generator Agreement” means a contract with CAISO for the Facility that delineates the terms and conditions for operations and the participation in CAISO’s markets, including requirements for scheduling and operations.

“Participating Transmission Owner” has the meaning set forth in the CAISO Tariff.

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

“Person” means an individual, partnership, corporation (including a business trust), limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

“QRE” has meaning set forth in Section 4.02 (d).

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

“REC” or “Renewable Energy Credit” means a certificate of proof associated with the generation of electricity from an ERR, which certificate is issued through the accounting system established, used or approved by the CEC pursuant to the RPS Program, evidencing that one (1) MWh of Energy was generated and delivered from such ERR. Such certificate is a transferable environmental commodity (also known as a “green tag” or “renewable energy certificate”) for which the owner of the REC can evidence that it has purchased Energy that is CEC certified.

“Resource Adequacy Attributes” means the rights and privileges attached to any generating resource that satisfy any entity’s resource adequacy obligations, as those obligations are set forth in any applicable CPUC Decisions (or rulings of CAISO or any other similar regional entity, as applicable) and shall include any local, zonal or otherwise locational attributes associated with the Facility, all under U.S. Applicable Law.

“RPS Program” or “Renewable Portfolio Standard Program” means applicable California Renewable Portfolio Standard Program laws and rules, including those rules and provisions set forth in the then-current CEC’s RPS Guidebook and RPS Eligibility Guidebook.

“SCADA” has the meaning set forth in Section 7.01(b).

“Schedule” or “Scheduling” means the actions of Seller, Buyer and/or their designated representatives, including applicable Transmission Providers, if applicable, of notifying, requesting and confirming to each other and the CAISO, the quantity of Energy from the Facility to be delivered on any given day or days hereunder during the Delivery Term (and prior thereto as may be applicable to Test Energy) at the Delivery Point, all in the manner contemplated by the CAISO Tariff.

“Scheduling Coordinator ” or “SC” means an entity designated by Buyer and 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.

“SDG&E” means San Diego Gas & Electric Company, a California corporation.

“Security” means the Initial Security, Construction Security, and/or Delivery Term Security, each in the form of Acceptable Security.

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

“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 to the Delivery Point, that may be used in common with third parties.

“Site” means the real property on which the Facility is located, as described in Exhibit A.

“Site Control” means that Seller (or a Seller Affiliate): (a) owns the Site; (b) is the lessee (or has a similar status) of the Site under a lease (or similar instrument); (c) is the holder of a right-of-way grant or similar instrument with respect to the Site; or (d) is the managing partner or other person or entity authorized to act in all matters relating to the control and operation of the Site.

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

“Taxes” means all United States and Mexican federal, state and local or other 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 term hereof, 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.

“Termination Payment” has the meaning set forth in Section 9.03(b)(i).

“Test Energy” has the meaning provided in Section 4.01.

“Third Party SC” has the meaning set forth in Section 4.03.

“Total Nameplate Capacity” means, as of any given date, the sum of the manufacturer’s nameplate ratings of all installed Wind Turbines comprising the Facility as of such date.

“Transmission Provider” means any entity or entities responsible for the interconnection of the Facility with a Balancing Authority Area or for transmitting Energy on behalf of Seller from the Facility to the Delivery Point, and on behalf of Buyer from the Delivery Point. For avoidance of doubt, as of the Effective Date, the Transmission Provider shall include SDG&E.

“Transmission System” means the facilities used for the transmission of electricity in interstate commerce, including any modifications or upgrades made to such facilities, owned or operated by the Transmission Provider or placed under CAISO’s operational control.

“U.S. Applicable Law(s)” refers solely to Applicable Law(s) of Governmental Authorities in the United States of America.

“Wind Turbine(s)” means each of the wind turbine generating devices powered by the wind that are described on Exhibit A and included in the Facility.

“WREGIS” means the Western Renewable Energy Generation Information System, or any successor renewable energy tracking system for implementing California’s Renewables Portfolio Standard.

Section 1.02 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 or agreement including any amendment or supplement to, or replacement, novation or modification thereof, but disregarding any amendment, supplement, replacement, novation or modification made in breach of such document or 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 (including Applicable Law) 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, unless the context otherwise requires;
- (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 Good Operating Practice shall have such meaning in this Agreement or (ii) do not have well known and generally accepted meaning in Good 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 II TERM AND INITIAL DELIVERY DATE

Section 2.01 EFFECTIVENESS AND TERM

This Agreement shall become effective on the Effective Date and, unless terminated earlier as provided herein, shall continue in full force and effect until (and shall expire upon) the expiration of the Delivery Term.

Section 2.02 INITIAL DELIVERY DATE CERTIFICATION

Buyer's obligation to purchase the Output from the Facility under this Agreement will commence upon the Initial Delivery Date, provided that Buyer's obligation to purchase Test Energy will commence on Initial Synchronization as described under Section 4.01. The "**Initial Delivery Date**" is the date identified by Seller in the Initial Delivery Date Notice as the date upon which Seller certifies that all of the conditions (a) through (f) below have been completed or otherwise satisfied. No later than five (5) days following the Initial Delivery Date, Seller will provide a certificate in the form of Exhibit L ("**Initial Delivery Date Notice**") identifying the Initial Delivery Date, executed by the Seller and the Independent Engineer.

- (a) Wind Turbine generators with a Total Nameplate Capacity of at least ninety percent (90%) of the Expected Nameplate Capacity have been installed, substantially completed and commissioned at the Site and all applicable Facility systems necessary for operation and metering of such Wind Turbine generators are tested and certified, in each case as required by CAISO, including the installation of a Remote Intelligence Gateway (RIG) or equivalent for the purpose of telemetry of real-time data to the CAISO, as required;
- (b) All applicable agreements between Seller (or its Affiliates) and CAISO which are required for Seller's performance of this Agreement are signed and delivered, including but not limited to the Interconnection Facilities Agreement, a Participating Generator Agreement, a Meter Service Agreement and any other agreements required by CAISO;
- (c) All applicable agreements between Seller (or its Affiliates) and SDG&E as Transmission Provider which are required for Seller's performance of this Agreement are signed and delivered, including the Interconnection Facilities Agreement;

- (d) The Facility's electrical interconnection facilities have demonstrated the ability to accept the Contract Capacity;
- (e) 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 Initial Delivery Date required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system;
- (f) All applicable regulatory authorizations, approvals and permits for the commencement of operations of the Facility ("**Governmental Approvals**") are obtained; and
- (g) The CEC Pre-Certification for the Facility has been obtained.

Section 2.03 MILESTONES, REPORTING AND DELAY LIQUIDATED DAMAGES

- (a) Milestones Generally. The Facility's development and construction key milestones are set forth on Exhibit E (each, a "**Milestone**" and "**Milestone Date**", as applicable), including for the expected Initial Delivery Date, which is December 31, 2024 (the "**Expected Initial Delivery Date**"), and Seller's outside guaranteed date for achieving the Initial Delivery Date which is December 31, 2025 (the "**Outside Guaranteed Initial Delivery Date**"). Subject to Section 2.03(b), Seller shall achieve the Initial Delivery Date on or prior to the Outside Guaranteed Initial Delivery Date.
- (b) Extensions of Milestones. Each of the Milestone Dates will be extended (on a day-for-day basis) for the periods of delay resulting from any of the following circumstances:
 - (i) Force Majeure Events;
 - (ii) SDG&E's interconnection related facilities required to interconnect the Facility at the Delivery Point and deliver Output are not complete and ready for the Facility to interconnect and deliver Output; or
 - (iii) Buyer has not made all necessary arrangements to receive the Output at the Delivery Point.

For the avoidance of doubt, any reference herein to any Milestone Date shall be interpreted to mean such Milestone Date as may be extended under this Agreement, whether or not such extension is expressly referenced.

- (c) Progress Reports and Prior Notice of Initial Delivery Date. Seller shall provide to Buyer written quarterly progress reports concerning the progress towards completion of the Milestones. In addition, within five (5) business days of the completion of each Milestone, Seller shall provide notice to Buyer (along with any supporting documentation), demonstrating Seller's achievement or satisfaction of the Milestone. Seller shall provide to Buyer additional information concerning Seller's progress towards, or confirmation of, achievement of the Milestones, as Buyer may reasonably request from time to time. Seller shall provide written notice to Buyer no less than thirty (30) days in advance of: (i) the

anticipated date of Initial Synchronization, and (ii) the anticipated Initial Delivery Date, and shall provide Buyer with reasonable written weekly updates thereafter on the status of Seller's progress in achieving the Initial Delivery Date until the week preceding the Initial Delivery Date.

- (d) Milestone Action Plans. If Seller misses a Milestone by more than thirty (30) days of its Milestone Date, except as the result of Force Majeure Event or Buyer Event of Default or other Buyer breach hereunder, Seller shall submit to Buyer, within fifteen (15) Business Days of the end of such thirty (30)-day period following the Milestone Date, a milestone action plan ("**Milestone Action Plan**"), which will describe in detail any delays (actual or anticipated) beyond the scheduled Milestone Dates, including the cause of the delay, Seller's detailed description of its proposed course of action to achieve the missed Milestone. Subject to the other provisions of this Section 2.03, and subject to Section 9.02(iii), so long as Seller complies with its obligations under this Section 2.03(d), it shall not be a Seller Event of Default or default of Seller's obligations under this Agreement if Seller misses any Milestone Date.
- (e) Daily Delay Damages. If Seller fails to achieve the Initial Delivery Date on or before the Outside Guaranteed Initial Delivery Date, then (subject to Section 9.02(iii), but otherwise as a sole and exclusive remedy to Buyer) Seller shall pay to Buyer liquidated damages for each day of such delay, for up to one hundred eighty (180) days maximum, in the amount per day equal to the Daily Delay Damages. Subject to the foregoing one hundred eighty (180) days maximum, the Outside Guaranteed Initial Delivery Date shall be extended on a day-for-day basis for each day that Seller pays Daily Delay Damages.

Section 2.04 PARTIAL COMPLETION

- (a) If Seller achieves the Initial Delivery Date with a Total Nameplate Capacity that is less than the Expected Nameplate Capacity, then Seller shall be entitled to a period of twelve (12) months after the Initial Delivery Date to continue installing Wind Turbines and/or performing related work to achieve the Expected Nameplate Capacity. Thereafter, Seller shall provide notice to Buyer upon the substantial completion of installation and commissioning of each additional Wind Turbine until the date (the "**Final Completion Date**") that is the earlier of (i) the date on which Seller provides notice that it has completed installation of Wind Turbines and/or performing related work comprising the entire Expected Nameplate Capacity or (ii) the first anniversary of the Initial Delivery Date.
- (b) If Section 2.04(a) is applicable, then during the period from the Initial Delivery Date until the Final Completion Date, Seller shall pay Buyer Partial Delay Damages each day in an amount equal to the product of (i) the Daily Delay Damages amount multiplied by (ii) a fraction the numerator of which equals (A) the amount by which the Expected Nameplate Capacity exceeds the Total Nameplate Capacity as of end of such day and (B) the denominator of which equals the Expected Nameplate Capacity.
- (c) If the Total Nameplate Capacity as of the Final Completion Date is less than the Expected Nameplate Capacity, then Seller shall pay to Buyer as liquidated damages (and as a sole and exclusive remedy) an amount equal to (i) \$100,000/MW multiplied by (ii) the amount by which the Expected Nameplate Capacity exceeds the Total Nameplate Capacity on the Final

Completion Date (the “**Buy-Down Damages**”). In such case, the Expected Nameplate Capacity will automatically and permanently be reduced to equal the Total Nameplate Capacity at such time.

ARTICLE III OPERATIONAL COVENANTS

Section 3.01 DEDICATION OF OUTPUT

Throughout the Delivery Term, Seller shall dedicate, sell and transfer all Output to Buyer.

Section 3.02 INSURANCE

Seller shall maintain insurance as specified in Exhibit F of this Agreement.

Section 3.03 BUYER ACCESS RIGHTS

With reasonable prior notice, Buyer shall have the right of access, at its expense, to visit the Facility at reasonable hours for purposes reasonably connected with this Agreement; provided that Buyer (and its employees and agents) shall comply with all site, health and safety requirements notified by Seller, such visits shall not interfere with the operations of the Facility, and Buyer shall indemnify and hold Seller harmless from and against any liabilities, damages, claims, actions and expenses arising out of or connected with Buyer’s visit.

Section 3.04 OPERATING STANDARDS

Throughout the Delivery Term, Seller shall operate or cause the Facility to be operated in accordance with all applicable (a) CAISO agreements, tariffs and standards, (b) SDG&E agreements and standards, (c) Governmental Approvals, (d) Good Operating Practices and (e) Applicable Laws. Without limiting the foregoing, Seller shall comply with all applicable requirements of NERC and WECC relating to the Facility, including those related to safety, construction, ownership and operation of the Facility.

Section 3.05 GUARANTEED AVAILABILITY.

Subject to the terms and conditions of this Agreement, Seller guarantees that, starting with the second Contract Year, the Actual Annual Availability of the Facility in each Contract Year shall be no less than the Guaranteed Availability, all in accordance with and subject to Exhibit D.

ARTICLE IV PURCHASE AND SALE OF NET ELECTRICAL OUTPUT

Section 4.01 PURCHASE AND SALE

Throughout the Delivery Term, Seller shall sell and deliver to Buyer at the Delivery Point, and Buyer shall purchase, receive at the Delivery Point, and pay for, all Net Electrical Output, along with all other Output, as measured by the Facility Meter. From Initial Synchronization through the Initial Delivery Date, Seller may deliver, and Buyer shall purchase, receive at the Delivery Point, and pay for, all Net Electrical Output produced by the Facility (the “**Test Energy**”) that

qualifies for Renewable Energy Credits. For avoidance of doubt, Seller shall retain any and all present or future (whether known or unknown) U.S. or Mexican state and federal production tax credits, investment tax credits and any other tax credits that are or will be generated by or associated with the Facility.

- (a) Seller shall arrange and be responsible for all costs, fees and penalties assessed by, and all associated requirements of, CAISO, SDG&E or any other applicable transmission provider or Balancing Authority to deliver the Net Electrical Output up to the Delivery Point, including all costs associated with metering and telemetry.
- (b) Buyer shall arrange and be responsible at its own expense for all scheduling and transmission service of Net Electrical Output at and from the Delivery Point, including all associated requirements of CAISO, SDG&E or any other applicable transmission provider or Balancing Authority to schedule and receive the Net Electrical Output at and from the Delivery Point, and including any transmission Outages or curtailment at and from the Delivery Point. Buyer shall be responsible and liable for any and all costs (including scheduling and transmission congestion costs), penalties, charges and losses arising at and from the Delivery Point, including any transmission losses from the Delivery Point and any CAISO imbalance charges (including, but not limited to, energy charges) assessed based on imbalances between scheduled output and actual output; provided, that Seller shall be responsible for CAISO penalties resulting from Seller's failure to curtail when required in accordance with the terms of this Agreement.

Section 4.02 ENVIRONMENTAL ATTRIBUTES, CAPACITY ATTRIBUTES, AND RESOURCE ADEQUACY ATTRIBUTES.

Throughout the Delivery Term, Seller shall transfer to Buyer, and Buyer shall receive from Seller, all rights, titles, and interest in and to the Environmental Attributes, Capacity Attributes and Resource Adequacy Attributes as a component of the Output purchased by Buyer from Seller hereunder. Seller agrees to transfer and make such Environmental Attributes, Capacity Attributes and Resource Adequacy Attributes available to Buyer to the fullest extent allowed by U.S. Applicable Law upon Seller's production or acquisition of the Environmental Attributes, Capacity Attributes and Resource Adequacy Attributes. Seller agrees that the Contract Price is the full compensation for all Energy, Environmental Attributes, Capacity Attributes and Resource Adequacy Attributes.

- (a) No Assignment. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of any portion of the Environmental Attributes, Capacity Attributes and Resource Adequacy Attributes to any Person other than Buyer.
- (b) RPS Compliance.

As soon as is reasonably possible following the Initial Delivery Date, Seller shall obtain CEC Certification for the Facility and, thereafter, Seller shall use commercially reasonable efforts to ensure that the Facility maintains ERR status throughout the remainder of the term of this Agreement. Seller shall cooperate reasonably with Buyer and provide such certifications or attestations to Buyer as are reasonably necessary to verify that all Environmental Attributes attributable to the Energy have been transferred to Buyer.

- (c) Reporting Rights. Seller shall not report to any Person that the Environmental Attributes, Capacity Attributes and Resource Adequacy Attributes granted hereunder to Buyer belong to anyone other than Buyer, and Buyer may report under any program that such attributes purchased hereunder belong to it.
- (d) Attestation and Transfer of RECs. Seller shall register and participate in WREGIS (or any successor renewable energy credit tracking system utilized by the CEC), and shall provide Buyer Renewable Energy Credits for all Net Electrical Output via WREGIS. Seller shall be responsible for complying, at its own expense, with requests for information associated with WREGIS and/or another entity, if any, that Buyer uses to verify its renewable energy purchases and that requires registration, inspections, certification or other evidence of the capability of the Facility to produce Environmental Attributes or evidence of the quality and/or quantity of such Environmental Attributes produced. Seller shall be responsible for acquiring and arranging a Qualified Reporting Entity (QRE) and any applicable QRE agreements. Seller shall document the production of Environmental Attributes under this Agreement by delivering with each invoice to Buyer an attestation for Environmental Attributes produced by the Facility and purchased by Buyer in the preceding calendar month, and ensuring the Environmental Attributes are available in Buyer's WREGIS account. On or before March 31st of each year following a Contract Year (but in any event consistent with WREGIS rules) Seller shall document the transfer of Environmental Attributes to Buyer under this Agreement by delivering to Buyer an attestation for Environmental Attributes transferred under this Agreement in the preceding Contract Year. The form of attestation is set forth as Exhibit H. Such form of attestation shall from time to time be updated or changed by the Parties as necessary to ensure that Buyer receives full and complete title to, and the ability to record with any EA Agency as its own, all of the Environmental Attributes purchased hereunder.
- (e) Documentation. At Buyer's request, the Parties, each at their own expense, shall execute all such documents and instruments in order to effect the transfer of the Environmental Attributes specified in this Agreement to Buyer, as Buyer may reasonably request, except that Seller shall be solely responsible for all of its own costs associated with participation in WREGIS (or its successor), including but not limited to obtaining and maintaining an account, reporting, and creation and transfer fees associated with delivery of the RECs to Buyer. Upon notification by an EA Agency that any transfers of Environmental Attributes contemplated by this Agreement will not be recorded, the Parties shall promptly cooperate in taking all reasonable actions necessary so that such transfer can be recorded. Each Party shall promptly give the other Party copies of all documents it submits to the EA Agency to effectuate any transfers.
- (f) Future Environmental Attributes.
 - (i) The Parties acknowledge and agree that new Environmental Attributes may be recognized after the Effective Date ("**Future Environmental Attributes**"). In such event, Buyer shall notify Seller in writing of its interest to receive such Future Environmental Attributes. Seller shall deliver to Buyer a good faith estimate of additional costs ("**FEA Additional Cost Estimate**") associated with the transfer, qualification, verification, registration and ongoing compliance for such Future

Environmental Attributes. Prior to Seller incurring the FEA Additional Cost Estimate, and following receipt of FEA Additional Cost Estimate by Buyer, Buyer shall notify Seller in writing ("**FEA Notice**") of its desire to acquire the Future Environmental Attributes at such cost. Upon Seller's receipt of the FEA Notice, such Future Environmental Attributes shall be transferred by Seller to Buyer pursuant to the terms and conditions set forth in this Agreement at no additional increase in the Contract Price; provided, that Buyer shall be responsible for the actual additional costs of the Future Environmental Attributes. If the actual additional costs of the Future Environmental Attributes exceed FEA Additional Cost Estimate by more than ten percent (10%), Buyer shall have the right to notify Seller in writing of its election not to purchase such Future Environmental Attributes, and Seller shall not be required to incur any new additional costs. For the avoidance of doubt, Buyer shall remain liable to Seller for all costs incurred to purchase such Future Environmental Attributes during the period commencing from Seller's receipt of the FEA Notice to Seller's receipt of Buyer's notice to not purchase such Future Environmental Attributes.

- (ii) The Parties agree to negotiate in good faith further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes prior to any such transfer, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided* that the Parties acknowledge and agree that (x) such terms are not intended to alter the other material terms of this Agreement and (y) this Agreement will remain in full force and effect notwithstanding any such negotiations.
- (iii) In no event shall Seller take actions with respect to any Future Environmental Attributes that Buyer may elect not to receive that would diminish the value or quantity of Environmental Attributes, including RECs, Buyer is entitled to under this Agreement.

Section 4.03 SCHEDULING COORDINATOR SERVICES

Buyer shall provide (or cause to be provided), at its own expense, all Scheduling Coordinator services for the Facility. Seller agrees to sign and deliver any documentation reasonably necessary to (i) designate Buyer or its designee as Scheduling Coordinator for the Facility and (ii) allow Buyer or Buyer's designee to perform its various Scheduling Coordinator duties, including scheduling output from the Facility in accordance with CAISO's Tariff. Buyer reserves the right to substitute another entity ("**Third Party SC**") as Scheduling Coordinator for the Facility upon reasonable advance notice to Seller, provided that Buyer shall be responsible for all acts and omissions of any Third Party SC and for all costs, charges and liabilities incurred by Third Party SC to the same extent that Buyer would be responsible under this Agreement for such acts, omissions, costs, charges and liabilities if taken, omitted or incurred by Buyer directly. Buyer and Third Party SC shall comply with all obligations as Scheduling Coordinator for the Facility under the CAISO Tariff and shall conduct all scheduling in full compliance with the terms of this

Agreement, all U.S. Applicable Laws, and all CAISO requirements (including the CAISO Tariff). All Facility Scheduling shall be performed consistent with Exhibit C.

Section 4.04 BUYER CURTAILMENT

- (a) Buyer Discretionary and Economic Curtailments. Buyer shall have the right to curtail deliveries of Net Electrical Output and associated Environmental Attributes at any time and for the duration specified by Buyer in accordance with this Section 4.04, consistent with the CAISO tariff. Buyer will retain ability in its discretion to cause curtailment of the output of the Facility (i) by submitting Economic Bids that result in less than the full forecasted Facility output being scheduled or dispatched into the CAISO market or (ii) for any other reason in Buyer's discretion by notice to Seller in accordance with procedures mutually agreed by Buyer and Seller consistent with CAISO rules and practices. Seller will curtail the Facility consistent with the foregoing. Buyer will pay Seller for all resulting curtailed amounts in accordance with Section 4.04(b). Buyer will not pay for any curtailed Net Electrical Output instructed by the CAISO verbally or electronically arising out of reliability or similar curtailments and that are not the result of a reduction in output caused by an Economic Bid, Buyer discretionary curtailment instruction or other Buyer Bid Curtailment, and Seller assumes all financial risk therefor. If Seller does not comply with any CAISO Schedule or dispatch instruction arising from a Buyer Economic Bid, then Seller shall be responsible for any negative CAISO market pricing amounts related to the portion of generation that exceeds that directed in such CAISO Schedule. Subject to any further procedures mutually agreed by Buyer and Seller consistent with CAISO rules and practices, Buyer shall provide notice by telephone and e-mail (or any other means mutually agreed upon by the Parties from time to time) to Seller of Buyer's request for discretionary curtailments under this Section 4.04 and Seller shall comply with such request within the maximum time permitted by the CAISO Tariff, subject to Good Operating Practices (including the operational limitations of the Facility).
- (b) Deemed Generated Energy. All Energy curtailed by Buyer under Section 4.04(a), and all Energy subject to Buyer Bid Curtailment, shall be treated hereunder as giving rise to Deemed Generated Energy. Buyer shall for each month pay to Seller the product of the Contract Price multiplied by all such Deemed Generated Energy in such month (including during ramp-up and ramp-down periods). For purposes hereof, "**Buyer Bid Curtailment**" means that Seller curtails or otherwise reduces the amount of Net Electrical Output from the Facility as a result of a failure to obtain a CAISO Schedule (or obtains a Schedule for less than the full potential Net Electrical Output) as a result of the manner in which Buyer (or its Scheduling Coordinator) bids or submits (or fails to bid or submit) an offer, bid or schedule into the CAISO market, including where Buyer submits an Economic Bid that is not accepted.
- (c) Curtailment Equipment. Seller shall use commercially reasonable efforts to develop procedures to install equipment and to respond to CAISO curtailment instructions and shall, in accordance with CAISO protocols and Good Operating Practices, and subject to appropriate ramp rates and the terms of this Agreement, respond to any instructions from the CAISO and reduce generation at the Facility based on such instructions from the CAISO.

- (d) Curtailment Payments. For avoidance of doubt, Buyer is not responsible to pay Seller for any Net Electrical Output prevented from being generated or delivered to the Delivery Point by curtailments instructed by the CAISO or the Transmission Provider arising out of reliability or similar curtailments (other than curtailments described in Section 4.04(a) or 4.04(b)).

Section 4.05 OUTAGES

- (a) Scheduled Outages. No later than sixty (60) days prior to the anticipated Initial Delivery Date, and for each calendar year thereafter, no later than one hundred twenty (120) days prior to the deadline for providing the CAISO Resource Adequacy filings and proposed maintenance outages for the following year as described in the CAISO Tariff, Seller shall provide Buyer and the Scheduling Coordinator with its non-binding written projection of the scheduled outages ("**Outage Schedule**") for the succeeding calendar year. Within ten (10) Business Days after its receipt of the Outage Schedule, Buyer shall notify Seller in writing of any reasonable request for changes to the Outage Schedule. If Buyer fails to provide such notice within the prescribed period, Buyer shall be deemed to have approved the Outage Schedule. If Buyer requests changes to the Outage Schedule, it shall suggest alternative dates in writing to Seller. If Seller can accommodate such alternate dates within accepted electrical practices and the operating requirements of the Facility, such alternate dates shall be accepted, otherwise Seller's proposed Outage Schedule shall remain unchanged. Seller may make reasonable requests to change the approved Outage Schedule. If Buyer can accommodate such alternate dates, or if the alternate dates are imposed on Seller by CAISO and/or SDG&E under any rights CAISO or SDG&E may have, such dates shall be accepted. In addition, Seller shall cooperate in good faith with maintenance scheduling requests by Buyer consistent with Good Operating Practice. Notwithstanding the process described herein for coordination of the Outage Schedule between Buyer and Seller, both Buyer and Seller acknowledge that all scheduled outages submitted to the CAISO may be accepted or rejected by the CAISO as described in the CAISO Tariff. In the event the CAISO rejects a scheduled outage request submitted by Seller, Buyer and Seller agree to cooperate in good faith to timely coordinate and develop a revised final Outage Schedule to account for any scheduled outages that are not approved by the CAISO in accordance with the CAISO Tariff. The Outage Schedule shall include information concerning all projected scheduled outages during the relevant period, including (A) the anticipated start and end dates of each scheduled outage; (B) a description of the maintenance or repair work to be performed during the scheduled outage; and (C) the anticipated MW of operational capacity, if any, during the scheduled outage. Seller shall use commercially reasonable efforts to notify Buyer and its Scheduling Coordinator of any change in the Outage Schedule seventy-five (75) days prior to first day of the calendar month of the originally-scheduled date of the scheduled outage, but in no event shall Seller notify Buyer later than sixty-five (65) days prior to the first day of the month of the originally-scheduled date of the scheduled outage. Seller shall use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of scheduled outages. Scheduled outages shall not take place during the months of July, August or September unless such scheduled outages are for planned transmission outages or necessary pursuant to Good Operating Practices. In the event of a System Emergency, Seller shall use commercially reasonable efforts to

reschedule any scheduled outage previously scheduled so that it does not occur during the System Emergency. In addition, Seller shall use commercially reasonable efforts to coordinate scheduled outages to occur within a single calendar month period.

- (b) Forced Outages. “**Forced Outages**” means any unplanned Outage.
- (i) Forced Outages in excess of 10 MW shall be reported by Seller to Buyer within twenty (20) minutes of such outages or such longer time as may be required in the case of emergency.
 - (ii) Notice by Seller to Buyer of a Forced Outage shall include the reason for the Forced Outage (if known), expected duration of the Forced Outage, and the capacity reduction.
 - (iii) Seller shall take reasonable action consistent with Good Operating Practice to avoid implementing Forced Outages that could negatively impact the Capacity Attributes or Resource Adequacy Attributes of the Facility.
- (c) Outage Notification. Seller shall notify Buyer of any Outage not previously scheduled as soon as practicable after the condition becomes known to Seller. Changes, additions, or modifications will be processed as planned and/or forced outages pursuant to CAISO and/or SDG&E protocols and timelines. At a minimum, Seller shall follow all CAISO and/or SDG&E outage coordination protocols.
- (d) Notices. All Outage Schedules and other schedules and notices relating to Outages are to be submitted to Buyer by phone or email to the contacts listed in Exhibit J.

ARTICLE V FORCE MAJEURE

Section 5.01 FORCE MAJEURE

To the extent either Party is delayed or prevented by a Force Majeure Event from carrying out, in whole or part, its obligations under this Agreement, and such Party (the “**Claiming Party**”) gives notice and details of the Force Majeure Event to the other Party as soon as reasonably practicable, but in any event within twenty (20) Business Days after the Claiming Party obtains actual knowledge of the Force Majeure Event, then the Claiming Party shall be excused from the performance of its obligations (other than the obligation to make payments then due or becoming due with respect to performance prior to the Force Majeure) until delays caused by such Force Majeure Event have passed or has been cured by the actions of the Parties or a third-party. The Claiming Party shall use commercially reasonable efforts to remedy or overcome the Force Majeure Event. In the event a Force Majeure extends for more than eighteen (18) consecutive months and materially adversely affects a Party’s ability to perform its obligations hereunder, either Party may terminate this Agreement on notice, which shall be effective five (5) Business Days after such notice is provided. Upon any such termination, neither Party shall have any liability to the other Party (excluding accrued liabilities as of such date), and Buyer shall promptly

return to Seller any Security then held by Buyer, less any amounts previously drawn in accordance with this Agreement.

ARTICLE VI

CONTRACT PRICE; GOVERNMENTAL CHARGES; COMPLIANCE CAP

Section 6.01 CONTRACT PRICE

Buyer shall pay to Seller the Contract Price, as indicated in Exhibit B, (i) for each MWh of Deemed Generated Energy, and (ii) for each MWh of Net Electrical Output metered and delivered under this Agreement and for which Seller has satisfied its obligations hereunder (as applicable) with respect to Environmental Attributes, Capacity Attributes and Resource Adequacy Attributes associated with such Net Electrical Output. Buyer shall pay to Seller 75% of the Contract Price for each MWh of Test Energy metered and delivered under this Agreement.

Section 6.02 GOVERNMENTAL CHARGES

Seller shall pay or cause to be paid all Taxes imposed by any Governmental Authority ("**Governmental Charges**") on or with respect to the Output (including Deemed Generated Energy) arising prior to the Delivery Point. Buyer shall pay or cause to be paid all Governmental Charges on or with respect to the Output (including Deemed Generated Energy) at and from the Delivery Point (other than Taxes based on or measured by Seller's income related to the sale of the electricity, which Taxes are, therefore, the responsibility of the Seller). In the event Seller is required by Applicable Law to remit or pay Governmental Charges which are Buyer's responsibility hereunder, Buyer shall promptly reimburse Seller for such Governmental Charges. If Buyer is required by Applicable Law to remit or pay Governmental Charges which are Seller's responsibility hereunder, Buyer may deduct the amount of any such Governmental Charges from the sums due to Seller under this Agreement. Nothing shall obligate or cause a Party to pay or be liable to pay any Governmental Charges for which it is exempt under Applicable Law.

Section 6.03 COMPLIANCE CAP

Seller shall deliver written notice to Buyer as soon as reasonably possible after obtaining actual knowledge of any change, amendment, repeal or enactment of U.S. Applicable Law which results in the occurrence of any Change in Compliance Costs, which notice shall describe in reasonable detail the Change in Compliance Costs, its effects on Seller or the Facility, and the additional costs, charges or penalties associated with remedial measures or imposed on Seller or other expenses to be undertaken with respect to Seller or the Facility. Subject to Section 4.02(f)(i), Seller shall pay all such costs up to a maximum of Twenty-Five Thousand Dollars (\$25,000) per Contract Year and Two Hundred Fifty Thousand Dollars (\$250,000) in aggregate over the entire term hereof (such amounts, the "**Compliance Cost Cap**"). In the event that Seller anticipates the need to incur any costs or expenses, or anticipates the imposition of any charges or penalties, in excess of the Compliance Cost Cap, Seller shall have no responsibility to pay such costs, expenses, charges or penalties, and Seller shall submit an invoice to Buyer for such costs, expenses, charges or penalties. Buyer shall have thirty (30) days to evaluate such notice, and shall, by the end of such period, either (i) agree to reimburse Seller for all or some of the costs that exceed the Compliance Cost Cap, or (ii) waive Seller's obligation to take such actions, or any part thereof for which Buyer has not agreed to reimburse Seller and, in either case, Seller shall not be in default under this

Agreement for failure to satisfy any U.S. Applicable Law or provision hereof related to such Change in Compliance Costs. In the event Buyer agrees to reimburse Seller pursuant to clause (i) in the foregoing sentence, then Seller shall take such actions for which Buyer has agreed to reimburse Seller its costs, expenses, charges or penalties ("**Agreed Compliance Costs**"), and Buyer shall pay to Seller the Agreed Compliance Costs (i) for any capital expenditures, in advance of Seller's expenditure of such costs or (ii) for all other costs, on a monthly basis pursuant to the invoicing and payment procedures under Article VIII.

ARTICLE VII METERING

Section 7.01 METERING REQUIREMENTS

- (a) Meters. The transfer of all Net Electrical Output from Seller to Buyer shall be measured by the Facility Meter. The Facility Meter shall be selected, provided, installed, owned, maintained and operated at Seller's sole cost and expense, by Seller or Transmission Provider or its designee in accordance with the CAISO Tariff. Seller shall exercise reasonable care in the maintenance and operation of the Facility Meter, and shall test and verify the accuracy at least annually. Seller shall inform Buyer in advance of the time and date of these tests, and shall permit Buyer to be present at such tests and to receive the results of such tests. The Facility shall have a Facility Meter that is dedicated to the Facility, provided that the Parties acknowledge and agree that the Facility may otherwise include certain Shared Facilities.
- (b) SCADA. Seller shall install and maintain all equipment and data circuits necessary to determine and transmit real time supervisory control and data acquisition ("**SCADA**") system data and real time data from Facility Meter to the CAISO. Seller shall provide to Buyer a copy of each certificate of compliance issued by CAISO, if any.
- (c) Access by Buyer. Buyer, at its discretion, shall be provided access to all monitored SCADA points to be used for real time monitoring.
- (d) CAISO Requirements. Seller shall submit to the CAISO, or allow the CAISO to retrieve, any meter data required by the CAISO related to the Facility and its Output in accordance with the CAISO's settlement and billing protocol and meter data tariffs. Seller shall authorize Buyer, as part of Buyer's Scheduling Coordinator services, to view the Facility's CAISO on-line meter data by identifying Buyer as an authorized user with "read only" privileges.

Section 7.02 METER INACCURACIES AND RETROACTIVE ADJUSTMENTS

If a Meter fails to register, or if the measurement made by a Meter is found upon testing to be inaccurate by an amount exceeding plus or minus one percent (1%), an adjustment shall be made correcting all measurements made by the inaccurate or defective Meter during the Adjustment Period. If the Parties are unable to agree on the amount of the adjustment to be applied to the thirty-six (36) months immediately preceding the discovery of such failure or inaccuracy (the "**Adjustment Period**"), the amount of the adjustment shall be determined: (i) by correcting the error if the percentage of error is ascertainable by calibration, tests or mathematical calculation, or

(ii) if not so ascertainable, by estimating on the basis of the deliveries under similar conditions during periods when the Meter was registering accurately. Upon the determination of the amount of any adjustment and upon acceptance of such adjustment by the CAISO, if applicable, Buyer shall pay to Seller any additional amounts then due for deliveries of Output during the Adjustment Period at such time as other payments are due for the billing period in which the determination is made, or Buyer shall be entitled to a credit against the next subsequent payments due for the deliveries of Output, whichever case is applicable. The Parties agree to abide by protocols under the CAISO Tariff for handling Meter inaccuracies, which shall take precedence over the foregoing.

Section 7.03 RECORDS AND AUDITS

Seller and Buyer shall each keep complete and accurate records and all other data required by each Party for the purposes of proper administration of this Agreement, including such records as may be required by state or federal regulatory authorities. To facilitate payment and verification, Seller and Buyer shall keep all books and records necessary for billing and payments and grant the other Party reasonable access to those records for a period not to exceed seven (7) years. Seller and Buyer, at their own expense, shall have the right to audit and to examine the billing and operating records and data kept by the other Party relating to the transactions under, and the administration of, this Agreement at any time during normal business hours throughout the term of this Agreement and for two (2) years thereafter. All such records and data shall be maintained by each Party throughout the term of this Agreement and for a period of not less than two (2) years following the termination hereof. All such audits and examinations shall be conducted upon reasonable notice and during normal business hours.

ARTICLE VIII BILLING AND PAYMENT

Section 8.01 BILLING

- (a) The calendar month shall be the standard period for all payments under this Agreement. Seller shall provide to Buyer on or before the tenth (10th) day of each calendar month starting from the second (2nd) month of the first Contract Year or, if applicable, the calendar month following the first calendar month in which Test Energy is delivered by Seller to Buyer an invoice based upon (i) the Energy produced and delivered to the Delivery Point in such previous calendar month, (ii) any Deemed Generated Energy for such month, (iii) any Agreed Compliance Costs relevant to such previous month and (iv) any other relevant amounts hereunder.
- (b) Disputes over Invoice. Should either Seller or Buyer determine at a later date, but in no event later than twelve (12) months after the original invoice date, that the invoice amount was incorrect, that Party shall promptly notify the other Party of the error. In the event that 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, with notice of the objection given to the other Party. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment in reasonable detail. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment (along with interest accrued at the Interest Rate from, and including, the due date to, but excluding the

date paid) shall be either (i) made within ten (10) Business Days of such resolution or (ii) netted against other amounts due to the owing party (if any) and invoiced in accordance with the other provisions of this Article VIII. Inadvertent and undisputed overpayments by Buyer shall be returned upon request or deducted by Seller from subsequent payments, with interest accrued at the Interest Rate from, and including, the date of such overpayment to, but excluding the date repaid or deducted by, Seller. Any dispute with respect to an invoice is waived unless the other Party is notified in accordance with this Section 8.01(b) within twelve (12) months after the invoice is rendered or any specific adjustment to the invoice is made. 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. Failure of Buyer or its agent to withhold any payment amount is not a waiver of Buyer's right to challenge such amount.

Section 8.02 PAYMENT

- (a) Subject to Section 8.01(b), all invoices under this Agreement shall be due and payable on the twentieth (20th) day of the month in which the invoice was received or (y) the fifteenth (15th) day after receipt of the invoice, whichever is later or, if such day is not a Business Day, then on the next Business Day. Each Party shall make payments by electronic funds transfer as set forth in Exhibit I, or by other mutually agreeable method(s), to the account designated by the other Party.
- (b) Late Payments and Interest Rate. Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at an annual rate equal to the Interest Rate. Interest shall be computed on the basis of a three hundred sixty-five (365) day year.

Section 8.03 NETTING OF PAYMENTS

The Parties hereby agree that they shall discharge debts and payment obligations due and owing to the other on the same date through netting, in which case all undisputed amounts owed by each Party to the other for the purchase and sale of Output during any monthly billing period under this Agreement, including any related damages, 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.

ARTICLE IX EVENTS OF DEFAULT

Section 9.01 EVENTS OF DEFAULT

An “**Event of Default**” shall mean, with respect to a Party (the “**Defaulting Party**”), the occurrence of any of the following:

- (a) The failure to make, when due, any payment required pursuant to this Agreement if such failure is not remedied within five (5) days after receipt of written notice from the other Party, or to post and/or maintain the Security, if such failure is not remedied within fifteen (15) days after receipt of written notice from the other Party;

- (b) The failure to perform any other material covenant or material obligation set forth in this Agreement (except to the extent constituting a separate Event of Default hereunder), if such failure is not remedied within thirty (30) days (or such longer period as may be reasonably required to remedy such failure, not to exceed an aggregate period of one hundred twenty (120) days) after receipt of written notice from the non-Defaulting Party;
- (c) Any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made, if such breach is not remedied within thirty (30) days (or such longer period as may be reasonably required to remedy such breach, not to exceed an aggregate period of one hundred twenty (120) days) after receipt of written notice from the non-Defaulting Party;
- (d) A Party becomes bankrupt, or an involuntary proceeding is initiated and approved as properly filed against the Party under bankruptcy or insolvency laws, which involuntary proceeding remains undismissed or unstayed for ninety (90) consecutive days; or
- (e) 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.

Section 9.02 ADDITIONAL EVENTS OF DEFAULT BY SELLER

Subject to the cure periods in Section 9.01(b) above, the following shall each constitute an Event of Default by Seller:

- (i) Seller Schedules and/or delivers to Buyer Output from a resource other than the Facility;
- (ii) During the Delivery Term, except during any periods in which Seller has suspended performance pursuant to Section 9.03(a)(iii) as a remedy for an Event of Default by Buyer, Seller sells or transfers any portion of the Output to any Person other than Buyer.
- (iii) Seller fails to achieve the Initial Delivery Date on or before the Outside Guaranteed Initial Delivery Date (as such Outside Guaranteed Initial Delivery Date is extended pursuant to Section 2.03).

Section 9.03 REMEDIES; TERMINATION FOR DEFAULT

- (a) Remedies. In the event the Defaulting Party fails to cure a potential Event of Default within the applicable period for curative action under Sections 9.01 or 9.02, as applicable, the non-Defaulting Party shall have the following rights:
 - (i) 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 that terminates this Agreement and ends the Delivery Term effective as of such designated date;

- (ii) to collect as liquidated damages the Termination Payment, as calculated in accordance with Section 9.03(b) below;
 - (iii) to suspend performance (subject to Section 9.03(c)); and
 - (iv) to exercise any other right or remedy available at law or in equity, except to the extent such remedies are expressly limited under this Agreement; provided, payment by the Defaulting Party of the Termination Payment, as applicable, shall constitute liquidated damages and the non-Defaulting Party's sole and exclusive remedy for any Agreement termination and the Event of Default related thereto.
- (b) Termination Payment. Upon termination of the Agreement following an uncured Event of Default, the non-Defaulting Party shall calculate, in a commercially reasonable manner, the Termination Payment as of the effective date of termination. As soon as practicable thereafter, the non-Defaulting Party shall give notice to the Defaulting Party of the amount of the Termination Payment, together with a written statement explaining in reasonable detail the calculation of such amount. The Termination Payment shall be made by the Defaulting Party within twenty (20) Business Days after its receipt of such notice. If the Defaulting Party disputes any portion of the non-Defaulting Party's calculation of the Termination Payment, then the Defaulting Party shall (i) within ten (10) Business Days of receipt of the non-Defaulting Party's calculation of the Termination Payment, provide to the non-Defaulting Party a detailed written explanation of the basis for such dispute, and such dispute shall be resolved in accordance with Section 14.05, and (ii) pay the undisputed portion thereof in accordance with the foregoing. For the purposes of this Section 9.03:
- (i) **"Termination Payment"** means the sum of (X) the sum of Losses and Gains, expressed in U.S. Dollars, plus (Y) Costs, expressed in U.S. Dollars plus (Z) the sum of all amounts owed by the Defaulting Party to the non-Defaulting Party less any amounts owed by the non-Defaulting Party to the Defaulting Party determined as of the effective date of termination, provided, that if the sum of aggregate Gains plus aggregate Net Outstanding Amounts exceed the sum of aggregate Losses plus aggregate Costs, then the Termination Payment shall be zero (0); and provided further, that the foregoing shall be subject to Section 13.04.
 - (ii) **"Losses"** means an amount equal to the present value of the economic loss (if any) to the non-Defaulting Party (exclusive of Costs) resulting from termination of this Agreement following an Event of Default, determined in a commercially reasonable manner; provided, that Losses shall not include consequential, incidental, punitive, exemplary, or indirect damages.
 - (iii) **"Gains"** means an amount equal to the present value of the economic benefit (if any) to the non-Defaulting Party (exclusive of Costs) resulting from termination of this Agreement following an Event of Default, determined in a commercially reasonable manner;

- (iv) **"Costs"** means brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by the non-Defaulting Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, and all reasonable attorneys' fees and expenses incurred by the non-Defaulting Party in connection with the termination of this Agreement; and
- (v) **"Net Outstanding Amounts"** means the sum of all amounts owed by the Defaulting Party to the non-Defaulting Party less any amounts owed by the non-Defaulting Party to the Defaulting Party determined as of the effective date of termination.
- (c) Suspension. Notwithstanding any other provision of this Agreement, if an Event of Default has occurred and is continuing, the non-Defaulting Party, upon written notice to the Defaulting Party, shall have the right (i) to suspend performance under this Agreement, provided, however, in no event shall any such suspension continue for longer than ten (10) Business Days unless a notice of termination has been given pursuant to Section 9.03(a); and (ii) to the extent an Event of Default has occurred and is continuing, to exercise any remedy available at law or in equity.
- (d) Mitigation. Any non-Defaulting Party shall be obligated to mitigate its damages and costs resulting from any Event of Default of the other Party.

ARTICLE X

SELLER'S REPRESENTATIONS AND WARRANTIES

Section 10.01 SELLER'S REPRESENTATIONS AND WARRANTIES

Seller represents and warrants to Buyer that as of the Effective Date:

- (a) Seller is duly organized and validly existing as a limited liability company under the laws of the State of Delaware and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified and registered to do business in the State of California, in good standing, and further in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary;
- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part;
- (c) Seller, for itself, and on behalf of its parent company, subsidiaries and affiliates, hereby acknowledges that this Agreement shall be governed by and construed in accordance with the domestic laws of the State of California as if this Agreement were fully performed and all obligations recited herein were undertaken solely within the State of California without giving effect to any choice or conflict of law provision or rule (whether of the State of California or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of California;

- (d) Subject to Section 6.03: (i) the Facility will meet the requirements for qualification and certification by the CEC as an ERR under the rules and requirements of the RPS Program in effect as of the Initial Delivery Date and maintain such CEC certification throughout the Delivery Term, (ii) the Net Electrical Output delivered to Buyer will meet the requirements for qualification and certification as output from an ERR under the requirements of the RPS Program in effect as of the Initial Delivery Date and remain eligible throughout the Delivery Term, and (iii) Facility will remain registered in WREGIS throughout the Delivery Term;
- (e) Subject to Section 6.03, the Net Electrical Output meets the criteria set forth in California Public Utilities Code Section 399.16(b)(1);
- (f) This Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity;
- (g) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in the impairment of Seller's ability to perform its obligations under this Agreement in any material respect;
- (h) All governmental and other authorizations, approvals, consents, notices and filings that are required to have been obtained or submitted by it with respect to entering into this Agreement have been obtained or submitted and are in full force and effect and all conditions thereof have been complied with;
- (i) Seller is not relying upon any representations of Buyer other than those expressly set forth herein, and is acting for its own account;
- (j) Seller shall deliver good and marketable title to the Output, and will deliver to Buyer the Output free and clear of all liens, security interests, claims, or other encumbrances or any interest therein, or thereto, by any Person;
- (k) Seller or its Affiliates hold and, subject to Section 6.03, will hold throughout the Delivery Term, the rights to all Environmental Attributes, Capacity Attributes and Resource Adequacy Attributes associated with the Net Electrical Output, until conveyed to Buyer at the Delivery Point;
- (l) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, nor will it conflict in any material respect with any Applicable Laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected; and

- (m) Seller (or a Seller Affiliate) shall have Site Control by start of construction of the Facility and throughout the Delivery Term. Seller shall provide Buyer with prompt notice of any material pending change, or change, in the status of Seller's or its Affiliate's Site Control.

ARTICLE XI

BUYER REPRESENTATIONS, WARRANTIES & COVENANTS

Section 11.01 BUYER'S REPRESENTATIONS AND WARRANTIES

Buyer represents and warrants to Seller that as of the Effective Date:

- (a) Buyer is a chartered California municipal corporation established pursuant to the laws of the State of California, and has all requisite corporate power and authority to own, lease, and operate its properties and to carry on its business as is now being conducted;
- (b) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part;
- (c) The execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, any Applicable Laws or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected;
- (d) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity; and
- (e) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Buyer, or to result in any impairment of Buyer's ability to perform its obligations under this Agreement.

Section 11.02 WAIVER OF SOVEREIGN IMMUNITY

Buyer represents, warrants and covenants that Buyer cannot assert sovereign immunity as a defense to the enforcement of its obligations under this Agreement and will not do so with respect to its contractual obligations under this Agreement. In connection with the foregoing, Buyer will not claim and hereby irrevocably waives 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.

ARTICLE XII INDEMNIFICATION

Section 12.01 SELLER INDEMNITY

Seller shall defend, release, indemnify and hold harmless Buyer, its directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees, resulting from, or arising out of or in any way connected with claims by third parties associated with the actions or omissions of Seller, its directors, officers, employees, agents and representatives relating to: (i) the Energy delivered at the Delivery Point; (ii) Seller's operation and/or maintenance of the Facility; or (iii) this Agreement; excepting only such loss, claim, action or suit to the extent caused by the willful misconduct or gross negligence of Buyer, its agents, employees, directors or officers.

Section 12.02 BUYER INDEMNITY

Buyer shall defend, release, indemnify and hold harmless Seller, its directors, officers, employees, agents, and representatives against and from any and all losses, claims, demands, liabilities and expenses, actions or suits, including reasonable costs and attorney's fees resulting from, or arising out of or in any way connected with claims by third parties associated with the actions or omissions of Buyer, its directors, officers, employees, agents, and representatives, relating to: (i) the Energy delivered by Seller under this Agreement after the Delivery Point, or (ii) this Agreement; excepting only such loss, claim, action or suit to the extent caused by the willful misconduct or gross negligence of Seller, its agents, employees, directors or officers.

ARTICLE XIII SECURITY REQUIREMENTS

Section 13.01 SELLER'S INITIAL SECURITY

Within thirty (30) days after Effective Date, Seller shall provide initial project development security to Buyer in the amount of \$30,000 per MW of Contract Capacity (i.e., \$9,000,000 total) in the form of Acceptable Security (the "**Initial Security**"). Seller shall maintain the Initial Security until the date that Seller posts the Construction Security or any earlier termination of this Agreement.

Section 13.02 SELLER'S CONSTRUCTION PERIOD SECURITY

Within thirty (30) days after the NTP Date, Seller shall increase the amount of Acceptable Security provided to Buyer to an aggregate amount of \$60,000 per MW of the Contract Capacity (i.e., \$18,000,000 total) (such aggregate amount, the "**Construction Security**"), either by directly increasing the Initial Security, substituting new Acceptable Security, or providing supplementary Acceptable Security. Seller shall maintain the Construction Security until the date that Seller posts the Delivery Term Security or any earlier termination of this Agreement.

Section 13.03 SELLER'S DELIVERY TERM SECURITY

On or before the Initial Delivery Date, Seller shall increase the amount of Acceptable Security provided to Buyer to an aggregate amount of \$75,000 per MW of the Contract Capacity (i.e., \$22,500,000 total) (such aggregate amount, the "**Delivery Term Security**"), either by directly increasing the Construction Security, substituting new Acceptable Security, or providing supplementary Acceptable Security. Seller shall maintain the Delivery Term Security until the end of the Delivery Term.

Section 13.04 SELLER LIABILITY

Notwithstanding any other provision of this Agreement, Seller's aggregate cumulative liability at any time arising out of or related to this Agreement from any and all causes and for any and all liabilities, damages, losses or other amounts shall be limited to and capped at the amount of the Seller posted Security at such time. For clarity, prior to the Initial Delivery Date, such Seller liability cap shall limit Seller's liability for all applicable Daily Delay Damages plus any Termination Payment and/or other amounts (all on an aggregate cumulative basis) to the Security amount then posted.

Section 13.05 SELLER LETTER OF CREDIT

(a) Upon the occurrence of a Letter of Credit Default, Seller shall provide Buyer a substitute Letter of Credit reasonably acceptable to Buyer, in each case on or before the fifth (5th) Business Day after notice of the occurrence thereof.

(b) Upon, or at any time after the occurrence and continuation of an Event of Default by Seller, if an early termination date has occurred or been designated as a result of an Event of Default by Seller for which there exist any unsatisfied payment obligations, then Buyer may draw on any undrawn portion of any outstanding Letter of Credit or other Security. If a Letter of Credit, Buyer may draw on any outstanding amount upon submission of one or more certificates specifying that an Event of Default or early termination date has occurred and is continuing.

In addition, Buyer will have the right to draw on any Letter of Credit for any of the following reasons:

1. The Letter of Credit will expire in fewer than ten (10) Business Days and Seller has not provided Buyer alternative Letter of Credit reasonably acceptable to Buyer.

2. The Seller or the issuer of the Letter of Credit has provided written Notice to Buyer of either Seller's or the issuer's intent not to renew or extend the Letter of Credit following the present expiration date thereof ("Notice of Non-Renewal"), and Seller has failed to provide Buyer with a replacement Letter of Credit reasonably satisfactory to Buyer within thirty (30) days following the date of the Notice of Non-Renewal.

3. Buyer has not been paid any or all of Seller's payment obligations due and payable under the Agreement within the applicable cure period under Article IX.

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 in, and lien on (and right to net against), and assignment of all Security, 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 allow Buyer 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.

Seller shall replenish the Delivery Term Security within three (3) Business Days of receipt of written notice from Buyer that Buyer has drawn down on the Delivery Term Security, except that there shall be no obligation to replenish in connection with any Seller Event of Default resulting in termination of this Agreement.

Section 13.06 BUYER SECURITY

Buyer shall be required to provide credit support to Seller in the form of a Letter of Credit in the event of any Buyer Credit Downgrade. Buyer shall deliver to Seller a Letter of Credit not later than ten (10) Business Days following the occurrence of a Buyer Credit Downgrade. For purposes hereof, "**Buyer Credit Downgrade**" means the long term credit rating (global scale) of Buyer is at or below any of the following levels from any two of the following rating agencies that provide ratings of Buyer: BBB- from S&P, Baa3 from Moody's, or BBB- from Fitch. Buyer shall be obligated to maintain any such Letter of Credit until such time as its long-term credit rating (global scale) becomes at least the following rating from any two of the following rating agencies that provide ratings of Buyer: BBB from S&P, Baa2 from Moody's and BBB from Fitch (as applicable). The amount of the Letter of Credit shall be \$15,000,000. Upon the occurrence of a Letter of Credit Default, Buyer shall provide Seller a substitute Letter of Credit reasonably acceptable to Seller, in each case on or before the fifth (5th) Business Day after notice of the occurrence thereof.

ARTICLE XIV MISCELLANEOUS

Section 14.01 CONFIDENTIALITY

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by Applicable Law, all documents, data, drawings, studies, projections, plans and other written information that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("Confidential Information"). The provisions of this Section 14.01 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this

Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 14.01, disclose matters that are made confidential by this Agreement:

(i) to its counsel, accountants, auditors, advisors, other professional consultants, credit rating agencies, actual or prospective co-owners, investors, purchasers, lenders, underwriters, contractors, suppliers, and others involved in construction, operation, and financing transactions and arrangements for a Party or its subsidiaries or Affiliates;

(ii) to governmental officials and parties involved in any proceeding in which either Party is seeking a permit, certificate, or other regulatory approval or order necessary or appropriate to carry out this Agreement; and

(iii) to governmental officials or the public as required by any law, regulation, order, rule, ruling or other Applicable Law, including laws or regulations requiring disclosure of financial information and information material to financial matters and filing of financial reports and responding to oral questions, discovery requests, subpoenas, civil investigations or similar processes.

(c) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 6250 et seq. ("CPRA") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 et seq. ("Brown Act"). Confidential Information of Seller provided to Buyer pursuant to this Agreement shall become the property of Buyer, and Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller pursuant to CPRA or Brown Act.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all Applicable Law the credit support contemplated by this Agreement, and the rights, liens and priorities of Buyer with respect to such credit support.

(e) If a Party is requested or required, pursuant to any Applicable Law, regulation, order, rule, ruling or other Applicable Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, and if permitted by Applicable Law, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party may seek a protective order or other appropriate remedy concerning such disclosure. If Buyer receives a CPRA request for Confidential Information of Seller, and Buyer or Buyer's authorized representative determines that such Confidential Information is subject to disclosure under CPRA, then Buyer shall notify Seller

of the request and its intent to disclose the documents. Buyer, as required by CPRA, shall release such documents unless Seller timely obtains a court order prohibiting such release. If Seller, at its sole expense, chooses to seek a court order prohibiting the release of Confidential Information pursuant to a CPRA request, then Seller undertakes and agrees to defend, indemnify and hold harmless Buyer from and against all suits, claims, and causes of action brought against Buyer for Buyer's refusal to disclose Confidential Information of Seller to any person making a request pursuant to CPRA. Seller's indemnity obligations shall include, but are not limited to, all actual costs incurred by Buyer, and specifically including costs of experts and consultants, as well as all damages or liability of any nature whatsoever arising out of any suits, claims, and causes of action brought against Buyer, through and including any appellate proceedings. Seller's obligations to Buyer under this indemnification provision shall be due and payable on a monthly, on-going basis within thirty (30) days after each submission to Seller of Buyer's invoices for all fees and costs incurred by Buyer, as well as all damages or liability of any nature.

(f) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non-breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity.

Section 14.02 AMENDMENTS

This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer. Notwithstanding the foregoing, the Site description (including the Site Map and Single-Line Diagram) in Exhibit A may be amended upon the occurrence of: (a) Seller's notice of the amendment in accordance with Section 14.08, and (b) Buyer's written acknowledgement of the amendment, provided that if Buyer fails to acknowledge any such amendment in writing within thirty (30) days of its receipt, the amendment shall thereafter be deemed effective and incorporated into this Agreement without any further action by the Parties.

Section 14.03 FORWARD CONTRACT

The Parties acknowledge and agree that this Agreement constitutes a "forward contract" within the meaning of the U.S. Bankruptcy Code.

Section 14.04 TITLE AND RISK OF LOSS

Title to and risk of loss of Net Electrical Output shall transfer from Seller to Buyer at the Delivery Point, and for other products included in the Output. Seller warrants that any Output delivered to the Buyer shall be free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto by any person arising prior to the Delivery Point.

Section 14.05 DISPUTE RESOLUTION

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

Section 14.06 ASSIGNMENT

- (a) Except as otherwise expressly provided herein, this Agreement may not be assigned by either Party without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed.
- (b) Seller may, without Buyer's consent, but with at least five (5) Business Days' prior written notice to Buyer, assign or otherwise transfer this Agreement, any or all right or interest in this Agreement, and any or all right or interest in any of the Facility to any Affiliate of Seller or as collateral in connection with the financing or the refinancing of the Facility.
- (c) In connection with any permitted assignment by Seller described above in connection with the financing or the refinancing of the Facility, Buyer will execute customary project finance consent related agreements and estoppels as may be reasonably requested by Seller or its financing parties (including, for example, customary lender extended cure periods, etc.), so long as such consent related agreements and estoppels are consistent in all material respects with this Agreement; and do not materially adversely affect any of Buyer's rights and obligations under this Agreement. Without limiting the foregoing, Buyer acknowledges that Seller may elect to finance all or any portion of the Facility (including the Interconnection Facilities) utilizing tax equity investment or on a portfolio or other aggregated basis, which may include cross-collateralization or similar arrangements, and all such investments and arrangements are not in conflict with, and do not give rise to any default under, this Agreement.

Section 14.07 GOVERNING LAW; DISPUTE RESOLUTION

This Agreement shall be interpreted, governed by, construed under and enforced in accordance with the laws of the State of California without regard for any applicable principles of conflicts of laws. The Parties hereto irrevocably consent to the choice of law, jurisdiction and venue as described herein. Any and all disputes that cannot be resolved by management negotiations as set forth in Section 14.05 above shall be resolved through binding arbitration by a retired judge or justice from the AAA panel conducted in San Francisco, California, administered by and in accordance with AAA's Commercial Arbitration Rules ("**Arbitration**"), as follows:

- (i) Any arbitrator shall have no affiliation with, financial or other interest in, or prior employment with either Party and shall be knowledgeable in the field of the dispute. The Parties shall cooperate with one another in selecting the arbitrator within sixty (60) days after notice of the demand for arbitration. If, notwithstanding their good faith efforts, the Parties are unable to agree upon a mutually-acceptable arbitrator,

the arbitrator shall be appointed as provided for in AAA's Commercial Arbitration Rules.

- (ii) At the request of a Party, the arbitrator shall have the discretion to order depositions of witnesses to the extent the arbitrator deems such discovery relevant and appropriate. Depositions shall be limited to a maximum of three (3) per Party and shall be held within thirty (30) days of the making of a request. Additional depositions may be scheduled only with the permission of the arbitrator, and for good cause shown. Each deposition shall be limited to a maximum of six (6) hours duration unless otherwise permitted by the arbitrator for good cause shown. All objections are reserved for the Arbitration hearing except for objections based on privilege and proprietary and confidential information. The arbitrator shall also have discretion to order the Parties to exchange relevant documents. The arbitrator shall also have discretion to order the Parties to answer interrogatories, upon good cause shown.
- (iii) The arbitrator shall have no authority to award punitive or exemplary damages or any other damages other than direct and actual damages and the other remedies contemplated by this Agreement.
- (iv) The arbitrator shall prepare in writing and provide to the Parties an award including factual findings and the reasons on which their decision is based.
- (v) The arbitrator's award shall be made within nine (9) months of the filing of the notice of intention to arbitrate (demand) and the arbitrator shall agree to comply with this schedule before accepting appointment. However, this time limit may be extended by agreement of the Parties or by the arbitrator, if necessary.
- (vi) Judgment on the award may be entered in any court having jurisdiction.
- (vii) The prevailing Party in this dispute resolution process is entitled to recover its costs. Until such award is made, however, the Parties shall share equally in paying the costs of the Arbitration.
- (viii) The arbitrator shall have the authority to grant dispositive motions prior to the commencement of or following the completion of discovery if the arbitrator concludes that there is no material issue of fact pending before the arbitrator.
- (ix) The existence, content, and results of any Arbitration hereunder is confidential information that is subject to the provisions of Section 14.01 and, to the fullest extent permitted by Applicable Law, exempt from disclosure under the California Public Records Act.

Section 14.08 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 Exhibits J and K or at such other address or addresses as a Party may designate for itself from time to time by notice hereunder.

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.

Section 14.09 FURTHER ASSURANCES

The Parties hereto agree to execute and deliver promptly, at the expense of the Party requesting such action, any and all other and further instruments, documents and information that a Party may request, and that are reasonably necessary, or appropriate, to give full force and effect to the terms and intent of this Agreement.

Section 14.10 RELATIONSHIP OF THE PARTIES

Each Party Seller and its agents and employees shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of the other Party. 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.

Section 14.11 NO THIRD PARTY BENEFICIARY

The Parties mutually agree that this Agreement is for their sole benefit and is not intended by them to be, in part or in whole, for the benefit of any third party, except to the extent expressly set forth herein with respect to any indemnification provision or with respect to Seller's financing parties.

Section 14.12 COUNTERPARTS

This Agreement may be executed in any number of counterparts, and upon execution by the Parties, each executed counterpart shall have the same force and effect as an original instrument and as if the Parties had signed the same instrument. The exchange of copies of this Agreement and of signature pages by electronic transmission (email), Portable Document Format (i.e., PDF) or by other electronic means constitutes effective execution and delivery of this Agreement as to the Parties and may be used in lieu of the original Agreement for all purposes.

Section 14.13 CHANGE IN ELECTRIC MARKET DESIGN

If, after the Effective Date, a change in the CAISO Tariff or other Applicable Law renders this Agreement or any provision 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, 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 Section 14.05. 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.

Section 14.14 NO DEDICATION OF FACILITIES

Any undertaking by one Party to the other under any provision of this Agreement shall not constitute the dedication of the Facility or any portion thereof to the public or to any portion thereof.

Section 14.15 WAIVER OF RIGHTS

Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of either Party to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.

Section 14.16 SECTION HEADINGS

All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.

Section 14.17 GOOD FAITH AND FAIR DEALING; REASONABLENESS

The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement. Unless expressly provided otherwise in this Agreement: (i) wherever the Agreement requires the consent, approval or similar action by a Party, such consent, approval or similar action shall not be unreasonably withheld or delayed; and (ii) wherever the Agreement gives a Party a right to determine, require, specify or take similar action with respect to matters, such determination, requirement, specification or similar action shall be reasonable.

Section 14.18 SEVERABILITY

Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their commercially reasonable efforts to

agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

Section 14.19 LIMITATION OF LIABILITIES

To the extent permitted by Applicable Law, no Party's directors, members of its governing bodies, officers or employees shall be liable to any other party or parties for any loss or damage to property, loss of earnings or revenues, personal injury, or any other direct, indirect, or consequential damages or injury, or punitive damages, which may occur or result from the performance or non-performance of this Agreement, including any negligence arising hereunder.

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

UNLESS EXPRESSLY HEREIN PROVIDED, NEITHER PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS OR BUSINESS INTERRUPTION DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, EXCLUDING CONSEQUENTIAL OR OTHER SUCH DAMAGES WHICH BECOME PAYABLE TO THIRD PARTIES AND FOR WHICH ARTICLE XII (INDEMNIFICATION) APPLIES.

UNLESS EXPRESSLY HEREIN PROVIDED, 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.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE REFERRED TO AS OR OTHERWISE DEEMED TO BE LIQUIDATED DAMAGES, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, OR OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT AND THE DAMAGES CALCULATED HEREUNDER CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS.

Section 14.20 ENTIRE AGREEMENT

This Agreement, when executed and delivered, shall constitute one, single integrated agreement and set forth the entire agreement by and between the Parties and supersedes any prior understandings, agreements or representations by or between the Parties, written or oral, to the extent they have related in any way to the subject matter hereof and thereof. Notwithstanding anything to the contrary, in the event of a conflict or an inconsistency between the body of this Agreement and any Exhibits hereto, the body of this Agreement shall control.

Section 14.21 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, a non-Party, or the FERC acting *sua sponte*, 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) and clarified by *Morgan Stanley Capital Group Inc. v. Pub. Util. Dist. No. 1 of Snohomish County*, 128 S. Ct. 2733 (2008). Changes proposed by a non-Party or FERC acting *sua sponte* shall be subject to the most stringent standard permissible under U.S. Applicable Law.

Section 14.22 APPLICABLE LAW REFERENCES

Whenever this Agreement specifically refers to any Applicable Law (including any law, code section, regulation, rule or tariff) or any Governmental Authority (including any government department or agency), the Parties hereby agree that the reference also refers to any successor thereto.

The Parties acknowledge and accept the terms and conditions of this Agreement as evidenced by the following signatures of their duly authorized representatives. It is the intent of the Parties that this Agreement shall become operative on the Effective Date first set forth above.

CITY OF SANTA CLARA, CALIFORNIA,
a chartered California municipal corporation
d/b/a Silicon Valley Power

APPROVED AS TO FORM:



Office of the City Attorney
City of Santa Clara

By: 

Rajeev Batra
City Manager

ATTEST:

City Clerk

ENERGIA SIERRA JUAREZ U.S., LLC
a Delaware limited liability company

By: 

Justin C. Bird
Chief Executive Officer



EXHIBIT A
FACILITY DESCRIPTION AND LOCATION

Facility Name: Cimarrón Wind

Contract Counterparty: Energia Sierra Juarez U.S., LLC

Facility Size:

Expected Nameplate Capacity: 310 MW

Contract Capacity: 300 MW

Delivery Point: San Diego Gas & Electric Company's (SDG&E) East County (ECO) Substation in CAISO

Transmission Provider: SDG&E

Projected Energy Deliveries: Approximately 1,000,000 MWh per Contract Year.

Site Coordinates: LATITUDE: N 32° 25' 00.21", LONGITUDE: W 115° 58' 38.90"

Turbine Details: Pending final site optimization: approximately 24 WTGs with a capacity of 6.2 MW each, and approximately 36 WTGs with a capacity of 4.5 MW each; all manufactured by Vesta, or other similar tier 1 supplier.

Permit application details: *See Exhibit E for details on required permits.*

CAISO Queue Position: Q1660

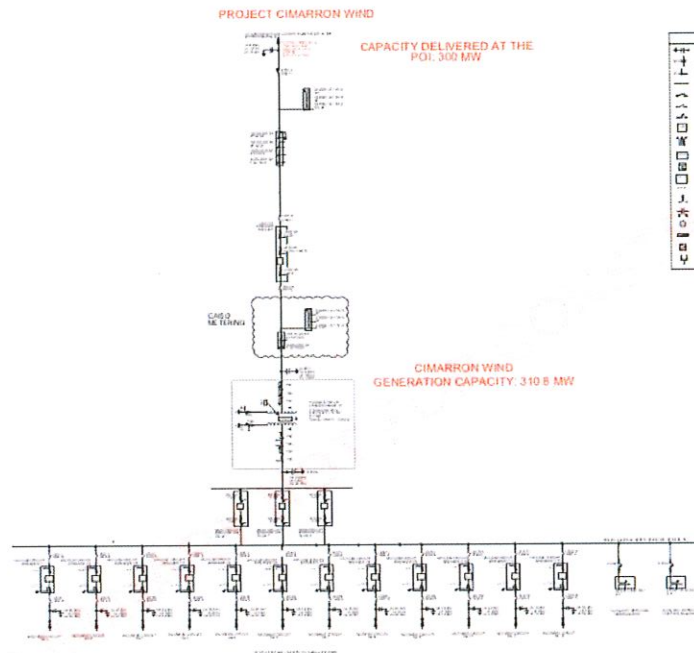
CAISO Resource ID: Will be assigned as part of the CAISO New Resource Implementation Process

Legal Description: Seller shall provide Buyer the Site legal description prior to or upon commencing Facility construction at the Site.

Site Map: [see preliminary Site map below] Seller shall provide Buyer a final Site map prior to or upon commencing Facility construction at the Site.

Single Line Diagram of the CAISO-Controlled Grid Interconnection: [see preliminary single-line below] Seller shall provide Buyer a final Single Line Diagram map prior to or upon commencing Facility construction at the Site.

Preliminary Single-Line



NO.	DESCRIPTION
1	115KV/138KV TRANSFORMER
2	138KV/115KV TRANSFORMER
3	115KV/138KV TRANSFORMER
4	138KV/115KV TRANSFORMER
5	115KV/138KV TRANSFORMER
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99	115KV/138KV TRANSFORMER
100	138KV/115KV TRANSFORMER

NOTES

1. THIS PROJECT IS A PRELIMINARY DESIGN AND THE INFORMATION CONTAINED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY. IT IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE ENGINEER.

NO.	DESCRIPTION	DATE
1	115KV/138KV TRANSFORMER	10/10/2011
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48	138KV/115KV TRANSFORMER	10/10/2011
49	115KV/138KV TRANSFORMER	10/10/2011
50	138KV/115KV TRANSFORMER	10/10/2011
51	115KV/138KV TRANSFORMER	10/10/2011
52	138KV/115KV TRANSFORMER	10/10/2011
53	115KV/138KV TRANSFORMER	10/10/2011
54	138KV/115KV TRANSFORMER	10/10/2011
55	115KV/138KV TRANSFORMER	10/10/2011
56	138KV/115KV TRANSFORMER	10/10/2011
57	115KV/138KV TRANSFORMER	10/10/2011
58	138KV/115KV TRANSFORMER	10/10/2011
59	115KV/138KV TRANSFORMER	10/10/2011
60	138KV/115KV TRANSFORMER	10/10/2011
61	115KV/138KV TRANSFORMER	10/10/2011
62	138KV/115KV TRANSFORMER	10/10/2011
63	115KV/138KV TRANSFORMER	10/10/2011
64	138KV/115KV TRANSFORMER	10/10/2011
65	115KV/138KV TRANSFORMER	10/10/2011
66	138KV/115KV TRANSFORMER	10/10/2011
67	115KV/138KV TRANSFORMER	10/10/2011
68	138KV/115KV TRANSFORMER	10/10/2011
69	115KV/138KV TRANSFORMER	10/10/2011
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75	115KV/138KV TRANSFORMER	10/10/2011
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85	115KV/138KV TRANSFORMER	10/10/2011
86	138KV/115KV TRANSFORMER	10/10/2011
87	115KV/138KV TRANSFORMER	10/10/2011
88	138KV/115KV TRANSFORMER	10/10/2011
89	115KV/138KV TRANSFORMER	10/10/2011
90	138KV/115KV TRANSFORMER	10/10/2011
91	115KV/138KV TRANSFORMER	10/10/2011
92	138KV/115KV TRANSFORMER	10/10/2011
93	115KV/138KV TRANSFORMER	10/10/2011
94	138KV/115KV TRANSFORMER	10/10/2011
95	115KV/138KV TRANSFORMER	10/10/2011
96	138KV/115KV TRANSFORMER	10/10/2011
97	115KV/138KV TRANSFORMER	10/10/2011
98	138KV/115KV TRANSFORMER	10/10/2011
99	115KV/138KV TRANSFORMER	10/10/2011
100	138KV/115KV TRANSFORMER	10/10/2011

EL CA CIMARRON EAP 120 KV

CIMARRON WIND

SINGLE LINE DIAGRAM

NO. 3000

PR0221-EL-300-PL-005

1/1 0

Preliminary Site Map

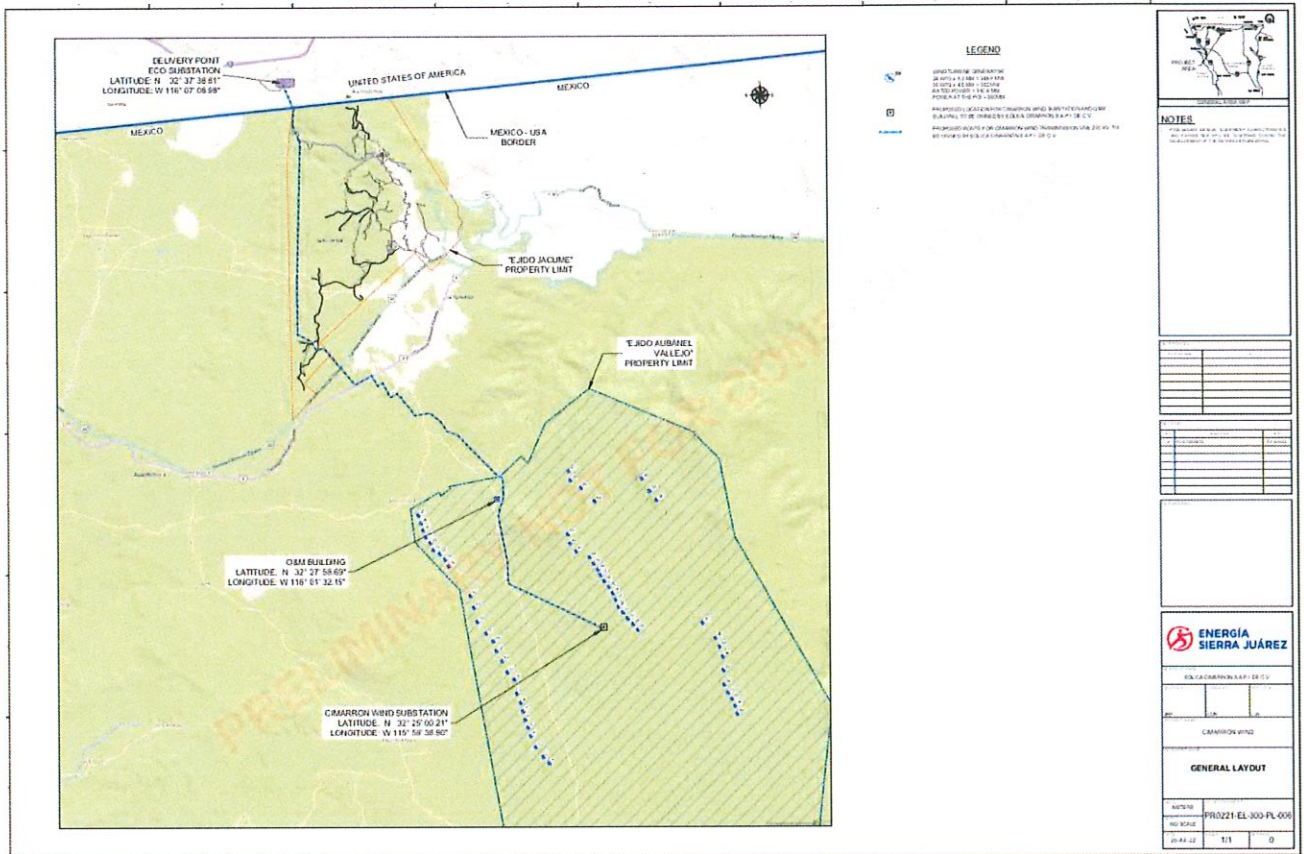


EXHIBIT B CONTRACT PRICE

(a) The contract price for Net Electrical Output recorded at the Facility Meter and delivered under this Agreement (inclusive of all Environmental Attributes, Capacity, Capacity Attributes and Resource Adequacy Attributes associated with that Net Electrical Output) is Sixty-Two Dollars and Nine Cents (\$62.09) per MWh (the “**Contract Price**”), subject to following paragraphs (b) and (c) below. Buyer shall pay to Seller 75% of the Contract Price for each MWh of Test Energy metered and delivered under this Agreement.

(b) Seller and its Affiliates shall apply to CAISO for FCDS for the Facility in the next Transmission Plan Deliverability (TPD) Allocation cycle into which the Facility is eligible to apply. To the extent that FCDS for the Facility is not then granted (i.e. the Facility will have PCDS or EODS), Seller and its Affiliates may again apply to CAISO (but in any event shall again apply to CAISO if requested by Buyer and if Buyer agrees to pay the costs of applying) at any time during the term of this Agreement for additional Deliverability to make the Facility FCDS or PCDS (as applicable). Seller shall provide to Buyer relevant documents related to the applications for FCDS and any granting of full or partial Deliverability for the Facility.

(c) If none of the Contract Capacity of the Facility is granted Deliverability on or before the Initial Delivery Date, then the Contract Price will be reduced to Fifty-Eight Dollars and Nine Cents (\$58.09) per MWh (such reduced amount, the “**Base Price**”). However, if prior to the Initial Delivery Date, the Facility receives PCDS, then the Contract Price will be equal to the Base Price plus an amount equal to (A) Four Dollars (\$4.00) per MWh multiplied by (B) a fraction equal to the amount of Facility capacity (in MW) deemed PCDS divided by the Facility’s total nameplate capacity (in MW). If there is a change in the quantity of Deliverability granted to the Facility after the Initial Delivery Date, the Contract Price will be adjusted as of the date(s) when the additional Deliverability can be reflected in Buyer’s month ahead showing of Resource Adequacy Attributes consistent with the preceding sentence, provided that, for the avoidance of doubt, the Contract Price shall never be reduced to an amount lower than Fifty-Eight Dollars and Nine Cents (\$58.09) per MWh, or increased to amount greater than Sixty-Two Dollars and Nine Cents (\$62.09) per MWh.

Based on the foregoing, the following is a hypothetical example calculation of the Contract Price: If the Facility were to receive 100 MW of Deliverability, then the Contract Price would be calculated as $\$58.09/\text{MWh} + (\$4.00/\text{MWh} * (100 \text{ MW}/300 \text{ MW})) = \$59.42/\text{MWh}$.

EXHIBIT C FORECASTING AND SCHEDULING DETAILS

1. Forecasting. Seller shall provide the forecasts described below and transmit such information in a format reasonably acceptable to Buyer or Buyer's SC, as applicable. Buyer and Seller shall agree upon reasonable changes to the requirements and procedures set forth below from time-to-time, as necessary to comply with CAISO Tariff and other applicable Transmission Provider tariff changes, accommodate changes to their respective generation technology and organizational structure, and address changes in the operating and scheduling procedures of the CAISO and other applicable Transmission Providers.

(a) Annual Forecasts. No less than thirty (30) days before the first day of each Contract Year, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of each month's average-day expected Net Electrical Output, by hour, for the following Contract Year.

(b) Monthly Forecasts. No less than ten (10) days before the expected Initial Delivery Date, and thereafter ten (10) days before the beginning of each month during the Delivery Term, Seller shall provide to Buyer and the SC (if applicable) a non-binding forecast of the expected Net Electrical Output, by hour, for the following month.

(c) Day-Ahead Forecasts. By 7:00 AM Pacific Prevailing Time on the Business Day immediately preceding the date of delivery, or as otherwise agreed by the Parties, Seller shall provide Buyer with a non-binding forecast of the hourly expected Net Electrical Output, in each case, for each hour of the applicable delivery day.

(d) Real-Time Forecasts, Outages, Etc. Seller shall provide notices to Buyer (and its SC, as applicable), of all outages in the manner set forth in Agreement Section 4.05. Additionally, prior to the Initial Delivery Date, Seller and Buyer shall cooperate reasonably to allow Buyer throughout the Delivery Term to obtain "read-only" access to the CAISO forecasts of the Net Electrical Output to be produced by the Facility.

2. Scheduling.

(a) Buyer as Scheduling Coordinator for the Facility. Buyer shall be the Scheduling Coordinator or designate, at Buyer's sole cost and expense, a qualified third party reasonably acceptable to Seller to provide Scheduling Coordinator services with the CAISO for the Facility for both the delivery and the receipt of all energy and products 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 reasonably 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 reasonably 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. Buyer's SC (which may be Buyer) shall submit bids to the CAISO in accordance with this Agreement and the applicable CAISO Tariff, protocols and Scheduling practices for Net

Electrical Output 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.

(b) Notices. Buyer's SC (which may be Buyer) 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 shall cooperate reasonably 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. Buyer (as the Facility's SC) shall provide Seller with read-only access to applicable real-time CAISO data to the extent Buyer has the authorization to do so.

(c) CAISO Costs and Revenues. Except as otherwise set forth in this paragraph (c) or as otherwise expressly provided in the Agreement, Buyer (as Scheduling Coordinator for the Facility) shall be responsible for any and all CAISO costs, liabilities, penalties and other debits, including all imbalance energy costs and other charges, and shall be entitled to any and all CAISO revenues, payments, and other credits, including all imbalance energy payments and including all revenues associated with CAISO payments and credits for Net Electrical Output 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, except to the extent such non-compliance is caused by Buyer's failure (including any failure to perform duties as Scheduling Coordinator for the Facility). All Availability Incentive Payments (as defined in the CAISO Tariff) are for the benefit of Seller and for Seller's account and any Non-Availability Charges (as defined in the CAISO Tariff) are the responsibility of Seller and for Seller's account, except to the extent any Non-Availability Charges arise from Buyer's or its Scheduling Coordinator's violation of this Agreement or the CAISO Tariff.

(d) CAISO Settlements. Buyer (and/or the Facility's SC) shall be responsible for all settlement functions with the CAISO related to the Facility and 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, if any. Buyer shall review, validate, and if requested by Seller, 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, and subject to Agreement Section 8.01(b), Seller shall pay the amount of CAISO Charges Invoices, or provide (or agree to provide) a credit to Buyer in respect of revenues payable to Seller pursuant to the Agreement, or agree to the netting of payments if due and owing to each other within thirty (30) days of Seller's receipt of the CAISO Charges Invoice.

(e) 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.

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

EXHIBIT D
AVAILABILITY CALCULATIONS

A. Actual Annual Availability Calculation. Following the end of the second Contract Year and each subsequent Contract Year, Seller shall reasonably promptly calculate the Actual Annual Availability for the Facility for such Contract Year. The following is an example of such a calculation for such a Contract Year, and assumes the following hypothetical facts.

Hypothetical Facts	
1. Total Hours in Contract Year	8,760 hours
2. Total Size of Facility	313.6 MW
3. Total Number of Wind Turbines	56 turbines
4. Size of each Wind Turbine	5.6 MW
5. Maximum Potential Available Hours of all Wind Turbines combined (8760 hours x 56 Wind Turbines) for Contract Year	490,560 hours
6. Available Hours (excluding all hours within Excused Periods (“ Excused Hours ”)) of all Wind Turbines combined for Contract Year based on SCADA	441,458.77 hours
7. Excused Hours of all Wind Turbines combined for Contract Year	2,252.75 hours
8. Sum of actual Available Hours (excluding Excused Hours) + Excused Hours of all Wind Turbines combined for Contract Year (i.e., sum of #6 and #7 above)	443,711.52 hours
9. Quotient of #8 divided by #5 (i.e., 443,711.52 hours divided by 490,560 hours), expressed as a percentage, equals the Actual Annual Availability for the Contract Year	90.45% Actual Annual Availability

B. Availability Shortfall Calculation. In each applicable Contract Year, the amount (if any) by which the Guaranteed Availability (92%) exceeds the Actual Annual Availability, is referred to as the “**Availability Shortfall**”. In the hypothetical facts above in Section A an Availability Shortfall exists and is equal to 92% less 90.45%, for an Availability Shortfall in the amount of 1.55%.

C. Remedy for Availability Shortfall. If for any applicable Contract Year there is an Availability Shortfall, then as a sole and exclusive remedy to Buyer (and as the sole and exclusive liability and obligation of Seller), arising out of such Availability Shortfall, Seller shall pay to Buyer liquidated damages for such Contract Year in an amount determined by the following equation (the “**Availability Shortfall Liquidated Damages**”):

$$\text{ASLD} = A \times B \times C$$

where:

ASLD = Availability Shortfall Liquidated Damages dollar amount for such Contract Year.

A = Availability Shortfall for such Contract Year, expressed as a percentage.

B = The Pricing Differential for such Contract Year, expressed in \$/MWh, up to (but not in excess of a maximum amount equal to) \$21.00/MWh.

C = The Expected Production Amount for such Contract Year, expressed in MWh.

Pricing Differential = the amount (if any), expressed in \$/MWh, by which (i) the Reference Price for such Contract Year exceeds (ii) the Contract Price.

Reference Price = the sum of (i) the average hourly price over all hours in such Contract Year for the CAISO Day-Ahead SP15 LMP prices plus (ii) \$12.00.

Expected Production Amount = the total expected energy production of the Facility for such Contract Year, expressed in MWh, which shall be deemed equal to the amount determined by the following equation:

$$\text{Expected Production Amount} = D \times E / F$$

where:

D = Net Electrical Output for such Contract Year.

E = Guaranteed Availability, expressed as a percentage.

F = Actual Annual Availability for such Contract Year, expressed as a percentage.

In the above hypothetical where there is an Availability Shortfall in the amount of 1.55%, if in such Contract Year the Pricing Differential was \$14.75/MWh and the Expected Production Amount was 1,021,059.5 MWh, then the Availability Shortfall Liquidated Damages (or ASLD amount) would be calculated as 1.55% x \$14.75/MWh x 1,021,059.5 MWh, and would equal \$233,439.73.

EXHIBIT E
MILESTONE DATES

Milestone	Milestone Date
CAISO Phase II Study	Complete
Secure Site Control (or an enforceable option therefor)	Complete
Secure Presidential Permit	Complete
Deliver Initial Security	30 Business Days following the Effective Date
Execute Large Generator Interconnection Agreement	October 15, 2023
All Permits Obtained (including the generation, export and import permits from the Comisión Reguladora de Energía (Mexican Energy Regulatory Commission))	October 15, 2023
Issue Notice to Proceed under Facility EPC Contract	October 31, 2023
Submit CEC Pre-Certification	January 31, 2024
Register the Facility with WREGIS	January 31, 2024
SDG&E's interconnection related facilities completed	~12 months after the Large Generator Interconnection Agreement is executed
Initiate a Qualified Reporting Entity Service Agreement (QRESA)	Minimum 30 days prior to Initial Synchronization
Initiate SC Designation Process	Minimum 30 days prior to Initial Synchronization
Initiate Execution of Meter Services Agreement	Minimum 30 days prior to Initial Synchronization
Initiate Execution of Participating Generator Agreement	Minimum 30 days prior to Initial Synchronization
Initial synchronization	October 31, 2024
Expected Initial Delivery Date	December 31, 2024
Outside Guaranteed Initial Delivery Date	December 31, 2025

EXHIBIT F
INSURANCE REQUIREMENTS

1. Insurance Coverage: Seller shall, at its own cost and expense, maintain commercial general liability insurance, automobile insurance, worker's compensation insurance or equivalent Mexican coverage, and property insurance with limits and in accordance with the requirements as stated below. The insurance underwriter issuing the policy(ies) must meet the following requirements:
 - (i) be duly authorized/licensed to issue policies in Mexico and the United States; and
 - (ii) have and maintain a Financial Strength Rating of "A-" or better as rated in the A.M. Best Key Rating Guide or equivalent.
2. Coverage Types and Monetary Limits:
 - a) General Civil Liability Insurance Policy, coverage for bodily injuries, and full coverage with respect to damages to third party bodily injury or property damage, products and contractual liability assumed under this Agreement with limit not less than USD \$3,000,000 (Three Million United States Dollars) each occurrence, and USD \$6,000,000 (Six Million United States Dollars) in the aggregate. Coverage shall include defense costs in excess of the minimum amounts required above. There shall be no cross-liability exclusion which precludes coverage for claims or suits by one insured against another. Such coverage may be met by a combination of the primary General Liability and Excess Liability insurance policy or policies.
 - b) Automobile Liability Insurance that must include coverage for vehicles owned or operated by the Seller with limits no less than those required by the country in which the vehicles are operated.
 - c) Seller shall maintain worker's compensation (or equivalent coverage in Mexico) and employer's liability insurance that meet or exceed the limits required by law in the country in which its employees operate.
 - d) Seller shall carry property insurance in an amount equal to the to the expected maximum loss (EML) of the Facility from and after the Initial Delivery Date to protect against risks of physical loss or damage.
3. Additional Insured: Buyer and its City Council, commissions, officers, employees, volunteers and agents shall be additional insureds on the commercial general liability insurance policy (2(a)).
4. Certificates: Seller shall provide Buyer the certificates of insurance evidencing the coverage required by Sections 2(a)-(c) above within thirty (30) days of the Effective Date, and Seller shall provide Buyer the certificates of insurance evidencing the coverage required by Section

2(d) of this Agreement within thirty (30) days of the Initial Delivery Date. Seller must provide proof of replacement insurance prior to the effective date of any cancellation or expiration. Certificates evidencing coverage will be submitted to the Buyer at the renewal of each policy during the term of this Agreement within fifteen (15) business days of renewal.

5. Notification of Cancellation: The general liability insurance policy shall contain language requiring that no cancellation, non-renewal, or modification of the coverage provided shall be effective without written notice to Seller at least thirty (30) days prior to the effective date of such cancellation, non-renewal or modification (which period shall be at least ten (10) days only in the event of non-payment of premiums). Seller shall provide notice to Buyer upon receipt of any notice required herein.
6. Affiliate Insurance Program: Any of the foregoing insurance policies may be provided as part of a corporate insurance program that is maintained and/or administered by Seller's Affiliates or direct or indirect shareholders. Seller may elect to self-insure any and/or all of the required insurance as described above.

EXHIBIT G
DEEMED GENERATED ENERGY CALCULATION

Deemed Generated Energy means the quantity of electric energy, expressed in MWh, that Seller reasonably calculates would have been produced by the Facility and made available at the Delivery Point during a relevant measurement period (including during any ramp-down or ramp-up periods).

For all such periods that are relevant under the Agreement, Seller shall calculate the amount of Deemed Generated Energy based on Seller's best reasonable estimates thereof, based upon Facility real time forecasts, applicable backcasts, and data related to Facility availability, wind speed, other weather conditions, and all other pertinent data for the relevant period of time.

For all relevant periods of Deemed Generated Energy, Seller shall provide Buyer with written summaries of each applicable Seller calculation of Deemed Generated Energy for Buyer's review and written approval, such approval not to be unreasonably withheld or delayed.

EXHIBIT H FORM OF ATTESTATION

[Note: Below form to be updated from time to time by mutual agreement of the Parties to comply with applicable WREGIS or other relevant requirements]

Green Energy REC Attestation Form

Owner of Facility (Name and Company):				
Address:				
City:		State:		Zip:
Phone:		Fax:	e-mail:	
Name of Company Purchasing RECs (Buyer):				
Location of Facility (if different from above)				
Type of Generation (solar, wind or hydro)				
Capacity (kilowatts installed)				
Date First Placed into Service				
Kilowatt Hours Generated and Sold to Buyer in [Year]: _____ (fill in year of sale)*	Jan 1 – Mar 31	Apr 1 – Jun 30	Jul 1 – Sept 30	Oct 1 – Dec 31
Total kWh Sold to Buyer in Year Above:				

[*To be modified for non-calendar year periods]

I, (print name) _____, declare the following:

- a. I am the owner of the Facility at the location provided above;
- b. The information provided on this form is true and correct to the best of my knowledge;
- c. The Facility generated the kilowatt-hours of electric power identified above during the periods of delivery listed above;
- d. The RECs (as defined in my contract with my Buyer) represent all the environmental attributes of the electric power and were not sold or transferred to any other party, nor, to the best of my knowledge, were the RECs claimed by any other party including my serving utility; and,
- e. The electric power generated was either consumed on the premises or delivered, via a net billing or similar arrangement, to my serving utility.

Signature: _____ Date: _____

Place of Execution: _____

EXHIBIT I
PAYMENT / WIRE INSTRUCTIONS

THE CITY OF SANTA CLARA (Buyer)

Taxpayer Identification Number: 94-6000-426

WIRE INSTRUCTIONS

The following information is to be used when wiring funds for deposit to Buyer:

Wire Transfer:

BNK: JP Morgan Chase Bank,
JP Morgan New York, NY 10004
ABA: 021000021
SWIFT: CHASUS33
ACCT: 696721312

ACH Transfer:

BNK: JP Morgan Chase Bank,
JP Morgan New York, NY 10004
ABA: 322271627
ACCT: 696721312

(Seller) [Information below to be provided separately]

Taxpayer Identification Number:

WIRE INSTRUCTIONS

The following information is to be used when wiring funds for deposit to Seller:

EXHIBIT J
SVP (BUYER) CONTACTS

1. Exhibit A Amendment

City of Santa Clara
Attention: Chief Electric Utility Officer
881 Martin Avenue
Santa Clara, CA 95050

City of Santa Clara
Attention: City Clerk
1500 Warburton Avenue
Santa Clara, CA 95050

2. Contract Management

Steve Hance
Phone (408) 615-6691
Email shance@svpower.com

3. Billing/Invoice Issues

Peter Virasak
Phone (408) 615-6645
Email pvirasak@svpower.com

4. SVP Pre-Scheduling

Monthly, weekly and daily generation schedules are to be provided to SVP Pre-Scheduling contacts.

Saul Lopez
Phone (408) 615-6692
Email slopez@svpower.com

SVP Scheduling
Phone (408) 615-6695
Email svpprescheduling@svpower.com

5. SVP Schedule Coordination

All Hour Ahead or Real-Time Schedule changes are to be provided to SVP Scheduling Coordinator Contacts.

SVP Scheduling
Phone (408) 615-6696

Email svpsched@svpower.com

6. SVP Dispatch/Outage Coordination

All Planned and/or Forced Outages of Generating Facilities are to be provided to SVP Dispatch/Outage Coordination.

SVP Scheduling

Phone (408) 615-6696

Email svpsched@svpower.com

EXHIBIT K
SEMPRA (SELLER) CONTACTS

1. Contract Management

Jesús Montaña
Phone +52 686-227-3667
Email power@sempraglobal.com.mx

2. Billing/Invoice Issues

Iliana Lugo
Phone +52 664-978-1142
Email contabilidadesj@sempraglobal.com.mx

Jesús Montaña
Phone +52 686-227-3667
Email power@sempraglobal.com.mx

3. Pre-Scheduling and Dispatch/Outage Coordination

Annual, Quarterly, Weekly and Daily generation schedules and Pre-Scheduling

Control Room Operators
Phone: +52 664-978-1183 / +52 664-978-1184
Email ESJ-O&M@ienova.com.mx

Roberto Rosas
Phone: +52 686-113-7959
Email rrosas@ienova.com.mx

4. Operator and Real Time Issues

All Planned and/or Forced Outages of generation facilities are to be provided to SVP Dispatch/Outage Coordination.

Control Room Operators
Phone: +52 664-978-1183 / +52 664-978-1184
Email ESJ-O&M@ienova.com.mx

Roberto Rosas
Phone: +52 686-113-7959
Email rrosas@ienova.com.mx

5. Curtailments

Buyer must notify all curtailments by telephone and email as follows:

Control Room Operators

Phone: +52 664-978-1183 / +52 664-978-1184

Email ESJ-O&M@ienova.com.mx

Roberto Rosas

Phone: +52 686-113-7959

Email rrosas@ienova.com.mx

EXHIBIT L
FORM OF INITIAL DELIVERY DATE NOTICE

This Initial Delivery Date Notice is delivered by Energia Sierra Juarez U.S., LLC, a Delaware limited liability company ("**Seller**"), and _____ [*licensed professional engineer*] ("**Engineer**"), to the City of Santa Clara, California, a chartered California municipal corporation doing business as Silicon Valley Power ("**Buyer**"), in accordance with the terms of that certain Renewable Energy Purchase and Sale Agreement (the "**Agreement**") made and entered into as of the ____ day of _____, 2022 (the "**Effective Date**"), by and between Seller and Buyer. All capitalized terms used in this Initial Delivery Date Notice but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement.

Seller and Engineer hereby certify to Buyer that the Initial Delivery Date is/was _____, 20____, on or prior to which date each of the following occurred:

- (a) Wind Turbine generators with a Total Nameplate Capacity of at least ninety percent (90%) of the Expected Nameplate Capacity have been installed, substantially completed and commissioned at the Site and all applicable Facility systems necessary for operation and metering of such Wind Turbine generators are tested and certified, in each case as required by CAISO, including the installation of a Remote Intelligence Gateway (RIG) or equivalent for the purpose of telemetry of real-time data to the CAISO, as required.
- (b) All applicable agreements between Seller (or its Affiliates) and CAISO which are required for Seller's performance of this Agreement are signed and delivered, including but not limited to the Interconnection Facilities Agreement, a Participating Generator Agreement, a Meter Service Agreement and any other agreements required by CAISO.
- (c) All applicable agreements between Seller (or its Affiliates) and SDG&E as Transmission Provider which are required for Seller's performance of this Agreement are signed and delivered, including the Interconnection Facilities Agreement.
- (d) The Facility's electrical interconnection facilities have demonstrated the ability to accept the Contract Capacity.
- (e) Seller (with the reasonable participation of Buyer) has completed all applicable WREGIS registration requirements that are reasonably capable of being completed prior to the Initial Delivery Date required to effect Facility registration with WREGIS and to enable Renewable Energy Credit transfers related to the Facility within the WREGIS system.

EXECUTED this _____ day of _____, 20____.

[Licensed Professional Engineer]

By: _____

Its: _____

Date: _____

Seller: Energia Sierra Juarez U.S., LLC

By: _____

Its: _____

Date: _____

EXHIBIT M
FORM OF LETTER OF CREDIT

[Bank Letterhead]

L/C NUMBER: (TBD by Bank) AMOUNT: \$XXX,XXX (U.S. CURRENCY)
EXPIRATION DATE: MM/DD/YYYY

BENEFICIARY:

APPLICANT:

Attn:

WE HEREBY OPEN OUR IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT ("LETTER OF CREDIT") IN FAVOR OF [BENEFICIARY] AND FOR THE ACCOUNT OF THE ABOVE REFERENCED APPLICANT IN THE AGGREGATE AMOUNT OF \$XXX,XXX (Dollars and Cents) UNITED STATES CURRENCY, WHICH IS AVAILABLE BY PAYMENT WITH US WHEN ACCOMPANIED BY THE FOLLOWING DOCUMENTS:

1. A DRAFT AT SIGHT DRAWN ON _____, AT OUR [US] [_____] OFFICE AT _____, ATTENTION: _____, DULY ENDORSED ON ITS REVERSE SIDE THEREOF BY THE BENEFICIARY, SPECIFICALLY REFERENCING THIS LETTER OF CREDIT NUMBER;
2. THE ORIGINAL LETTER OF CREDIT AND ANY AMENDMENTS ATTACHED THERETO;
3. COPY OF INVOICE MARKED UNPAID; AND
4. A STATEMENT ISSUED ON THE LETTERHEAD OF AND SIGNED BY THE BENEFICIARY STATING THE FOLLOWING: THE APPLICANT HAS NOT MADE PAYMENT ON INVOICE NUMBER (INSERT - INVOICE NUMBER) PER THE RELEVANT CONTRACTS. WE THEREFORE DEMAND PAYMENT IN THE AMOUNT OF (INSERT - DOLLAR AMOUNT) AS SAME IS DUE AND OWING.

WE ARE ADVISED BY THE APPLICANT THAT THIS LETTER OF CREDIT IS ISSUED IN CONNECTION WITH THE RENEWABLE POWER PURCHASE AND SALE AGREEMENT BETWEEN THE CITY OF SANTA CLARA AND ENERGIA SIERRA JUAREZ U.S., LLC DATED (INSERT - DATE OF PPA) AS AMENDED FROM TIME TO TIME DATED MM/DD/YY ("AGREEMENT").

INVOICE(S) IN EXCESS OF THE AMOUNT AVAILABLE UNDER THIS LETTER OF CREDIT ARE ACCEPTABLE; HOWEVER, DRAWINGS UNDER THIS LETTER OF CREDIT MAY NOT EXCEED AMOUNT AVAILABLE.

IF A COMPLYING PRESENTATION OF DRAW DOCUMENTS IS MADE PRIOR TO 12:00 P.M. (PACIFIC TIME) ON A BUSINESS DAY, THEN WE SHALL, PRIOR TO THE CLOSE OF BUSINESS ON THE FIRST FOLLOWING BUSINESS DAY, MAKE PAYMENT IN IMMEDIATELY AVAILABLE FUNDS. IF A COMPLYING PRESENTATION OF DRAW DOCUMENTS IS MADE AT OR AFTER 12:00 P.M. (PACIFIC TIME) ON A BUSINESS DAY, THEN WE SHALL, PRIOR TO CLOSE OF BUSINESS ON THE SECOND FOLLOWING BUSINESS DAY, MAKE PAYMENT IN IMMEDIATELY AVAILABLE FUNDS.

PARTIAL DRAWINGS AND MULTIPLE PRESENTATIONS ARE PERMITTED.

ALL CHARGES OF THE ISSUER ARE FOR THE ACCOUNT OF THE APPLICANT.

THIS LETTER OF CREDIT SETS FORTH IN FULL THE TERMS OF OUR UNDERTAKING. THIS UNDERTAKING SHALL NOT IN ANY WAY BE MODIFIED, AMENDED, AMPLIFIED, OR INCORPORATED BY REFERENCE TO ANY DOCUMENT, CONTRACT, OR AGREEMENT REFERENCED TO HEREIN.

WE HEREBY AGREE WITH YOU THAT DRAFT(S) DRAWN UNDER AND IN COMPLIANCE WITH THE TERMS AND CONDITIONS OF THIS CREDIT SHALL BE DULY HONORED IF PRESENTED TOGETHER WITH DOCUMENT(S) AS SPECIFIED AT OUR OFFICE LOCATED AT _____, ATTENTION: _____ ON OR BEFORE THE ABOVE STATED EXPIRY DATE, OR ANY EXTENDED EXPIRY DATE IF APPLICABLE. DRAFT(S) DRAWN UNDER THIS CREDIT MUST SPECIFICALLY REFERENCE OUR LETTER OF CREDIT NUMBER.

FACSIMILE OF THE DRAW DOCUMENTS IS ACCEPTABLE TO [ADD US TELEPHONE NUMBER] _____. IF PRESENTATION IS MADE BY FACSIMILE, PROMPT PHONE NOTIFICATION MUST BE GIVEN TO _____ AS PRESENTATION BY FACSIMILE SHALL NOT BE COMPLETE UNTIL CONFIRMED BY TELEPHONE CALL TO THE NUMBER PROVIDED HEREIN. WE WILL NOTIFY YOU OF ANY UPDATES TO EITHER OF THE TWO PRECEDING TELEPHONE NUMBERS. . THE FACSIMILE PRESENTATION SHALL BE DEEMED THE ORIGINAL PRESENTATION. IN THE EVENT OF A FULL OR FINAL DRAWING, THE ORIGINAL STANDBY LETTER OF CREDIT MUST BE RETURNED TO THE ISSUER BY OVERNIGHT COURIER AT THE TIME OF FACSIMILE PRESENTATION.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998, INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590 ("ISP98"). AS TO MATTERS NOT GOVERNED BY ISP98, THIS LETTER OF CREDIT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WITHOUT REFERENCE TO THE CONFLICT OF LAW PROVISIONS THEREOF THAT WOULD DIRECT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.
SINCERELY,

AUTHORIZED SIGNATURE

(INSERT – TYPED NAME AND TITLE)

(Please note – The Bank is to provide documentation supporting signatory's authority to issue the Letter of Credit in the specified amount at the time the Letter of Credit is issued.)

TO BE COMPLETED UPON ACCEPTANCE AND ISSUANCE OF FINAL LETTER OF CREDIT

PLEASE DIRECT ANY CORRESPONDENCE INCLUDING DRAWING OR INQUIRY QUOTING
OUR LETTER OF CREDIT NUMBER TO: _____, ATTENTION: _____.

ATTACHMENT A

Drawing Certificate

TO _____

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT

No. _____

DRAWING CERTIFICATE

Subject: Irrevocable Non-transferable Standby Letter of Credit
Reference Number: _____

The undersigned _____, an authorized representative of _____ (the "Beneficiary"), hereby certifies to [_____] (the "Bank"), and _____ (the "Applicant"), with reference to Irrevocable Nontransferable Standby Letter of Credit No. (_____), dated _____, (the "Letter of Credit"), issued by the Bank in favor of the Beneficiary, as follows as of the date hereof:

1. The Beneficiary is entitled to draw under the Letter of Credit an amount equal to \$ _____, for the following reason(s) [check applicable provision]:

[]A. An Event of Default, as defined in that certain Renewable Power Purchase and Sale Agreement between Applicant and Beneficiary, dated as of [Date of Execution] (the "Agreement"), with respect to the Applicant has occurred.

[]B. The Letter of Credit will expire in fewer than ten (10) Business Days (as defined in the Agreement) from the date hereof, and Applicant has not provided Beneficiary alternative Performance Assurance (as defined in the Agreement) acceptable to Beneficiary.

[]C. The Bank has heretofore provided written notice to the Beneficiary of the Bank's intent not to renew the Letter of Credit following the present Expiration Date thereof ("Notice of Non-renewal"), and Applicant has failed to provide the Beneficiary with a replacement letter of credit satisfactory to Beneficiary in its sole discretion within thirty (30) days following the date of the Notice of Non-renewal.

2. Based upon the foregoing, the Beneficiary hereby makes demand under the Letter of Credit for payment of U.S. DOLLARS AND ____/100ths (U.S.\$ _____), which amount does not exceed (i) the amount set forth in paragraph 1 above.

3. Funds paid pursuant to the provisions of the Letter of Credit shall be wire transferred to the Beneficiary in accordance with the following instructions: [INSERT]

Unless otherwise provided herein, capitalized terms which are used and not defined herein shall have the meaning given each such term in the Letter of Credit.

IN WITNESS WHEREOF, this Certificate has been duly executed and delivered on behalf of the Beneficiary by its authorized representative as of this ____ day of ____, 20__.

Beneficiary: _____

By: _____

Name: : _____

Title: : _____