

MEMORANDUM

TO: UTILITIES ADVISORY COMMISSION

FROM: UTILITIES DEPARTMENT

DATE: JANUARY 13, 2016

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SUBJECT: Staff Recommendation that the Utilities Advisory Commission Recommend that the City Council Adopt a Resolution Approving a Power Purchase Agreement with Hecate Energy Palo Alto LLC for up to 75,000 Megawatt-hours Per Year of Energy over a Term of up to 40 Years for a Total Not to Exceed Amount of \$101 Million

REQUEST

Staff recommends that the Utilities Advisory Commission (UAC) recommend that the City Council adopt a Resolution (Attachment A) to:

1. Approve a Power Purchase Agreement (PPA) with Hecate Energy Palo Alto LLC (HEPA), a Delaware limited liability company, for the acquisition of up to 75,000 Megawatt-hours (MWh) per year of energy from the Wilsona solar project (Wilsona) over a maximum of forty years at a total cost not to exceed \$101 million; and
2. Waive the application of the investment-grade credit rating requirement of Section 2.30.340(d) of the Palo Alto Municipal Code, which applies to energy companies that do business with the City, as HEPA will provide a \$5.2 million letter of credit as a development assurance deposit, and a subsequent \$2.6 million letter of credit as a performance assurance deposit.
3. Delegate to the City Manager or his designee, the authority to execute on behalf of the City the PPA with HEPA, the three contract term extension options available to the City under the PPA, and any documents necessary to administer the agreements that are consistent with the Palo Alto Municipal Code and City Council approved policies.
4. Waive the application of the anti-speculation requirement of Section D.1 of the City's Energy Risk Management Policy as it may apply to surplus electricity purchases resulting from the City's participation in the Wilsona PPA, due to the variability of the City's hydroelectric resources.

EXECUTIVE SUMMARY

As part of ongoing efforts to meet the City's Carbon Neutral Plan requirements, as well as to comply with the recently adopted state Renewable Portfolio Standard (RPS) mandate of

providing at least 50% of sales from qualifying renewable resources, staff issued a request for proposals (RFP) for renewable resources in the spring of 2015 and evaluated the proposals based on price, value, viability and compatibility with the City's needs. Under this RFP, staff sought projects that would begin delivering energy to Palo Alto in 2021, which is when one of the City's older wind energy contracts will expire. After thorough review, staff concluded that the Wilsona solar photovoltaic (PV) project proposal had the best total score.

When it begins operating in mid-2021, the 26-megawatt (MW) project¹ will provide about 7.5 percent of the City's annual energy needs, and will be sited on low productivity, previously disturbed agricultural land in Los Angeles County. The project was proposed by Hecate Energy LLC (Hecate), a privately-held developer, owner, and operator of solar, wind, energy storage, and natural gas projects. Headquartered in Nashville, Hecate was founded in 2012 by the executive team that built (and subsequently sold) the company OCI Solar Power. Hecate currently has over 2,400 MW of projects under development.

The Wilsona PPA (Attachment B) is structured with a 25-year initial term, followed by three separate five-year extension term options that can be exercised at the City's sole discretion. The project's contract price of \$36.76 per MWh is substantially lower than the prices of any of the City's previous renewable energy contracts. But as with all of those prior contracts, Palo Alto will make no upfront payments under the Wilsona PPA; energy will be paid for only after it is delivered.

Further mitigating the risks posed by this contract, HEPA will be required to post a \$5.2 million development assurance deposit, which the City will be able to keep in the event that the project is not completed in a timely manner. This deposit amount is almost three times greater than the amount provided under any of the City's other solar PV contracts. In addition, the Wilsona project will be a "fully deliverable" project, meaning that it will provide Resource Adequacy (RA) value to the City, in addition to the value of its renewable energy.

BACKGROUND

Per the Council-approved Long-term Electric Acquisition Plan (LEAP) Objectives and Strategies, updated in April 2012 ([Staff Report 2710](#)), the City's RPS target is to procure at least 33% of its retail sales volume from qualifying renewable resources by 2015, and to continue procuring renewable resources as long as the cumulative rate impact of all of the City's renewable resources is not more than 0.5 cents per kilowatt-hour (¢/kWh).

In addition, California's Senate Bill (SB) 350, signed into law in October 2015, requires all electric utilities in the state, including Palo Alto's municipal utility, to procure increasing amounts of renewable resources in order to serve their retail customers. Utilities must procure at least 40% of their retail sales volume from renewable resources by December 31, 2024, at

¹ Under the terms of the PPA, the Wilsona project will be sized between 25 and 27 MW, with an expected size of 26 MW. All references to the Wilsona project's 26 MW size in this report should be understood to capture that range.

least 45% by December 31, 2027, and at least 50% by December 31, 2030 (and each year thereafter).

Finally, in March 2013, Council approved the City's Carbon Neutral Plan for the electric supply portfolio, to be achieved starting in 2013 ([Staff Report 3550](#)). Since 2013 and over the next couple of years of implementing the Carbon Neutral Plan, the City expects to achieve carbon neutrality with its renewable energy portfolio, its carbon-free hydroelectric resources and by purchasing renewable energy certificates (RECs) to offset the emissions associated with its wholesale market power purchases. Starting in 2017, the City plans to achieve carbon neutrality entirely through the acquisition of additional "hard resources" that supply the City with both energy and environmental attributes so that REC purchases can be minimized—and the Wilsona PPA is a part of that long-term effort.

Current Status of Renewable Resources in Palo Alto's Electric Portfolio

The City has executed eight PPAs for new renewable resources that are currently delivering energy to Palo Alto, with one additional resource (Hayworth Solar) expected to begin operating by the end of November 2015. The currently operating resources include two wind projects, five landfill-gas-to-energy (LFGTE) projects, and one solar PV project. Besides Hayworth, an additional three PPAs have been executed for solar projects that are still under development and expected to begin operating by the end of 2016. The City has also executed PPAs for three other resources but subsequently terminated those agreements after the suppliers ran into problems developing the projects and requested unacceptable contractual concessions. Summary information for all 12 currently contracted RPS resources is provided in Table 1.

Table 1 – Palo Alto’s Existing Renewable Energy Contracts

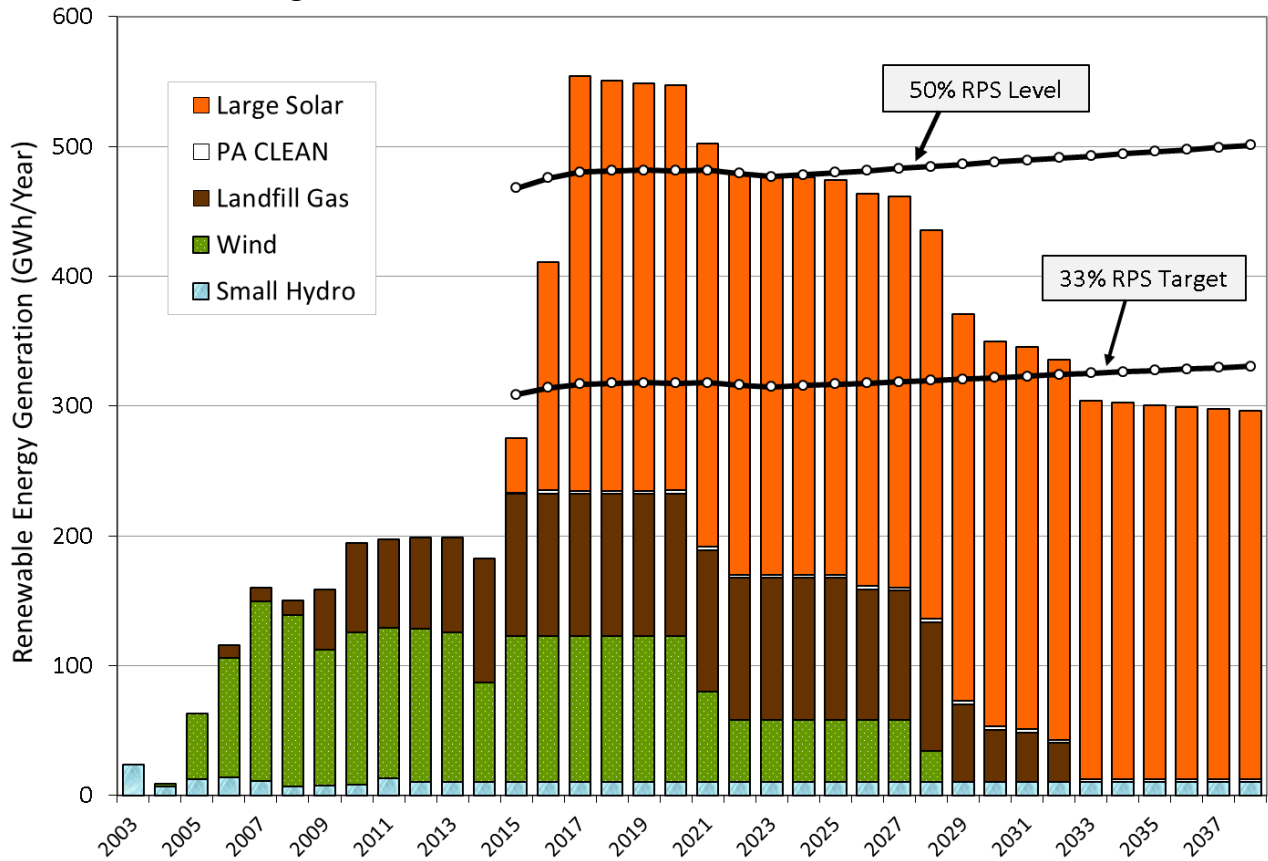
Project	Supplier	Technology	Date Contract Executed	Actual or Estimated Online Date	Annual Energy (GWh)
High Winds	Iberdrola	Wind	Nov. 2004	Dec. 2004	48.2
Shiloh	Iberdrola	Wind	Oct. 2005	Jun. 2006	64.5
Santa Cruz	Ameresco	Landfill Gas	Nov. 2004	Feb. 2006	9.9
Half Moon Bay	Ameresco	Landfill Gas	Jan. 2005	Apr. 2009	43.9
Keller Canyon	Ameresco	Landfill Gas	Aug. 2005	Aug. 2009	14.9
Johnson Canyon	Ameresco	Landfill Gas	Aug. 2009	May 2013	10.4
San Joaquin	Ameresco	Landfill Gas	May 2010	Apr. 2014	30.3
EE Kettleman Land	Clēnera	Solar PV	Nov. 2012	Jul. 2015	53.5
Subtotal – Operating					275.5
Hayworth Solar	sPower	Solar PV	Jun. 2014	Nov. 2015	63.7
Elevation Solar C	sPower	Solar PV	Jul. 2013	Dec. 2016	100.8
Western Antelope Blue Sky Ranch B	sPower	Solar PV	Jul. 2013	Dec. 2016	50.4
Frontier Solar	Clēnera	Solar PV	Jul. 2013	Dec. 2016	52.5
Subtotal – Under Development					267.4
Total – All Executed Contracts					542.9

In addition, through its contract with the Western Area Power Administration and through its ownership share of the Calaveras Hydroelectric Project, the City receives a small amount of energy from “small” hydroelectric projects that qualify under the state’s RPS standard. These resources that can be counted towards the City’s RPS requirements together account for about 1% of the City’s sales in normal water years.

Lastly, Palo Alto CLEAN, a local solar PV feed-in tariff program, was launched in March 2012 (Staff Report 2548, [Resolution 9235](#)). Under the current program design approved in May 2015 ([Staff Report 5849](#)), the Palo Alto CLEAN program may provide up to 0.5% of Palo Alto’s electric energy needs.

Together, when all of the renewable facilities under contract enter commercial operation, and assuming Palo Alto CLEAN provides 0.5% of the City’s total energy supply, the City’s RPS is expected to be about 43.2% of total energy supply needs in 2016, and 57.7% in 2017, as shown in Figure 1 below. However, one of the City’s earliest PPAs, for the Shiloh I wind project, is set to expire in May 2021. Once it does, the City’s RPS will fall to about 50.0% (in 2022). Figure 1 shows actual energy deliveries through 2014 and estimated deliveries after that date.

Figure 1 – Palo Alto’s Committed Renewable Resources



Green Premium Calculation

To conform to the City’s RPS policy rate impact limitation of 0.5¢/kWh on average, staff compares the total cost of each renewable resource to the wholesale market price of non-renewable energy at the time that the contract for the resource is executed. The green premium represents the additional cost paid for renewable energy compared to non-renewable energy from the market. For each resource the levelized² cost impact (\$/year) is calculated as follows:

$$Green\ Premium = (PPA\ cost + transmission\ charges - capacity\ value) - brown\ power\ cost,$$

where “PPA cost” is the renewable energy cost adjusted for its time-of-delivery³; “transmission charges” are any costs Palo Alto would incur to get the energy delivered to CAISO territory; “capacity value” is any system or local capacity value provided by the resource; and “brown

² Levelizing is a process of taking nominal cash flows, discounting them to present value, summing the present values, and amortizing the present value into uniform annual payments like a mortgage. The discounting and the amortizing are both performed with the user’s discount rate or time value of money.

³ In general, solar PV projects deliver energy during the on-peak hours when energy deliveries are more valuable; thus solar PV project prices are discounted slightly in the green premium calculation. The opposite adjustment is usually true of wind projects.

power cost” is the wholesale market price quote for non-renewable energy delivered to Northern California for an equivalent term.

DISCUSSION

This section of the report will cover the following topics:

- A. The Market for Renewable Resources in California
- B. Results of Palo Alto’s Renewable Resource Request for Proposals (Spring 2015 RFP)
- C. Wilsona Solar Project Summary
- D. Contract Mechanisms for Mitigating Project Risks
- E. Energy Risk Manager’s Assessment
- F. Palo Alto’s Renewable Resource Portfolio with Wilsona

A. The Market for Renewable Resources in California

California’s aggressive RPS mandates for electric utilities resulted in a supply-demand imbalance in the renewables market that drove prices up, particularly between 2007 and 2011. However, in the past several years renewable energy prices have plummeted – largely due to an influx of low-cost solar panels into the market. Prior to 2011, solar was generally the most expensive type of renewable energy technology; now it is easily the least expensive.

Furthermore, in the past few years, supply and demand factors have shifted decidedly in favor of buyers like Palo Alto. A large number of renewable energy developers have entered the market in recent years—reacting to the then-high renewable energy contract prices and the large appetites of the state’s large investor-owned utilities (IOUs) seeking to meet their RPS procurement requirements. But, as of now, the IOUs have contracted for enough renewable energy to meet their mid-term needs and have dramatically slowed their procurement efforts. This has left a large pool of project developers competing with each other to win contracts with a relatively small pool of buyers. As a result, renewables prices—particularly for solar—have been driven down to the point that they are now roughly at parity with long-term brown market prices.

However, there are a number of factors that have the potential to push renewable energy prices back up in the mid- to long-term. Among them are:

- a) The scheduled expiration of federal tax incentives for renewable energy projects—including the reduction from 30% to 10% of the Investment Tax Credit (ITC)⁴ and accelerated depreciation rules;
- b) The recent passage of SB 350, the new 50% by 2030 RPS mandate, which will likely spur all of the state’s electric utilities to begin actively procuring renewable energy for the 2020 to 2030 time period; and

⁴ At the time the City issued this RFP, and through the majority of the negotiations process with Hecate, the ITC was slated to drop from 30% to 10% at the end of 2016. However, in mid-December 2015 Congress extended the ITC at the 30% level for an additional three years. It is now scheduled to reduce to 26% for projects beginning construction in 2020, and to 22% for projects beginning construction in 2021, before falling to the 10% level again.

- c) The enactment of the U.S. Environmental Protection Agency’s (EPA’s) Clean Power Plan, which is likely to lead other Western states to more actively pursue renewable resources in order to reduce the carbon emissions associated with their electricity.

All of the above factors suggest that now is a good time to lock in long-term commitments at historically low prices in order to help the City meet its carbon neutrality goals and its post-2020 RPS requirements.

B. Results of Palo Alto’s Renewable Resource Request for Proposals (Spring 2015 RFP)

The City typically contracts for renewable power by independently issuing RFPs, the most recent of which was released in April 2015 in pursuit of projects that would deliver renewable energy starting in 2021 to replace the Shiloh I wind PPA when it expires in 2021. Staff expected to receive proposals from projects that would be constructed before the end of 2016 (in order to take advantage of the 30% federal ITC—which, at the time the RFP was issued, was scheduled to be reduced to 10% at the end of 2016; however, in December Congress extended it at the 30% level until the end of 2019) or from projects that would not be completed until 2021. In response to this RFP, the City received 41 project proposals, which is about half as many as were received in response to the City’s prior RFP in fall 2013. This drop-off in proposals received is likely due to the fact that the City was requesting a rather late contract start date of 2021. The 41 proposals represented a total capacity of 900 MW and 2,600 gigawatt-hours per year (GWh/year) of energy from a variety of different generating technologies. The proposed projects included 32 solar PV projects, five wind projects, two biomass projects, one geothermal project, and one ocean wave project.

The proposals were evaluated based on price and value, project/contract viability, and compatibility with Palo Alto’s electric portfolio. The City received many attractive proposals—including several that were priced lower than any of Palo Alto’s previous PPAs—but ultimately the Wilsona proposal received the highest overall score.

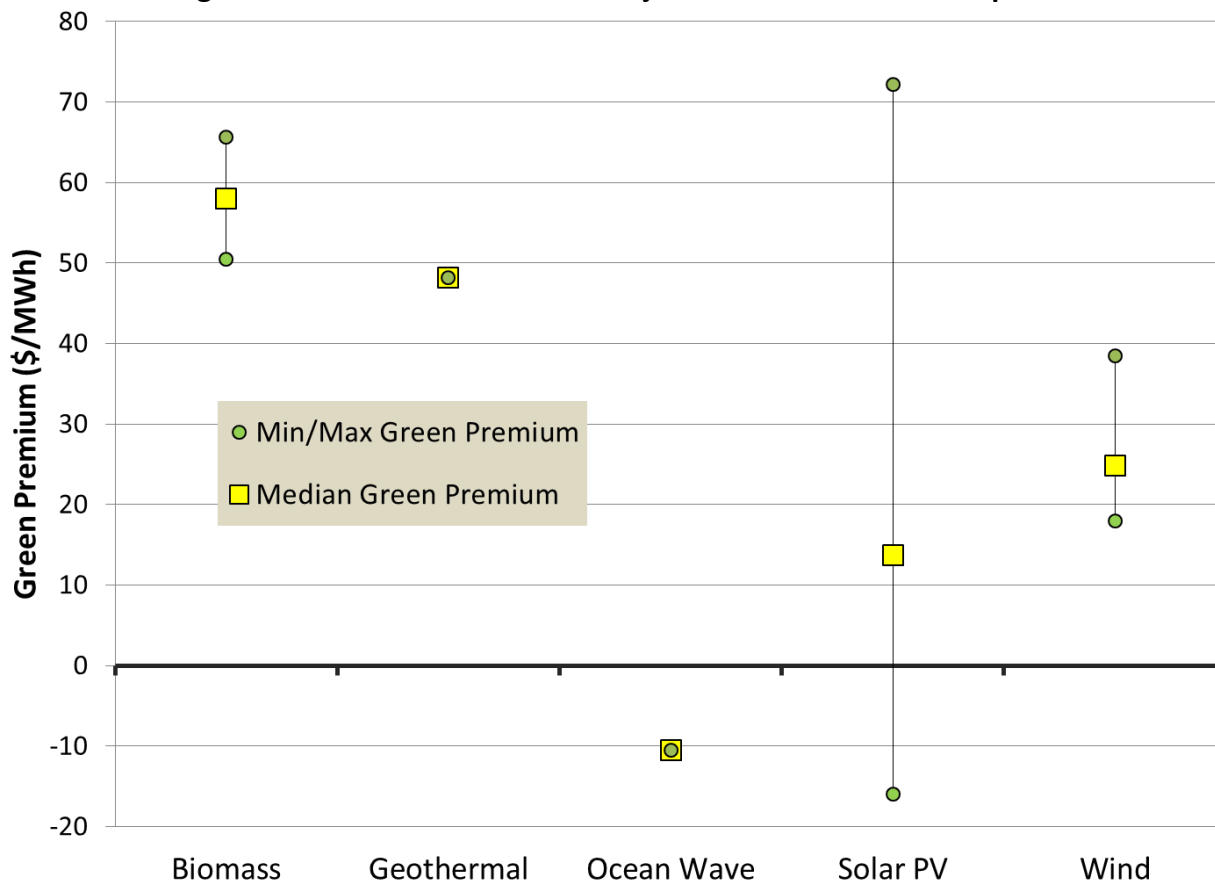
In evaluating the price and value of different offers staff takes into account:

- The daily and seasonal shape of the energy output;
- The location of the output;
- The structure of the output in terms of meeting legislated criteria (i.e., satisfying limitations on the use of the three categories of renewable resources defined by the state’s RPS law);
- The likely capacity value of the output;
- The likely interconnection cost to get the output onto the grid; and
- The green premium, which is calculated for each proposal as the proposal cost minus the cost of buying the equivalent amount of non-renewable resource output.

Figure 2 depicts the range of green premiums for the proposals received in the spring 2015 RFP, sorted by type of generation technology. Overall, the green premiums of these projects were somewhat lower than those of the project proposals received through the fall 2013 RFP, and those of the top few proposals were substantially lower.

Further, the viability of each proposed project/contract was evaluated in terms of accomplished and remaining project development steps, along with the financial standing and development experience of the project developer.

Figure 2 – Green Premiums and Project Start Dates of RFP Proposals



C. Wilsona Solar Project Summary

The Wilsona PPA proposal was submitted by Hecate Energy, a privately-held Nashville-based firm that develops solar PV, wind, energy storage, and natural gas projects in the U.S. as well as abroad. Hecate currently has over 2,400 MW of projects under development. In June 2014, the Los Angeles Department of Water and Power board unanimously approved the award of 190 MW of solar PV PPAs to Hecate—an award that comprises two 56 MW projects, a 50 MW project, and 28 MW of in-city distributed generation solar PV projects. Additionally, Hecate’s management team led the partnership for a 400 MW solar PPA with CPS Energy of San Antonio, Texas—the largest municipal solar development in the U.S.

Wilsona Solar is a 26 MW project, with expected annual energy deliveries of 75,000 MWh (approximately 7.5% of the City’s energy needs) in the first year of the contract term. As with any solar PV plant, the annual output is expected to decline at a rate of about 0.5% per year due to solar panel degradation effects. The project is expected to begin commercial operations

in the first half of 2021, and will interconnect to the California Independent System Operator (CAISO) grid as a Full Capacity Deliverability Status (FCDS) resource, which means that the City will be able to claim capacity value from the project. The project will be sited on disturbed agricultural land about 20 miles east of the City of Palmdale in Los Angeles County, and will interconnect at the Wilsona Substation.

The Wilsona PPA is structured as a 25-year base contract term, followed by three separate five-year extension term options that can be exercised by Palo Alto in its sole discretion. The negotiated price for the PPA is \$36.76 per MWh for the entire term of the contract, which is about 47% lower than the price of the lowest cost solar PPA that was approved by the Council⁵.

As of today, the green premium for a 40-year contract term is significantly lower than that of a 25-, 30-, or 35-year term. For this reason, and assuming the development of the project proceeds according to plan, it appears likely that the City will want to exercise all three contract term extension options. Staff therefore seeks Council authorization to exercise all three options, which would extend the 25-year base contract to a full 40-year contract term for the City. Staff also requests that Council delegate authority to the City Manager to exercise the extension term options, so that the City may act expeditiously if staff determines that it is in the City's best interest to exercise each option near the end of the then-current contract term. Delegation of such authority to the City Manager is permissible under section 2.30.290 of the Palo Alto Municipal Code.

D. Contract Mechanisms for Mitigating Project Risks

With any new, or "greenfield," electric generation resource there is a risk that the project will not be built, will come online later than scheduled, or will stop performing at some point after it comes online. The Wilsona project, in particular, due to its planned 2021 start date, is at a relatively early stage of development and therefore can be considered at greater risk than other, more advanced projects. To mitigate these risks, the City has negotiated the inclusion of very sizable development and performance assurance deposits in this PPA. Also, as with all PPAs, this agreement is structured so that the City pays only for metered output from the project after it has been delivered each month. This structure minimizes the City's exposure to operational, maintenance, and counterparty default risks in the contract.

For this project, HEPA will provide a development assurance deposit of \$5.2 million (in the form of a letter of credit), or \$200/kW of installed capacity, which will be available to the City, and withheld from the developer, if the project misses the commercial operation timing milestone. The development deposit provides an incentive to the developer to complete the project on time. It also provides compensation to the City should the project suffer unexcused delays or fail to materialize. Due to the extended length of time before the Wilsona project begins

⁵ The levelized price for the Hayworth Solar PPA approved in June 2015 is \$68.72 per MWh for the 34-year term (assuming both extension term options are exercised). (See [Staff Report 4791](#), [Resolution 9416](#).)

operating, staff negotiated a significantly greater development assurance amount under this PPA compared to prior ones⁶ in order to offset the increased development risk.

After the start of commercial operations, HEPA will provide a \$2.6 million performance assurance deposit (also in the form of a letter of credit), or \$100/kW of installed capacity, which will be available to the City, and withheld from HEPA, if certain performance measures are not met. The performance deposit provides an added incentive for the operator to maintain the project output and provides compensation to the City should performance be less than expected, which would require the City to secure replacement renewable energy.

In addition to risks related to project development, operations, and counterparty default, it should also be noted that there is a risk that in the future the CAISO could impose additional fees on the owners or off-takers of resources with highly intermittent output such as the Wilsona project. As more solar and wind resources are added to the state's generation mix in the coming years to meet the new 50% RPS mandate, the cost of managing the intermittency of these resources and ensuring the stability of the electric grid will likely increase, and it is possible that this additional cost will be passed on to the owners of the resources that are driving the cost increases. On the other hand, it is also possible that these cost increases would be spread evenly across all CAISO load-serving entities, regardless of the level of intermittency of their generation portfolios. While it is important to acknowledge the potential for future cost increases as a result of executing this agreement, it should also be noted that it is highly unlikely that these cost increases would be great enough to make the Wilsona project less attractive to the City than a non-intermittent alternative (i.e., a geothermal or biomass project) based on the response to the City's recent renewable energy RFP.

E. Energy Risk Manager's Assessment

The Energy Risk Manager (ERM) was involved in the final stages of the RFP evaluation process when two final candidates were being considered. The ERM analyzed the creditworthiness of each counterparty and provided the results to the RFP selection team. Credit assessments were performed on the companies providing financing for the projects. HEPA's financial backer is Hecate Energy.

The ERM assessed the expected default frequency (EDF) of Hecate using Moody's credit measure tool, which extracts credit signals by combining information from the equity markets with the company's debt structure as reported on its financial statements. This analysis yielded an EDF of 1.02 percent (meaning that there is an estimated one in 98 chance of default by the company within the next year).

The risks to the City of entering into the proposed PPA are that the supplier defaults or is unable to perform according to the terms of the contract. If this occurs, the City might need to buy renewable energy from another supplier in order to meet its RPS obligations under state

⁶ Under the City's other five solar PPAs, the development assurance amounts range from \$20/kW to \$75/kW of installed generating capacity.

law or to meet the City's RPS and Carbon Neutral goals. These risks are minimized by the following terms of the proposed PPA:

- The City is not at risk for paying for output that is not delivered. The City will make no payments under the PPA unless and until energy from the project is delivered to the City.
- The supplier's development assurance deposit funds provide some degree of comfort that the project will be completed. If it is not, then the City would be able to access the development deposit funds of up to \$5.2 million to help offset the cost of procuring replacement renewable energy.
- Once the project becomes operational, the unclaimed development deposit funds will be returned to HEPA. At the same time, a new performance assurance deposit will be posted by HEPA and can be used by the City to cover operational and performance risk. Staff believes this amount (\$2.6 million) is sufficient to cover these risks given that the operating costs for solar plants are much lower than their operating revenues; thus project owners tend to keep their projects operating.

In general, businesses in the renewable industry lack extensive financial and operational track records, and because of the capital-intensive nature of these projects, they tend to be highly leveraged as well. Hecate Energy is no exception; thus, it is not investment-grade and has a higher projected default rate than the City's other (non renewable) electric and gas suppliers.

However, under the terms of the Wilsona PPA, if the project does not come to fruition according to the construction start and commercial operation date milestones set forth in the PPA or if the supplier defaults at any time during the term of the agreement, the City can access the then-current development assurance funds provided by the letter of credit. For these reasons, staff recommends that the Council waive the investment-grade credit requirement for public agency contracts required under Section 2.20.340(d) of the Palo Alto Municipal Code. This conforms to Council action on prior renewable resource contracts with similar characteristics (CMR:461:04, CMR:100:05, CMR:350:05, CMR:343:09, CMR:226:10, Staff Report 3223, Staff Report 3845, and Staff Report 4791).

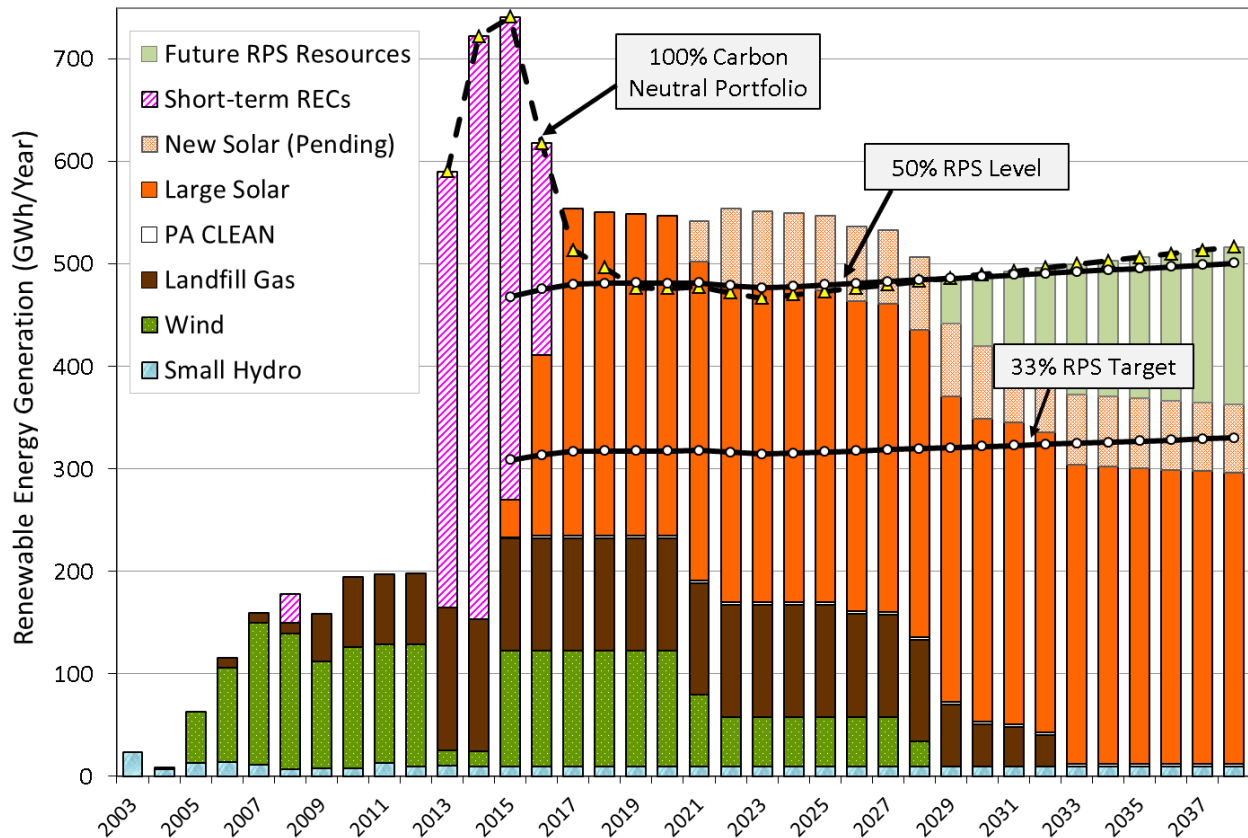
F. Palo Alto's Renewable Resource Portfolio with Wilsona

The City has made commitments to renewable resources projected to provide 57.7% of its energy from qualified renewable resources by 2017. However, in May 2021 the City's PPA for the Shiloh I wind project—which was executed in 2006, and is one of its larger PPAs—is set to expire. Three more PPAs are then set to expire in 2028 and 2029. If the Wilsona solar project is added to the City's renewables portfolio, Palo Alto's renewable resources would be expected to provide about 57.5 % of total sales in 2022. Additionally, the Wilsona project would enable the City to meet its Carbon Neutral Plan goal as well as the state's 50% RPS mandate through 2028.

Figure 3 illustrates the City's existing renewable resource commitments, with the Wilsona project included as a "pending" resource. Also shown are reference lines indicating the level of renewables that would be needed to achieve a 50% RPS, and the level that would produce a carbon neutral electric supply portfolio. (The volume of renewable energy certificates (RECs)

that need to be procured each year in order for the City to achieve a 100% carbon neutral electric supply portfolio is shown as well. The large volume of RECs required from 2013 through 2016 is largely due to the impacts of the current drought, which has reduced the output of the City’s two hydroelectric resources.) These reference lines indicate that the inclusion of Wilsona in the City’s renewable resources portfolio would enable the City to achieve greater than a 50% RPS level and a 100% carbon neutral supply portfolio through long-term renewable and hydro resources through 2028, even under slightly dry hydrological conditions⁷.

Figure 3 – Palo Alto’s Renewable Resources with Wilsona



As indicated in Figure 3, staff projects that adding the Wilsona PPA to the City’s renewables portfolio would cause a surplus of carbon neutral electric supplies from 2026 through 2028. However, this will be true only if hydrologic conditions are close to (or wetter than) the long-term average level and all of the renewable resources that the City has contracted for that are still under development (plus the Wilsona project) are completed on-time and deliver the

⁷ Note that the City’s electric needs may change over time from the forecast shown in Figure 3. Load forecasts are updated annually and staff is aware of pressures lowering needs due to energy efficiency improvements from appliance standards and increasingly stringent building codes as well as increasing local generation, particularly from rooftop PV systems. On the other hand, increasing attention to electrification of natural gas using appliances such as water and space heaters as well as increasing penetration of EVs have an upward pressure on electric loads. Regardless of load trends, staff is confident that sufficient renewable supplies can be secured to meet future RPS requirements and carbon neutral goals.

expected amount of energy to the City. As the year 2013 through 2016 data points on the carbon neutral reference line indicate, “dry hydro” years are becoming increasingly common in northern California, and they can have a tremendous negative impact on the output of the City’s hydroelectric resources. In such years, even the addition of the Wilsona PPA and all of the other contracted resources that are still under development would not be sufficient to achieve a carbon neutral supply portfolio without the purchase of RECs. Also, it is the City’s experience that some renewable energy projects that are contracted for experience significant development delays, or end up not being built at all. The City’s experience in this regard is consistent with the broader renewables market. The California Energy Commission, for instance, has estimated the failure rate for renewables contracts to be between thirty and forty percent.⁸ The City itself has cancelled three renewable PPAs it executed since the projects did not proceed as planned.

If, however, the City’s carbon neutral electric supply portfolio exceeds the amount of generation needed to achieve carbon neutrality in any given year, the City would have the ability to either “bank” the RECs associated with that generation for use in a later time period, or sell the surplus into the short-term markets. Prices for short-term REC sales are currently expected to be fairly advantageous for the City over the long-term, so these surplus positions would likely result in little if any financial loss for the City.

Section D.1 of the City’s Energy Risk Management (ERM) Policy prohibits speculative buying and selling of energy products. Under the ERM Policy, “speculation” is defined as “buying energy not needed for meeting forecasted load or selling energy that is not owned.” Because the Wilsona project has the potential to lead to surplus electric purchases, including during the 2026 through 2028 time period, staff recommends that the UAC recommend that Council waive application of the ERM Policy’s anti-speculation requirement to the City’s participation in the Wilsona PPA. Staff’s recommendation is based on the information set forth above, including the variability of the City’s hydroelectric resources and potential uncertainties associated with the viability and timeliness of renewable energy projects in the City’s portfolio that are currently under development.

Table 2 provides a summary of renewable energy project volumes and the associated annual green premium amounts for the City’s committed renewable energy supplies as well as the PPA under consideration. As shown in the table, the annual green premium for the Wilsona PPA is estimated at -\$1.1 million. This means that the contract will be expected to cost the City \$1.1 million per year less than brown power purchases would, based on current forward projections for brown power costs. If Council approves the Wilsona PPA, the total rate impact for all renewable supplies would be only 0.123¢/kWh—well within the 0.5¢/kWh rate impact limit Council established for the RPS goal.

⁸ According to the CEC: “Data from the Energy Commission’s [Investor Owned Utility] contract database indicates that since the start of the RPS Program, about 30 percent of long-term RPS contracts (10 years or more) approved by the California Public Utilities Commission (CPUC) have been cancelled. The contract failure rate increases to about 40 percent when also considering contracts that have been delayed.” California Energy Commission. 2011 Integrated Energy Policy Report. Publication Number: CEC-100-2011-001-LCF. 2011.

Table 2 – Summary of the City’s Current Renewable Energy Supplies and the Proposed Project

	Delivery Begins	Annual Generation (GWh)	Levelized Price (\$/MWh)	Adjusted Brown Market Price (\$/MWh)	Green Premium (\$/MWh)	Total Annual Green Premium (\$1000)
Small Hydro	Before 2000	10.0	N/A	N/A	0	0
High Winds	Dec. 2004	48.2	57.6	55.0	2.6	123
Shiloh I Wind	Jun. 2006	64.5	63.0	69.5	(6.5)	(419)
Santa Cruz	Feb. 2006	9.9	62.3	59.3	3.0	29
Ox Mountain	Apr. 2009	43.9	59.0	67.5	(8.5)	(375)
Keller Canyon	Aug. 2009	14.9	70.9	83.9	(13.0)	(194)
Johnson Canyon	Mar. 2013	10.4	123.6	67.3	56.3	588
San Joaquin	Jun. 2013	30.3	118.1	75.6	42.4	1,285
Kettleman	Jul. 2015	53.5	77.0	60.1	16.9	903
Hayworth Solar	Oct. 2015	63.7	68.7	65.0	3.7	234
Elevation	Dec. 2016	100.8	68.8	72.7	(4.0)	(399)
W. Antelope	Dec. 2016	50.4	68.8	69.2	(0.4)	(22)
Frontier Solar	Dec. 2016	52.5	69.0	67.1	1.9	98
Total Committed Projects		553	Total Committed Green Premium			1,852
Wilsona	Jun. 2021	75	36.8	51.4	(14.6)	(1,095)
Total with Wilsona (but without Shiloh)		563	Total Green Premium with Wilsona (without Shiloh)			1,176 *

* The annual green premium associated with a rate impact of 0.5¢/kWh is equal to \$4.8 million

NEXT STEPS

The Wilsona PPA has been reviewed and approved by staff and by the City Attorney’s Office. The PPA has also been executed by the supplier and sent to the City for execution once approved by Council. Staff plans to seek a Finance Committee recommendation for Council approval in December. If recommended by the Finance Committee, staff plans to seek Council approval of the PPA by early next year.

RESOURCE IMPACT

The cost of renewable energy supplies from Wilsona is expected to be up to \$101 million over the 40-year term of the agreement (if all three extension options are exercised). The annual expected cost is up to \$2.8 million. Approval of the PPA would result in a retail rate impact from all renewable resources, including the Wilsona project, of up to 0.12¢/kWh in 2022. The expected future cost for procuring renewable resources to meet the City’s RPS goal is already included in the current five-year financial forecast.

POLICY IMPLICATIONS

Approval of the proposed PPA is in conformance with the City’s Long-term Energy Acquisition Plan (LEAP), specifically the City’s Renewable Portfolio Standard to meet at least 33% of the electric sales from renewable energy by 2015. Approval of the proposed PPA would also further the City’s efforts to achieve a carbon neutral electric supply portfolio entirely through the acquisition of additional “hard resources” that supply the City with both energy and environmental attributes.

ENVIRONMENTAL REVIEW

Approval of this agreement does not meet the definition of a project under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065. However, the City intends to receive output from a project that will constitute a project for the purposes of CEQA. The project developer will be responsible for acquiring necessary environmental reviews and permits on the project to be developed.

During the development phase of the project, the PPA allows for the City to review the project CEQA documents and the project’s environmental impacts. If the City determines that the project will have a significant negative environmental impact, it can require HEPA to develop and implement a remediation plan in order to mitigate these impacts.

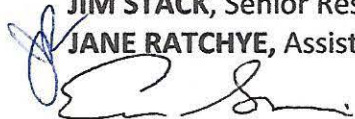
ATTACHMENTS:

- A. Resolution of the Council of the City of Palo Alto Approving a Long Term Power Purchase Agreement with Hecate Energy Palo Alto LLC for the Purchase of Solar Electricity
- B. Power Purchase Agreement with Hecate Energy Palo Alto LLC

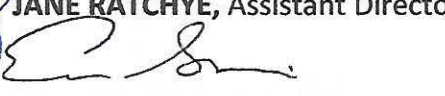
PREPARED BY:

JIM STACK, Senior Resource Planner

REVIEWED BY:

 **JANE RATCHYE**, Assistant Director, Resource Management

APPROVED BY:


ED SHIKADA
Assistant City Manager/Interim Director of Utilities

* NOT YET APPROVED *

Resolution No. _____

Resolution of the Council of the City of Palo Alto Approving a Long
Term Power Purchase Agreement with Hecate Energy Palo Alto LLC
for the Purchase of Solar Electricity

A. On April 16, 2012, Council approved an update to the Long-term Electric Acquisition Plan's (LEAP) strategy related to the Renewable Portfolio Standard (RPS). The updated strategy specifies that the City's objective is to reduce the carbon intensity of the electric portfolio by pursuing a minimum level of renewable purchases of at least 33 percent of retail electricity sales by 2015 within a rate impact cap of 0.5 cents per kilowatt-hour.

B. On March 4, 2013, Council approved a Carbon Neutral Plan, which enabled the City to achieve a carbon neutral electric supply portfolio starting in calendar year 2013.

C. On October 7, 2015, the Governor approved Senate Bill ("SB") 350, which requires that all retail sellers of electricity in California, including publicly-owned utilities, serve 50 percent of their retail electricity sales with renewable energy by 2030.

D. The City is interested in purchasing power generated by renewable resources for the benefit of its electric customers.

E. By purchasing renewable energy resources, the City will help reduce the production of greenhouse gases, will meet its RPS requirements under SB 350 and LEAP, and will meet its Carbon Neutral Plan goals.

F. Hecate Energy Palo Alto LLC ("HEPA") through its parent company, Hecate Energy LLC, proposed its project, the Wilsona solar photovoltaic plant, in response to the City's Request for Proposals 156876 ("RFP") in May 2015. Its proposal is highly competitive with other RFP respondent proposals.

G. The execution of a power purchase agreement ("PPA") with HEPA is anticipated to enable the City to meet a seven and a half percent portion of its goal of sourcing at least 33 percent of its electric needs from renewable resources and its goal to implement the Carbon Neutral Plan.

H. Under the terms of this PPA, the City is allocated a 100 percent share of the power from HEPA's solar project located in Los Angeles County, California, which will yield approximately 26 megawatts of plant net output when completed.

I. The PPA is for a twenty-five year base contract term and will allow the City to extend the PPA at its sole option for up to three additional five-year terms.

J. The City's participation in the Hecate Energy Palo Alto PPA may result in surplus electric purchases that are inconsistent with the anti-speculation requirement of section D.1 of the City's existing Energy Risk Management Policy, due to variability of the City's hydroelectric resources, and potential uncertainties associated with the timeliness and viability of the renewable energy projects in the City's portfolio still under development.

The Council of the City of Palo Alto does RESOLVE as follows:

SECTION 1. The Council approves the power purchase agreement (PPA) between Hecate Energy Palo Alto LLC, as seller, and the City of Palo Alto, as buyer. The delivery term of the PPA is up to forty (40) years, commencing upon the commercial operation date of the planned electric generation facility, which date is expected to be no later than June 1, 2021. The City will receive a 100 percent share of the facility's net output. Spending authority under the PPA shall not exceed one hundred one million dollars (\$101,000,000).

SECTION 2. The Council delegates to the City Manager, or his designee, the authority to execute the PPA with Hecate Energy Palo Alto LLC on behalf of the City, and the authority to execute any documents necessary to administer the PPA that are consistent with the Palo Alto Municipal Code and City Council approved policies.

SECTION 3. As permitted by section 2.30.290 of the Palo Alto Municipal Code, the Council delegates to the City Manager, or his designee, the authority to exercise the three extension term options, to extend the twenty-five year base contract to a full forty year contract term for the City.

SECTION 4. With respect to the Council's award of the PPA referred to in Section 1 above, the Council waives the creditworthiness requirements of Palo Alto Municipal Code section 2.30.340(c), as that requirement may apply to Hecate Energy Palo Alto LLC.

SECTION 5. With respect to the Council's award of the PPA referred to in Section 1 above, the Council waives the anti-speculation requirement of Section D.1 of the City's existing Energy Risk Management Policy, as that requirement may apply to surplus electricity purchases caused by the City's participation in the PPA with Hecate Energy Palo Alto LLC.

SECTION 6. The Council's approval of this PPA does not meet the definition of a project under the California Environmental Quality Act (CEQA), pursuant to Public Resources Code Section 21065. However, the City intends to receive output from a project that will constitute a project for the purposes of CEQA. The project developer will be responsible for acquiring necessary environmental reviews and permits on the project to be developed. During the development phase of the project, the City will become a "responsible agency" under the CEQA proceedings. As such, the PPA allows for the City to review the project CEQA documents and issue a notice of determination with respect to its review of the projects. Staff anticipates working with the City Attorney's Office and the Planning Department to undertake this assessment and make a determination.

* NOT YET APPROVED *

INTRODUCED AND PASSED:

AYES:

NOES:

ABSENT:

ABSTENTIONS:

ATTEST:

City Clerk

Mayor

APPROVED AS TO FORM:

APPROVED:

Senior Deputy City Attorney

City Manager

Director of Utilities

Director of Administrative
Services

Execution Version

POWER PURCHASE AGREEMENT

Between

The City of Palo Alto

(as “Buyer”)

and

Hecate Energy Palo Alto LLC

(as “Seller”)

Dated as of _____, 2016

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EXHIBITS

The following Exhibits constitute a part of this Agreement and are incorporated into this Agreement by reference:

EXHIBIT A	PLANT DESCRIPTION AND SITE DRAWINGS
EXHIBIT B	ENVIRONMENTAL ATTRIBUTE TRANSFER FROM SELLER TO BUYER
EXHIBIT C	INSURANCE COVERAGES
EXHIBIT D	SCHEDULING PROTOCOLS
EXHIBIT E-1	FORM OF MONTHLY PROGRESS REPORT
EXHIBIT E-2	COD CERTIFICATION
EXHIBIT F-1	FORM OF LETTER OF CREDIT
EXHIBIT F-2	FORM OF LENDER CONSENT AGREEMENT
EXHIBIT G	EXPECTED ANNUAL ENERGY PRODUCTION
EXHIBIT H	SELLER DOCUMENTATION CONDITIONS PRECEDENT

POWER PURCHASE AGREEMENT

PREAMBLE

This Power Purchase Agreement, together with the exhibits referenced herein, is made and entered into as of the Execution Date, by and between the City of Palo Alto, a California chartered municipal corporation (“**Buyer**”), and Hecate Energy Palo Alto LLC, a Delaware limited liability company (“**Seller**”).

RECITALS

1. Seller intends to develop, finance, build, own and operate a solar photovoltaic electric generating facility which shall obtain a Full Capacity Deliverability Status Finding from the CAISO as described herein and be located at the Site.
2. Buyer is a municipal utility governed by the City of Palo Alto, by and through its Council, which has all powers necessary and appropriate to a municipal corporation, including but not limited to the authority granted by the City Charter, Article XI, Section 9(a) of the California Constitution, California Government Code Section 39732 and California Public Utilities Code Section 10002, to establish, purchase, and operate public works to furnish its inhabitants with electrical power. Under this authority, Buyer is engaged in the business of delivering electricity to its residential and commercial customers in Palo Alto, California, and buying electricity with the intention of routinely taking physical delivery.
3. Buyer wishes to purchase the Output of the Plant to meet Buyer’s needs at a known price and timing and intends to resell related Energy to its residential and commercial customers.
4. Buyer is willing to purchase, and Seller is willing to sell, the Output of the Plant, on the terms and conditions and at the prices set forth in this Agreement.

NOW THEREFORE, in consideration of the recitals above and the following covenants, terms and conditions, the Parties agree:

GENERAL TERMS AND CONDITIONS

ARTICLE I: DEFINITIONS; RULES OF INTERPRETATION

1.1 Definitions.

The following initially capitalized terms, whenever used in this Agreement, have the meanings set forth below unless the context of their use otherwise indicates or they are otherwise defined in other sections of this Agreement.

AC: Alternating current.

Accelerated Contract Delivery Start Date Notice: Has the meaning set forth in Section 2.2(c).

Agreement: Means this Power Purchase Agreement between Buyer and Seller, which is comprised of the Preamble, Recitals, these General Terms and Conditions, and all appendices, schedules, exhibits and any written supplements attached hereto and incorporated herein by reference, as well as all written and signed amendments and modifications thereto.

Ancillary Services: Has the meaning set forth in the CAISO Tariff.

Attorneys' Fees: Means reasonable attorneys' fees and costs, including at trial and on appeal, including an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

Availability Standards: Means the program set forth in Section 40.9 of the CAISO Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time, setting forth certain standards regarding the desired level of availability for Resource Adequacy resources and possible charges and incentive payments for performance thereunder.

Bankrupt: Means with respect to any entity, such entity (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, or has any such petition filed or commenced against it and such case filed against it is not dismissed in sixty (60) calendar days, (b) makes an assignment or any general arrangement for the benefit of creditors, (c) otherwise becomes bankrupt or insolvent (however evidenced), (d) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (e) is generally unable to pay its debts as they fall due.

Battery Storage Facility: Has the meaning set forth in Section 2.12.

Battery Storage Facility Request: Has the meaning set forth in Section 2.12.

Business Day: Means any day except a Saturday, Sunday, or a Federal Reserve Bank holiday and shall be between the hours of 8:00 a.m. and 5:00 p.m. local time for the relevant Party's principal place of business where the relevant Party, in each instance unless otherwise specified, shall be the Party from whom the notice, payment or delivery is being sent and by whom the notice or payment or delivery is to be received.

Buyer: Has the meaning in the Preamble, and any successor or permitted assignee.

CAISO: The California Independent System Operator Corporation, or its functional successor.

CAISO Tariff: The California Independent System Operator Corporation, Fifth Replacement FERC Electric Tariff, as it may be amended, supplemented or replaced (in whole or in part) from time to time.

Calculation Period: Means successive periods consisting of two (2) consecutive Contract Years with the first Calculation Period commencing on the Contract Delivery Start Date, and with each

subsequent Calculation Period commencing on the twelve (12) month anniversary of the commencement of the prior Calculation Period.

Calculation Period Deemed Delivered Energy Production: For each Calculation Period, an amount expressed in MWh equal to the sum of (i) the total Output delivered by Seller to the Point of Interconnection in such Calculation Period, plus (ii) the Seller Excused Energy Amount for such Calculation Period.

Calculation Period Expected Energy Production: Means an amount expressed as MWh equal to the sum of the Expected Annual Energy Production for the relevant two Contract Years during each Calculation Period.

Capacity Attributes: Means any current or future defined characteristic (including the ability to generate at a given capacity level, provide Ancillary Services, and ramp up or ramp down at a given rate), certificate, tag, credit, flexibility, or dispatchability attribute, whether general in nature or specific as to the location or any other attribute of the Plant, intended to value any aspect of the capacity of the Plant to produce any and all Output, including any accounting construct so that the maximum amount of Initial Capacity of the Plant may be counted toward Resource Adequacy Requirements or any other measure by the CPUC, the CAISO, the FERC, or any other entity invested with the authority under federal or state Law, to require Buyer to procure, or to procure at Buyer's expense, Resource Adequacy or other such Output.

CARB: Means the California Air Resources Board or any successor agency.

CEC: Means the California Energy Resources Conservation and Development Commission or any successor agency.

CEC Certification and Verification: Means that the CEC has certified (or, with respect to periods before the Plant has commenced commercial operation (as such term is defined by and according to the CEC), that the CEC has pre-certified) that the Plant is an ERR for purposes of the California Renewables Portfolio Standard and that all Output produced by the Plant qualifies as generation from an ERR for purposes of the Plant.

CEQA: The California Environmental Quality Act, as it may be amended from time to time.

Change in Law: The enactment or issuance of any new Law, the amendment, alteration, modification or repeal of any existing Law or any authoritative interpretation of any existing Law issued by a competent court, tribunal or Governmental Authority contrary to the existing official interpretation thereof, in each case coming into effect after the Execution Date and which must be complied with in order for the Plant to be constructed and operated lawfully.

COD Certification: Seller's certification of Commercial Operation in the form set forth as Exhibit E-2, duly executed by Seller and its Licensed Professional Engineer.

Commercial Operation: The condition of the Plant whereby it is operating and able to produce and deliver the Output to Buyer pursuant to the terms of this Agreement.

Commercial Operation Date: The date upon which Seller delivers the COD Certification to Buyer in accordance with Section 4.3(d) and thereby notifies Buyer that Commercial Operation has commenced.

Commercial Operation Milestone: Has the meaning set forth in Section 4.3(b)(vi).

Condition Precedent: Means each of, or one of, the conditions set forth in Section 2.1(a)(i) through (iii), and “**Conditions Precedent**” shall refer to all of the conditions set forth in Section 2.1(a)(i) through (iii).

Conditional Use Permit a permit approving the conditional use for the development, construction and operation of the Plant required and by any Governmental Authority..

Conditional Use Permitting Milestone: Has the meaning set forth in Section 4.3(b)(ii).

Confidential Information: Has the meaning set forth in Section 10.16(a).

Construction Milestone: Has the meaning set forth in Section 4.3(b)(v).

Construction Start Date: The date on which Seller delivers to Buyer a copy of the Notice to Proceed that Seller has delivered to the EPC Contractor for the Plant.

Contract Delivery Start Date: Has the meaning set forth in Section 2.2(b)(i), or, if accelerated, the meaning set forth in Section 2.2(c).

Contract Year: A period of twelve (12) consecutive months, with the first Contract Year commencing at 12:00 a.m. on the Contract Delivery Start Date, and each subsequent Contract Year commencing on the twelve (12) month anniversary of the Contract Delivery Start Date.

Contractual Obligations: As to Seller, any material agreement, instrument or undertaking to which Seller is a party or by which it or any of its Plant property is bound.

Costs: With respect to a Non-Defaulting Party, (a) brokerage fees, commissions and other similar third party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement entered into pursuant to this Agreement or entering into new arrangements which replace this Agreement and (b) all Attorneys’ Fees incurred by the Non-Defaulting Party in connection with the termination of this Agreement.

CPRA: Has the meaning set forth in Section 10.16(a).

CPUC: Means the California Public Utilities Commission or any successor entity.

Credit Rating: Means, with respect to any entity, (a) the rating then assigned to such entity’s unsecured senior long-term debt obligations (not supported by third party credit enhancements) or (b) if such entity does not have a rating for its unsecured senior long-term debt obligations, then the rating assigned to such entity as an issuer rating by S&P and/or Moody’s. If the entity is rated by both S&P and Moody’s and such ratings are not equivalent, the lower of the two ratings shall

determine the Credit Rating. If the entity is rated by either S&P or Moody's, but not both, then the available rating shall determine the Credit Rating.

Cure: Has the meaning set forth in Section 9.3(b).

DA Price: The resource specific locational marginal price ("LMP") applied to the PNode applicable to the Plant in the CAISO Day-Ahead Market.

Daily LD Amount: For each day or portion of a day for which delay liquidated damages are payable under Section 4.4(b), an amount equal to the total amount of Development Assurance required hereunder divided by 365.

Damage Payment: Means (a) the dollar amount to be posted as Development Assurance pursuant to Section 9.2(a)(i) hereof, less (b) amounts collected by Buyer as the Daily LD Amount pursuant to Section 4.4(b), if any.

Day-Ahead Market: Has the meaning set forth in the CAISO Tariff.

Defaulting Party: Means the Party that is subject to an Event of Default.

Delivery Term: Has the meaning set forth in Section 2.2(b)(i), or if extended, the meaning set forth in Section 2.2(d).

Development Assurance: Means the collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 9.2(a)(i) of this Agreement.

Development Progress Report: Means the report similar in form and content attached hereto as Exhibit E-1.

Discretionary Curtailment: Has the meaning set forth in Section 4.5(c)(ii)(A).

Dispatch Down Period: The period of curtailment of delivery of Output from the Plant that is not Discretionary Curtailment and results from:

- (a) A curtailment ordered by the CAISO (whether directly or through a Scheduling Coordinator or the Participating Transmission Owner), for any reason, including, but not limited to, any System Emergency, any warning of an anticipated System Emergency, or any warning of an imminent condition or situation which could jeopardize the CAISO's or Participating Transmission Owner's electric system integrity or the integrity of other systems to which the CAISO or the Participating Transmission Owner is connected;
- (b) A curtailment ordered by the Participating Transmission Owner or distribution operator (if interconnected to distribution or sub-transmission system) for any reason, including but not limited to, (i) any situation that affects normal function of the electric system including, but not limited to any abnormal condition that requires action to prevent circumstances such as equipment damage, loss of load, or abnormal voltage conditions, (ii) any warning, forecast or anticipation of

conditions or situations that jeopardize the Participating Transmission Owner's electric system integrity or the integrity of other systems to which the Participating Transmission Owner is connected; or (iii) as a result of scheduled or unscheduled maintenance or construction on the Participating Transmission Owner's transmission facilities or distribution operator's facilities that prevents the delivery or receipt of Output to or at the Point of Interconnection; or

- (c) A curtailment in accordance with Seller's obligations under its Interconnection Agreement with the Participating Transmission Owner or distribution operator;

provided, that any of the foregoing events (a) through (c) shall not have been solely caused by the acts or omissions of Buyer.

Distribution Upgrades: Has the meaning set forth in the CAISO Tariff.

EA Agency: Any local, state or federal entity, or any other Person, that has responsibility for or jurisdiction over a program involving transferability of Environmental Attributes, including, without limitation, the Clean Air Markets Division of the United States Environmental Protection Agency (together with any successor agency, the "EPA"), the CEC, the CPUC, CARB, and any successor commission or agency thereto.

Early Termination Date: Has the meaning set forth in Section 7.3(a)(i).

Electric System Upgrades: Means any Network Upgrades, Distribution Upgrades, or Interconnection Facilities that are determined to be necessary by the CAISO or Participating Transmission Owner, as applicable, to physically and electrically interconnect the Plant to the Participating Transmission Owner's electric system for receipt of Energy at the Point of Interconnection.

Eligible Intermittent Resource: Has the meaning set forth in the CAISO Tariff.

Eligible Intermittent Resource Protocols or EIRP: Has the meaning set forth in the CAISO Tariff, including but not limited to Appendix Q attached thereto.

Eligible LC Bank: Means either a U.S. commercial bank, or a foreign bank issuing a Letter of Credit through its U.S. branch; and in each case the issuing U.S. commercial bank or foreign bank must be acceptable to Buyer in its sole discretion and such bank must have a Credit Rating of at least: (a) "A-, with a stable designation" from S&P and "A3, with a stable designation" from Moody's, if such bank is rated by both S&P and Moody's; or (b) "A-, with a stable designation" from S&P or "A3, with a stable designation" from Moody's, if such bank is rated by either S&P or Moody's, but not both, even if such bank was rated by both S&P and Moody's as of the date of issuance of the Letter of Credit but ceases to be rated by either, but not both of those ratings agencies.

Eligible Renewable Energy Resource: Has the meaning set forth in 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.

Energy: Means three-phase, 60-cycle alternating current electric energy measured in MWh and net of auxiliary loads and station electrical uses (unless otherwise specified). For purposes of the definition of “Environmental Attributes”, the word “**energy**” shall have the meaning set forth in this definition.

Environmental Attributes: Any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the Plant or Expansion Plant(s) (to the extent of sales to Buyer of Expansion Plant Output pursuant to Section 2.10), and its displacement of conventional energy generation. Environmental Attributes include, without limitation, Renewable Energy Credits, and all of the following: (a) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SO_x), nitrogen oxides (NO_x), carbon monoxide (CO) and other pollutants; (b) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (c) the reporting rights to these avoided emissions such as Environmental Attributes Reporting Rights.

Environmental Attributes Reporting Rights: The rights of a purchaser of Environmental Attributes to report the ownership of accumulated Environmental Attributes in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the discretion of the Environmental Attributes’ purchaser, and include without limitation those Environmental Attribute Reporting Rights accruing under Section 1605(b) of the Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Environmental Attributes are accumulated on a kWh basis and one Environmental Attribute represents the amount of Environmental Attributes associated with one (1) MWh of Energy. Environmental Attributes do not include (i) any Energy, capacity, reliability or other power attributes from the Plant or Expansion Plant(s), if any, or (ii) tax credits associated with the construction or operation of the Plant, Expansion Plant(s), if any, or any other associated contract or right, and other financial incentives in the form of credits, rebates, reductions, or allowances associated with the Plant, Expansion Plant(s), if any, or any other associated contract or right, that are applicable to a state or federal income taxation obligation.

Environmental Laws: Any and all federal, state and local laws, including statutes, regulations, rulings, orders, administrative interpretations and other governmental restrictions and requirements relating to the discharge of air pollutants, water pollutants or process waste water or otherwise relating to the environment or hazardous substances, as amended from time to time.

EPA: Has the meaning set forth in the definition of EA Agency.

EPC Contract: The Seller’s engineering, procurement and construction contract with the EPC Contractor.

EPC Contractor: An engineering, procurement, and construction contractor, or if not utilizing an engineering, procurement, and construction contractor, the entity having lead responsibility for the management of overall construction activities, selected by Seller, with substantial experience in the engineering, procurement, and construction of utility-scale solar photovoltaic power plants.

ERR: Has the meaning set forth in the definition of Eligible Renewable Energy Resource.

Event of Default: Has the meanings set forth in Section 7.1 as to Buyer, and Section 7.2 as to Seller.

Execution Date: Means the date on which all of the Conditions Precedent set forth in Section 2.1(a) have been satisfied or waived in writing by both Parties.

Expansion Plant: Any expansion of the Plant from its Initial Capacity, or any other electricity generating facility owned or controlled by Seller or its affiliates, located at the Site. Each such expansion of the Plant or additional facility shall be deemed to be an “**Expansion Plant.**”

Expansion Plant Output: All capacity, Output, associated Environmental Attributes, Ancillary Services, contributions towards Resource Adequacy or reserve requirements (if any) and any other reliability or power attributes produced by Seller at any Expansion Plant.

Expected Annual Energy Production: Means an amount expressed as MWh equal to the expected Energy associated with the Output to be produced by the Plant based on its Expected Initial Capacity for each Contract Year during the Delivery Term, including degradation, as set forth on Exhibit G.

Expected Initial Capacity: Has the meaning set forth in Section 2.3(c)(i).

Extended Delivery Term: Has the meaning set forth in Section 2.2(d).

Extended Delivery Term Option Exercise Notice: Has the meaning set forth in Section 2.2(d).

FCDS Finding Milestone: Has the meaning set forth in Section 4.3(b)(vii).

FERC: The Federal Energy Regulatory Commission and any successor organization.

Financing Milestone: Has the meaning set forth in Section 4.3(b)(iv).

Force Majeure Event: Any act, event or circumstance that wholly or partly delays or prevents a Party from timely performing obligations under this Agreement or from complying with conditions required under this Agreement, only to the extent that such act, event or circumstance is (x) reasonably unforeseeable, (y) directly or indirectly beyond the reasonable control of and without the fault or negligence of, or caused by, the Party relying thereon as justification for such delay, nonperformance, or noncompliance, and (z) the Party seeking to have its performance obligation(s) excused thereby has taken all reasonable precautions and measures in order to prevent or avoid such event or mitigate the effect of such event on such Party’s ability to perform its obligations under this Agreement and which by the exercise of due diligence such Party could not reasonably have been expected to avoid and has been unable to overcome.

- (a) Subject to the foregoing, events that could qualify as Force Majeure Events include the following:

- (i) acts of God or the elements, extreme or severe weather conditions, explosion, fire, epidemic, landslide, mudslide, sabotage, lightning, earthquake, flood or similar cataclysmic event;
 - (ii) war (declared or undeclared), blockade, civil insurrection, riot, civil disturbance, acts of the public enemy (including acts of terrorism), sabotage, revolution, expropriation or confiscation;
 - (iii) except in the case of (b)(vii) below, strike, work stoppage or other labor dispute or difficulty caused or suffered by a Party (in which case the affected Party shall have no obligation to settle the strike or labor dispute on terms it deems unreasonable);
 - (iv) any restraint or restriction imposed by Law or other acts or omissions of Governmental Authorities, whether federal, state or local, which by the exercise of due diligence and in compliance with applicable Law a Party could not reasonably have been expected to avoid and to the extent which, by exercise of due diligence and in compliance with applicable Law, such Party has been unable to overcome (so long as the affected Party has not applied for or assisted such act by a Governmental Authority);
 - (v) emergencies declared by the Transmission Provider or any other authorized successor or regional transmission organization or any state or federal regulator or legislature requiring a forced curtailment of the Plant or making it impossible for the Transmission Provider to transmit Energy, including Energy to be delivered pursuant to this Agreement; provided that, if a curtailment of the Plant pursuant to this subsection (a)(v) would also meet the definition of a Dispatch Down Period, then it shall be treated as a Dispatch Down Period for purposes of this Agreement; or
- (b) A “**Force Majeure Event**” shall not include:
- (i) economic conditions that render a Party’s performance of this Agreement at the Price unprofitable or otherwise uneconomic (including Buyer’s ability to buy Energy or Environmental Attributes at a lower price, or Seller’s ability to sell Energy or Environmental Attributes at a higher price, than the Price);
 - (ii) a governmental act by Buyer that delays or prevents Buyer from timely performing its obligations under this Agreement;
 - (iii) a Plant equipment failure, except where such failure is caused by a Force Majeure Event of the specific type described in any of subsections (a)(i) through (a)(v) above;
 - (iv) failure or delay in grant of Permits or approvals of any type for the construction, operation or maintenance of the Plant, except where such

failure is caused by a Force Majeure Event of the specific type described in any of subsections (a)(i) through (a)(v) above;

- (v) Discretionary Curtailment;
- (vi) failures or delays by the Participating TO and/or the CAISO in entering into, or performing under, any agreements with Seller contemplated by this Agreement;
- (vii) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's affiliates, the EPC Contractor or subcontractors thereof or any other third party employed by Seller to work on the Plant;
- (viii) a Party's inability to pay amounts due to the other Party under this Agreement, except if such inability is caused solely by a Force Majeure event that disables physical or electronic facilities necessary to transfer funds to the payee Party;
- (ix) Seller's failure to obtain additional funds, including funds authorized by a state or the federal government or agencies thereof, to supplement the payments made by Buyer pursuant to this Agreement;
- (x) Seller's inability to obtain sufficient fuel, power or materials to operate the Plant, except where such failure is caused by a Force Majeure Event of the specific type described in any of subsections (a)(i) through (a)(v) above;
- (xi) a Forced Outage except where such Forced Outage is caused by an event of Force Majeure of the specific type described in any of subsections (a)(i) through (a)(v) above; or
- (xii) a failure to complete, or a delay in completing, interconnection or Electric System Upgrades by the Commercial Operation Milestone, including by any third party.

Forecasting Service: Has the meaning set forth in Section 4.5(d).

Forced Outage: Means any unplanned reduction or suspension of the electrical output from the Plant or unavailability of the Output in whole or in part from a unit in response to a mechanical, electrical, or hydraulic control system trip or operator-initiated trip in response to an alarm or equipment malfunction and any other unavailability of a unit for operation, in whole or in part, for maintenance or repair that is not a Planned Outage and not the result of Force Majeure.

FPA: Has the meaning set forth in Section 8.1(c)(i).

Full Capacity Deliverability Status or FCDS: Has the meaning set forth in the CAISO Tariff.

Full Capacity Deliverability Status Finding or FCDS Finding: A written confirmation from the CAISO that the Plant is eligible for FCDS.

GAAP or Generally Accepted Accounting Principles: Means the standards for accounting and preparation of financial statements established by the Federal Accounting Standards Advisory Board (or its successor agency) or any successor standards adopted pursuant to relevant Securities Exchange Commission rule.

Gains: With respect to any Party, an amount equal to the present value of the economic benefit to it, if any (exclusive of Costs), resulting from the termination of the Agreement for the remainder of the Term, determined in a commercially reasonable manner, subject to Section 7.3 hereof. Factors used in determining economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g., NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Output.

Governmental Authority: Any federal or state government, or political subdivision thereof, including, without limitation, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, without limitation, any corporation or other entity owned or controlled by any of the foregoing.

Incentives: Any and all tax credits, including Section 45 Credits and Section 48 Credits, deductions, allowances, depreciation and exemptions applicable to federal, state and local taxes and any other payment, credit, deduction, benefit, grant or monetary incentive provided by any federal, state or local Governmental Authority or any Person, whether now in effect or arising in the future, in each case arising from the activities contemplated by this Agreement, including any “Renewable Energy Production Incentive Payments” from the U.S. Department of Energy and any “Energy Investment Tax Credit” described in Section 48 of the Internal Revenue Code of 1986, as it may be amended or supplemented from time to time. Notwithstanding the foregoing, Incentives shall not include anything that qualifies as Output (including any Environmental Attributes).

Indemnified Party: Has the meaning set forth in Section 10.1(b).

Indemnifying Party: Has the meaning set forth in Section 10.1(b).

Ineligible LC Bank: Has the meaning set forth in Section 9.3(c)(i)(A).

Ineligible LC Bank Notice Period: Has the meaning set forth in Section 9.3(c)(i).

Initial Capacity: Has the meaning set forth in Section 2.3(c)(ii).

Interconnection Agreement: The agreement and associated documents (or any successor agreement and associated documentation) by and among Seller, the Participating TO and the CAISO governing the terms and conditions of Seller’s interconnection with the CAISO grid, including any description of the plan for interconnection of the Plant to the Participating TO’s system.

Interconnection Agreement Milestone: Has the meaning set forth in Section 4.3(b)(i).

Interconnection Facilities: Has the meaning set forth in the CAISO Tariff.

Interim Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 9.2(a)(ii) of this Agreement.

kWh: Means kilowatt-hour (AC).

Law: Means any statute, law, treaty, rule, regulation, CEC guidance document, ordinance, code, permit, enactment, injunction, order, writ, decision, authorization, judgment, decree or other legal or regulatory determination or restriction by a court or Governmental Authority of competent jurisdiction, including any of the foregoing that are enacted, amended, or issued after the Execution Date, and which becomes effective after the Execution Date; or any binding interpretation of the foregoing.

LC Notice: Has the meaning set forth in Section 9.3(c).

Local Capacity Area: Has the meaning set forth in the CAISO Tariff.

Lender(s): Any Person(s) providing money or extending credit (including any capital lease) to Seller, including in the form of debt or tax equity, for (a) the construction of the Plant, (b) the term or permanent financing of the Plant, or (c) working capital or other ordinary business requirements for the Plant. "**Lender(s)**" shall not include any trade creditor(s) of Seller.

Letter of Credit: Means an irrevocable, non-transferable standby letter of credit issued by Wells Fargo, N.A., or other banking institution acceptable to Buyer in its sole discretion, the form of which must be substantially as contained in Exhibit F-1 to this Agreement; provided, that, if the issuer is a U.S. branch of a foreign commercial bank, Buyer may require changes to such form, the issuer must be an Eligible LC Bank on the date of Transfer, and the issuing Letter of Credit amount may not be greater than the Maximum Issuing Amount if the total amount of collateral posted by the Seller in the form of Letter of Credit exceeds ten million dollars (\$10,000,000.00) on the date of Transfer.

Licensed Professional Engineer: Means a Person acceptable to Buyer in its reasonable judgment who (a) is licensed to practice engineering in California, (b) has training and experience in the power industry specific to the technology of the Plant, (c) has no economic relationship, association, or nexus with Seller or Buyer, other than to meet the obligations of Seller pursuant to this Agreement, (d) is not a representative of a consultant, engineer, contractor, designer or other individual involved in the development of the Plant or of a manufacturer or supplier of any equipment installed at the Plant, and (e) is licensed in an appropriate engineering discipline for the required certification being made.

LMP: Has the meaning set forth in the definition of DA Price.

Losses: With respect to any Party, an amount equal to the present value of the economic loss to it, if any (exclusive of Costs), resulting from the termination of this Agreement for the remainder of the Term, determined in a commercially reasonable manner, subject to Section 7.3 hereof. Factors

used in determining the loss of economic benefit may include reference to information either available to it internally or supplied by one or more third parties, including quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets, market price referent, market prices for a comparable transaction, forward price curves based on economic analysis of the relevant markets, settlement prices for a comparable transaction at liquid trading hubs (e.g. NYMEX), all of which should be calculated for the remainder of the Term to determine the value of the Output. If the Non-Defaulting Party is the Seller, then in addition to lost payments for Output pursuant to this Agreement, “Losses” shall exclude any associated loss of investment tax credits and other lost tax benefits.

Maximum Issuing Amount: Means the amount of a Letter of Credit to be issued by an Eligible LC Bank, which cannot exceed the lesser of (a) sixty percent (60%) of the total collateral posted by Seller in the form of Letter of Credit including the Letter of Credit to be issued or (b) twenty-five million dollars (\$25,000,000.00), without Buyer’s prior written consent.

Milestones: Means the key development activities required for the construction and operation of the Plant, as set forth more particularly in Section 4.3(a).

MW: Megawatt (AC).

MWh: Megawatt-hour (AC).

Network Upgrades: Has the meaning set forth in the CAISO Tariff.

Non-Defaulting Party: Has the meaning set forth in Section 7.3(a).

Notice to Proceed: The full notice to proceed provided by Seller to the EPC Contractor following execution of the EPC Contract between Seller and such EPC Contractor and satisfaction of all conditions to performance of such contract, by which Seller authorizes such EPC Contractor to begin construction of the Plant without any delay or waiting periods.

Output: The capacity, Energy, Environmental Attributes, Ancillary Services, contributions towards Resource Adequacy, reserve requirements (if any), and any and all other reliability or power attributes which are or can be produced by or associated with the Plant.

Overproduction Energy Price: Has the meaning set forth in Section 2.4(a).

Participating Intermittent Resource: Has the meaning set forth in the CAISO Tariff.

Participating TO or Participating Transmission Owner: An entity that (a) owns, operates and maintains transmission lines and associated facilities and/or has entitlements to use certain transmission lines and associated facilities, and (b) has transferred to the CAISO operational control of such facilities and/or entitlements to be made of the CAISO Grid. For purposes of this Agreement, the Participating TO is Southern California Edison.

Participating TO System: The transmission system owned by the Participating TO.

Parties: Buyer and Seller, and their respective successors and permitted assignees.

Party: Buyer or Seller, and each such Party's respective successors and permitted assignees.

Performance Assurance: The collateral provided by Seller to Buyer to secure Seller's obligations hereunder in accordance with Section 9.2(a)(iii) of this Agreement.

Performance LDs: Has the meaning set forth in Section 4.6(b).

Permits: All material federal, state or local authorizations, certificates, certifications, pre-certifications, permits, licenses and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Plant, other than the Conditional Use Permit.

Permitting Milestone: Has the meaning set forth in Section 4.3(b)(iii).

Person: An individual, partnership, corporation, business trust, limited liability company, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity.

Planned Outage: Means the removal of equipment from service availability for inspection and/or general overhaul of one or more major equipment groups. To qualify as a Planned Outage, the maintenance (a) must actually be conducted during the Planned Outage, and in Seller's sole discretion must be of the type that is necessary to reliably maintain the Plant, (b) cannot be reasonably conducted during Plant operations, and (c) causes the generation level of the Plant to be reduced by at least ten percent (10%) of the Initial Capacity.

Plant: The power generation facilities to be constructed, owned and operated by Seller located on the Site for the generation and delivery of electricity, including the step-up transformer, revenue quality meter and all other facilities up to the Point of Interconnection, but not including any Expansion Plant.

PNode: Has the meaning set forth in the CAISO Tariff.

Point of Interconnection: The point on the electrical system where the Plant is physically interconnected with the Participating TO System, which is anticipated to be at the Wilsona Substation.

Pre-FCDS Energy Price: Has the meaning set forth in Section 2.4(b).

Price: The price set forth in Section 2.4.

Project: Has the meaning set forth in Section 2.9(c)(i).

Prudent Utility Practice: Has the meaning in the CAISO Tariff.

QF: Has the meaning set forth in Section 8.1(c)(1).

Real-Time Market: Has the meaning set forth in the CAISO Tariff.

REC or Renewable Energy Credit: Has the meaning set forth in California Public Utilities Code Section 399.12(h) and CPUC Decision 08-08-028, as may be amended from time to time or as further defined or supplemented by applicable law.

Report Period means the interval between dates when Seller must deliver each Development Progress Report to Buyer according to Section 4.3(c)(i)-(iii), as applicable.

Requirements of Laws: Collectively, any federal, state or local law, treaty, franchise, rule or regulation, or any order, writ, judgment, injunction, decree, award or determination of any arbitrator or court or other Governmental Authority, in each case applicable to or binding upon Seller or Buyer or any of its property or to which Seller or Buyer or any of its respective properties are subject.

Resource Adequacy: Means an obligation of load serving entities, including Buyer, that requires Buyer to procure a certain amount of electric generating capacity.

Resource Adequacy Requirements: Has the meaning set forth in Section 2.7(a).

SCADA: Has the meaning set forth in Section 3.1.

Scheduling Coordinator: Means a qualified entity designated by Buyer to provide the Scheduling Coordinator Functions for the Plant pursuant to this Agreement.

Scheduling Coordinator Functions: Means the functions specified in “**Responsibilities of a Scheduling Coordinator**” of the CAISO Tariff undertaken by an entity certified by the CAISO as qualifying as a Scheduling Coordinator pursuant to the CAISO Tariff.

Section 45 Credits: Those tax credits available under Section 45 of Subtitle A, Chap. 1A, Part IV of the Internal Revenue Code of 1986, as amended, or any other similar state, federal or local tax credits, deductions, payments or benefits arising from the generation and sale of electricity using qualifying renewable resources, not including any Environmental Attributes.

Section 48 Credits: Those tax credits available under Section 48(a)(3)(A)(i) and 48(a)(5) of the Internal Revenue Code of 1986, as amended, or any other similar state, federal or local tax credits, deductions, payments or benefits arising from the investment in qualifying energy properties, not including any Environmental Attributes.

Seller: Has the meaning in the Preamble, and any successor or permitted assignee.

Seller Excused Energy Amount: Means, for each Calculation Period, an amount expressed in MWh, equal to the aggregate amount of reduction(s) in delivered Output during such Calculation Period as a result of Dispatch Down Periods, Discretionary Curtailment, Force Majeure Events, Buyer’s breach or default hereunder or failure to accept delivered Output, or Forced Outages to the local transmission or distribution system.

Seller Execution: Means the date an authorized representative of Seller duly executes this Agreement as evidenced by the date set forth next to its signature on the Signature Page hereof.

Seller's Parent: Means Hecate Energy, LLC

Shortfall: Has the meaning set forth in Section 4.6(b).

Site: The description of the Plant and Site Drawings as described on Exhibit A.

Site Drawings: Has the meaning set forth on Exhibit A.

Substitute Bank Period: Has the meaning set forth in Section 9.3(c).

Substitute Letter of Credit: Has the meaning set forth in Section 9.3(c).

System Emergency: Has the meaning set forth in the CAISO Tariff.

Term: Has the meaning set forth in Section 2.2(a).

Termination Payment: Means, with respect to the Non-Defaulting Party, the sum of (a) the Losses or Gains, and Costs, which such Party incurs as a result of the termination of this Agreement pursuant to Section 7.3, plus (b) the sum of all amounts then owed to the Non-Defaulting Party by the defaulting Party determined as of the Early Termination Date.

Test Energy: Output (to the extent available) generated by the Plant and delivered to the Point of Interconnection prior to the Contract Delivery Start Date.

Transfer: Means with respect to Letters of Credit the delivery of the Letter of Credit conforming to the requirements of this Agreement, by Seller or an Eligible LC Bank to Buyer or delivery of an executed amendment to such Letter of Credit (extending the term or varying the amount available to Buyer thereunder, if acceptable to Buyer) by Seller or Eligible LC Bank to Buyer.

Two Year Minimum Production Threshold: For each Calculation Period, an amount expressed in MWhs equal to eighty percent (80%) of the Calculation Period Expected Energy Production for such Calculation Period. For the avoidance of doubt, an example of the Two Year Minimum Production Threshold is the sum of 80% of the Calculation Period Expected Energy Production for the first Contract Year of such Calculation Period plus 80% of the Calculation Period Expected Annual Energy Production for the second Contract Year of such Calculation Period.

Watch: Has the meaning set forth in Section 9.3(c).

WREGIS: The Western Renewable Energy Generation Information System, or any successor renewable energy tracking program.

1.2 Rules of Interpretation.

The following rules of interpretation shall apply in addition to those set forth in Sections 10.3, 10.4, 10.5, 10.6, 10.8, 10.11, 10.13, 10.14, 10.15, 10.17, 10.20 and 10.22:

- (a) The term “month” shall mean a calendar month unless otherwise indicated, and a “day” shall be a 24-hour period beginning at 12:00:01 a.m. Pacific Prevailing Time and ending at 12:00:00 midnight Pacific Prevailing Time; provided that a “day” may be 23 or 25 hours on those days on which daylight savings time begins and ends.
- (b) Unless otherwise specified herein, all references to any agreement or other document of any description shall be construed to give effect to amendments, supplements, modifications or any superseding agreement or document as then existing at the applicable time to which such construction applies.
- (c) Capitalized terms used in this Agreement, including the exhibits hereto, shall have the meaning set forth in Section 1.1, unless otherwise specified.
- (d) Unless otherwise specified herein, references in the singular shall include references in the plural and vice versa, pronouns having masculine or feminine gender shall be deemed to include the other, and words denoting natural persons shall include partnerships, firms, companies, corporations, joint ventures, trusts, associations, organizations or other entities (whether or not having a separate legal personality). Other grammatical forms of defined words or phrases have corresponding meanings.
- (e) References to a particular article, section, subsection, paragraph, subparagraph, appendix or attachment shall, unless specified otherwise, be a reference to that article, section, subsection, paragraph, subparagraph, appendix or attachment in or to this Agreement.
- (f) Any reference in this Agreement to any natural person, Governmental Authority, joint powers agency, corporation, partnership or other legal entity includes its permitted successors or assigns or to any natural person, Governmental Authority, joint powers agency, corporation, partnership or other legal entity succeeding to its functions.
- (g) All references to dollars are to U.S. dollars.
- (h) The term “includes” and “including” when used in this Agreement shall be by way of example only and shall not be considered in any way to be in limitation, whether or not so specified.

ARTICLE II

TERM, PURCHASE AND SALE

2.1 Conditions Precedent to Commencement of Term of Agreement.

- (a) Conditions Precedent. The Term of this Agreement shall not commence until the occurrence of all of the following:
 - (i) Seller Execution;
 - (ii) At least five (5) Business Days before Seller Execution, Buyer receives from Seller the conditions precedent documentation listed in Exhibit H; and
 - (iii) This Agreement has been approved by the Palo Alto City Council, and duly executed by the authorized representatives of Buyer.
- (b) Failure to Meet All Conditions Precedent. If the Conditions Precedent set forth in Sections 2.1(a) are not satisfied or waived in writing by both Parties, then either Party may terminate this Agreement effective upon receipt of notice by the other Party. Neither Party shall have any obligation or liability to the other, including for a Termination Payment or otherwise, by reason of such termination.

2.2 Agreement Term, Delivery Term, Acceleration and Extension.

- (a) Agreement Term. The term of this Agreement shall commence, and this Agreement shall be effective, upon the satisfaction or written waiver of the Conditions Precedent set forth in Section 2.1(a) of this Agreement and, unless earlier terminated pursuant to an express provision of this Agreement, shall remain in effect until the conclusion of the Delivery Term (the “**Term**”).
- (b) Delivery Term.
 - (i) The Parties agree that the delivery term shall mean: a period of delivery of Output of twenty-five (25) Contract Years beginning with the first date that Buyer accepts delivery of the Output from the Plant in connection with this Agreement following Seller’s demonstration of satisfaction of the items listed in this Section 2.2(b)(ii) (the “**Contract Delivery Start Date**”) and continuing until the end of the twenty-fifth (25th) Contract Year (“**Delivery Term**”), unless terminated as provided by the terms of this Agreement; provided that, the Parties agree that (x) the Contract Delivery Start Date shall occur on June 1, 2021, which may be accelerated pursuant to Section 2.2(c), and (y) the Delivery Term shall end on May 31, 2046, which may be extended pursuant to Section 2.2(d). For the avoidance of doubt, the maximum Delivery Term shall not extend past the fortieth (40th) anniversary of the Contract Delivery Start Date.

- (ii) The Contract Delivery Start Date shall occur as soon as practicable once all of the following have been satisfied:
 - (aa) Seller delivers the COD Certification set forth at Exhibit E-2 to Buyer and, if applicable, an Expected Annual Energy Production table in the form attached hereto as Exhibit G updating the Expected Annual Energy Production originally calculated based on the Plant's Expected Initial Capacity and provided pursuant to Section 2.1(a)(ii) for its Initial Capacity (which shall remain subject to the limits set forth in Section 2.3(b)(ii));
 - (bb) Buyer shall have received and accepted the Performance Assurance in accordance with the relevant provisions of Article 9.2(a)(iii) of the Agreement;
 - (cc) Seller shall have obtained the requisite CEC Certification and Verification for the Plant and delivered a copy of same to Buyer;
 - (dd) all of the applicable Conditions Precedent in Section 2.1(a) have been satisfied or waived in writing;
 - (ee) Seller shall have demonstrated satisfaction of Seller's other obligations under this Agreement that commence prior to or as of the Delivery Term, including taking all necessary steps to allow the RECs transferred to Buyer to be tracked in WREGIS;
 - (ff) Seller shall have provided Buyer with a copy of the notice letter from the Participating Transmission Owner authorizing the Plant to commence commercial operation; and
 - (gg) unless Seller has been directed by Buyer not to participate in the Participating Intermittent Resource program, Buyer shall have received written notice from the CAISO that the Plant is certified as a Participating Intermittent Resource to the extent such Participating Intermittent Resource status exists and is available at such time as the conditions in subsections (aa) through (ff) of this Section 2.2(b)(ii) are satisfied.
- (c) Buyer Acceleration of Contract Delivery Start Date. Buyer may, in its sole discretion, accelerate the Contract Delivery Start Date to a new date no more than six (6) months prior to the Contract Delivery Start Date, unless otherwise agreed in writing by the Parties. Subject to this Section 2.2(c), if Buyer desires so to accelerate the Contract Delivery Start Date, it shall deliver six (6) months prior written notice to Seller specifying the new Contract Delivery Start Date (the "**Accelerated Contract Delivery Start Date Notice**"), which shall thereafter for all purposes be deemed to be the "**Contract Delivery Start Date**". Notwithstanding the foregoing, Seller and Buyer may at any time mutually agree in

writing to accelerate the Contract Delivery Start Date to a date earlier than the Contract Delivery Start Date.

- (d) Extension of End of Delivery Term. Buyer may, in its sole discretion, extend the end of the Delivery Term by up to an additional fifteen (15) years, in one or more five (5)-year increments each and all at the same Price set forth in Section 2.6 (each, an “**Extended Delivery Term**”). Subject to this Section 2.2(d), if Buyer desires so to extend the Delivery Term, it shall deliver a written notice (“**Extended Delivery Term Option Exercise Notice**”) to Seller by not later than three hundred sixty-five (365) calendar days prior to the end of the Delivery Term specifying the Extended Delivery Term, which shall thereafter for all purposes be deemed to be the “**Delivery Term**”.

2.3 Purchase and Sale of the Output.

- (a) Purchase and Sale of Output. During the Delivery Term, Seller shall sell and deliver, or cause to be delivered, and Buyer shall purchase and receive, or cause to be received, the Output (subject to Section 2.4(a)) at the Point of Interconnection, and Buyer shall pay Seller the Price in accordance with the terms of this Agreement, unless specifically excused by the terms of this Agreement. In no event shall Seller have the right to procure any element of the Output from sources other than the Plant for sale or delivery to Buyer under this Agreement, or sell Output from the Plant to a third party. Buyer shall be the only party that may claim credit for the Output (subject to Section 2.4(a)), as may be available to Buyer from time to time. Buyer shall have no obligation to receive or purchase Output from Seller prior to or after the Delivery Term, except for Test Energy. Seller shall be responsible for any costs or charges associated with the Output or its delivery of the Output up to the Point of Interconnection. Buyer shall be responsible for any costs or charges imposed on or associated with the Output after its receipt at and from the Point of Interconnection.
- (b) Title and Risk of Loss. As between the Parties, Seller shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Output purchased by Buyer prior to the Point of Interconnection, and Buyer shall be deemed to be in exclusive control (and responsible for any damages or injury caused thereby) of all Output purchased by Buyer at and from the Point of Interconnection. Title to and risk of loss as to all Output purchased by Buyer shall pass from Seller to Buyer at the Point of Interconnection. Seller warrants that it shall deliver all Output to Buyer free and clear of all liens, security interests, claims and encumbrances or any interest therein or thereto created by any Person other than Buyer.
- (c) Capacity of Plant.
 - (i) Expected Initial Capacity. Seller and Buyer each acknowledge and agree that as of the Execution Date the Parties expect that the generation capability of the Plant as of the Commercial Operation Date shall be 26

MW AC, net of all auxiliary loads, station electrical uses, and electrical losses (the “**Expected Initial Capacity**”). Seller shall complete and deliver to Buyer the Expected Annual Energy Production table in the form attached hereto as Exhibit G based on the Expected Initial Capacity pursuant to Section 2.1(a)(ii).

- (ii) Actual Initial Capacity. Seller shall use commercially reasonable efforts to ensure that the installed capacity of the Plant determined as of the Commercial Operation Date (the “**Initial Capacity**”) is same as the Expected Initial Capacity, but in no event shall be less than 25 MW AC or more than 27 MW AC, and shall be determined based upon the sum of the nameplate ratings (AC) of all Plant inverters. If applicable, Seller shall update the Expected Annual Energy Production table it delivered to Buyer pursuant to Section 2.1(a)(ii) and 2.3(c)(i) above, to reflect the Plant’s Initial Capacity (which shall remain subject to the installed capacity limitations set forth in this sub-section) and deliver such revised table to Buyer pursuant to Section 2.2(b)(ii)(aa).

2.4 Price.

Subject to the adjustments described in Sections 2.4(a) and (b) and related to Performance LDs under the provisions of Section 4.6, during the period of delivery of any Test Energy and during the Delivery Term, for Output delivered or tendered to Buyer at the Point of Interconnection, Buyer shall pay Seller a price per MWh of Output equal to Thirty Six Dollars and Seventy-Six Cents (\$36.76) per MWh (“**Price**”). The Price shall be the total compensation owed by Buyer for the Output delivered or tendered to Buyer during the period of delivery of any Test Energy and during the Delivery Term, as adjusted as follows:

- (a) Overproduction Output Price. For any and all Output in excess of one hundred five percent (105%) of the Expected Annual Energy Production for the then-current Contract Year, if any, Buyer shall pay Seller a price per MWh of Output that is the lesser of (i) ninety percent (90%) of the Price or (ii) the hourly DA Price at the Point of Interconnection (either (i) or (ii) being referred to as the “**Overproduction Energy Price**”), subject to: (i) Buyer shall be obligated to purchase any and all Output delivered or tendered to Buyer in excess of one hundred five percent (105%) up to and including one hundred twenty percent (120%) of the Expected Annual Energy Production for the then-current Contract Year and (ii) Buyer shall have the right, but not the obligation to purchase, Output in excess of one hundred twenty percent (120%) or more of the Expected Annual Energy Production for the then-current Contract Year, and, if applicable, subject to Section 2.4(b). If Buyer chooses not to exercise this right of first refusal in sub-section (ii) above, Seller may sell such Output to a third party so long as such third party sale does not affect or impair in any material way Seller’s ability to meet its obligations or Buyer’s rights with respect to this Agreement as determined by Buyer in its reasonable discretion; and/or

- (b) Pre-FCDS Energy Price. For any and all Output delivered or tendered to Buyer prior to the date on which Seller has obtained a Full Capacity Deliverability Status Finding from the CAISO, if any, Buyer shall pay Seller a price per MWh of Output equal to ninety percent (90%) of the Price (“**Pre-FCDS Energy Price**”) and, if applicable, subject to Section 2.4(a).

For the avoidance of doubt, if both conditions (a) and (b) above occur, then Buyer shall pay Seller the Price adjusted by both (a) and (b), and if only one condition (a) or (b) above occurs, then Buyer shall pay Seller the Price adjusted by either (a) or (b), as applicable.

2.5 Test Energy.

For a period of up to ninety (90) days prior to the commencement of the Delivery Term, Buyer shall purchase and accept from Seller at the Point of Interconnection and pay for as described in Section 2.4, the Output relating to any Test Energy pursuant to the terms of this Agreement; provided that the decision to produce and deliver Test Energy hereunder shall be at the sole discretion of Seller. All Test Energy shall be scheduled in accordance with the scheduling protocols set forth in Exhibit D, as may be modified by the Parties pursuant to Section 4.1(g).

2.6 Environmental Attributes.

- (a) Purchase and Sale of Environmental Attributes. During the Term, Seller shall sell and transfer to Buyer, and Buyer shall purchase and receive from Seller, all right, title and interest in and to the Environmental Attributes associated with the Output, if any, whether now existing or subsequently generated or acquired (other than by direct purchase from a third party) by Seller, or that hereafter come into existence, during the Term, as a component of the Output purchased by Buyer from Seller hereunder. Subject to Section 2.6(c), Seller agrees to transfer and make such Environmental Attributes available to Buyer immediately to the fullest extent allowed by applicable Law upon Seller’s production or acquisition of the Environmental Attributes. Seller agrees to convey and hereby conveys all such Environmental Attributes to Buyer as included in the delivery of the Output from the Plant. Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the Environmental Attributes to any Person other than Buyer. As of the Effective Date and continuing throughout the Term, Seller represents and warrants that Seller holds the rights to all Environmental Attributes from the Plant, the Plant qualifies and is certified by the CEC as an ERR and the Plant’s Output qualifies under the California Renewable Portfolio Standards requirements. To the extent that a Change in Law occurs after the Effective Date that causes this representation and warranty to be false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such Change in Law and takes all actions as determined by Buyer in its reasonable discretion to implement any change or improvement to the Plant to maintain such certification or qualification.

- (b) Buyer's Right to Report Ownership of Environmental Attributes. During the Term, Seller shall not report to any Person or entity that the Environmental Attributes granted hereunder to Buyer belong to anyone other than Buyer, and Buyer may report under any program that such Environmental Attributes purchased hereunder belong to it.
- (c) Documentation of Environmental Attributes. Seller shall document the production of Environmental Attributes under this Agreement by delivering with each invoice to Buyer such attestations or other documents as may be required by Exhibit B. Seller agrees to promptly and cooperatively update or modify Exhibit B, 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. At Buyer's request, the Parties, each at their own expense, shall execute all such documents and instruments in order to transfer the Environmental Attributes specified in this Agreement, to Buyer or its designees, as Buyer may reasonably request. In the event of the promulgation of a scheme involving Environmental Attributes administered by an EA Agency, upon notification by an EA Agency that any transfers contemplated by this Agreement shall 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.

2.7 Resource Adequacy.

- (a) Resource Adequacy Requirements. During the Delivery Term, Seller grants, pledges, assigns and otherwise commits to Buyer all of the Plant's Initial Capacity, including Capacity Attributes from the Plant, to enable Buyer to meet its Resource Adequacy or successor program requirements, as the CPUC, CAISO and/or other regional entity may prescribe, including submission of a supply plan or Resource Adequacy plan ("**Resource Adequacy Requirements**"). From the Execution Date, and for the duration of the Delivery Term, Seller shall take all commercially reasonable actions, including complying with all applicable registration and reporting requirements, and executing any and all documents or instruments necessary to enable Buyer to use all of the capacity of the Plant, including Capacity Attributes, to be committed by Seller to Buyer pursuant to this Agreement to meet Buyer's Resource Adequacy Requirements during the Delivery Term.
- (b) Availability Standards. Seller shall be responsible for all costs, charges, expenses, penalties, and obligations resulting from Availability Standards, if applicable, and Seller shall be entitled to retain all credits, payments, and revenues, if any, resulting from Seller achieving or exceeding Availability Standards, if applicable.

2.8 Tax Credits and Incentives.

Buyer acknowledges and agrees that all Incentives shall be owned by Seller, and that Buyer shall not claim Incentives. Buyer agrees to cooperate with Seller, as may be necessary, to

allow maximization of the value of, and realization of, all Incentives; provided that Buyer shall not be required to incur additional costs or accept any diminution in value of its rights under this Agreement or of the Output purchased hereunder. In addition, Buyer shall not take any action (except as otherwise permitted under this Agreement), that would in any way reduce or eliminate the availability to Seller of any Incentives, including the Section 45 Credits and the Section 48 Credits, and Buyer shall forego any credits or benefits available to it (other than Environmental Attributes), including rights to purchase of Test Energy, to the extent necessary to allow Seller to obtain the full benefit of the Incentives, but in no event shall Buyer be required to forego receipt of Output after the Contract Delivery Start Date.

2.9 CEQA.

- (a) CEQA Determinations. Any and all CEQA requirements for or related to the development of the Plant shall be the responsibility of Seller; provided, that, Buyer reserves any and all of its rights and powers under CEQA that may be applicable, appropriate, and within Buyer's jurisdiction, including the power in its sole discretion to:
- (i) review the Plant's environmental impacts;
 - (ii) prepare and/or review environmental documents and studies;
 - (iii) review mitigation measures and/or alternatives in order to avoid or lessen any significant environmental impacts resulting from the Plant;
 - (iv) determine that any significant impacts that cannot be mitigated are acceptable due to overriding considerations; or
 - (v) decide to terminate this Agreement due to any significant adverse environmental effects resulting from the Plant that were unable to be mitigated and were unacceptable for lack of overriding considerations in Buyer's reasonable discretion.
- (b) Seller's Responsibility to Provide CEQA Documents. Seller shall be required to provide to Buyer final (and executed, if applicable) copies of all CEQA documents within ten (10) days of their approval by the CEQA lead agency.
- (c) Conditions Precedent to Buyer Purchase. The Parties therefore acknowledge and agree that Buyer has no obligation to purchase the Output under this Agreement until all of the following have occurred:
- (i) Seller has complied with all applicable CEQA requirements in connection with its permitting, construction and operation of the Plant (the "Project");
 - (ii) Buyer has, as part of such CEQA compliance, been designated as a "Responsible Agency" for the Project under Section 15096 of the CEQA Guidelines;

- (iii) Buyer has satisfactorily complied with all applicable requirements of Section 15096 relating to the Project, as determined by Buyer in its reasonable discretion consistent with CEQA requirements;
 - (iv) Buyer has notified Seller that Buyer elects not to terminate the PPA pursuant to Section 2(a)(v); and
 - (iv) the applicable period for any legal challenges under CEQA relating to the Plant has expired without any such challenge having been filed or, in the event of any such challenge, the challenge has been determined adversely to the challenger by final judgment or settlement.
- (d) Buyer Termination of Agreement. If Buyer decides not to approve the purchase of Output from the Plant and to terminate this Agreement as described in Section 2.9(a)(v), Buyer shall give Seller written notice thereof and this Agreement shall terminate within sixty (60) calendar days from the giving of such notice. Any termination under this Section 2.9(c) shall be “no-fault”, and neither Party shall have any liability to the other arising out of such termination, and Buyer shall promptly return to Seller all Development Assurance less any LD Amount paid by or due and payable by Seller prior to the date of such termination for reasons unrelated to this Section 2.9. For the avoidance of doubt, this Section 2.9(c) shall not affect the rights and remedies associated with any other termination rights set forth in this Agreement.

2.10 Right of First Refusal for Expansion Plant and Expansion Plant Output.

- (a) Buyer’s Right of First Refusal for Development of Expansion Plant. During the Term, Seller may, in exercising its sole discretion, determine, from time to time, to develop, finance, construct and/or operate an Expansion Plant. Each time such a determination is made, Seller shall notify Buyer of such determination and shall offer, in writing, to sell the Expansion Plant Output to Buyer. The offer shall include the price to be paid by Buyer for the Expansion Plant Output, the term, and other principal terms and conditions of the proposed sale. If Buyer wishes to accept such offer to purchase all (but not less than all) of the Expansion Plant Output, Buyer shall so notify Seller within ninety (90) calendar days of its receipt of such offer. Buyer and Seller shall promptly thereafter enter into good faith negotiation of commercial modifications to this Agreement incorporating such Expansion Plant Output offer. Until the revised Agreement incorporating an Expansion Plant is executed, Seller’s proposal, accepted by Buyer (including any modifications agreed upon in writing by both Parties), shall control all dealings between the Parties relating to the Expansion Plant. Should any issue arise that is not covered by such documentation, the terms of this Agreement (prior to amendment for the Expansion Plant or Expansion Plant Output) shall apply.
- (b) Buyer’s Right to Purchase Expansion Plant Output. If Buyer does not accept Seller’s offer to purchase the Expansion Plant Output within ninety (90) calendar days of receipt of Seller’s offer, Seller shall be deemed authorized to offer to sell

that portion of the Expansion Plant Output to one or more third parties at a price and on other terms and conditions which, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer. If Seller offers to disaggregate the Expansion Plant Output for the purpose of selling the same to multiple independent buyers, Seller shall notify Buyer, in writing, of the terms and conditions of such offers, and Buyer shall again have the right of first refusal consistent with the terms set forth above for each of the lesser amounts being offered to the third parties. If Buyer does not purchase the Expansion Plant Output and Seller sells such Expansion Plant Output to a third party, Seller shall promptly certify, in writing, to Buyer that the terms and conditions of sale of such Expansion Plant Output to such third party, taken as a whole, are at least as favorable to Seller as the price and other terms and conditions set forth in Seller's offer to Buyer, and, Seller shall provide the relevant final contract and any other supporting documentation for such certification by Buyer. Upon the sale of such Expansion Plant Output in compliance with this Agreement, Buyer shall have no further rights to be offered or to purchase such Expansion Plant Output. Buyer's refusal, in writing, of the Expansion Plant Output from one Expansion Plant shall not affect Buyer's right to purchase the Expansion Plant Output from a subsequently developed Expansion Plant under the terms of this Agreement. Notwithstanding any provision to the contrary herein, Seller shall not sell or provide the Expansion Plant Output to any third party, unless Seller can do so without compromising in any material way its ability to provide the Output or Expansion Plant Output, if any, to Buyer hereunder. The materiality of any such impact shall be determined by Buyer, acting in its reasonable discretion.

2.11 Refurbishment of Plant.

During the Term, Seller may refurbish the Plant, alter components of the Plant, replace components of the Plant, add additional solar modules or inverters, or replace solar modules or inverters with more powerful solar modules or inverters, in order to increase the Plant estimated peak AC capability up to the lesser of the Initial Capacity or to the amount allowed by the Interconnection Agreement; provided, however, that Seller may not perform any refurbishment to increase capacity higher than the Initial Capacity without the prior written consent of Buyer, and Buyer shall have the right, in its sole discretion, to accept or decline to permit any such refurbishment that may increase the Initial Capacity.

2.12 Optional Battery Storage at the Site.

At any time and multiple times during the Term, Buyer may, upon written request ("**Battery Storage Facility Request**"), ask Seller to review and evaluate the development of a battery storage facility or facilities capable of storing up to 25 MWh located at the Site ("**Battery Storage Facility**"). The Battery Storage Facility Request may ask Seller to develop a detailed proposal or may include a detailed proposal (or a combination thereof) for the development of the Battery Storage Facility. Seller hereby agrees to review, develop and/or evaluate the Battery Storage Facility Request in good faith and to use its best efforts to take all actions and to do all things necessary, proper or advisable to consummate, make effective and comply with the development of the Battery Storage Facility. Within sixty (60) days of receipt of any Battery Storage Facility

Request, Seller shall provide a written response to Buyer describing in detail the feasibility of the development of a Battery Storage Facility, upon what terms and why, and including supporting documentation and such other information as Buyer may reasonably request. Seller agrees to negotiate the terms and conditions for the development of such Battery Storage Facility in good faith; provided, however, that Seller shall not be required to add any such storage unit(s) to the Plant unless and until Seller, Buyer and any Lenders each (in their sole and absolute discretion) approves the technical details of such unit(s) and appropriate amendments to this Agreement or negotiation of a separate battery storage agreement, including additional compensation related to such unit(s).

ARTICLE III

METERING AND BILLING

3.1 Metering Requirements.

The transfer of Output from Seller to Buyer shall be measured by revenue quality metering equipment at the Point of Interconnection or another nearby location reasonably acceptable to Buyer. Such metering equipment, including any equipment required for communicating meter data (e.g., a dedicated data line) to Buyer or the CAISO, shall be selected, provided, installed, owned, maintained and operated, at Seller's sole cost and expense, by Seller or its designee in accordance with applicable CAISO rules. Seller shall exercise reasonable care consistent with Prudent Utility Practice in the maintenance and operation of any such metering equipment, and shall test and verify the accuracy of each meter at least annually. Seller shall inform Buyer sufficiently in advance of the time and date of these tests to permit Buyer to be present, and shall permit Buyer to be present, at such tests and to receive the results of such tests. Subject to Buyer paying the cost of any update or upgrade to such metering equipment pursuant to a new requirement of the CAISO, the Participating TO or any other Governmental Authority, adopted after the Contract Delivery Start Date, each of Seller's meters shall be accurate to the metering specifications then in effect for CAISO meter accuracy. Seller shall further install and maintain all equipment and data circuits necessary to transmit all monitored real time supervisory control and data acquisition ("**SCADA**") system data and real time data from the CAISO meter to the CAISO and, if applicable, Buyer's Scheduling Coordinator, while adhering to both CAISO and, if applicable, Buyer's Scheduling Coordinator's communications protocols. Seller shall provide Buyer with a copy of each certificate of compliance issued by CAISO, if any.

Seller shall provide Buyer and, if applicable, its Scheduling Coordinator access to all monitored SCADA points to be used at their discretion in real time monitoring. Buyer, at its sole cost and expense, may install and maintain check meters and all associated measuring equipment necessary to permit an accurate determination of the quantities of Output delivered under this Agreement, provided the referenced equipment does not interfere with Seller's metering equipment. Seller shall permit Buyer or its Scheduling Coordinator or its agent access to Seller's Plant for the purpose of installing and

maintaining such check meters. Seller shall submit to the CAISO, or allow the CAISO to retrieve, any meter data required by the CAISO related to the Plant output in accordance with the CAISO's settlement and billing protocol and meter data tariffs. Buyer shall have reasonable access to relevant meters and associated facilities, as well as real time access to all meter data, as is necessary for Buyer or, if applicable, its Scheduling Coordinator to perform its duties as scheduling coordinator and comply with the requirements of the CAISO Tariff.

3.2 Billing.

Seller shall provide to Buyer on or before the tenth (10th) day of each month an invoice for the Output for the prior month based upon meter data for Output delivered in such calendar month (taking into account any line losses to the Point of Interconnection), enclosing reasonably appropriate supporting CAISO documentation and any corresponding attestation that may be required pursuant to Section 2.6(c). Such invoice may be transmitted by e-mail to *UtilityCommoditySettlements@cityofpaloalto.org*, or to any other e-mail address designated, in writing by Buyer. Should either Seller or Buyer determine at a later date, but in no event later than two (2) years after the original invoice date, that the invoice amount was incorrect, that Party shall promptly notify, in writing, the other Party of the error. If the amount invoiced was lower than the amount that should have been invoiced, then Buyer shall, upon receiving verification of the error and supporting documentation from Seller, pay any undisputed portion of the difference within thirty (30) calendar days of receipt of verification. If the amount invoiced was higher than the amount that should have been invoiced, then Seller shall, upon receiving verification of the error and supporting documentation from Buyer, pay any undisputed portion of the difference within thirty (30) calendar days of receipt of verification. Any such adjusted amount owing by Seller or Buyer shall be subject to the interest rate as designated in Section 3.3, running from the original due date of payment.

3.3 Payment.

For Output delivered to Buyer pursuant to this Agreement, Buyer or its agent shall pay Seller by electronic transfer of funds by the later of the twentieth (20th) day of the month or the tenth (10th) Business Day after the invoice is received in accordance with Section 3.2, subject to Buyer's right to set-off any Daily LD Amount or Performance LDs owed by Seller to Buyer as described in Sections 4.4(b)(iii) or 4.6(b)(iii), respectively. Payments made after the due date shall be considered late and shall bear interest on the unpaid balance at an annual rate equal to two percent (2%) plus the average daily prime rate as determined from the "Money Rates" section of *The Wall Street Journal* for the days of the late payment period multiplied by the number of calendar days elapsed from and including the day after the due date, to and including the payment date. Interest shall be computed on the basis of a 365-day year. In the event this index is discontinued or its basis is substantially modified, the Parties shall agree on a substitute equivalent index. Should Buyer in good faith dispute the amount of an invoice, Buyer or its agent may withhold such disputed amounts until the dispute is resolved in accordance with Section 10.10. Such disputed amounts shall bear interest at the interest rate described above. Failure of Buyer or its agent to withhold any amount shall not constitute a waiver of Buyer's right to challenge such amount.

3.4 Billing Agent.

Seller agrees Buyer may designate an agent to act on its behalf for billing purposes, so long as Buyer remains liable for its obligations under this Agreement.

ARTICLE IV

SELLER'S OBLIGATIONS

4.1 Development, Finance, Construction and Operation of the Plant.

During the Term, Seller covenants that at no cost to Buyer, unless otherwise specifically stated in this Agreement, it shall:

- (a) Develop, Finance and Construct the Plant. Design, develop, finance and construct the Plant;
- (b) Real-time Monitoring. Provide Buyer with access to a "real time" Plant monitoring system (which, at a minimum, shall provide "real time" information regarding the net output of the Plant) that is anticipated to be internet protocol-based and include any applicable alarms required by Prudent Utility Practice;
- (c) Permits. Seek, obtain, maintain, comply with and, as necessary, renew and modify from time to time, all Permits, certificates or other authorizations or approvals, including comply with any and all CEQA requirements for or related to the

development of the Plant and prepare any and all necessary CEQA documentation, including any environmental impact studies, as described more specifically in Section 2.9, which are necessary for the construction, operation and maintenance of the Plant or required by any Requirements of Laws or Governmental Authority as prerequisites to Seller's performance of this Agreement;

- (d) Operation and Maintenance - Compliance. Operate, maintain, and repair the Plant in accordance with this Agreement, all Requirements of Laws applicable to Seller or the Plant, all Contractual Obligations and Permits, and in accordance with Prudent Utility Practice, including with respect to efforts to maintain availability of the Expected Annual Energy Production subject to normal system wear-and-tear and the panel degradation factor set forth on Exhibit G. Seller shall obtain in its own name and at its own expense any and all pollution or environmental credits or offsets necessary to operate the Plant in compliance with the Environmental Laws;
- (e) Operation and Maintenance – Prudent Utility Practice. Operate and maintain in a manner consistent with Prudent Utility Practice the facilities it will own and otherwise cooperate with the Participating TO in the physical interconnection of the Plant to the Participating TO System in accordance with the Interconnection Agreement;
- (f) Insurance. Obtain and maintain the policies of insurance in the amounts and with the coverages as set forth on Exhibit C;
- (g) Outages. By October 1st of each year of the Delivery Term, provide each of Buyer and, if applicable, its Scheduling Coordinator with an annual projection of scheduled Planned Outages for the following calendar year. Should Seller make any changes to such projection, it shall notify Buyer and, if applicable, its Scheduling Coordinator of such changes at least fourteen (14) calendar days in advance of any newly scheduled or rescheduled Planned Outage. If Buyer requests a change to the scheduled date of any Planned Outage (including to a date set forth in a change notice from Seller), Seller shall consider such request in good faith and notify Buyer of its decision within seven (7) calendar days of receipt of Buyer's request. In no instance other than Saturdays, Sundays and federal holidays during the period of reliability accounting (initially the period between June 1st and September 30th but subject to changes selected at Buyer's discretion for conforming to CAISO availability assessment) shall Seller schedule Planned Outages of more than twenty-four (24) hours during the Delivery Term. In connection with any Planned Outage or Forced Outage in excess of one (1) MW of Plant capacity, Seller shall notify Buyer and, if applicable, its Scheduling Coordinator, as soon as practicable, of the percentage of Plant (based on percentage of Output loss) expected to be out of service and how long the Planned Outage or Forced Outage is expected to last. If the Planned Outage or Forced Outage is total and is due to failure of the Plant rather than the transmission and distribution system beyond the Point of Interconnection, Seller shall give Buyer and, if applicable, its Scheduling Coordinator at least four (4) hours' prior notice before re-energizing the Plant. In addition, Seller shall comply with Buyer's Scheduling

Coordinator's scheduling protocols, as may be changed from time to time. A copy of the scheduling protocols prepared jointly by the Parties as of the Execution Date and then-anticipated to be appropriate as of the Commercial Operation Date is attached as Exhibit D. The Parties agree, within thirty (30) days after achievement of the Construction Milestone to commence reviewing the appropriateness of such scheduling protocols and work together (including meeting in-person) and, if applicable, with Buyer's Scheduling Coordinator to make and complete prior to the delivery of Test Energy under Section 2.5, any modifications necessary to ensure the scheduling protocols' consistency with the CAISO Tariff, its Operating Procedures and Business Practice Manuals, and the then-planned operating procedures for the Plant; provided that, during the Delivery Term, Buyer shall provide Seller with any revised scheduling protocols within a reasonable period of time to the extent, if applicable, its Scheduling Coordinator provides the same to Buyer;

- (h) Interconnection. Perform all studies, pay all fees, obtain all necessary approvals and execute all necessary agreements to secure the interconnection, distribution and/or transmission arrangements, including negotiate and enter into an Interconnection Agreement sufficient to allow Seller to deliver the Output to the Point of Interconnection and into the CAISO-controlled grid for sale to Buyer pursuant to the terms of this Agreement;
- (i) FCDS Status and Copy of Finding. Ensure that its interconnection, distribution and/or transmission arrangements shall provide for Full Capacity Deliverability Status as of the FCDS Finding Milestone (unless extended pursuant to Section 4.4) and throughout the remainder of the Delivery Term. Seller shall provide to Buyer a copy of the FCDS Finding within fifteen (15) days of such finding having been obtained from the CAISO. All costs or amounts designated in the Plant's full capacity deliverability study to obtain FCDS or any costs and expenses incurred by Seller for FCDS studies shall be Seller's sole responsibility.
- (j) Participating Generator Agreement and Meter Service Agreement. Negotiate and enter into a Participating Generator Agreement and a Meter Service Agreement for CAISO Metered Entities with the CAISO, the load control area operator for the Participating TO System, to which the Plant is interconnected. Buyer shall pay for or reimburse Seller for any such costs or charges associated with these agreements, except to the extent such cost or charge is required to be paid by Seller under this Agreement in Sections 3.1 and 4.1(h). Seller shall cooperate with Buyer to minimize any such costs as are to be reimbursed by Buyer;
- (k) Start-ups and Shut-downs. Coordinate all Plant start-ups and shut-downs, in whole or in part, with Buyer in accordance with CAISO scheduling protocols and the reasonable protocols established by Buyer that are not inconsistent with the CAISO Tariff and CAISO procedures; and
- (l) Development Assurance, Interim Assurance and Performance Assurance. Fund and maintain the Development Assurance and Interim Assurance, as applicable, to

assure Seller's timely development of the Plant and achievement of Commercial Operation and the Contract Delivery Start Date, including the performance of all construction tasks; and fund and maintain the Performance Assurance to assure Seller's delivery of the Output to Buyer, all in accordance with Article IX.

4.2 **General Obligations.**

- (a) **Records.** Seller shall keep complete and accurate operating and other records and all other data for the purposes of proper administration of the Agreement, including such records as may be required by any Governmental Authority or Prudent Utility Practice;
- (b) **Organizational Good Standing and Compliance with Laws and Agreement.** During the Term of this Agreement, Seller shall continue to (i) preserve, renew and keep in full force and effect its organizational existence and good standing, and take all reasonable action to maintain all applicable Permits, rights, privileges, licenses and franchises necessary or desirable in the ordinary course of its business; (ii) comply with all Requirements of Laws, including Environmental Laws, applicable to Seller or the Plant; and (iii) comply with all Contractual Obligations related to the operation and maintenance of the Plant;
- (c) **Further Development Information.** Seller shall provide to Buyer such other information regarding the permitting, engineering, construction or operations of the Plant as Buyer may from time to time reasonably request, subject to licensing or other restrictions of Seller or a third party with respect to confidentiality, disclosure or use; provided, nothing herein shall limit Buyer's right to agree to confidentiality or sign a confidentiality agreement in connection therewith before acquiring knowledge of such information;
- (d) **CAISO Agreements.** Seller shall enter into any agreements with the CAISO required by the CAISO for generators delivering power into the CAISO-controlled grid. Except for such costs and charges as are expressly identified in this Agreement as Seller's costs, Buyer shall reimburse Seller for all costs and charges under such agreements. Seller shall cooperate with Buyer to minimize any such costs as are to be reimbursed by Buyer;
- (e) **Financial Statements.** If requested by Buyer, Seller shall deliver to Buyer (a) within four (4) months following the end of each fiscal year, a copy of Seller's and Seller's Parent's annual report containing audited consolidated financial statements for such fiscal year (or if not available, unaudited consolidated financial statements for such fiscal year) and (b) within forty-five (45) calendar days after the end of each of its first three (3) fiscal quarters of each fiscal year, a copy of Seller's and Seller's Parent's quarterly report containing unaudited consolidated financial statements for such fiscal quarter. In all cases, the statements shall be for the most recent accounting period and shall be prepared in accordance with GAAP and shall be certified by the Chief Financial Officer or equivalent officer of Seller on behalf of Seller and of Seller's Parent on behalf of Seller's Parent, dated no earlier than ten

(10) Business Days prior to delivery to Buyer (i) as fairly presenting the financial condition of Seller and Seller's Parent, as applicable, subject only to what would typically be included in year-end audit adjustments and footnotes; provided, however, that should any such statements not be available on a timely basis due to a delay in preparation or certification, such delay shall not constitute an Event of Default so long as Seller diligently pursues the preparation, certification and delivery of the statements;

- (f) Notice of Expected Initial Capacity. Within fifteen (15) calendar days of the later of (i) obtaining the authority to construct for the Plant from the applicable Governmental Authority or (ii) Seller's receipt of the system impact and facility cost studies from the Participating TO, Seller shall provide written notice to Buyer stating the then-expected Initial Capacity of the Plant in MW AC (which shall be subject to the Initial Capacity limits described in Section 2.3(c)(ii)) and specifying other material key Plant design details;
- (g) Site Size Requirement. Seller agrees and hereby certifies to Buyer that the Site (including any proposed modification to the Site described in Section 4.2(h)) shall be sufficient in size and scope to accommodate both the Plant and the potential future build out of a Battery Storage Facility (whether the Parties agree to develop the battery storage facilities or not). Seller acknowledges and agrees that Buyer's potential ability to add a Battery Storage Facility under Section 2.12 and the obligation to size the Site accordingly in this Section 4.2(g) are material inducements to Buyer to enter into this Agreement.
- (h) Modification of Site. Seller shall not modify the Site without the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. With respect to any proposed Site modification Seller shall provide written notice to Buyer describing the proposed Site modification, the reasons therefor, and the extent of any impact such modification would have upon any and all of the Milestones and including a revised Exhibit A reflective of the proposed modification. Seller shall provide Buyer with other relevant information reasonably requested by Buyer regarding the proposed Site modification. At all times during this Agreement, Seller covenants that the Site (and any proposed Site modification) shall be sufficient in size and scope to accommodate both the Plant and a potential future build out the Battery Storage Facility as contemplated by Section 2.12 (whether the Parties agree to develop the battery storage facilities or not). Notwithstanding any provision to the contrary, any fees and costs related to modifications contemplated by this Section 4.2(h) shall be subject to Section 10.12(a).
- (i) Final Site Drawings. Seller shall provide to Buyer final Site Drawings ninety (90) days prior to the Commercial Operation Date.

4.3 Construction Milestones.

- (a) Seller Pursuit of Milestones. The Parties agree that time is of the essence in the performance of Seller's obligations under this Agreement. The Parties further agree that the Milestones must be achieved in a timely fashion or Buyer shall suffer damages which are difficult to estimate with reasonable certainty. Upon request, Seller shall promptly provide Buyer with documentation satisfactory to Buyer, acting in the reasonable exercise of Buyer's discretion, to support the progress, status and achievement of the Milestones by the dates set forth below (in addition to the reports, notices, updates, certifications, documentation and materials described in this Section 4.3 below).
- (b) Individual Milestones. Seller covenants that it shall diligently pursue to completion each of the following Milestones:
- (i) By December 22, 2017, Seller shall have executed and delivered to Buyer the Interconnection Agreement for the Plant (the "**Interconnection Agreement Milestone**");
 - (ii) By August 28, 2019, Seller shall have obtained the Conditional Use Permit necessary, in final form, to commence construction of the Plant (the "**Conditional Use Permitting Milestone**");
 - (iii) By August 28, 2019, Seller shall have obtained all Permits necessary, in final form, to commence construction of the Plant (the "**Permitting Milestone**");
 - (iv) By October 15, 2019, Seller shall have arranged for the financing of the construction of the Plant or otherwise make funds available to commence and complete construction (the "**Financing Milestone**");
 - (v) By August 3, 2020, Seller shall have commenced construction of the Plant (the "**Construction Milestone**");
 - (vi) By June 1, 2021, Seller shall deliver the COD Certification to Buyer (the "**Commercial Operation Milestone**"); and
 - (vii) By August 1, 2021, Seller shall have obtained a Full Capacity Deliverability Status Finding from the CAISO (the "**FCDS Finding Milestone**").
- (c) Development Progress Reports. Seller shall regularly provide to Buyer Development Progress Reports concerning the progress towards construction and completion of each of the Milestones (including whether Seller has met or is on target to meet each of the Milestones), which shall be substantially similar in form and substance to that attached as Exhibit E, and include such additional information as reasonably required by Buyer in its sole discretion. Seller shall also agree to meetings between representatives of Buyer and Seller to review such monthly reports and discuss Seller's construction progress, as Buyer may request from time

to time. Seller shall deliver the Development Progress Report to Buyer describing activities for the applicable Report Period no less frequently than:

- (i) From the Execution Date until completion of the Interconnection Agreement Milestone, on a bi-annual basis, with the first Development Progress Report due under this Section 4.3(c)(i) on the date that is six (6) months after the Execution Date and with each subsequent Development Progress Report due under this Section 4.3(c)(i) on the date that is the six (6) calendar month anniversary of the prior due date;
- (ii) From the Interconnection Agreement Milestone until Seller delivers the Notice to Proceed to the EPC Contractor for the Plant, on a quarterly basis, with the first Development Progress Report due under this Section 4.3(c)(ii) on the date that is fifteen (15) days after the close of the first full calendar quarter following Seller's achievement of the Interconnection Agreement Milestone and with each subsequent Development Progress Report due under this Section 4.3(c)(ii) on the date that is fifteen (15) days after the close of each calendar quarter thereafter;
- (iii) From the date Seller delivers the Notice to Proceed to the EPC Contractor for the Plant until achievement of all Milestones, on a monthly basis, with the first Development Progress Report due under this Section 4.3(c)(iii) on the date that is fifteen (15) days after the close of the first full calendar month following Seller's delivery of the Notice to Proceed to the EPC Contractor for the Plant and with each subsequent Development Progress Report due under this Section 4.3(c)(iii) on the date that is fifteen (15) days after the close of each month thereafter. (d) Notice of Commercial Operation Date and COD Certification. Seller shall provide written notice to Buyer thirty (30) calendar days in advance of the anticipated Commercial Operation Date, and shall provide Buyer with written weekly updates thereafter detailing the status of Seller's progress in achieving Commercial Operation until the week preceding the Commercial Operation Date. Once Commercial Operation of the Plant has commenced, Seller shall deliver to Buyer by electronic mail or facsimile, with originals to follow by hand-delivery, courier or mail service, the COD Certification in the form attached hereto as Exhibit E-2, which date of delivery shall establish the Commercial Operation Date as described in the COD Certification.
- (e) Certification of Completion of Milestone. Within five (5) Business Days of the completion of each Milestone (except for the Commercial Operation Milestone which certification is described in subsection (d) above), Seller shall provide a certification to Buyer (along with any relevant supporting documentation), stating Seller's achievement or satisfaction of each such Milestone. In addition, 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.
- (f) Notice of Failure to Achieve Milestone. Upon becoming aware that it shall, or is reasonably likely to, fail to achieve any Milestone by the required date, for any

reason including a Force Majeure Event, Seller shall so notify Buyer, in writing, as soon as is reasonably practical. Such notice shall provide information regarding the cause of the delay, provide a revised estimated date for achievement of the Milestone(s), and otherwise describe Seller's plan for meeting the Milestone(s). Seller's notice shall also explain any impact such delay may or shall have on any other Milestone, and measures to be taken to mitigate such impact.

4.4 Milestone Excused Delay and Liquidated Damages.

- (a) Permitted Extensions to Milestones. In the event that a Force Majeure Event causes a delay to the achievement of any Milestone then, and in each such case, each Milestone deadline may be extended by that number of calendar days the applicable Force Majeure Event actually delays completion of such Milestone. For the avoidance of doubt, any extension of the deadline for one Milestone shall not extend the deadline for completion of any other Milestones. Notwithstanding the foregoing,
- (i) in no event shall the combined extensions under this Section 4.4(a) for any individual Milestone arising from Force Majeure Events exceed six (6) months in the aggregate;
 - (ii) in no event shall the combined extensions under this Section 4.4(a) for all Milestones combined arising from Force Majeure Events exceed twelve (12) months in the aggregate; and
 - (iii) if on any given day two or more events cause delay to a Milestone at the same time (i.e., occur concurrently), Seller shall only be entitled to one (1) day of delay for such day.
- (b) More Than Six (6) Months Excused Extensions; Daily LD Amount. If the combined excused extensions for any individual Milestone exceed six (6) months in the aggregate as set forth in Section 4.4(a)(i), Seller shall be liable to Buyer for liquidated damages for each day or portion of a day of unexcused delay in an amount equal to the Daily LD Amount. In Buyer's sole discretion, Buyer shall be entitled to collect the Daily LD Amount for the relevant number of unexcused days of delay on a monthly basis within ten (10) days of Seller's receipt of an invoice from Buyer therefor by one or more of the following:
- (i) drawing upon the Development Assurance or Interim Assurance, as applicable (which shall be subject to the replenishment provisions set forth in Section 9.2(a)(i) or (ii), respectively);
 - (ii) receiving payments from Seller; and/or
 - (iii) setting off against any amounts owed to Seller by Buyer for the purchase of Output hereunder under Section 3.3.

So long as Seller timely pays and continues to pay any and all of the Daily LD Amount when due, Buyer shall not be permitted to terminate this Agreement for up to twelve (12) months. The Parties agree that Buyer's receipt of the Daily LD Amount shall (x) not be construed as Buyer's declaration that an Event of Default has occurred under any provision of Article VII and (y) not limit Buyer's right to receive a Termination Payment or Damage Payment, as applicable, upon exercise of Buyer's default right pursuant to Article VII. Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to Seller's delay in achieving the Milestones would be difficult or impossible to predict with certainty and (II) the Daily LD Amount is an appropriate approximation of such damages.

(c) More than Twelve (12) Months Excused Extensions or Non-Payment of Daily LD Amount; Termination of Agreement. If for all Milestones the combined excused extensions exceed twelve (12) months in the aggregate as described in Section 4.4(a)(ii), or if for any reason Seller fails to pay, or discontinues paying, any or all of the Daily LD Amount when due, Buyer may terminate this Agreement by written notice to Seller. This twelve (12) month period shall not be further extended as a result of a Force Majeure Event, including a Force Majeure Event as contemplated by Section 6.3. In Buyer's sole discretion, Buyer shall be entitled to collect the Damage Payment within ten (10) days of Seller's receipt of an invoice from Buyer therefor by one or more of the following:

(i) drawing upon the Development Assurance (which shall be subject to the replenishment provision set forth in Section 9.2(a)(i));

(ii) receiving payments from Seller within ten (10) days of receipt of an invoice from Buyer therefor; and/or

(iii) setting off against any amounts owed to Seller by Buyer for the purchase of Output hereunder as set forth in Section 3.3.

If Seller fails to achieve the Milestones, including the Construction Milestone and Commercial Operation Milestone, as permitted in and limited by the performance excuse provisions set forth in this Section 4.4, only the damages or remedy set forth in this Section 4.4(c), and no other, shall be available to Buyer; provided that, the Parties agree that the prior sentence shall not in any way limit Buyer's right to receive a Damage Payment or Termination Payment, as applicable, including for failure to achieve the Construction Milestone or Commercial Operation Milestone, for any reason other than as described in this Section 4.4, including exercise of Buyer's default right pursuant to Article VII.

4.5 Obligation to Schedule and Deliver.

(a) Appointment of Scheduling Coordinator. As of the Execution Date, Buyer hereby appoints Seller to act on behalf of Buyer as its Scheduling Coordinator under this Agreement for the transmission, delivery and receipt of Output from the Plant at the Point of Interconnection in accordance with all applicable CAISO and related

rules and protocols. At least ninety (90) days before the beginning of delivery of Test Energy, Seller shall take all actions and execute and deliver to Buyer or the CAISO all documents necessary to become and act as Buyer's Scheduling Coordinator. Seller as Scheduling Coordinator shall do all things reasonably needed to comply with any obligations, and minimize any potential liability, under the CAISO Tariff. Seller represents, warrants and certifies that Seller shall be certified by the CAISO as a qualifying Scheduling Coordinator so long as it provides Scheduling Coordinator Functions on behalf of Buyer for the Plant. Seller as Buyer's Scheduling Coordinator shall comply with all Scheduling Coordinator Functions under the CAISO Tariff and shall conduct all scheduling for the Plant in full compliance with the terms and conditions of this Agreement and the applicable CAISO Tariff, all requirements of EIRP (if applicable) and protocols and scheduling practices for Energy on a Day-Ahead basis or pursuant to the Hour-Ahead Scheduling Process, as such terms are defined in the CAISO Tariff, and the scheduling protocols attached hereto as Exhibit D. Commercial arrangements for such transmission and delivery services shall be coordinated and settled by the Scheduling Coordinator directly with the CAISO or other third parties. Seller shall act as Scheduling Coordinator, and perform any and all duties and responsibilities related thereto, at Seller's own expense and at no charge to Buyer at all time during its appointment as Scheduling Coordinator hereunder. Buyer may at any time during the Term in its sole discretion and for any reason replace Seller as Scheduling Coordinator (or any subsequent Scheduling Coordinator) for the Plant with another Scheduling Coordinator upon fifteen (15) days advance written notice; provided that in such event the Scheduling Coordinator being replaced shall within ten (10) days of receipt of such notice provide copies of all scheduling-related records, data, history and information to the replacement Scheduling Coordinator simultaneously with written certification of provision of the same to Buyer.

- (b) General Confirmations. The Parties acknowledge their general understanding and intent, subject to the terms and conditions of this Agreement, as follows:
- (i) Seller shall use all reasonable efforts consistent with Prudent Utility Practice to maximize the Output;
 - (ii) Seller shall be responsible to arrange for, and shall bear all risks associated with, delivery of all Output to the Point of Interconnection;
 - (iii) Buyer shall be obligated to pay for all Output delivered to the Point of Interconnection (subject to Section 2.4(a)); and
 - (iv) Buyer shall be responsible to arrange for, and shall bear all risks associated with, acceptance and transmission of Output at and from the Point of Interconnection.
- (c) Curtailment Rights.

- (i) Mandatory Dispatch Down Periods. Seller shall reduce delivery amounts as directed by the CAISO, Participating TO, or any successor thereof during any Dispatch Down Period. For the avoidance of doubt, Buyer shall not be required to pay Seller for the Output that Seller could have delivered to Buyer but for such order.
- (ii) Discretionary Curtailment.
 - (A) Buyer may require Seller to curtail deliveries of Output from the Plant to the Point of Interconnection for any reason in Buyer's sole discretion (a "**Discretionary Curtailment**") by delivering a dispatch notice to Seller, provided that (1) such Discretionary Curtailments shall be limited to a total of not more than twenty-five percent (25%) of the Expected Annual Energy Production, with the first fifty (50) hours of such amount in each Contract Year at no charge to Buyer, and (2) the dispatch notices shall be consistent with the operational characteristics set forth in Exhibit D. Seller shall reduce the Plant's delivered Output by the amount and for the period set forth in each dispatch notice.
 - (B) In addition to paying Seller for all Output actually delivered and not curtailed hereunder (subject to Section 2.4 and the adjustments in (a) and/or (b)), Buyer shall pay Seller, on the date payment would otherwise be due in respect of each month in which any Discretionary Curtailment occurred after giving effect to the maximum of fifty (50) hours of no-charge curtailment specified in Section 4.5(c)(ii)(A)(1), an amount equal to (1) the amount of Output that Seller could reasonably have delivered to Buyer but for such Discretionary Curtailment multiplied by (2) the Price, the Over-Production Energy Price and/or the Pre-FCDS Price, as applicable.
- (iii) Failure to Comply. If Seller fails to comply with a dispatch notice that meets the requirements for a Discretionary Curtailment, then, for the amount of Output (measured in MWhs of Output) that the Plant delivered in contradiction to the dispatch notice, Seller shall pay Buyer the greater of:
 - (A) Two hundred percent (200%) of the aggregate Price for such MWhs plus any penalties or other charges actually incurred resulting from Seller's failure to comply with the dispatch notice; and
 - (B) the CAISO's Real-Time Market price for the applicable PNode for such MWhs plus any penalties or other charges actually incurred resulting from Seller's failure to comply with the dispatch notice.
- (d) Eligible Intermittent Resource; Participating Intermittent Resource; and Forecast Fee.

(i) EIRP. Unless the Plant is not EIRP-eligible or as otherwise directed by Buyer pursuant to Section 2.2(b)(ii)(gg), (i) Seller shall provide Buyer with a copy of the notice from CAISO certifying the Plant as a Participating Intermittent Resource as soon as practicable after Seller's receipt of such notice of certification, (ii) as of the first date of delivery of Test Energy and until the Plant receives certification as a Participating Intermittent Resource, Seller, at its sole cost, shall comply with EIRP and additional protocols issued by the CAISO for Eligible Intermittent Resources, and (iii) throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with EIRP and all additional protocols issued by the CAISO for a Participating Intermittent Resource. If the EIRP is no longer made available by the CAISO or if Buyer directs Seller not to participate in such program, then throughout the Delivery Term, Seller, at its sole cost, shall participate in and comply with all other protocols, rules or regulations issued by the CAISO for generating facilities providing energy on an intermittent basis. Throughout the Delivery Term, Buyer in its limited capacity as Seller's Scheduling Coordinator shall facilitate communication with the CAISO and provide other administrative materials to CAISO as necessary to satisfy Seller's obligations as Seller's Scheduling Coordinator .

(ii) Forecast Fee. As an Eligible Intermittent Resource, the Scheduling Coordinator shall schedule Plant Output based upon a day-ahead and hour-ahead forecast developed by the CAISO (the "**Forecasting Service**").

Seller shall bear all forecast fees imposed by the CAISO for use of the Forecasting Service or any successor CAISO forecasting service up to and including \$0.10/MWh (irrespective of whether Seller uses its own forecasting service in addition to the Forecasting Service). If such fees exceed this amount, the Parties shall each be responsible for, and each agrees to pay, fifty percent (50%) of such excess. Seller agrees to provide the Forecasting Service with sufficient data to support a reasonably accurate and unbiased forecast with respect to the Output to be sold by Seller to Buyer. To the extent the CAISO no longer provides the Forecasting Service (or a successor Forecasting Service) for the Plant Output, Seller and Buyer shall promptly coordinate to develop an alternative source for day-ahead and hour-ahead forecast information to be used by the Scheduling Coordinator for scheduling Plant Output.

4.6 Output Obligations, Performance LDs and Buyer's Right to Operate.

- (a) Two (2) Year Minimum Production Threshold. Seller guarantees that the Calculation Period Deemed Delivered Energy Production for each Calculation Period shall be no less than the Two (2) Year Minimum Production Threshold for such Calculation Period in accordance with this Section 4.6. No less frequently than quarterly during each year, Seller shall calculate and provide notice to Buyer of the then-cumulative amount of the Seller Excused Energy Amount for such year, along with an explanation in reasonable detail of the calculation thereof based on historical Plant data, meteorological data, Output projections (including by the CAISO, if applicable) and other relevant data. The calculation shall be subject to

review and approval by Buyer.

- (b) Performance LDs. If, for any Calculation Period, the Calculation Period Deemed Delivered Energy Production is less than the Two (2) Year Minimum Production Threshold (any such shortfall, in MWh, a “**Shortfall**”), then Seller may cure such Shortfall by paying or crediting Buyer liquidated damages based on the amount of such Shortfall in an amount equal to (i) the amount of such Shortfall multiplied by (ii) the per MWh Price in this Agreement multiplied by (iii) a factor of 1.2 (“**Performance LDs**”). In Buyer’s sole discretion, Buyer shall be entitled to collect Performance LDs within ten (10) days of Seller’s receipt of an invoice from Buyer therefor by one or more of the following:

(i) drawing upon the Performance Assurance (which shall be subject to the replenishment provision set forth in Section 9.2(a)(iii));

(ii) receiving payments from Seller on a monthly basis within ten (10) days of receipt of an invoice from Buyer therefor; and/or

(iii) setting off against any amounts owed to Seller by Buyer for the purchase of Output hereunder as set forth in Section 3.3.

If for any Calculation Period Seller is obligated to pay or credit any Shortfall damages hereunder, then, for purposes of calculating the Calculation Period Deemed Delivered Energy Production for the immediately succeeding Calculation Period, the amount of the Calculation Period Deemed Delivered Energy Production for the first year in such succeeding Calculation Period shall be deemed to be equal to the greater of (a) the actual Calculation Period Deemed Delivered Energy Amount for such first year, or (b) eighty percent (80%) of the Calculation Period Expected Annual Energy Production for such first year.

Except as otherwise expressly stated in this Section 4.6(b), the Performance LDs shall be Buyer’s sole monetary remedy for any Shortfall or failure to produce the Output or failure to maintain any specified Two Year Minimum Production Threshold (subject to Buyer’s right to operate in Section 4.6(c)). The Parties agree that Buyer’s receipt of the Performance LDs shall (x) not be construed as Buyer’s declaration that an Event of Default has occurred under any provision of Article VII and (y) not limit Buyer’s right to receive a Termination Payment upon exercise of Buyer’s default right pursuant to Article VII. Each Party agrees and acknowledges that (I) the damages that Buyer would incur due to Shortfall would be difficult or impossible to predict with certainty and (II) the Performance LDs are an appropriate approximation of such damages.

- (c) [Reserved].

ARTICLE V

BUYER'S OBLIGATIONS

5.1 **Delivery and Transmission.**

Except for Seller's obligations pursuant to Sections 3.1, 4.1(k), 4.1(l) and 4.5(d), Buyer shall be solely responsible for paying costs and charges associated with the delivery and receipt of the Output under this Agreement at the Point of Interconnection and for the transmission and delivery of the Output from the Point of Interconnection to any other point downstream of the Point of Interconnection (including, without limitation, transmission costs and charges, competition transition charges, applicable control area service charges, transmission congestion charges, inadvertent energy flows, any other CAISO charges related to the transmission of such Output by the CAISO and any charge assessed or collected in the future pursuant to any utility tariff or rate schedule, however defined, for transmission or transmission-related service rendered by or for any transmission-owning or operating entity). If and to the extent that Seller fails to comply with the notice provisions in Section 4.1(g) concerning Forced Outages or with its obligations as outlined in the previous sentence, Seller shall be wholly responsible for all imbalances, deviations, or any other CAISO charges or penalties associated with such Forced Outage or CAISO Tariff obligation (it being understood, however, that all such charges and penalties (if any) shall be borne by Buyer if Seller has not failed to comply with such provisions or obligations).

5.2 **Taxes.**

Buyer shall pay and be fully responsible for any sales, use, gross receipts, utility or other taxes, assessments or fees, if any, incurred or imposed on the sale or transfer of Output from Seller to Buyer under this Agreement. Buyer shall not be responsible for any taxes measured on the net income of Seller, *ad valorem* taxes paid by Seller that are associated with Seller's rights and privileges relating to the Site or any taxes imposed as a result of Seller's corporate structure, including, without limitation, limited liability company or other entity fees and taxes.

5.3 **Notification of Transmission Outages.**

Buyer shall exercise reasonable efforts to provide Seller with as much advance notice as practicable of any Forced Outages on the Participating TO System or other transmission or delivery facilities which is reasonably likely to result in a Dispatch Down Period.

ARTICLE VI

FORCE MAJEURE

6.1 Remedial Action.

Subject to the limitation on extensions of Milestones set forth in Section 4.4(a), a Party shall not be liable to the other Party if the Party is prevented from performing its obligations hereunder due to a Force Majeure Event. The Party rendered unable to fulfill an obligation by reason of a Force Majeure Event shall take all action necessary to remove such inability with all due speed and diligence. The non-performing Party shall be prompt and diligent in attempting to mitigate the effects of and to remove the cause of its failure to perform, and nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. Notwithstanding the foregoing, the existence of a Force Majeure Event shall not excuse any Party from its obligations to make payment of amounts due hereunder.

6.2 Notice.

In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall, as soon as practicable under the circumstances, notify the other Party, in writing, of the nature, cause, date of commencement thereof and the anticipated extent of any delay or interruption in performance.

6.3 Termination Due To Force Majeure Event.

If a Party is prevented in any material respect from performing any material obligations under this Agreement solely due to a Force Majeure Event lasting for a period of twelve (12) consecutive months or longer, the unaffected Party may terminate this Agreement, without liability of either Party to the other, upon thirty (30) calendar days' prior written notice at any time following expiration of such period of twelve (12) consecutive months. In such event, Buyer shall promptly return to Seller all Development Assurance, Interim Assurance or Performance Assurance, as applicable, less any LD Amount paid by or due and payable by Seller prior to the date of such termination for reasons unrelated to this Section 6.3. For the avoidance of doubt, this Section 6.3 shall not affect the rights and remedies associated with any other termination rights set forth in this Agreement.

ARTICLE VII

DEFAULT, REMEDIES AND TERMINATION

7.1 Events of Default by Buyer.

The following shall each constitute an “**Event of Default**” by Buyer:

- (a) Buyer breaches any material obligation or covenant (other than one covered by Section 7.1(b) or (c) of this Agreement) and fails to cure such breach within thirty (30) calendar days after written notification of breach by Seller or, if the breach cannot be cured within thirty (30) calendar days, such longer period as may be necessary to cure such breach as long as Buyer is exercising diligent efforts to cure such breach;
- (b) Buyer fails to make any payment when due under this Agreement within thirty (30) calendar days after written notice that such payment is due; or
- (c) Buyer becomes Bankrupt.

7.2 Events of Default by Seller.

The following shall each constitute an “**Event of Default**” by Seller:

- (a) Seller breaches any material obligation or covenant (other than ones covered by Sections 7.2(b) through and including (k) of this Agreement or for which a remedy is specified) and fails to cure such breach within thirty (30) calendar days after written notification of breach by Buyer or, if the breach cannot be cured within thirty (30) calendar days, such longer period as may be necessary to cure such breach as long as Seller is exercising diligent efforts to cure such breach;
- (b) Seller fails to make any payment when due under this Agreement within fifteen (15) calendar days after written notice that such payment is due;
- (c) Seller becomes Bankrupt;
- (d) Seller 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 Seller under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to Buyer;
- (e) Seller sells or transfers the Output (or any individual component thereof), Expansion Plant Output (or any individual component thereof), if any, the right to the Output (or any individual component thereof), or the right to the Expansion Plant Output (or any individual component thereof) to the extent that such Expansion Plant Output is purchased by Buyer, to any Person other than Buyer.

- (f) Seller fails to comply with the terms of Buyer's right of first refusal as described in Section 2.4(a) or 2.10 of this Agreement;
- (g) Subject to Section 4.4, Seller fails, for any reason other than an unauthorized act or omission by Buyer, to achieve the Construction Milestone;
- (h) Subject to Section 4.4, Seller fails, for any reason other than an unauthorized act or omission by Buyer, to achieve the Commercial Operation Milestone;
- (i) If at any time during the Term of this Agreement, Seller delivers or attempts to deliver to the Point of Interconnection for sale under this Agreement Output that was not generated by the Plant;
- (j) Failure by Seller to satisfy the creditworthiness or collateral requirements agreed to pursuant to Sections 9.1, 9.2 or 9.3 of this Agreement; or
- (k) Failure by Seller to achieve the Contract Delivery Start Date.

7.3 Termination for Default.

- (a) Declaration of Early Termination Date. If an Event of Default with respect to a defaulting Party shall have occurred, is continuing and has not been cured, the other Party (the "**Non-Defaulting Party**") shall have the right to:
 - (i) send notice, designating a day, no earlier than ten (10) calendar days after the day such notice is deemed to be received as an early termination date of this Agreement ("**Early Termination Date**") on which to (A) collect the Damage Payment if any Event of Default arose at any time prior to the commencement of the Delivery Term, including an Event of Default pursuant to Section 7.2(j), or (B) collect the Termination Payment (which shall be calculated in accordance with Section 7.3(b)) if any Event of Default arose during the Delivery Term;
 - (ii) accelerate all amounts owing between the Parties, terminate this Agreement and end the Delivery Term effective as of the Early Termination Date;
 - (iii) withhold any payments due to the Defaulting Party under this Agreement;
 - (iv) suspend performance;
 - (v) exercise its rights pursuant to Section 9.1 of this Agreement to draw upon and retain Development Assurance, Interim Assurance or Performance Assurance, as applicable; and
 - (vi) exercise any other right or remedy available at Law or in equity to the extent otherwise permitted under this Agreement.
- (b) Calculation of Termination Payment.

- (i) The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Termination Payment as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include dealers in the relevant markets, end-users of relevant output, information vendors and other sources of market information. If the Non-Defaulting Party uses the market price for a comparable transaction to determine the Gains or Losses, such price should be determined by using the average of market quotations provided by three (3) or more bona fide unaffiliated market participants. If the number of available quotes is three, then the average of the three quotes shall be deemed to be the market price. Where a quote is in the form of bid and ask prices, the price that is to be used in the averaging is the midpoint between the bid and ask price. The quotes obtained shall be: (i) for a like amount, (ii) of the same Output, (iii) at the same (or a reasonably equivalent) PNode, and (iv) for the remainder of the Delivery Term, or in any other commercially reasonable manner.
 - (ii) If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, if any, resulting from such termination of this Agreement, the amount of the Termination Payment shall be zero.
 - (iii) The Non-Defaulting Party shall not have to enter into replacement transactions to establish a Termination Payment.
 - (iv) The Termination Payment shall be the sole and exclusive remedy available to the Non-Defaulting Party in connection with its termination of this Agreement if any Event of Default arose during the Delivery Term, and shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages.
- (c) Notice of Termination Payment. As soon as practicable after notice of termination, notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment due from the Defaulting Party to the Non-Defaulting Party, if any. The notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party fifteen (15) calendar days after such termination payment notice is effective.
- (d) Disputes Regarding Termination Payment. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) calendar 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. Following delivery of such a notice, disputes regarding the Termination Payment shall be resolved in accordance with Section 10.10.
- (e) Damage Payment. The Parties agree that the Damage Payment to be paid by Seller for any Event of Default arising prior to the commencement of the Delivery Term

shall be considered liquidated damages and not a penalty, in accordance with Section 7.4(D) and subject to Section 7.4(B).

7.4 Limitation of: Remedies, Liability and Damages.

- (A) THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF.
- (B) EXCEPT AS OTHERWISE PROVIDED HEREIN, THE RIGHTS AND REMEDIES OF A PARTY PURSUANT TO THIS ARTICLE VII SHALL BE CUMULATIVE AND IN ADDITION TO THE RIGHTS OF THE PARTIES OTHERWISE PROVIDED IN THIS AGREEMENT.
- (C) 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 PROVIDES THAT THE EXPRESS REMEDIES ARE IN ADDITION TO OTHER REMEDIES THAT MAY BE AVAILABLE.
- (D) 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 SUCH OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED UNLESS EXPRESSLY HEREIN PROVIDED. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY UNDER THIS AGREEMENT FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR CONSEQUENTIAL DAMAGES, INCLUDING, WITHOUT LIMITATION, LOSS OF USE, LOSS OF REVENUES, LOSS OF PROFIT, OR OTHER BUSINESS INTERRUPTION DAMAGES, INTEREST CHARGES, COST OF CAPITAL OR CLAIMS OF ITS CUSTOMERS OR MEMBERS TO WHICH SERVICE IS MADE, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN. EXCEPT AS SET FORTH IN ARTICLE IX AND EXCEPT TO THE EXTENT SELLER VIOLATES ITS UNDERTAKING NOT TO PROVIDE OR SELL RIGHTS TO PART OR ALL OF THE OUTPUT OR EXPANSION PLANT OUTPUT, IF ANY, TO A PARTY OTHER THAN BUYER (EXCEPT AS SET FORTH IN SECTION 2.4(A)), SELLER SHALL NOT BE LIABLE TO BUYER FOR FAILURE TO PROVIDE ANY SPECIFIC AMOUNT OF OUTPUT HEREUNDER.

- (E) THE PARTIES ACKNOWLEDGE AND AGREE THAT THE (I) THE DAILY LD AMOUNT SET FORTH IN SECTION 4.4(b), (II) THE DAMAGE PAYMENT SET FORTH IN SECTION 4.4(c), (III) THE DAMAGE PAYMENT SET FORTH IN SECTION 7.3(a)(i)(B), AND (IV) THE PERFORMANCE LDS SET FORTH IN SECTION 4.6(b); ARE EACH REASONABLE AND REPRESENT A FAIR AND GENUINE ESTIMATE OF THE DAMAGES THAT WOULD OCCUR RELATED TO THE EVENTS DESCRIBED THEREIN. THE PARTIES ACKNOWLEDGE THAT IT WOULD BE IMPRACTICABLE OR EXTREMELY DIFFICULT TO FIX ACTUAL DAMAGES IN SUCH CIRCUMSTANCES, AND THEREFORE THEY HAVE DEEMED THE LIQUIDATED DAMAGES SET FORTH ABOVE TO BE THE AMOUNT OF DAMAGE SUSTAINED BY BUYER OR SELLER UPON THE OCCURRENCE OF SUCH CIRCUMSTANCES. THE PARTIES FURTHER AGREE THAT PAYMENT OF SUCH AMOUNTS SHALL BE AS AND FOR LIQUIDATED DAMAGES AND NOT AS A PENALTY AND ARE THEREFORE NOT SUBJECT TO AVOIDANCE UNDER CALIFORNIA CIVIL CODE SECTION 1671.

ARTICLE VIII

REPRESENTATIONS AND WARRANTIES

8.1 Seller's Representations and Warranties.

In addition to the representations and warranties set forth in other sections of this Agreement, Seller represents and warrants to Buyer that as of Seller Execution:

- (a) Seller is duly organized and validly existing as a limited liability company under the laws 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 in California and 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) Either:
 - (1) the Plant shall on the Commercial Operation Date be a "qualifying small power production facility" ("QF") as that term is defined in Section 3(17)(C) of the Federal Power Act ("FPA") and shall be entitled to all of the exemptions from regulation provided in 18 CFR §§ 292.601(c) and 292.602 applicable to a QF with the capacity of the Plant; and (B) no approval

(except with respect to "qualifying small power production facility" status and market-based rate authorization under Section 205 of the FPA) with respect to this Agreement is required from FERC; or

- (2) Seller shall on the Commercial Operation Date be an "exempt wholesale generator" as that term is defined in Section 1262(6) of the Public Utility Holding Company Act of 2005, and (B) no approval (except with respect to "exempt wholesale generator" status and market based rate authorization under Section 205 of the FPA) with respect to this Agreement is required from FERC. In the event that the Plant is not a "qualifying small power production facility" that is exempt from Sections 205 and 206 of the FPA on the Commercial Operation Date or any date thereafter, Seller shall make appropriate filings under the Federal Power Act within sixty (60) calendar days so as to comply with applicable law, subject at all times to the provisions of Section 10.19 of this Agreement;
- (d) The execution, delivery and performance of this Agreement by Seller shall not conflict with its governing documents, 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;
- (e) This Agreement has been duly and validly executed and delivered by Seller and, as of Seller Execution, 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;
- (f) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened, in writing, against Seller or any of its affiliates, 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 any impairment of Seller's ability to perform its obligations under this Agreement;
- (g) It is not Bankrupt and there are no proceedings pending or being contemplated by it or any of its affiliates, or, to its knowledge, threatened against it or its affiliates which would result in it being or becoming Bankrupt; and
- (h) It is, or shall be deemed for all purposes to be, a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement).

8.2 Buyer Representations and Warranties.

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

- (a) Buyer is a municipal corporation, duly organized and validly existing, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement;
- (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 shall 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 Execution 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;
- (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;
- (f) It is not Bankrupt and there are no proceedings pending or being contemplated by it or, to its knowledge, threatened against it which would result in it being or becoming Bankrupt; and
- (g) It is, or shall be deemed for all purposes to be, a forward contract merchant within the meaning of the U.S. Bankruptcy Code (as in effect as of the Execution Date of this Agreement).

8.3 Covenants.

- (a) General Covenants. In addition to other covenants in this Agreement, each Party covenants that throughout the Delivery Term:
 - (i) it shall continue to be duly organized, validly existing and in good standing under the Laws of the jurisdiction of its formation;

- (ii) it shall maintain (or obtain from time to time as required, including through renewal, as applicable) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and
 - (iii) it shall perform its obligations under this Agreement in a manner that does not violate any of the terms and conditions in its governing documents, any contracts to which it is a party or any Law, rule, regulation, order or the like applicable to it.
- (b) Seller Covenants. In addition to other covenants in this Agreement, Seller covenants that:
 - (i) Throughout the Delivery Term that it shall take no action or permit any other Person or entity (other than Buyer) to take any action that would impair in any way Buyer's ability to rely on the Plant in order to satisfy its Resource Adequacy Requirements; and
 - (ii) It shall comply with all CAISO Tariff requirements applicable to an Interconnection Customer (as defined in the CAISO Tariff) and shall take any other necessary action, including payment of fees and submission of requests, applications or other documentation, to promote the completion of the Electric System Upgrades prior to the Commercial Operation Date.

ARTICLE IX

DEVELOPMENT, INTERIM AND PERFORMANCE ASSURANCE

9.1 Grant of Security Interest/Remedies.

To secure its obligations under this Agreement and to the extent Seller delivers the Development Assurance, Interim Assurance and/or Performance Assurance, as applicable, hereunder, Seller hereby grants to Buyer, as the secured party, a first priority security interest in, and lien on (and right of setoff against), and assignment of, all such Development Assurance, Interim Assurance and/or Performance Assurance posted with Buyer in the form of cash collateral and cash equivalent collateral and any and all proceeds resulting therefrom or the liquidation thereof, whether now or hereafter held by, on behalf of, or for the benefit of, Buyer. Within thirty (30) calendar days of the delivery of the Development Assurance, Interim Assurance or Performance Assurance, as applicable, Seller agrees to take such action as Buyer reasonably requires in order to perfect a first-priority security interest in, and lien on (and right of setoff against), such Development Assurance, Interim Assurance or Performance Assurance and any and all proceeds resulting therefrom or from the liquidation thereof, respectively. Upon or any time after the occurrence or deemed occurrence and during the continuation of an Event of Default or an Early Termination Date, Buyer, as the Non-Defaulting Party, may do any one or more of the following:

- (a) exercise any of the rights and remedies of a secured party with respect to all Development Assurance, Interim Assurance or Performance Assurance, as applicable, including any such rights and remedies under the law then in effect;
- (b) exercise its rights of setoff against any and all property of Seller, as the Defaulting Party, in the possession of the Buyer or Buyer's agent;
- (c) draw on any outstanding Letter of Credit issued for its benefit; and
- (d) liquidate all Development Assurance, Interim Assurance or Performance Assurance, as applicable, then held by or for the benefit of Buyer free from any claim or right of any nature whatsoever of Seller, including any equity or right of purchase or redemption by Seller.

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

9.2 Development Assurance, Interim Assurance and Performance Assurance.

- (a) Provision of Security by Seller. Except as set forth in Section 2.1(b), Seller agrees to deliver to Buyer collateral to secure its obligations under this Agreement which Seller shall maintain in full force and effect for the period posted with Buyer, as follows:
 - (i) Development Assurance. Development Assurance pursuant to this Section 9.2(a)(i) in the amount of Five Million Two Hundred Thousand Dollars (\$5,200,000.00) (equal to \$200 per kW AC multiplied by the Expected Initial Capacity) and in the form of cash or a Letter of Credit within ten (10) calendar days following the Execution Date until Seller posts the Interim Assurance or Performance Assurance pursuant to Section 9.2(a)(ii) or (iii) below with Buyer, as applicable; provided that, if Buyer collects or is entitled to collect a Daily LD Amount by drawing upon the Development Assurance pursuant in Section 4.4(b)(i), Seller agrees that within ten (10) Business Days following written notice from Buyer related thereto, Seller shall replenish the Development Assurance by an amount equal to the encumbered Development Assurance;
 - (ii) Interim Assurance. Interim Assurance pursuant to this Section 9.2(a)(ii) in the amount of Two Million Six Hundred Thousand Dollars (\$2,600,000.00) and in the form of cash or a Letter of Credit from the Commercial Operation Date until the Seller posts Performance Assurance pursuant to Section 9.2(a)(iii) below; provided that, (A) with Buyer's consent, Seller may elect to apply a portion of the Development Assurance posted pursuant to Section 9.2(a)(i) toward the Interim Assurance posted pursuant to this Section

9.2(a)(ii); and (B) Seller shall not be required to deliver to Buyer the Interim Assurance if the Commercial Operation Date occurs on the same date as the Contract Delivery Start Date; and (C) if Buyer collects (or is entitled to collect) a Daily LD Amount for failure to achieve the Milestones by drawing upon the Interim Assurance pursuant to Section 4.4(b), Seller agrees that within ten (10) Business Days following written notice from Buyer related thereto, Seller shall replenish the Interim Assurance by an amount equal to the encumbered Interim Assurance; and

- (iii) Performance Assurance. Performance Assurance pursuant to this Section 9.2(a)(iii) in the amount of Two Million Six Hundred Thousand (\$2,600,000.00) (equal to \$100 per kW AC multiplied by the Expected Initial Capacity) and in the form of cash or a Letter of Credit from the Contract Delivery Start Date and ending at the expiration of the Delivery Term; provided that, (A) with Buyer's consent, Seller may elect to apply a portion of the Development Assurance or Interim Assurance posted pursuant to Section 9.2(a)(i) or 9.2(a)(ii) toward the Performance Assurance posted pursuant to this Section 9.2(a)(iii), as applicable; and (B) if Buyer collects or is entitled to collect Performance LDs by drawing upon the Performance Assurance pursuant in Section 4.6(b), Seller agrees that within ten (10) Business Days following written notice from Buyer related thereto, Seller shall replenish the Performance Assurance by an amount equal to the encumbered Performance Assurance.

The amount of Development Assurance, Interim Assurance and Performance Assurance required under this Agreement shall not be deemed a limitation of damages.

- (b) Use of Development Assurance.

Buyer shall be entitled to draw upon the Development Assurance posted by Seller for its Daily LD Amount until the Development Assurance is exhausted, subject to the provision for replenishment set forth in Section 9(a)(1). Buyer shall also be entitled to draw upon the Development Assurance for any damages arising upon Buyer's declaration of an Early Termination Date.

- (c) Termination of Development Assurance.

If (i) Buyer terminates this Agreement pursuant to Section 2.1(b) or 2.9(c), or (ii) after the Commercial Operation Date (as extended pursuant to Section 4.4(a)), no damages are due and owing to Buyer under this Agreement; then in either case Seller shall no longer be required to maintain the Development Assurance, and Buyer shall return to Seller the Development Assurance, plus interest under the applicable account, less the undisputed amounts drawn in accordance with Section 9.2(b), if any. The Development Assurance (or portion thereof) shall be returned within thirty (30) calendar days of Seller's provision of the Interim Assurance or Performance Assurance unless, with Buyer's consent, Seller elects to apply the

Development Assurance (or a portion thereof) toward the Interim Assurance or Performance Assurance posted pursuant to Section 9.2(a)(ii) or (iii), as applicable.

(d) Use of Interim Assurance.

Buyer shall be entitled to draw upon the Interim Assurance posted by Seller for any damages arising in or during the time period from the Commercial Operation Date until the Contract Delivery Start Date upon Buyer's declaration of an Early Termination Date.

(e) Termination of Interim Assurance.

If after the Contract Delivery Start Date, no damages are due and owing to Buyer under this Agreement, then Seller shall no longer be required to maintain the Interim Assurance, and Buyer shall return to Seller the Interim Assurance, plus interest under the applicable account, less the amounts drawn in accordance with Section 9.2(d). The Interim Assurance (or portion thereof) shall be returned to Seller within thirty (30) calendar days of Seller's provision of the Performance Assurance unless, with Buyer's consent, Seller elects to apply the Interim Assurance posted pursuant to Section 9.2(a)(ii) toward the Performance Assurance posted pursuant to Section 9.2(a)(iii), as applicable.

(f) Return of Performance Assurance and Interest.

Buyer shall return the unused portion of Development Assurance, Interim Assurance or Performance Assurance, as applicable, including the payment of any interest due thereon to Seller within thirty (30) days after the following has occurred: (i) the Term of the Agreement has ended, or subject to Section 7.3, an Early Termination Date has occurred, as applicable; and (ii) all payment obligations of the Seller arising under this Agreement, including payments pursuant to a Damage Payment, Termination Payment, indemnification payments or other damages are paid in full (whether directly or indirectly such as through set-off or netting).

9.3 Letter of Credit.

Development Assurance, Interim Assurance or Performance Assurance provided in the form of a Letter of Credit shall be subject to the following provisions:

(a) Renewal of Letter of Credit. If Seller has provided a Letter of Credit pursuant to any of the applicable provisions in this Article Nine, then Seller shall renew or cause the renewal of each outstanding Letter of Credit on a timely basis in accordance with this Agreement.

(b) Failure of Letter of Credit and Cure. In the event the issuer of such Letter of Credit at any time (i) fails to maintain the requirements of an Eligible LC Bank or Letter of Credit, (ii) indicates its intent not to renew such Letter of Credit, or (iii) fails to honor Buyer's properly documented request to draw on such Letter of Credit, Seller

shall cure such occurrence by complying with either (A) or (B) below in an amount equal to the outstanding Letter of Credit, and by completing the action within five (5) Business Days after the date of Buyer's notice to Seller of an occurrence listed in this subsection (Seller's compliance with either (A) or (B) below is considered the "**Cure**"):

- (A) providing a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank which is the subject of Buyer's notice to Seller in Section 9.3(b) above, or
- (B) posting cash.

If Seller fails to cure or if such Letter of Credit expires or terminates without a full draw thereon by Buyer, or fails or ceases to be in full force and effect at any time that such Letter of Credit is required pursuant to the terms of this Agreement, then Seller shall have failed to meet the creditworthiness or collateral requirements of Section 9.2.

- (c) Substitute Letter of Credit. Notwithstanding the foregoing in Section 9.3(b), if, at any time, the issuer of such Letter of Credit has a Credit Rating on "credit watch" negative or developing by S&P, or is on Moody's "watch list" under review for downgrade or uncertain ratings action (either a "**Watch**"), then Buyer may make a demand to Seller by notice ("**LC Notice**") to provide a substitute Letter of Credit that is issued by an Eligible LC Bank, other than the bank on a Watch ("**Substitute Letter of Credit**"). The Parties shall have thirty (30) Business Days from the LC Notice to negotiate a Substitute Letter of Credit ("**Substitute Bank Period**").
 - (i) If the Parties do not agree to a Substitute Letter of Credit by the end of the Substitute Bank Period, then Buyer shall provide Seller with Notice within five (5) Business Days following the expiration of the Substitute Bank Period ("**Ineligible LC Bank Notice Period**") that either:
 - (A) Buyer agrees to continue accepting the then currently outstanding Letter of Credit from the bank that is the subject of the LC Notice, but such bank shall no longer be an Eligible LC Bank ("**Ineligible LC Bank**") and Buyer shall not accept future or renewals of Letters of Credit from the Ineligible LC Bank; or
 - (B) the bank that is the subject of the LC Notice is an Ineligible LC Bank and Seller shall then have thirty (30) days from the date of Buyer's Notice to Cure pursuant to Section 8.5(b) and, if Seller fails to Cure, then the last paragraph in Section 9.3(b) shall apply to Seller.
 - (ii) If the Parties have not agreed to a Substitute Letter of Credit and Buyer fails to provide a Notice during the Ineligible LC Bank Notice Period above,

then Seller may continue providing the Letter of Credit posted immediately prior to the LC Notice.

- (d) Letter of Credit Costs. In all cases, the reasonable costs and expenses of establishing, renewing, substituting, canceling, increasing, reducing, or otherwise administering the Letter of Credit shall be borne by Seller.

ARTICLE X

MISCELLANEOUS

10.1 Indemnification.

- (a) Seller Indemnification Prior to Commercial Operation Date. Up to and including the Contract Delivery Start Date, Seller shall indemnify, defend, and hold harmless Buyer, and its City Council members, officers, agents and employees, from any claim, liability, loss, injury or damage arising out of, or in connection with, the negligence, willful misconduct or violation of applicable law by Seller and/or its agents, employees or sub-contractors, excepting only loss, injury or damage caused by the negligence, willful misconduct or violation of applicable law of personnel employed by Buyer to the extent caused by such negligence, willful misconduct or violation of applicable law of Buyer's employed personnel. If an Indemnified Party determines that it is entitled to defense and indemnification under this Section 10.1, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's prior written consent.
- (b) Seller and Buyer Indemnification after Commercial Operation Date. After the Contract Delivery Start Date, each Party ("**Indemnifying Party**") shall defend, indemnify and hold harmless the other Party and its officers, directors, employees, agents, affiliates and representatives and, in the case of Buyer, its City Council members (each, an "**Indemnified Party**") from and against any and all losses, including but not limited to losses arising from personal injury or death, or damage to property, but only to the extent such losses result from or arise out of the negligence, willful misconduct or violation of applicable law by the Indemnifying Party, its employees, subcontractors or agents. If an Indemnified Party determines that it is entitled to defense and indemnification under this Section 10.1, such Indemnified Party shall promptly notify the Indemnifying Party in writing of the losses, and provide all reasonably necessary or useful information, and authority to settle and/or defend the losses. No settlement that would impose costs or expense upon the Indemnified Party shall be made without such Party's prior written consent.

10.2 Assignment.

- (a) General Assignment. Except as provided in Sections 10.2 (b) and (c), neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld, conditioned or delayed so long as among other things (i) the assignee assumes the transferring Party's payment and performance obligations under this Agreement, (ii) the assignee agrees in writing to be bound by the terms and conditions hereof, (iii) the transferring Party delivers financial statements, information and other evidence satisfactory to the non-transferring Party of the proposed assignee's technical and financial capability to fulfill the assigning Party's obligations hereunder and (iv) the transferring Party delivers such tax and enforceability assurance as the other Party may reasonably request. Seller shall be responsible for reimbursement of Buyer's Attorneys' Fees related to this Section 10.2(a) as described in Section 10.12(a).
- (b) Assignment to Financing Providers. Notwithstanding any provision to the contrary in this Section 10.2, Seller shall be permitted to assign this Agreement as collateral for any financing or refinancing of the Plant with the prior written consent of the Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. If Buyer gives its consent, then such consent shall be in a form substantially similar to the Form of Lender Agreement attached hereto as Exhibit F-2; provided that (i) Buyer shall not be required to consent to any additional terms or conditions beyond those contained in Exhibit F-2, including extension of any cure periods or additional remedies for financing providers and (ii) Seller shall be responsible for reimbursement of Buyer's Attorneys' Fees as described in Section 10.12(a).
- (c) Assignment in Connection with a Change in Control. Notwithstanding any provision to the contrary in this Section 10.2, any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment and shall require the prior written consent of Buyer, which consent shall not be unreasonably withheld, conditioned or delayed. At Buyer's request, Seller shall promptly deliver financial statements, information and other evidence satisfactory to Buyer regarding the proposed change of control of Seller. Seller shall be responsible for reimbursement of Buyer's Attorneys' Fees related to this Section 10.2(c) as described in Section 10.12(a).
- (d) Unauthorized Assignment. Any assignment or purported assignment in violation of this Section 10.2 is void.

10.3 Notices.

Unless otherwise expressly allowed hereunder, any notice, demand, request, or communication required or authorized by this Agreement shall be delivered either by hand, facsimile, electronic mail, overnight courier or mailed by certified mail, return receipt requested with postage prepaid, to:

City of Palo Alto
250 Hamilton Avenue, 8th Floor
Palo Alto, CA 94301
Attention: Senior Deputy City Attorney / Utilities
Fax: (650) 329-2646
Email: jessica.mullan@cityofpaloalto.org

with a copy to:

City of Palo Alto
250 Hamilton Avenue, 3rd Floor
Palo Alto, CA 94301
Attention: Director of Utilities
Fax: (650) 329-2946
Email:

on behalf of Buyer;

and to:

Hecate Energy Palo Alto LLC
115 Rosa Parks Blvd.
Nashville, TN 37203
Attention: Chris Bullinger
Telephone: 480-239-5617
Email: cbullinger@hecateenergy.com

with a copy to:

Hecate Energy, LLC
300 S. Wacker Dr., Ste. 1850
Chicago, IL 60606
Attention: Craig Overmyer
Telephone: 312-357-9621
Email: [covermyer@hecateenergy.com](mailto:ccovermyer@hecateenergy.com)

on behalf of Seller.

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice delivered in the manner set forth in this Section 10.3.

Whenever this Agreement requires or permits delivery of a “notice” (or requires a Party to “notify”), the Party with such right or obligation shall provide a written communication in the manner specified herein. Any such notice, demand, request, or communication shall be deemed received (i) if delivered by the delivering Party by hand, facsimile or electronic mail on the Business Day on which such notice was transmitted if received before 5:00 p.m. (and if received after 5:00 p.m., on the next Business Day) at the receiving party’s notice address specified in this Section 10.3; or (ii) upon receipt by the receiving Party if sent by overnight courier or mailed by certified mail, return receipt requested with postage prepaid; or (iii) if notice is required in the form of sub-sections (i) and (ii), then on the earlier of (i) or (iii).

10.4 Electronic Transmission.

Facsimile or electronic or PDF transmission shall be the same as delivery of an original document; provided that, at the request of either Party, the other Party shall confirm facsimile or electronic or PDF signatures by signing and delivering an original document; provided further, however, that the execution and delivery of this Agreement and its counterparts shall be subject to Section 10.20.

10.5 Captions.

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.

10.6 No Third Party Beneficiary.

No provision of the Agreement is intended to, nor shall it in any way, inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third party beneficiary under the Agreement, or of any one or more of the terms hereof, or otherwise give rise to any cause of action in any Person not a Party hereto.

10.7 No Dedication.

No undertaking by one Party to the other under any provision of the Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public or affect Seller as an independent entity and not a public utility.

10.8 Entire Agreement; Integration; Amendments.

This Agreement, together with the Preamble and each and every exhibit, appendix, attachment, amendment, schedule and any written supplements hereto, if any, constitutes the entire, integrated agreement between the Parties and supersedes any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is made, in writing, and signed by a duly authorized officer or representative of

the Parties.

10.9 Applicable Law.

This Agreement and the rights and duties of the Parties hereunder shall be construed, enforced and performed in accordance with the laws of the state of California, and/or the laws of the United States, as applicable, without regard to principles of conflicts of law which may direct the application of the laws of another jurisdiction.

10.10 Venue.

The Parties hereby submit to the exclusive jurisdiction of the federal courts for the Northern District of the State of California; provided, however, that if such federal courts sitting in the Northern District of the State of California refuse jurisdiction, the Parties agree to the exclusive jurisdiction of the state courts sitting in the County of Santa Clara, State of California.

10.11 Rule of Construction.

This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

10.12 Attorneys' Fees and Costs.

- (a) Buyer's Costs Due to Seller's Change. Notwithstanding any provision to the contrary herein, Buyer shall be entitled to recover from Seller, upon Buyer's request, Buyer's Attorneys' Fees associated with the review, evaluation, negotiation, execution and/or delivery of any and all documents, consents, amendments, modifications or restatements related to this Agreement pursuant to Sections 4.2(h), 10.2(a), 10.2(b), and 10.2(c) and, if such actions require any actions beyond the giving of notice by Buyer, any and all other Seller-initiated proposed modifications (whether agreed to or not) of any and all terms or conditions of this Agreement which include, by way of illustration, but not of limitation: Milestones, Price, Capacity, quantity of Output, Point of Interconnection, FCDS Finding and/or Discretionary Curtailment. The Parties agree that this Section 10.12(a) shall be interpreted inclusively and broadly, with the intention of reimbursing Buyer for its legal fees, expenses and costs rather than not.
- (b) Judicial Action. If a suit or action is instituted to enforce or interpret any term of this Agreement, the prevailing party in any suit or action brought to enforce or interpret the provisions of this Agreement shall be entitled to recover its Attorneys' Fees at any hearing, any trial, on appeal, and on any petition for review or other trial court or appellate proceeding. In addition, the prevailing party shall be entitled to recover its Attorneys' Fees incurred in enforcing its rights under this Agreement in

connection with any nonjudicial action or the exercise of nonjudicial remedies, and in any administration, arbitral, mediation or dispute resolution process or proceeding.

10.13 Nature of Relationship.

The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. Seller and Buyer shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.

10.14 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, conditioned 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, unless a different standard is otherwise specified in this Agreement.

10.15 Severability.

Should any provision of the Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of the Agreement shall not be affected and shall continue in full force and effect. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable provision(s) with legally acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision.

10.16 Confidentiality.

- (a) Public Records Act and Confidential Information Designated by Seller. Seller acknowledges that Buyer is a public agency subject to the disclosure requirements of the California Public Records Act, *Cal. Gov. Code § 6250 et seq.* (“CPRA”). If documents or information submitted to Buyer contain Seller’s proprietary and confidential information and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information “CONFIDENTIAL AND PROPRIETARY”, and identify the specific lines containing such information (the “**Confidential Information**”). Buyer shall disclose such Confidential Information to third parties only to the extent required by California law (including, without limitation, the California Constitution, the CPRA and the Brown Act) as set forth in this Section 10.16.

- (b) Disclosure of Confidential Information by Buyer. In the event of a third party request for Buyer to disclose such Confidential Information, Buyer shall make reasonable efforts to provide notice to Seller prior to disclosure. If Seller contends that any Confidential Information is exempt from the CPRA and wishes to prevent disclosure, Seller shall obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Santa Clara County before Buyer's deadline for responding to the CPRA request. If Seller fails to obtain such remedy prior to Buyer's deadline for responding to the CPRA request, Seller agrees that Buyer may disclose the requested Confidential Information. Seller further agrees that Buyer shall have no liability to Seller arising out of any disclosure by Buyer of any Seller Confidential Information before Seller has timely obtained an order, injunctive relief or other appropriate remedy to prevent Buyer from making the requested third party disclosure. Each Party shall be bound by its obligations of confidentiality hereunder for a period of two (2) years from the expiration or earlier termination of this Agreement.
- (c) Non-Confidential Information. Notwithstanding anything to the contrary in this Section 10.16, nothing shall restrict any Party from using or disclosing confidential information in any manner it chooses which (i) is or becomes generally available to the public other than as a result of a disclosure directly or indirectly by the disclosing Party or its representative(s); (ii) was within the using or disclosing Party's possession prior to it being furnished hereunder, provided that such information is not subject to another confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, any other party with respect to such information; (iii) is rightfully obtained by a Party from third parties authorized to make such disclosure without restriction; (iv) is legally required to be disclosed by judicial or other governmental action as determined by such Party's attorney acting in good faith (including, but not limited to, the California Constitution, the CPRA and the Brown Act); or (v) is disclosed without a duty of confidentiality to a third party by, or with the authorization of, the disclosing Party; or (vi) is independently developed by the recipient.
- (d) Disclosure to the City Council of Palo Alto. Notwithstanding any provision to the contrary in this Section 10.16, Buyer shall be permitted to disclose this Agreement and related information to the City Council of Palo Alto for the express purpose of obtaining approval to execute this Agreement, including any written amendment or modification thereto.

10.17 Cooperation.

The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under the Agreement.

10.18 Audit.

Both Parties shall maintain all records relating to the other Party or this Agreement for a minimum of two (2) years after the expiration or earlier termination of the Term and shall permit the other Party, upon reasonable notice, at its sole expense and during normal working hours, to examine such records as the requesting Party deems reasonably necessary to protect its rights.

10.19 Mobile Sierra Doctrine.

Notwithstanding any provision of this Agreement, the Parties intend that the standard of review for changes to any rate, charge, classification, term or condition of this Agreement proposed by a Party shall be the “*Mobile-Sierra* public interest” standard of review, as stated by the United States Supreme Court in *Morgan Stanley Capital Group Inc. v. Public Utility District No. 1 of Snohomish County*, 554 U.S. 1164 (2008) and consistent with the order of the Supreme Court in *NRG Power Marketing LLC, et al. v. Maine Public Utilities Commission et al.*, No. 08-674, 130 S.Ct 693 (2010). Any modifications proposed by a non-contracting third party or FERC acting *sua sponte* shall be the most stringent standard permissible under applicable law.

10.20 Counterparts.

This Agreement may be executed in one or more counterparts and by different Parties on separate counterparts, all of which shall be deemed one and the same agreement and each of which shall be deemed an original. Delivery of an executed counterpart of this Agreement by fax or other electronic means shall be deemed as effective as delivery of an originally executed counterpart. Any Party delivering an executed counterpart of this Agreement by facsimile or other electronic means shall also deliver an originally executed counterpart, but the failure of any Party to deliver an originally executed counterpart of this Agreement shall not affect the validity or effectiveness of this Agreement.

10.21 Debt Liability Disclaimer.

For the avoidance of doubt, the Buyer, including, but not limited to, any source of funding for Buyer, any General Fund of Buyer or any special self-insurance program, is not liable for any debts, liabilities, settlements, liens, or any other obligations of the Seller or its heirs, successors or assigns. Buyer shall not be liable for and shall be held harmless and indemnified by Seller for (a) any claims or damages arising out of any other contract to which Seller is a party, and (b) subject to Section 10.1(b), any tortious action or inaction, negligent error in judgment, act of negligence, intentional tort, negligent mistakes or other

acts taken or not taken by the Seller, its employees, agents, servants, invitees, guests or anyone acting in concert with or on behalf of the Seller.

10.22 No Implied Waiver of Breach.

Waiver by a Party of any breach of a specific provision of this Agreement shall not be construed as a waiver of any other breach of that term or any other term of this Agreement.

[SIGNATURE PAGE ON NEXT PAGE]

SIGNATURE PAGE

IN WITNESS WHEREOF, each of the Parties have caused this Agreement to be duly executed as of the day, month and year set forth next to each of the Parties' signatures below.

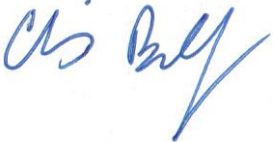
<p>SELLER: Hecate Energy Palo Alto LLC</p> <p></p> <p>By: _____ Name: Chris Bullinger Title: Manager Date: January 6, 2016</p>	<p>BUYER: CITY OF PALO ALTO APPROVAL AS TO FORM:</p> <p>By: _____ Name: _____ Title: Senior Deputy City Attorney Date: _____</p>
<p>CITY OF PALO ALTO APPROVAL BY ADMINISTRATIVE SERVICES DIRECTOR</p> <p>By: _____ Name: Lalo Perez Title: Administrative Services Director Date: _____</p>	<p>CITY OF PALO ALTO APPROVAL BY UTILITIES DIRECTOR</p> <p>By: _____ Name: _____ Title: Utilities Director Date: _____</p>
<p>CITY OF PALO ALTO APPROVAL BY CITY MANAGER</p> <p>By: _____ Name: James Keene Title: City Manager Date: _____</p>	<p>CITY OF PALO ALTO APPROVAL BY MAYOR</p> <p>By: _____ Name: _____ Title: Mayor Date: _____</p>

EXHIBIT A

PLANT DESCRIPTION AND SITE DRAWINGS

Plant Description

Plant name: Wilsona Solar

Plant physical address: Near the corner of 240th St. and E Palmdale Blvd. in Palmdale, CA 93591

Total number of units at the Plant: 26 inverters of 1 MWac capacity each

Technology type (including any applicable model): PV solar modules connected to solar inverters that connect to the grid via transformers

Interconnection Point of Plant: Wilsona Substation (Pnode: WILSONA_6_N001)

Local Capacity Area: N/A

Nameplate capacity of the Plant: 26 MWac

Description of units: More than 80,000 photovoltaic solar modules mounted on trackers and connected to 26 inverters that convert DC power to AC Power. The inverters are connected to the grid via transformers

Site Drawings

Site Map:

The term, “Site” as defined in the Agreement means the following parcel description upon which the generating facility is located and as identified in the following topographical map and Assessed Parcel Number, and the below Interconnection Facilities and metering configuration as evidenced in the related diagram (collectively, the “**Site Drawings**”):

[INSERT MAP]

Assessed Parcel No.: _____

Interconnection Facilities and metering diagram:

The Plant shall use the following Interconnection Facilities and metering configuration as identified in this one-line diagram included in this Exhibit A:

***[INSERT ONE-LINE DIAGRAM FOR
INTERCONNECTION FACILITIES AND METERING]***

EXHIBIT B

ENVIRONMENTAL ATTRIBUTE TRANSFER FROM SELLER TO BUYER

Participation in the Western Renewable Energy Generation Information System. Seller shall, at its sole expense take all actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all delivered Output are issued and tracked for purposes of satisfying the applicable requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall comply with all applicable laws, including, without limitation, the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates. Seller shall be deemed to have satisfied the warranty in this EXHIBIT B, paragraph (h) provided that Seller fulfills its obligations under this EXHIBIT B, paragraphs (a) through (h) below. In addition:

- (a) Prior to the Contract Delivery Start Date, Seller shall register the Plant with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the Delivery Term. Seller shall transfer the WREGIS Certificates using "Forward Certificate Transfers" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**"). Seller shall be responsible for all expenses associated with registering the Plant with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.
- (b) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates shall only be created for whole MWh amounts of Energy generated, any fractional MWh amounts (i.e., kWh) shall be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.
- (c) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Energy corresponding to delivered Output for such calendar month as evidenced by the Plant's metered data.
- (d) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 3.3, Buyer shall make an invoice payment for a given month in accordance with Section 3.3 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this EXHIBIT B. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 3.3.
- (e) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the delivered Energy for the same calendar month ("**Deficient Month**"), after taking into account applicable delays in the

issuance of WREGIS Certificates referenced in the prior paragraph or otherwise arising under WREGIS Operating Rules. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction, by Seller, then Seller shall take all actions reasonably necessary to remedy such circumstances and failure to do so shall be a breach hereunder by Seller.

- (f) Without limiting Seller's obligations under this EXHIBIT B, to the extent a WREGIS Certificate Deficit is caused by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.
- (g) If WREGIS changes the WREGIS Operating Rules after the Execution Date or applies the WREGIS Operating Rules in a manner inconsistent with this EXHIBIT B after the Execution Date, the Parties promptly shall modify this EXHIBIT B as reasonably required (i) to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the delivered Energy in the same calendar month or (ii) as may otherwise be reasonably appropriate to address such inconsistency.
- (h) Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System shall be taken prior to the first delivery under this Agreement.

EXHIBIT C

INSURANCE COVERAGES

At its own expense, Seller shall secure and maintain during the Term the following insurance with the coverage amounts indicated for occurrences during and arising out of Seller's performance of this Agreement. Such insurance shall be placed with responsible and reputable insurance companies as determined by Buyer in its reasonable discretion in compliance with Requirements of Laws applicable to Seller.

- (a) Workers' Compensation/Employer's Liability. Seller shall maintain Workers' Compensation Insurance and Employer's Liability Insurance which comply with Requirements of Laws applicable to Seller.
- (b) Automobile Liability. Seller shall maintain Automobile Liability Insurance in compliance with Requirements of Laws applicable to Seller, including coverage for owned, non-owned and hired automobiles for both bodily injury (including death) and property damage, including automobile liability contractual endorsement and uninsured/underinsured motorist protection endorsements.
- (c) Third Party Liability. Seller shall maintain third party liability insurance in compliance with Requirements of Laws applicable to Seller on a project-specific basis covering against legal responsibility to others as a result of bodily injury, property damage and personal injury arising from the operation and maintenance of the Plant. Such policy shall be written with a limit of liability not less than \$10,000,000 and a deductible not to exceed \$10,000. Such liability may be in any combination of primary and excess/umbrella. Coverage shall include, but not be limited to, premises/operations, explosion, collapse, underground hazards, broad form property damage and personal injury liability. Such coverage shall not contain exclusions for punitive or exemplary damages.
- (d) Property Insurance. Seller shall maintain third party property insurance on a project-specific basis covering cost of repairing Plant and or interconnection equipment to operational condition. Such policy shall be written with coverage sufficient to replace and rebuild the Plant. Coverage shall include, but not be limited to, fire, storm damage, equipment failure, damage to equipment precluding operation under prudent utility practice, premises/operations, explosion, collapse, underground hazards, broad form property damage.

Upon the request from Buyer, Seller shall promptly provide Buyer with applicable insurance certificates confirming the insurance coverages required above.

EXHIBIT D

SCHEDULING PROTOCOLS

Dated: _____, 2016

The following scheduling protocols shall govern the scheduling of Output from the Plant pursuant to that certain Power Purchase Agreement dated as of ____, 2016, by and between the City of Palo Alto and Hecate Energy Palo Alto LLC (the "Agreement"). Capitalized terms not defined herein have the meanings set forth in the Agreement.

1. Test Energy

Pursuant to Section 2.3(a) of the Agreement all Test Energy shall be scheduled in accordance with the following procedure:

All Test Energy produced by the Plant will be scheduled in accordance with CAISO Operating Procedure No. 5320 (Resource Trial Operation and Test Energy Process), as such may be amended from time to time. Pursuant to CAISO Operating Procedure No. 5320, pre-commercial resources are required to make arrangements with the CAISO for executing Trial Operations.

- I. At least ten (10) calendar days prior to the first planned Trial Operation date Seller shall provide Buyer a Test Energy schedule for the Plant. The Test Energy schedule shall include the following information:
 - a. Expected MW output for each hour during the testing period;
 - b. Start and Stop times of the test;
 - c. NRI Test Energy Template; and
 - d. Any operating constraints or testing limits that may impact the testing process.
- II. At least seven (7) calendar days prior to the first planned Trial Operation date (not including the submittal date and the date the test is requested to begin), the Scheduling Coordinator shall submit an outage request to the CAISO for the Test Energy schedule provided by Seller.
- III. Pending CAISO's approval of the outage request for Trial Operations and testing, the Scheduling Coordinator shall coordinate with Seller and CAISO to perform Plant testing.

2. Scheduling Protocols

The Scheduling Coordinator shall submit Bids for forecasted Plant Output to the CAISO in accordance with the CAISO Tariff and Business Practice Manuals, as the same may be amended or revised from time to time.

- I. Forecasts

Plant Output shall be scheduled according to Section 4.5(d) of the Agreement.

II. Submission of Bids

For each trade date, Scheduling Coordinator will develop and submit Bids for Plant Output into the CAISO markets in accordance with the CAISO market timelines. Day-ahead and real-time Bids for Plant Output shall be consistent with the CAISO forecast. Bids may consist of Self-Schedules, economic Bids, or a combination of Self-Schedules and economic Bids. Self-Schedule Bids shall be equal to the applicable CAISO forecasted Output, and economic Bids shall be limited to an amount not to exceed the applicable CAISO forecasted Output.

III. Dispatch Notices

Scheduling Coordinator shall provide dispatch notices to Buyer to communicate CAISO day-ahead and real-time market awards. Dispatch notices may include, but are not limited to, the following information: (i) scheduled Plant output by applicable operating interval, (ii) start-up instructions, (iii) shut-down instructions, (iv) ramping instructions, and (v) other information that may be relevant to the scheduled operations of the Plant.

- a. Day-Ahead Dispatch Notices. Dispatch Notices for Day-Ahead market awards will be provided to Buyer through a form of electronic communication as mutually agreed upon by Buyer and Scheduling Coordinator.
- b. Real-Time Dispatch Notices. Dispatch Notices for Real-Time market awards will be provided to Buyer through Scheduling Coordinator's automated SCADA control system, whereby Scheduling Coordinator will send a generator operating set point directly to the Plant's control systems.

3. Outage Coordination

Pursuant to the Agreement, Seller shall provide Scheduling Coordinator with all information required to submit timely outages to the CAISO in accordance with the CAISO Tariff and outage coordination procedures. Scheduling Coordinator shall perform all outage coordination activities on behalf of the Plant, including but not limited to, submission of planned and forced outages to the CAISO through use of CAISO's Outage Management System (OMS), in accordance with the CAISO Tariff and outage coordination procedures.

I. Communicating Outages to Scheduling Coordinator

a. Required Information

Seller shall provide the following information to Scheduling Coordinator at the time Seller submits a request for a planned or forced outage:

- Name of Facility
- CAISO Resource ID
- Start Date/Time of the Outage
- End Date/Time of the Outage
- Explanation for Reason of Outage
- Unit Availability During the Outage
- Emergency Return to Service Time (if called upon by the CAISO)

II. Outage Submission Timeline

Planned Outage requests must be submitted to Scheduling Coordinator at least seven (7) days in advance of the start date of the outage; whereby the seven (7) day period shall not include the date on which the request is submitted, or the start date of outage. Outage requests submitted less than seven (7) days in advance of the start date of the outage will automatically be designated by the CAISO as a Forced Outage (unless otherwise approved by the CAISO as a Planned Outage). Outages that occur in the active day (or real-time) must be reported to Scheduling Coordinator as soon as possible.

4. Discretionary Curtailment

Pursuant to Section 4.4(c), Buyer may require Seller to curtail deliveries of Energy from the Plant for any reason in Buyer's reasonable discretion by delivering a dispatch notice to the Scheduling Coordinator. Scheduling Coordinator shall provide dispatch notices for discretionary curtailments to Seller in accordance with the procedure described in Section 2(III) of this Exhibit D.

EXHIBIT E-1

FORM OF DEVELOPMENT PROGRESS REPORT

Development Progress Report

[Plant Name] Plant
[Report Month and Year]
[Date of Report]

This Development Progress Report describes the construction and status and progress toward the achievement of each of the Milestones of the *[Plant Name]* Plant, which guaranteed Commercial Operation Milestone is _____, for the _____ *[insert period that report is due as required under Section 4.3(c)]* and year of _____ (“**Report Period**”) as required pursuant to Section 4.3(c) of that certain Power Purchase Agreement by and between _____ (“**Seller**”), and the City of Palo Alto (“**Buyer**”), dated _____ (the “**Agreement**”). (Capitalized terms used in this report but not defined herein shall have the meanings set forth in the Agreement.)

This report shall be completed and delivered by Seller to _____ at Buyer, together with all attachments and exhibits. Buyer should direct any questions about this report to _____ at Seller.

1. General Plant Description

Please provide a general description of the Plant, including its location, Site size, technology type, nameplate capacity, interconnection point, ownership, and any other information relevant to a general description of the Plant.

2. Property Acquisition Activities and Site Control

In this section, please include information on property acquisition or site control activities for the Plant, including the date of execution of significant documents, and information on the expecting timing of future significant activities.

a. Prior Period’s Activities

Please provide a description and dates of all major Site acquisition or control related activities completed prior to the Report Period.

b. Report Period’s Activities

Please describe in detail the Site acquisition or control related activities that occurred during the Report Period.

c. Next Period's Activities

Please describe the Site acquisition or control related activities that are expected to be performed during the period following the Report Period.

3. Permitting

In this section, please provide information on each of the Conditional Use Permit and other Permits required for the construction of the Plant and the status thereof. List the applicable governmental agency, the type of application/approval requested, and the dates (expected or actual) of significant activity. Significant activity includes, but is not limited to, application submission, notice of complete application, notice of preparation, public hearing or comment period, draft documents and/or approvals, final documents and/or approvals, notice of determination and/or issuance of permit. If the government agency maintains a website with information on the approval process for the Plant, please provide a link.

a. Prior Period's Activities

Please provide a description of all major activities related to the Conditional Use Permit and other Permits completed prior to the Report Period.

b. Report Period's Activities

Please describe in detail the activities related to Permits that occurred during the Report Period.

c. Next Period's Activities

Please list the activities related to Permits that are expected to be performed during the period following the Report Period.

4. Interconnection

In this section, please provide a description of all major interconnection related activities, dates of completion of significant activities and the expected timing of future significant activities including, but not limited to, information on the status of interconnection studies, Interconnection Agreements, design and construction of Interconnection facilities (e.g., substations, switchyards, gen-ties, system protection schemes, telecommunications equipment to the extent not already covered in the Plant construction information in Section 8), network upgrades, and grid outage and/or interconnection schedules, and information related to Full Capacity Deliverability Status Finding applications, studies, timing, correspondence and . Describe any and all factors that may affect the ability of the Plant to deliver Energy to the Buyer.

a. Prior Period's Activities

Please provide a description of all major interconnection related activities completed prior to the Report Period.

b. Report Period's Activities

Please describe in detail the Interconnection related activities that occurred during the Report Period.

c. Current Period's Activities

Please list the Interconnection related activities that are expected to be performed during the period following the Report Period.

5. Design and Engineering

In this section, please provide information on the design and engineering of the Plant.

a. Prior Period's Activities

Please provide a description and dates of all major design and engineering related activities, including dates of completion of significant activities and expected timing of future activities.

b. Report Period's Activities

Please describe in detail the design and engineering related activities that occurred during the Report Period.

c. Current Period's Activities

Please list the design and engineering related activities that are expected to be performed during the period following the Report Period.

6. Financing

In this section, please include information on each separate phase of financing for the Plant. Include information on debt, equity and/or federal or state loans or grant.

b. Report Period's Activities

Please describe in detail the financing related activities that occurred during the Report Period.

c. Current Period's Activities

Please list the financing related activities that are expected to be performed during the period following the Report Period.

7. Major Equipment Procurement

In this section, please include information on all major equipment to be procured for all portions of the Plant to be completed by Seller, including switchyards, substations and any other interconnection equipment, in addition to generating and auxiliary equipment.

a. Prior Period's Activities

Please provide a description and dates of all major equipment procurement related activities completed prior to the Report Period, including the date of execution of significant documents, and information on the expected timing of future significant activities.

b. Report Period's Activities

Please describe in detail the Major Equipment Procurement related activities that occurred during the Report Period.

c. Next Period's Activities

Please list the Major Equipment Procurement related activities that are expected to be performed during the period following the Report Period.

8. Construction

In this section, please include information on the status of any construction-related factors that may affect the ability of the Plant to deliver the Output to the Buyer. Include information on the Plant infrastructure, generating equipment, and major auxiliary equipment. Also include information on the substations, switchyards, gen-ties, telecommunications equipment or other interconnection facilities that are the direct responsibility of the Plant.

a. Prior Period's Activities

Please provide a summary of the status and progress of each major construction activity for all portions of the Plant, including a schedule showing expected or actual dates as applicable. Provide the name of the EPC Contractor, the date of execution of the EPC Contract, and the date of issuance of a full notice to proceed (or equivalent). For each major type of equipment, break out the number of each item (to be) installed and/or commissioned in each period.

Please attach a copy of the all of the progress reports received during the previous Report Period from the EPC Contractor pursuant to the construction contract between Seller and EPC Contractor.

b. Report Period's Activities

Please describe in detail the Construction related activities that occurred during the Report Period.

c. Current Period's Activities

Please list the Construction related activities that are expected to be performed during the period following the Report Period.

9. Startup and Commissioning

In this section, please include information on the status of activities related to preparation for Commercial Operation, including equipment testing, commissioning, release to operations, requirements of the grid operator, and any other activities that must be conducted before the Plant may deliver Output to the grid and/or declare Commercial Operation (as evidenced by delivery of the COD Certification).

a. Prior Period's Activities

Please provide a description of all major startup and commissioning activities related to preparation for Commercial Operation completed prior to the Report Period.

b. Report Period's Activities

Please describe in detail the Startup and Commissioning related activities that occurred during the Report Period.

c. Current Period's Activities

Please list the Startup and Commissioning related activities that are expected to be performed during the period following the Report Period.

10. Milestones Schedule

a. *[Insert Gantt chart]*

b. Milestone Schedule

- a. Please describe the status and progress toward or achievement of each Milestone in the construction schedule for the Plant, including dates of completion of completed Milestone(s) and the expected date of completion of uncompleted Milestone(s). The expected date is the current best estimate, and may change from time to time as better information becomes available.

c. Remedial Action Plan

Please describe any issues which Seller expects in its reasonable judgment may adversely affect the schedule, including the cause of the delay and what remedial actions Seller intends to take to ensure that each of the Milestones shall be attained by their required dates.

III. Pictures

If available, please provide pictures documenting construction and startup progress of the Plant.

The information contained in this Seller's Development Progress Report is true and accurate and reflects, to the best of Seller's knowledge, the current status of the construction of the Plant as of the date specified below.

Seller:

By: _____

Name: _____

Title: _____

Date: _____

EXHIBIT E-2

COD CERTIFICATION

This COD Certification (“**Certification**”) is delivered by _____ (“**Seller**”) to The City of Palo Alto (“**Buyer**”) in accordance with the terms of that certain Power Purchase Agreement dated as of the Execution Date (“**Agreement**”) by and between Seller and Buyer. All capitalized terms used in this Certification but not otherwise defined herein shall have the respective meanings assigned to such terms in the Agreement. Seller hereby certifies and represents to Buyer the following:

1. Commercial Operation occurred on: _____ *[date]*
2. The Plant equipment representing _____ MW AC of Initial Capacity has been installed, tested and is capable of generating Output in accordance with the manufacturer’s specifications.
3. The Plant is substantially complete and capable of delivering Output as described in the Agreement.
4. The CAISO has provided notification of Commercial Operation in accordance with the CAISO Tariff, and documentation of such notification is attached hereto or shall be provided to Buyer promptly upon Seller’s receipt thereof.

EXECUTED by Seller this _____ day of _____, 20__.

By: _____
Name: _____
Title: _____

The undersigned, a licensed professional engineer, hereby certifies that, to its current knowledge, the foregoing is substantially true and correct.

[LICENSED PROFESSIONAL ENGINEER]

By: _____
Name: _____
Title: _____

RECEIVED by Buyer this ____ date of _____, 20__
which date shall be the Commercial Operation Date.

By: _____

Name: _____

Title: _____

EXHIBIT F-1

FORM OF LETTER OF CREDIT

Issuing Bank Letterhead and Address

STANDBY LETTER OF CREDIT NO. XXXXXXXXX

Date: *[Insert issue date]*

Beneficiary: **City of Palo Alto**

Applicant: *[Insert name and address of Applicant]*

250 Hamilton Avenue

Palo Alto, CA 94301

Attention: Credit Risk Management

Letter of Credit Amount: *[insert amount]*

Expiry Date: *[insert expiry date]*

Ladies and Gentlemen:

By order of *[insert name of Applicant]* (“**Applicant**”), we hereby issue in favor of the City of Palo Alto (the “**Beneficiary**”) our irrevocable standby letter of credit No. *[insert number of letter of credit]* (“**Letter of Credit**”), for the account of Applicant, for drawings up to but not to exceed the aggregate sum of U.S. \$ *[insert amount in figures followed by (amount in words)]* (“**Letter of Credit Amount**”). This Letter of Credit is available with *[insert name of issuing bank, and the city and state in which it is located]* by sight payment, at our offices located at the address stated below, effective immediately, and it shall expire at our close of business on *[insert expiry date]* (the “**Expiry Date**”).

Funds under this Letter of Credit are available to the Beneficiary against presentation of the following documents:

1. Beneficiary’s signed and dated sight draft in the form of Exhibit A hereto, referencing this Letter of Credit No. *[insert number]* and stating the amount of the demand; and
2. One of the following statements signed by an authorized representative or officer of Beneficiary:

A. “Pursuant to the terms of that certain *[insert name of the agreement]* (the “**Agreement**”), dated *[insert date of the Agreement]*, between Beneficiary and *[insert name of Seller under the Agreement]*, Beneficiary is entitled to draw under Letter of Credit No. *[insert number]* amounts owed by *[insert name of Seller under the Agreement]* under the Agreement; or

B. “Letter of Credit No. *[insert number]* shall expire in thirty (30) days or less and *[insert name of Seller under the Agreement]* has not provided replacement security acceptable to Beneficiary.

Special Conditions:

1. Partial and multiple drawings under this Letter of Credit are allowed;
2. All banking charges associated with this Letter of Credit are for the account of the Applicant;
3. This Letter of Credit is not transferable; and
4. The Expiry Date of this Letter of Credit shall be automatically extended without a written amendment for a period of one year and on each successive Expiry Date, unless at least sixty (60) days before the then current Expiry Date, we notify you by registered mail or courier that we elect not to extend the Expiry Date of this Letter of Credit for such additional period.

We engage with you that drafts drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation, on or before the Expiry Date (or after the Expiry Date as provided below), at our offices at *[insert issuing bank’s address for drawings]*.

All demands for payment shall be made by presentation of originals or copies of documents; or by facsimile transmission of documents to *[insert fax number]*, Attention: *[insert name of issuing bank’s receiving department]*, with originals or copies of documents to follow by overnight mail. If presentation is made by facsimile transmission, you may contact us at *[insert phone number]* to confirm our receipt of the transmission. Your failure to seek such a telephone confirmation does not affect our obligation to honor such a presentation.

Our payments against complying presentations under this Letter of Credit shall be made no later than on the sixth (6th) banking day following a complying presentation.

Except as stated herein, this Letter of Credit is not subject to any condition or qualification. It is our individual obligation, which is not contingent upon reimbursement and is not affected by any agreement, document, or instrument between us and the Applicant or between the Beneficiary and the Applicant or any other party.

Except as otherwise specifically stated herein, this Letter of Credit is subject to and governed by the *Uniform Customs and Practice for Documentary Credits, 2007 Revision*, International Chamber of Commerce (ICC) Publication No. 600 (the “**UCP 600**”); provided that, if this Letter of Credit expires during an interruption of our business as described in Article 36 of the UCP 600, we shall honor drafts presented in compliance with this Letter of Credit within thirty (30) days after the resumption of our business and effect payment accordingly.

The law of the State of New York shall apply to any matters not covered by the UCP 600.

For telephone assistance regarding this Letter of Credit, please contact us at *[insert number and any other necessary details]*.

Very truly yours,

[insert name of issuing bank]

By:

Authorized Signature

Name:

[print or type name]

Title:

Attachment 1 to Exhibit F-1
SIGHT DRAFT

TO: *[INSERT NAME AND ADDRESS OF PAYING BANK]*

AMOUNT: \$ _____ DATE: _____

AT SIGHT OF THIS DEMAND PAY TO THE ORDER OF THE CITY OF PALO ALTO THE
AMOUNT OF U.S.\$ _____ (_____ U.S. DOLLARS)

DRAWN UNDER [INSERT NAME OF ISSUING BANK] LETTER OF CREDIT NO.
XXXXXX.

REMIT FUNDS AS FOLLOWS:

[INSERT PAYMENT INSTRUCTIONS]

DRAWER

BY: _____

NAME AND TITLE

EXHIBIT F-2

FORM OF LENDER CONSENT AGREEMENT

CONSENT AND AGREEMENT

This CONSENT AND AGREEMENT (“**Consent and Agreement**”) is entered into as of _____, between the City of Palo Alto (“**Buyer**”), and _____, as collateral agent¹ (in such capacity, “**Financing Provider**”), for the benefit of various financial institutions (collectively, the “**Secured Parties**”) providing financing to _____ (“**Seller**”). Buyer, Seller, and the Financing Provider shall each individually be referred to as a “Party” and collectively as the “**Parties**”.

Recitals

A. Pursuant to that certain Power Purchase Agreement dated as of _____ (as amended, modified, supplemented or restated from time to time, as including all related agreements, instruments and documents, collectively, the “**Assigned Agreement**”) between Buyer and Seller, Buyer has agreed to purchase energy from Seller.

B. The Secured Parties have provided, or have agreed to provide, to Seller financing (including a financing lease) pursuant to one or more agreements (the “**Financing Documents**”), and require that Financing Provider be provided certain rights with respect to the “**Assigned Agreement**” and the “**Assigned Agreement Accounts**,” each as defined below, in connection with such financing.

C. In consideration for the execution and delivery of the Assigned Agreement, Buyer has agreed to enter into this Consent and Agreement for the benefit of Seller.

Agreement

1. **Definitions.** Any capitalized term used but not defined herein shall have the meaning specified for such term in the Assigned Agreement.
2. **Consent.** Subject to the terms and conditions below, Buyer consents to and approves the pledge and assignment by Seller to Financing Provider pursuant to the [Security Agreement] of (a) the Assigned Agreement, and (b) the accounts, revenues and proceeds of the Assigned Agreement (collectively, the “**Assigned Agreement Accounts**”).

¹ This form assumes that a collateral agent will hold the security on behalf of a syndicate of lenders and therefore, the consent would be signed by the collateral agent in such capacity for the benefit of the secured parties. If that is not the case, please modify.

3. Limitations on Assignment. Financing Provider acknowledges and confirms that, notwithstanding any provision to the contrary under applicable law or in any Financing Document executed by Seller, Financing Provider shall not assume, sell or otherwise dispose of the Assigned Agreement or any of Financing Provider's rights under the Assigned Agreement (whether by foreclosure sale or other liquidation sale, conveyance in lieu of foreclosure or otherwise) unless, on or before the date of any such assumption, sale or disposition, Financing Provider or any third party, as the case may be, assuming, purchasing or otherwise acquiring the Assigned Agreement (a) cures any and all defaults of Seller under the Assigned Agreement which are capable of being cured and which are not personal to the Seller, (b) executes and delivers to Buyer a written assumption of all of Seller's rights and obligations under the Assigned Agreement in form and substance reasonably satisfactory to Buyer, (c) otherwise satisfies and complies with all requirements of the Assigned Agreement, (d) provides such tax and enforceability assurance as Buyer may reasonably request, and (e) is a Permitted Transferee (as defined below). Financing Provider further acknowledges that the assignment of the Assigned Agreement and the Assigned Agreement Accounts is for security purposes only and that Financing Provider has no rights under the Assigned Agreement or the Assigned Agreement Accounts to enforce the provisions of the Assigned Agreement or the Assigned Agreement Accounts unless and until an event of default has occurred and is continuing under the Financing Documents between Seller and Financing Provider (a "**Financing Default**"), in which case Financing Provider shall be entitled to all of the rights and benefits and subject to all of the obligations which Seller then has or may have under the Assigned Agreement to the same extent and in the same manner as if Financing Provider were an original party to the Assigned Agreement.

"Permitted Transferee" means any person or entity who is reasonably acceptable to Buyer. Financing Provider may from time to time, following the occurrence of a Financing Default, notify Buyer in writing of the identity of a proposed transferee of the Assigned Agreement, which proposed transferee may include Financing Provider, in connection with the enforcement of Financing Provider's rights under the Financing Documents, and Financing Provider shall deliver to Buyer financial statements, information and other evidence satisfactory to Buyer of the proposed transferee's technical and financial capability to fulfill the Seller's obligations under the Assigned Agreement. Buyer shall, within thirty (30) Business Days of the later of its receipt of such written notice and delivery of such financial statements, information and other evidence, confirm to Financing Provider whether or not such proposed transferee is a "Permitted Transferee" (together with a written statement of the reason(s) for any negative determination) it being understood that if Buyer shall fail to so respond within such thirty (30) Business Days period such proposed transferee shall be deemed to be a "**Permitted Transferee**".

4. Cure Rights.

(a) Notice to Financing Provider by Buyer. Buyer shall, concurrently with the delivery of any notice of an event of default under the Assigned Agreement (each, an "**Event of Default**") to Seller (a "**Default Notice**"), provide a copy of such Default Notice to Financing Provider pursuant to Section 9(a) of this Consent and Agreement. In addition, Seller shall provide a copy of the Default Notice to Financing Provider the next Business Day after receipt from Buyer, independent of any agreement of Buyer to deliver such Default Notice.

(b) Cure Period Available to Financing Provider Prior to Any Termination by Buyer. Upon the occurrence of an Event of Default, subject to (i) the expiration of the relevant cure periods provided to Seller under the Assigned Agreement, and (ii) Section 4(a) above, Buyer shall not terminate the Assigned Agreement unless it or Seller provides Financing Provider with notice of the Event of Default and affords Financing Provider an Additional Cure Period (as defined below) to cure such Event of Default. For purposes of this Agreement “**Additional Cure Period**” means (i) with respect to a monetary default, twenty (20) calendar days in addition to the cure period (if any) provided to Seller in the Assigned Agreement, and (ii) with respect to a non-monetary default, forty-five (45) calendar days in addition to the cure period (if any) provided to Seller in the Assigned Agreement.

(c) Failure by Buyer to Deliver Default Notice. If neither Buyer nor Seller delivers a Default Notice to Financing Provider as provided in Section 4(a), the Financing Provider’s applicable cure period shall begin on the date on which notice of an Event of Default is delivered to Financing Provider by either Buyer or Seller. Except for a delay in the commencement of the cure period for Financing Provider and a delay in Buyer’s ability to terminate the Assigned Agreement (in each case only if both Buyer and Seller fail to deliver notice of an Event of Default to Financing Provider), failure of Buyer to deliver any Default Notice shall not waive Buyer’s right to take any action under the Assigned Agreement and shall not subject Buyer to any damages or liability for failure to provide such notice.

(d) Extension for Foreclosure Proceedings. If possession of the Plant (as defined in the Assigned Agreement) is necessary for Financing Provider to cure an Event of Default and Financing Provider commences foreclosure proceedings against Seller within thirty (30) calendar days of receiving notice of an Event of Default from Buyer or Seller, whichever is received first, Financing Provider shall be allowed a reasonable additional period to complete such foreclosure proceedings, such period not to exceed ninety (90) calendar days; provided, however, that Financing Provider shall provide a written notice to Buyer that it intends to commence foreclosure proceedings with respect to Seller within ten (10) Business Days of receiving a notice of such Event of Default from Buyer or Seller, whichever is received first. In the event Financing Provider succeeds to Seller’s interest in the Plant as a result of foreclosure proceedings, the Financing Provider or a purchaser or grantee pursuant to such foreclosure shall be subject to the requirements of Section 3 of this Consent and Agreement.

5. Setoffs and Deductions. Each of Seller and Financing Provider agrees that Buyer shall have the right to set off or deduct from payments due to Seller each and every amount due Buyer from Seller whether or not arising out of or in connection with the Assigned Agreement. Financing Provider further agrees that it takes the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts subject to any defenses or causes of action Buyer may have against Seller.

6. No Representation or Warranty. Seller and Financing Provider each recognizes and acknowledges that Buyer makes no representation or warranty, express or implied, that Seller has any right, title, or interest in the Assigned Agreement or as to the priority of the assignment for security purposes of the Assigned Agreement or the Assigned Agreement Accounts. Financing Provider further recognizes and acknowledges that it has relied exclusively on its own investigation and due diligence with respect to and is responsible for satisfying itself as to the

existence and extent of Seller's right, title, and interest in the Assigned Agreement, and Financing Provider hereby releases Buyer from any liability resulting from the assignment for security purposes of the Assigned Agreement and the Assigned Agreement Accounts.

7. Amendment to Assigned Agreement. Financing Provider acknowledges and agrees that Buyer may agree with Seller to modify or amend the Assigned Agreement, and that Buyer is not obligated to notify Financing Provider of any such amendment or modification to the Assigned Agreement. Financing Provider hereby releases Buyer from all liability arising out of or in connection with the making of any amendment or modification to the Assigned Agreement.

8. Payments under Assigned Agreement. Buyer shall make all payments due to Seller under the Assigned Agreement from and after the date hereof to _____, as depositary agent, to ABA No. _____, Account No. _____, and Seller hereby consents to any and all such payments being made in such manner. Each of Seller, Buyer and Financing Provider agrees that each such payment by Buyer to such depositary agent of amounts due to Seller from Buyer under the Assigned Agreement shall satisfy Buyer's corresponding payment obligation under the Assigned Agreement.

9. Miscellaneous.

(a) Notices. All notices hereunder shall be in writing and shall be deemed received (i) at the close of business of the date of receipt, if delivered by hand or by facsimile or other electronic means, or (ii) when signed for by recipient, if sent registered or certified mail, postage prepaid, provided such notice was properly addressed to the appropriate address indicated on the signature page hereof or to such other address as a party may designate by prior written notice to the other parties, at the address set forth below:

If to Financing Provider:

Name:

Address:

Attn:

Telephone:

Facsimile:

Email:

If to Buyer:

Name:

Address:

Attn: _____

Telephone: _____

Facsimile: _____

Email: _____

(b) No Assignment. This Consent and Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of Buyer, and shall be binding on and inure to the benefit of the Financing Provider, the Secured Parties and their respective successors and permitted transferees and assigns under the *[loan agreement]* and *[security agreement]*.

(c) No Modification. This Consent and Agreement is neither a modification of nor an amendment to the Assigned Agreement.

(d) Choice of Law. The parties hereto agree that this Consent and Agreement shall be construed and interpreted in accordance with the laws of the State of California, excluding any choice of law rules which may direct the application of the laws of another jurisdiction.

(e) No Waiver. No term, covenant or condition hereof shall be deemed waived and no breach excused unless such waiver or excuse shall be in writing and signed by the party claimed to have so waived or excused.

(f) Counterparts. This Consent and Agreement may be executed in one or more duplicate counterparts, and when executed and delivered by all the parties listed below, shall constitute a single binding agreement.

(g) No Third Party Beneficiaries. There are no third party beneficiaries to this Consent and Agreement.

(h) Severability. The invalidity or unenforceability of any provision of this Consent and Agreement shall not affect the validity or enforceability of any other provision of this Consent and Agreement, which shall remain in full force and effect.

(i) Amendments. This Consent and Agreement may be modified, amended, or rescinded only by writing expressly referring to this Consent and Agreement and signed by all parties hereto.

(j) Attorneys' Fees. If a suit or action is instituted to enforce or interpret any term of this Consent and Agreement, the prevailing party in any suit or action brought to enforce or interpret the provisions of this Agreement shall be entitled to recover its reasonable costs and attorneys' fees at any hearing, any trial, on appeal, and on any petition for review or other trial court or appellate proceeding. In addition, the prevailing party shall be entitled to recover its reasonable costs and attorneys' fees incurred in enforcing its rights under this Consent and Agreement in connection with any nonjudicial action or the exercise of nonjudicial remedies, and

in any administration, arbitrate, mediation or dispute resolution process or proceeding. In addition, the prevailing party shall be entitled to recover an amount equal to the fair market value of legal services provided by attorneys employed by it as well as any attorneys' fees paid to third parties.

(k) Rule of Construction. It is understood and agreed that the rule of construction that a written agreement is to be construed against the party preparing or drafting such agreement shall not be applicable to the interpretation of this Consent and Agreement, it being recognized that each of Buyer and Financing Provider has contributed substantially and materially to the preparation of this Consent and Agreement.

IN WITNESS WHEREOF, each of Buyer and Financing Provider has duly executed this Consent and Agreement as of the date first written above.

[SIGNATURE BLOCKS]

ACKNOWLEDGEMENT

The undersigned hereby acknowledges the Consent and Agreement set forth above, makes the agreements set forth therein as applicable to Seller, including the obligation of Seller to provide a copy of any Default Notice it receives from Buyer to Financing Provider the next Business Day after receipt by Seller, and confirms that the Financing Provider identified above and the Secured Parties have provided or are providing financing to the undersigned.

[name of Seller]

By: _____
Name: _____
Title: _____

EXHIBIT G

EXPECTED ANNUAL ENERGY PRODUCTION

Contract Year	Expected Annual Energy Production (in MWh)
1	75,000
2	74,625
3	74,252
4	73,881
5	73,511
6	73,144
7	72,778
8	72,414
9	72,052
10	71,692
11	71,333
12	70,977
13	70,622
14	70,269
15	69,917
16	69,568
17	69,220
18	68,874
19	68,529
20	68,187
21	67,846
22	67,507
23	67,169
24	66,833
25	66,499
26	66,167
27	65,836
28	65,507
29	65,179
30	64,853
31	64,529
32	64,206
33	63,885
34	63,566
35	63,248
36	62,932
37	62,617
38	62,304
39	61,992
40	61,682

___ Dated as of Seller Execution, with the Expected Annual Energy Production for Contract Year 1 based on the Expected Initial Capacity of 26 MW AC and each subsequent Contract Year reduced by a degradation factor of 0.5%.

___ Dated as of Commercial Operation Date, with the Expected Annual Energy Production for Contract Year 1 based on the Initial Capacity of ___ MW AC (subject to the Initial Capacity limitations described in Section 2.3(c)(2) of the Agreement and each subsequent Contract Year reduced by a degradation factor of ___%.

Capitalized terms have the meanings set forth in that certain Power Purchase Agreement dated ___, by and between the City of Palo Alto, as Buyer, and Hecate Energy Palo Alto LLC, as Seller.

EXHIBIT H

SELLER DOCUMENTATION CONDITION PRECEDENT

Seller shall provide to Buyer all of the following documentation at least five (5) Business Days prior to the Seller Execution:

1. A copy of each of (A) the articles of incorporation, certificate of incorporation, operating agreement or similar applicable organizational document of Seller and (B) the by-laws or other similar document of Seller (collectively, “**Charter Documents**”) as in effect, or anticipated to be in effect, on the Seller Execution.
2. A certificate signed by an authorized officer of Seller, dated no earlier than ten (10) Business Days prior to the Seller Execution, certifying (A) that attached thereto is a true and complete copy of the Charter Documents of the Seller, as in effect at all times from the date on which the resolutions referred to in clause (B) below were adopted to and including the date of such certificate; (B) that attached thereto is a true and complete copy of resolutions duly adopted by the board of directors (or other equivalent body) or evidence of all corporate or limited liability company action, as the case may be, of Seller, authorizing the execution, delivery and performance of this Agreement, and that such resolutions have not been modified, rescinded or amended and are in full force and effect, and (C) as to the name, incumbency and specimen signature of each officer of Seller executing this Agreement.
3. A certificate from the jurisdiction of Seller’s incorporation or organization certifying that Seller is duly organized, validly existing and in good standing under the laws of such jurisdiction.
4. Evidence of Site control (e.g. lease with redacted price terms) satisfactory to Buyer.
5. A copy of the most recent financial statements (which may be unaudited) from Seller and Seller’s Parent together with a certificate from the Chief Financial or equivalent officer of Seller, dated no earlier than ten (10) Business Days prior to the Seller Execution, to the effect that, to the best of such officer’s knowledge, (A) such financial statements are true, complete and correct in all material respects and (B) there has been no material adverse change in the financial condition, operations, Properties, business or prospects of Seller since the date of such financial statements.
6. A completed Expected Annual Energy Production table based on the Plant’s Expected Initial Capacity in the form set forth at Exhibit G.