Execution Version

RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT

BETWEEN

CITY OF RIVERSIDE

AND

VESI 15 LLC

DATED AS OF ________________, 2024

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RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT

PARTIES

THIS RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT ("**Agreement**"), which is dated for convenience as of this ___ day of ___________, 2024, is being entered into by and between the City of Riverside, a California charter city and municipal corporation in the City of Riverside, California ("**Buyer**"), and VESI 15 LLC ("**Seller**"), a limited liability company organized and existing under the laws of the State of Delaware. Each of Buyer and Seller is referred to individually in this Agreement as a "**Party**" and together they are referred to as the "**Parties**".

RECITALS

WHEREAS, Buyer desires to purchase resource adequacy attributes from energy storage facilities; and

WHEREAS, Seller is developing the Shirk Energy Storage Facility in Visalia, California, and desires to sell all resource adequacy attributes associated with the Facility; and

WHEREAS, Seller has agreed to sell to Buyer, and Buyer has agreed to purchase, all resource adequacy attributes associated with the Facility, as more fully described in this Agreement; and

WHEREAS, the Parties desire to set forth the terms and conditions pursuant to which such sales and purchases shall be made.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals, which are incorporated herein, and the mutual covenants and agreements herein set forth, the Parties hereto agree as follows:

ARTICLE I
DEFINITIONS AND INTERPRETATION

Section 1.1 Definitions. The following terms in this Agreement and the appendices hereto shall have the following meanings when used with initial capitalized letters:

"**Acceptable Form of Performance Assurance**" means a letter of credit issued by a Qualified Issuer, substantially in the form attached hereto as **APPENDIX D**, which will guarantee Seller's obligations under this Agreement.

"**Accepted Compliance Costs**" has the meaning set forth in Section 7.6(c).

"**Act**" means all of the provisions contained in the California Joint Exercise of Powers Act found in Chapter 5 of Division 7 of Title 1 of the Government Code of the State of California, beginning at California Government Code Section 6500 *et seq.*

"**Affiliate**" means, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

"**Agreement**" has the meaning set forth in the preamble of this Agreement and includes all Appendices attached hereto.

"**Agreement** Term" has the meaning set forth in Section 2.2.

"**Annual Report**" means the report required to be delivered by Seller pursuant to Section 4.2 in form and substance substantially similar to **APPENDIX I**.

"**ASCE**" means American Society of Civil Engineers and any successor thereto.

"**ASME**" means American Society of Mechanical Engineers and any successor thereto.

"**ASTM**" means American Society for Testing and Materials and any successor thereto.

"**Authorized Auditors**" means representatives of Buyer or Buyer's Agents who are authorized to conduct audits on behalf of Buyer.

"**Authorized Representative**" means, with respect to each Party, the Person designated as such Party's authorized representative pursuant to Section 11.1.

"**AWS**" means American Welding Society and any successor thereto.

"**Bankruptcy**" means any case, action or proceeding under any bankruptcy, reorganization, debt arrangement, insolvency or receivership law or any dissolution or liquidation proceeding commenced by or against a Person and, if such case, action or proceeding is not commenced by such Person, such case, action or proceeding that is consented to or acquiesced in by such Person or that results in an order for relief or that remains undismissed or unstayed for sixty (60) days.

"**Brown Act**" has the meaning set forth in Section 11.21(d).

"**Business Day**" means any day that is not a Saturday, a Sunday, or a day on which commercial banks are authorized or required to be closed in Los Angeles, California.

"**Buyer**" has the meaning set forth in the preamble of this Agreement.

"**Buyer's Agent**" means any Person that Buyer may designate in writing from time to time to perform certain tasks acting as Buyer's agent.

"**CAISO**" means the California Independent System Operator.

"**CAISO Tariff**" means the CAISO FERC Electric Tariff, Fifth Replacement Volume, including the rules, protocols, procedures, and standards attached thereto and any replacement thereof or successor thereto in effect.

"**Cal-OSHA**" means California Occupational Safety and Health Administration and any successor thereto.

"**CEQA**" means the California Environmental Quality Act, California Public Resources Code Section 21000 *et seq.*

"**CEQA Delay**" means that the conditions set forth in both Section 3.1(d)(i) and Section 3.1(d)(ii) have not occurred by December 31, 2024, for reasons not caused by the fault or negligence of Seller or any Affiliate of Seller or Seller's failure to take commercially reasonable actions to secure the timely occurrence of such conditions.

"**CEQA EIR**" has the meaning set forth in Section 3.1(d)(i).

"**CEQA IS/(M)ND**" has the meaning set forth in Section 3.1(d)(i).

"**CEQA Notice of Exemption**" has the meaning set forth in Section 3.1(d)(i).

"**Change in Control**" means the occurrence, whether voluntary or by operation of law and whether in a single transaction or in a series of related transactions, of any one or more of the following: (a) a merger or consolidation of Seller or either Parent Entity with or into any other Person or any other reorganization in which the members of Seller or either Parent Entity immediately prior to such consolidation, merger or reorganization, own less than fifty percent (50%) of the equity ownership of the surviving entity or cease to have the power to control the management and policies of the surviving entity immediately after such consolidation, merger or reorganization, (b) any transaction or series of related transactions in which in excess of fifty percent (50%) of the equity ownership of Seller or either Parent Entity, or the power to control the management and policies of Seller or either Parent Entity, is transferred to another Person, (c) a sale, lease or other disposition of all or substantially all of the assets of Seller or either Parent Entity, (d) the dissolution or liquidation of Seller or either Parent Entity or (e) any transaction or series of related transactions that has the substantial effect of any one or more of the foregoing; *provided*, *however*, that a Change in Control shall not include any transaction or series of transactions in which a membership interest or other equity interest in Seller, an Affiliate of Seller, or either Parent Entity is issued or transferred to another Person solely (i) for the purpose of a Tax Equity Financing, or (ii) in connection with a pledge of equity or other passive investment by a Facility Lender in which control over the management or operations of the Facility is not transferred to such Facility Lender, each as certified by Seller in an officer's certificate delivered by Seller prior to the closing of such transaction.

"**CIRA**" means the CAISO's Customer Interface for Resource Adequacy.

"**Commencement Date**" means the first day of the first month for which all of the following are true: (a) such month is after the Commercial Operation Date, (b) Seller has provided Buyer the RAR Attributes for such month by submitting a monthly Supply Plan to the CAISO in accordance with the requirements set forth herein, and (c) prior to such month, Seller has executed and provided to Buyer the Delivery Term Security.

"**Commercial Operation**" means, with respect to the Facility, that Seller has provided the certificate in the form of **APPENDIX G-2**.

"**Commercial Operation Date**" has the meaning set forth in Section 3.2.

"**Compliance Actions**" has the meaning set forth in Section 7.6(b).

"**Compliance Expenditure Cap**" has the meaning set forth in Section 7.6(a).

"**Confidential Information**" has the meaning set forth in Section 11.21(a).

"**Construction Start Date**" means the date on which Seller delivers to Buyer a written certification substantially in the form attached hereto as **APPENDIX G-1**.

"**Contract Year**" means a 365- (or, as applicable, 366-) day period commencing from the Commencement Date or an anniversary thereof, and, for the avoidance of doubt, the last Contract Year shall end on the last day of the Delivery Term.

"**Control**" means the possession, directly or indirectly, of the power to direct or cause the direction of management, policies, or activities of a Person, whether through ownership of voting securities, by contract or otherwise.

"**Costs**" has the meaning set forth in Section 10.3(f)(iii).

"**COVID-19**" means the disease named coronavirus disease 2019 (COVID-19) by the World Health Organization and caused by the virus named Severe Acute Respiratory Syndrome Coronavirus 2 (SARS-CoV-2) by the International Committee on Taxonomy of Viruses and any mutations thereof.

"**CPRA**" has the meaning set forth in Section 11.21(d).

"**Default**" has the meaning set forth in Section 10.1.

"**Defaulting Party**" has the meaning set forth in Section 10.1.

"**Delay Damages**" has the meaning set forth in Section 3.5(b)(ii).

"**Delivery Term**" has the meaning set forth in Section 2.2.

"**Delivery Term Security**" has the meaning set forth in Section 5.3(b).

"**Dispute**" has the meaning set forth in Section 11.3(a).

"**Dispute Notice**" has the meaning set forth in Section 11.3(a).

"**Downgrade Event**" means any event that results in a Person providing a letter of credit as Performance Security hereunder failing to meet the credit requirements of a Qualified Issuer or the commencement of involuntary or voluntary bankruptcy, insolvency, reorganization, arrangement, composition, readjustment, liquidation, dissolution, or similar proceeding (whether under any present or future statute, law, or regulation) with respect to such Person.

"**Early Termination Date**" has the meaning set forth in Section 10.3(a).

"**EEI**" means Edison Electric Institute and any successor thereto.

"**Effective Date**" has the meaning set forth in Section 2.1.

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

"**Energy**" means electrical energy.

"**Environmental Laws**" means any federal, state or local laws (including common law), statutes, ordinances, rules, regulations, binding orders, injunctions or judgments pertaining to public health, pollution, or the presence of or release of Hazardous Materials on, under or about the Site.

"**EPA**" means the United States Environmental Protection Agency and any successor agency.

"**Expected RA Capacity**" means, for each Contract Year and each month during the applicable Contract Year, the MW of RA Capacity set forth in **APPENDIX H**, as may be adjusted pursuant to Section 7.3.

"**Facility**" means Shirk Energy Storage Facility, a battery energy storage system that will have a discharge capacity of 80 MW / 320 MWh, including mechanical equipment and associated facilities and equipment, as further described in **APPENDIX B**.

"**Facility Assets**" means all or any portion of the Facility or related assets.

"**Facility Lender**" means any lender providing senior or subordinated interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Facility, including any equity and tax investor providing financing or refinancing for the Facility or purchasing equity ownership interests of Seller or its Affiliates, and any trustee or agent acting on their behalf, and any Person providing interest rate protection agreements to hedge any of the foregoing debt obligations.

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

"**Financing Agreement**" shall mean any credit agreement, loan agreement, lease, partnership agreement, limited liability company agreement, shareholders agreement, or similar agreement, or other agreement related to the financing of the Facility, to be executed between Seller and a Facility Lender.

"**Flat Contract Price**" means the flat price set forth in paragraph 1 of **APPENDIX A**.

"**Forced Outage**" means the removal of service availability of the Facility, or any portion of the Facility, for emergency reasons or conditions in which the Facility, or any portion thereof, is unavailable due to unanticipated failure, including as a result of an Uncontrollable Force.

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

"**Gains**" has the meaning set forth in Section 10.3(f)(i).

"**Generator Interconnection Agreement**" means that certain Generator Interconnection Agreement (GIA) for a Generating Facility Interconnecting Under the Cluster Study Process (Applicable for Queue Cluster 5 and Subsequent Queue Clusters) between VESI 15 LLC and Southern California Edison Company, dated March 11, 2022, as amended.

"**Governmental Authority**" means any federal, state, regional, city or local government, any intergovernmental association or political subdivision thereof, other governmental, regulatory or administrative agency, court, commission, administration, department, board, other governmental subdivision, legislature, rulemaking board, tribunal, other governmental authority with jurisdiction over the Person or matter at issue, or any Person acting as a delegate or agent of any Governmental Authority; *provided that* Buyer shall not be considered a Governmental Authority hereunder.

"**Guaranteed Commencement Date**" means March 1, 2026.

"**Hazardous Materials**" means any hazardous substances, pollutants, contaminants, wastes, or materials (including petroleum (including crude oil or any fraction thereof), petroleum wastes, radioactive materials, hazardous wastes, toxic substances, or asbestos or any materials containing asbestos) designated, regulated, or defined under any Environmental Law.

"**IEEE**" means Institute of Electrical and Electronics Engineers and any successor thereto.

"**Indemnified Liabilities**" has the meaning set forth in Section 11.19(a).

"**Indemnitees**" has the meaning set forth in Section 11.19(a).

"**Insurance**" means the policies of insurance as set forth in **APPENDIX E**.

"**Interconnection Delay**" means the Participating TO's Interconnection Facilities, Distribution Upgrades, or Network Upgrades (each, as defined in the Generator Interconnection Agreement) are not complete by May 15, 2025, for reasons not caused by the fault or negligence of Seller or any Affiliate of Seller or Seller's failure to take commercially reasonable actions to mitigate any such delay.

"**Interest Rate**" has the meaning set forth in Section 8.3.

"**ISA**" means Instrument Society of America and any successor thereto.

"**Key Milestone**" means a Milestone for which liquidated damages are provided in **APPENDIX F**.

"**Legal Opinion**" means an executed original of a written legal opinion of Seller's legal counsel, Sheppard Mullin Richter & Hampton LLP, addressed to Buyer and in form and substance reasonably acceptable to Buyer, concerning, among other matters on the part of Seller, the enforceability and due authorization of this Agreement, dated as of the Effective Date.

"**Lien**" means any mortgage, deed of trust, lien, security interest, retention of title or lease for security purposes, pledge, charge, encumbrance, equity, attachment, claim, easement, right of way, covenant, condition or restriction, leasehold interest, purchase right or other right of any kind, including any option, of any other Person in or with respect to any real or personal property.

"**Losses**" has the meaning set forth in Section 10.3(f)(ii).

"**Milestone**" has the meaning set forth in Section 3.5(a)(i).

"**Milestone Date**" has the meaning set forth in Section 3.5(a)(i).

"**MW**" means megawatt (AC).

"**MWh**" means megawatt-hour.

"**NERC**" means the North American Electric Reliability Corporation and any successor thereto.

"**NERC Reliability Standards**" means the reliability standards developed by NERC or by any regional authority having jurisdiction, which are applicable to the owner or operator of the Facility or the Facility itself.

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

"**Non-Defaulting Party**" has the meaning set forth in Section 10.3(a).

"**Notification Deadline**" has the meaning set forth in Section 7.4(a).

"**Notifying Party**" has the meaning set forth in Section 11.3(a).

"**OSHA**" means Occupational Safety and Health Administration of the United States Department of Labor and any successor thereto.

"**Outside Commencement Date**" means December 31, 2026.

"**Pacific Prevailing Time**" means the local time in Los Angeles, California.

"**Parent Entity**" means each of Ormat Nevada, Inc., a Delaware corporation, and Viridity Energy Solutions Inc., a Delaware corporation, in each case, together with its successors and assigns.

"**Party**" or "**Parties**" has the meaning set forth in the preamble of this Agreement.

"**Performance Security**" means the Project Development Security and/or Delivery Term Security for the Facility, together or individually, as applicable.

"**Permit**" means all applications, permits, licenses, franchises, certificates, concessions, consents, authorizations, certifications, self-certifications, approvals, registrations, orders, filings, entitlements and similar requirements of whatever kind and however described which are required

to be filed, submitted, obtained or maintained by any Person with respect to the equipping, financing, refinancing, ownership, possession, shakedown, operation or maintenance of the Facility, the sale of RAR Attributes to Buyer, or any other transactions or matter contemplated by this Agreement (including those pertaining to electrical, building, zoning, environmental and occupational safety and health requirements), including those described in **APPENDIX B**.

"**Permitted Encumbrances**" means (a) any Lien approved by Buyer in a writing separate from this Agreement which expressly identifies the Lien as a Permitted Encumbrance, (b) Liens for Taxes not yet due or for taxes being contested in good faith by appropriate proceedings, so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on the use of the Facility or any part thereof, provided that such proceedings end by the expiration of the Agreement Term, (c) suppliers', vendors', mechanics', workman's, repairman's, employees' or other like Liens arising in the ordinary course of business for work or service performed or materials furnished in connection with the Facility for amounts the payment of which is either not yet delinquent or is being contested in good faith by appropriate proceedings so long as such proceedings do not involve a risk of the sale, forfeiture, loss or restriction on use of the Facility or any part thereof, provided that such proceedings end by expiration of the Agreement Term, and (d) easements, rights of way, use rights, exceptions, encroachments, reservations, restrictions, conditions or limitations, so long as they have been identified by Seller to Buyer in writing prior to the Effective Date and do not interfere with or impair the operation of the Facility as contemplated by this Agreement.

"**Person**" means any individual, corporation, partnership, joint venture, limited liability company, association, joint stock company, trust, unincorporated organization, entity, government or other political subdivision.

"**Point of Interconnection**" means Oak Grove – Riverway 66kV tap at new Woodrat Substation.

"**Pre-COD Liability Cap**" has the meaning set forth in Section 11.19(e).

"**Present Value Rate**" means, at any date, the sum of one-half percent (0.50%) plus the yield reported on page "USD" of the Bloomberg Financial Markets Services Screen (or, if not available, any other nationally recognized trading screen reporting on-line intraday trading in United States government securities) at 11:00 a.m. (New York City, New York time) for the United States government securities having a maturity that most nearly matches the Remaining Term at that date.

"**Project Development Security**" has the meaning set forth in Section 5.3(a).

"**Provided RA Capacity**" means with respect to the applicable month, the RA Capacity shown in the applicable monthly Supply Plan delivered to CAISO in accordance with the requirements of this Agreement, plus any Replacement RA Capacity provided pursuant to Section 7.4(a).

"**Prudent Utility Practices**" means those practices, methods and acts, that are commonly used by a significant portion of the battery energy storage industry in prudent engineering and operations to operate and maintain electric equipment (including battery energy storage systems)

lawfully and with safety, dependability, reliability, efficiency and economy, including any applicable practices, methods, acts, guidelines, standards and criteria of the CAISO, FERC, NERC, WECC, as each may be amended from time to time, and all applicable Requirements of Law.

"**PUC**" means the California Public Utilities Commission and any successor thereto.

"**Qualified Issuer**" means a U.S. Issuer Bank or the U.S. branch of a non-U.S. Issuer Bank, in each case, reasonably acceptable to Buyer, that has a current long-term credit rating (corporate or long-term senior unsecured debt) of "A-" or higher by Moody's Investors Service, Inc. or "A3" or higher by Standard & Poor's.

"**Qualified Operator**" means, with respect to the Facility, (a) an Affiliate of Seller including Viridity Energy Solutions Inc., or (b) a Person reasonably acceptable to Buyer that, in each case, has at least three (3) years of experience operating battery storage facilities similar to the Facility.

"**Qualified Transferee**" means a Person that, when considered collectively with its Affiliates,

(a) (i) (A) has or is a direct or indirect subsidiary of a Person that has, a tangible net worth assets under management, or to the extent its securities are publicly traded, equity value of at least $250,000,000, or (B) has a minimum long term unsecured credit rating of at least Baa3 or higher by Moody's or at least BBB- or higher by S&P,

(ii) retains a Qualified Operator or Qualified Operators to operate the Facility (or otherwise agrees not to interfere with the existing Qualified Operator for the Facility),

(iii) other than in connection with a Change in Control, executes a written assumption agreement in favor of Buyer pursuant to which such Person shall assume all of the obligations of Seller under this Agreement, and

(iv) is not at the time of transfer in active litigation against Buyer; or

(b) is reasonably acceptable to Buyer.

"**RA Capacity**" means, for a given period of time, all transferrable qualifying and deliverable capacity of the Facility for RAR purposes, as determined by the CAISO or other Governmental Authority authorized to make such determination under Requirements of Law.

"**RA Shortfall**" means (a) the quantity of Expected RA Capacity not provided by Seller for the applicable time period, minus (b) the quantity of Replacement RA Capacity provided by Seller for such time period.

"**RAR**" means the resource adequacy requirements (including, for the avoidance of doubt, flexible resource adequacy attributes and local resource adequacy requirements) established for load-serving entities by the PUC pursuant to Requirements of Law and PUC decisions, the CAISO pursuant to the CAISO Tariff, or any other Governmental Authority having jurisdiction.

"**RAR Attributes**" means all resource adequacy attributes capable of being provided from the RA Capacity, including flexible resource adequacy attributes (category 2), and any local, zonal and other locational attributes, as may be identified from time to time by the PUC, the CAISO, or other Governmental Authority having jurisdiction, that may be counted toward RAR.

"**Recipient Party**" has the meaning set forth in Section 11.3(a).

"**Remaining Term**" means, at any date, the remaining portion of the Agreement Term at that date without regard to any early termination of this Agreement.

"**Remedial Action Plan**" has the meaning set forth in Section 3.5(a)(iii).

"**Replacement RA Capacity**" has the meaning set forth in Section 7.4(a).

"**Requirements of Law**" means federal, state and local laws, statutes, regulations, rules, codes, ordinances, resolutions, standards, directives, orders, judgments, decrees, rulings or determinations enacted, adopted, issued or promulgated by any federal, state, local or other Governmental Authority (including those pertaining to electrical, building, zoning, Environmental Laws, and occupational safety and health requirements).

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

"**Scheduled Outage**" means any outage with respect to the Facility that is scheduled by Seller in advance in accordance with the provisions of Section 6.1.

"**Scheduled Outage Projection**" has the meaning set forth in Section 6.1(a).

"**Scheduling Coordinator**" means any entity certified by the CAISO for the purposes of undertaking the functions specified by the CAISO Tariff.

"**Seasonal Contract Price**" means the seasonal price set forth in paragraph 1 of **APPENDIX A**.

"**Seller**" has the meaning set forth in the preamble of this Agreement.

"**Settlement Amount**" has the meaning set forth in Section 10.3(d).

"**Site**" means the real property (including all fixtures and appurtenances thereto) and related physical property generally identified in **APPENDIX B** as owned or leased by Seller where the Facility is located or will be located, or over which Seller has an easement, right-of-way or other right to use or access the property where the Facility is located or will be located.

"**Site Control**" means that Seller shall: (a) own the Site; (b) be the grantee, licensee, or lessee under one or more real property agreements in respect of the Site; or (c) have otherwise provided evidence satisfactory to Buyer of Seller's exclusive right to control the Site so as to permit Seller to perform all of its obligations under this Agreement; each of the foregoing clauses (a) through (c), for the Agreement Term.

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

"**System Emergency**" means each of the following: (a) "System Emergency" as set forth in the CAISO Tariff and (b) a condition or situation that in the judgment of Buyer (i) is imminently likely to endanger life or property; or (ii) is imminently likely (as determined in a non-discriminatory manner) to cause a material adverse effect on the security of, reliability of, or damage to the Transmission System, Transmission Provider's interconnection facilities (as defined in the Generator Interconnection Agreement) or the transmission systems of others to which the Transmission System is directly connected.

"**Tax**" or "**Taxes**" means each federal, state, county, local and other (a) net income, gross income, gross receipts, sales, use, ad valorem, business or occupation, transfer, franchise, profits, withholding, payroll, employment, excise, property or leasehold tax and (b) customs, duty or other fee, assessment or charge of any kind whatsoever, together with any interest and any penalties, additions to tax or additional amount with respect thereto.

"**Tax Equity Financing**" means, with respect to Seller, any transaction or series of transactions resulting in a tax equity investor receiving certain federal tax benefits as a result of capital contributions to Seller or an Affiliate of Seller and with the tax equity investor being granted only such management responsibilities in Seller as are reasonable and customary for similar transactions.

"**Termination Notice**" has the meaning set forth in Section 10.3(a).

"**Termination Payment**" has the meaning set forth in Section 10.3(b).

"**Transmission Provider(s)**" means Southern California Edison Company.

"**Transmission Services**" means the transmission and other services required to transmit Energy to or from the Facility.

"**Transmission System**" means the facilities utilized to provide Transmission Services.

"**Uncontrollable Force**" means an event or circumstance that prevents one Party from performing its obligations under this Agreement, which event or circumstance is not within the reasonable control of, or the result of the negligence of, the claiming Party, and which by the exercise of due diligence the claiming Party is unable to avoid, cause to be avoided, or overcome. So long as the requirements of the preceding sentence are met, an "Uncontrollable Force" may include and is not restricted to flood, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and COVID-19 (but only with respect to governmental rules or mandates related to COVID-19 that are implemented following the Effective Date). The following shall not be considered an "Uncontrollable Force": (a) Seller's cost of producing RAR Attributes except to the extent directly caused by an independent Uncontrollable Force; (b) Buyer's inability to pay; or (c) Buyer's inability due to the price of the RAR Attributes, to use or resell such RAR Attributes. No Party shall, however, be relieved of liability for failure of performance to the extent that such failure is due to causes arising out of its own negligence or due to causes

that are removable or remediable with the application of commercially reasonable efforts, in either case, that such Party fails to remove or remedy within a reasonable time period.

"**Uncontrollable Force** Notice" has the meaning set forth in Section 11.6(a).

"**U.S. Issuer Bank**" means any issuer of a letter of credit that is organized under the laws of the United States or any state thereof.

"**WECC**" means the Western Electricity Coordinating Council and any successor entity thereto.

Other terms defined herein have the meanings so given them in this Agreement.

Section 1.2 Interpretation. In this Agreement, unless a clear contrary intention appears:

(a) the singular number includes the plural number and vice versa;

(b) reference to any Person includes such Person's successors and assigns but, in case of a Party hereto, only if such successors and assigns are permitted by this Agreement, and reference to a Person in a particular capacity excludes such Person in any other capacity or individually;

(c) reference to any gender includes the other;

(d) (i) reference to any agreement (including this Agreement), document, instrument, tariff, rule, or law means such agreement, document, instrument, tariff, rule, or law as amended or modified and in effect from time to time in accordance with the terms thereof and, if applicable, the terms hereof, and any successor to the foregoing (including successor statutes, if applicable), and (ii) any term defined herein by reference to the definition of such term in any agreement, document, instrument, tariff, rule, or law shall have the meaning ascribed to such term, or if such term is no longer used, the term or concept most closely representing such term, in any amended or modified version of such agreement, document, instrument, tariff, rule, or law, or any successor thereto, unless the foregoing interpretation would materially affect the interpretation or performance of this Agreement;

(e) reference to any Article, Section, or Appendix means such Article of this Agreement, Section of this Agreement, or such Appendix to this Agreement, as the case may be, and references in any Article or Section or definition to any clause means such clause of such Article or Section or definition;

(f) "herein", "hereunder", "hereof", "hereto" and words of similar import shall be deemed references to this Agreement as a whole and not to any particular Article or Section or other provision hereof or thereof;

(g) "including" (and with correlative meaning "include") means including without limiting the generality of any description preceding such term;

(h) relative to the determination of any period of time, "from" means "from and including", "to" means "to but excluding" and "through" means "through and including";

(i) reference to time shall always refer to Pacific Prevailing Time;

(j) reference to any "day", "month" or "quarter" shall mean a calendar day, calendar month or calendar quarter respectively, unless otherwise indicated, and assumes the use of Pacific Prevailing Time to determine the start and end of each referenced "day", "month" or "quarter", unless otherwise indicated;

(k) the term "or" is not exclusive; and

(l) with respect to obligations, the terms "shall" and "will" shall have the same meaning and be of equal force and effect.

Section 1.3 Order of Precedence. In the event of any conflict or inconsistency between or among the terms and conditions of any of the body of this Agreement and the Appendices attached to the body of this Agreement, the following order of precedence, consistent with the controlling Requirements of Law, shall govern the interpretation of this Agreement: (a) the body of this Agreement, and (b) the Appendices attached to the body of this Agreement (other than executed documents based on forms attached as Appendices that by their terms govern in the event of any inconsistency).

ARTICLE II
EFFECTIVE DATE, TERM AND EARLY TERMINATION

Section 2.1 Effective Date. This Agreement shall be effective as of the "**Effective Date**," which shall occur as of the date upon which Seller and Buyer have executed and delivered this Agreement. On or prior to the Effective Date, Seller shall deliver to Buyer the Legal Opinion.

Section 2.2 Agreement Term and Delivery Term. This Agreement shall have a delivery term (the "**Delivery Term**") commencing on the Commencement Date and ending at 11:59 p.m. on the date that is fifteen (15) years after the Commencement Date, unless sooner terminated in accordance with the terms of this Agreement. The term of this Agreement (the "**Agreement Term**") shall commence on the Effective Date and shall end upon the expiration of the Delivery Term or earlier termination of this Agreement in accordance with the terms hereof.

Section 2.3 Survivability. The provisions of this Article II, Section 11.19(b)-(e), and Section 11.21 shall survive for a period of one year following the termination of this Agreement. The provisions of Article IX and Section 11.19(a) shall survive for a period of four (4) years following final payment made by Buyer hereunder or the expiration or termination date of this Agreement, whichever is later. The provisions of Article V, Article VI, Article VII, and Article VIII shall continue in effect after termination to the extent necessary to provide for final billing, adjustments and deliveries related to any period prior to termination of this Agreement.

Section 2.4 Early Termination.

(a) **Early Termination by Mutual Agreement**. This Agreement may be terminated by mutual written agreement of the Parties.

(b) **Early Termination for Default**. Upon the occurrence of a Default, the Non-Defaulting Party may terminate this Agreement as set forth in Section 10.3.

(c) **Early Termination for Extended Uncontrollable Force**. This Agreement may be terminated pursuant to Section 11.6(c).

(d) **Early Termination for Exceeding the Pre-COD Liability Cap**. This Agreement may be terminated pursuant to Section 11.19(e).

(e) **Effect of Termination**. Any early termination of this Agreement under this Section 2.4 shall be without prejudice to the rights and remedies of either Party for Defaults occurring prior to such termination.

ARTICLE III
DEVELOPMENT OF THE FACILITY

Section 3.1 In General.

(a) **Project Design**. Seller shall determine the location, design, and configuration of the Facility as it deems appropriate, subject to the Requirements of Law, the requirements for the Facility set forth in **APPENDIX B**, and any conditions imposed by the lead agency or any responsible agency as part of the CEQA review of the Facility.

(b) **Permitting**. Seller, at its expense, shall timely take all steps necessary to obtain and maintain all Permits required to construct, own, maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law and for the performance of Seller's obligations hereunder.

(c) **Meetings with Governmental Authorities**. Seller shall represent the Facility as necessary in all meetings with and proceedings before all Governmental Authorities.

(d) **CEQA Determinations**. The Parties acknowledge and agree that Seller shall have no obligation to sell and Buyer shall have no obligation to purchase any RAR Attributes under this Agreement unless and until all of the following occur:

(i) The lead agency conducting the review of the Facility as required under CEQA shall have certified one of the following: as applicable, that it (A) prepared a final environmental impact report (or equivalent environmental document) for the Facility (the "**CEQA EIR**"), issued a final approval for the Facility, and filed a Notice of Determination for the Facility in compliance with CEQA; (B) prepared an initial study and a negative declaration or mitigated negative declaration for the Facility (the "**CEQA IS/(M)ND**"), issued a final approval for the Facility, and filed a Notice of Determination for the Facility in compliance with CEQA; or (C) determined that the Facility is subject to a CEQA exemption, that no further CEQA evaluation is required, issued a final approval for the Facility, and filed a Notice of Exemption for the Facility (the "**CEQA Notice of Exemption**") in conformance with CEQA; and

(ii) The applicable period for any legal challenges to any action by either the lead agency or any responsible agency under CEQA shall have expired without any such challenge having been filed or, in the event of any such challenge, the challenge shall have been determined adversely to the challenger by final judgment or settlement.

Seller acknowledges and agrees that Buyer retains whatever discretion and authority Buyer may have under CEQA, as may be applicable, with respect to the Facility, this Agreement or otherwise.

(e) **Construction**. Seller shall use commercially reasonable and diligent efforts to site, develop, finance and construct the Facility. Seller shall develop, operate and maintain the Facility, at its sole risk and expense, and in reasonable compliance with the Requirements of Law and applicable manufacturer's and operator's specifications and recommended procedures; *provided, however*, meeting these requirements shall not relieve Seller of its other obligations under this Agreement.

(f) **Ownership of the Facility**. Except as otherwise permitted by this Agreement, the Facility shall be owned by Seller during the Agreement Term. Seller shall not sell or otherwise dispose of or create, incur, assume or permit to exist any Lien (other than Permitted Encumbrances) that would have a material adverse effect on Seller's ability to perform under this Agreement on any portion of the Facility or any other property or assets which are related to the operation, maintenance and use of the Facility without the prior written approval of Buyer. The Facility shall be operated during the Delivery Term by a Qualified Operator.

Section 3.2 Certification of Commercial Operation Dates. Not less than thirty (30) days prior to the date upon which Seller expects to achieve all of the conditions precedent to Commercial Operation as specified in **APPENDIX G-2**, Seller shall give written notice to Buyer of such expected date of Commercial Operation. Seller shall deliver written completion certifications to Buyer in the form of **APPENDIX G-2**. The "**Commercial Operation Date**" shall be the date on which Seller delivered the certification to Buyer as provided in this Section 3.2.

Section 3.3 Commencement Date Notices. Seller shall provide Buyer no fewer than ninety (90) days' prior written notice of the date on which Seller anticipates achievement of the Commencement Date. As soon as reasonably practicable after the Commencement Date has been achieved, Seller shall provide Buyer a notice to document such date.

Section 3.4 Other Information. Seller shall provide to Buyer such other information regarding the permitting or operations of Seller or the Facility as Buyer or Buyer's Authorized Representative may, from time to time, reasonably request. Seller shall permit Buyer and Buyer's Authorized Representative to inspect the Facility from time to time throughout the Agreement Term, upon reasonable (but no less than ten (10) Business Days) prior notice to Seller and during reasonable business hours, on the condition that (i) such activity does not materially disrupt operations at the Facility, and (ii) any such Authorized Representatives at the Site comply with any Site-specific rules and requirements notified to Buyer in advance.

Section 3.5 Milestone Schedule; Delay Damages.

(a) **Milestone Schedule; Reporting.**

(i) Attached as **APPENDIX F** is a milestone schedule with deadlines for the development of the Facility through the Commencement Date (each milestone, a "**Milestone**" and each date by which a Milestone is to be completed, and subject to adjustment under Section 3.5(b), a "**Milestone Date**"). Seller shall use commercially reasonable efforts to achieve each Milestone by the Milestone Date therefor.

(ii) Until the Commencement Date, Seller shall provide Buyer with a report on a quarterly basis that includes: (1) a description of the Site plan for the Facility, (2) a description of any planned changes to the Facility or Site plan since the previously delivered report, (3) a bar chart schedule showing progress to achieving the remaining Milestones with respect to the Facility, (4) a chart showing the critical path schedule of major items and activities, (5) a summary of activities at the Facility during the previous quarter, (6) a forecast of activities during the then-current quarter, and (7) a list of any significant developments or delays or other issues that could impact Seller's achievement of Milestones relating to the Facility by the applicable Milestone Dates and any changes to the anticipated Commencement Date.

(iii) If Seller anticipates that it will not achieve a Milestone by the applicable Milestone Date (as such date may be extended pursuant to this Section 3.5), Seller shall promptly prepare and deliver to Buyer a remedial action plan ("**Remedial Action Plan**"), which shall set forth (1) the anticipated period of delay, (2) the basis for such delay, (3) an outline of the commercially reasonable steps that Seller is taking to address the delay and to ensure that future Milestones, including the Guaranteed Commencement Date, will be timely achieved, (4) a proposed revised date for achievement of the applicable Milestone and (5) such other information and in such detail as may be reasonably requested by Buyer. Except as set forth in Section 3.5(b), Seller shall not have any liability for failure to timely achieve a Milestone other than the obligation to submit a Remedial Action Plan; *provided, however*, that the foregoing shall not limit Buyer's right to exercise any right or remedy available under this Agreement or at law or in equity for any other Default occurring concurrently with or before or after Seller's delay in achievement of the applicable Milestone.

(b) **Delays; Delay Damages**.

(i) Each Milestone Date (other than the Outside Commencement Date) may be extended, on a day-for-day basis to the extent Seller is actually, demonstrably and unavoidably delayed in achieving such Milestone due to an Uncontrollable Force, a CEQA Delay or an Interconnection Delay. Notwithstanding anything to the contrary set forth in this Agreement, the Outside Commencement Date shall not be extended for any reason whatsoever, including due to any Uncontrollable Force, a CEQA Delay or any Interconnection Delay, and the failure to achieve the Commencement Date by the Outside Commencement Date shall be an immediate Default by Seller, and Buyer shall have the right in its sole discretion and without penalty to terminate this Agreement for a Default under Section 10.3, not subject to extension or cure of any kind.

(ii) If Seller fails to achieve any Key Milestone by the applicable Milestone Date (as such Milestone Date may be extended pursuant to Section 3.5(b)(i)), Seller shall pay liquidated damages to Buyer in the applicable liquidated damage amount set forth for such Key Milestone in **APPENDIX F** (the "**Delay Damages**") for each day between the Milestone

Date and the earlier of the date upon which such Key Milestone is achieved or the date upon which this Agreement is terminated by Buyer. Seller shall pay to Buyer Delay Damages within seven (7) days after receipt of an invoice therefor from Buyer. If Seller (A) incurs Delay Damages for failure to timely achieve the Construction Start Date, but (B) achieves the Commencement Date by the Guaranteed Commencement Date, then Buyer shall refund to Seller any amounts previously paid to Buyer as Delay Damages for failure to timely achieve the Construction Start Date.

(iii) The Parties agree that the damages that Buyer would incur due to Seller's failure to timely achieve a Key Milestone would be difficult or impossible to predict with certainty, and it is impractical or difficult to assess actual damages in those circumstances, but the Delay Damages are a fair and reasonable calculation of such damages for Seller's failure to achieve any Key Milestone by the Milestone Date therefor. The payment of Delay Damages as provided in this Article III are Buyer's sole remedy for Seller's failure to timely achieve a Key Milestone, but shall not limit Buyer's right to (A) exercise any right or remedy available under this Agreement or at law or in equity for any other breach or default occurring concurrently with, before, or after Seller's delay in achieving the applicable Key Milestone by the Milestone Date therefor, (B) recover any damages or pursue any indemnity claims in accordance with this Agreement, or (C) terminate this Agreement pursuant to Section 10.3, *provided that* the payment of Delay Damages shall be taken into account when determining any damages due Buyer for such termination; *provided further* that in no event shall any damages, including Delay Damages, owed in connection with such termination exceed the limitation of liability provided in Section 11.19(e).

Section 3.6 Decommissioning and Other Costs. Buyer shall not be responsible for any cost of decommissioning or demolition of the Facility Assets or any environmental or other liability associated with the decommissioning or demolition of the Facility Assets without regard to the timing or cause of the decommissioning or demolition of the Facility Assets.

ARTICLE IV
OPERATION AND MAINTENANCE OF THE FACILITY

Section 4.1 General Operational Requirements.

Seller shall or shall cause its Qualified Operator to, at all times:

(a) At its sole expense, operate and maintain the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement, all applicable Requirements of Law and the requirements of applicable manufacturers' and operators' specifications, using commercially reasonable efforts to comply with any published recommendations of the manufacturers and suppliers of the major components of the Facility;

(b) Employ qualified and trained personnel for managing, operating and maintaining the Facility and for coordinating with Buyer and Buyer's Agent. Seller shall ensure that necessary personnel are available on-site or on-call twenty-four (24) hours per day during the Delivery Term; and

(c) Operate and maintain the Facility with due regard for the safety, security and reliability of the interconnected facilities and Transmission System.

Section 4.2 Reporting and Information. For the duration of the Delivery Term, Seller shall provide to Buyer (a) within thirty (30) days following the end of each Contract Year, an Annual Report of past performance during such Contract Year related to events or circumstances affecting Seller's delivery of the RAR Attributes; and (b) such other information regarding the Facility as Buyer may, from time to time, reasonably request.

ARTICLE V
COMPLIANCE DURING OPERATION PERIOD

Section 5.1 The Facility. Seller shall perform or cause to be performed, all engineering, design, development and construction of the Facility, and shall perform, or cause to be performed, any future engineering, design, development, and construction of the Facility, in a good and workmanlike manner and in accordance with applicable standards, Prudent Utility Practices, all applicable Requirements of Law, and all other requirements of this Agreement. Throughout the Agreement Term, Seller will monitor the operation and maintenance of the Facility and ensure that said operation and maintenance is, and will be, in full compliance with Prudent Utility Practices, Requirements of Law, and other provisions of this Agreement. Without limiting the foregoing, Seller shall promptly repair or replace, consistent with Prudent Utility Practices and the requirements of Facility Lenders, any component of the Facility that does not comply with the foregoing. Seller shall at all times exercise commercially reasonable efforts to undertake all recommended or required updates or modifications to the Facility, its equipment and materials, including procedures, programming and software in a timely manner.

Section 5.2 Compliance with Standards. Seller shall cause the Facility and all parts thereof to be operated and maintained to meet (a) all of the requirements of this Agreement, (b) all applicable standards and requirements of the latest revision of standards or requirements of the ASTM, ASME, ASCE, AWS, EPA, EEI, IEEE, ISA, National Electric Code, National Electric Safety Code, OSHA, Cal-OSHA, Uniform Building Code, Uniform Plumbing Code, Underwriters Laboratory Standards, the local County Fire Department Standards of the applicable county, and applicable National Fire Protection Agency standards and requirements, (c) all applicable FERC-approved NERC Reliability Standards, (d) any other material codes, standards, and operations and maintenance requirements applicable to the services, equipment, and work, as generally shown in this Agreement, and (e) all applicable Requirements of Law not specifically mentioned in this Section 5.2. Subject to Section 7.6 and as otherwise expressly provided herein, Seller shall assume all risks, costs or expenses associated with, arising from, or resulting from, its obligation to keep the Facility compliant in accordance with the foregoing sentence.

Section 5.3 Security Provided by Seller.

(a) Within ten (10) days after the Effective Date, Seller shall deliver to Buyer an Acceptable Form of Performance Assurance in the amount of Three Million Six Hundred Thousand Dollars ($3,600,000), which Acceptable Form of Performance Assurance shall secure Seller's obligations under this Agreement prior to the achievement of the Commencement Date (the "**Project Development Security**"). Seller shall maintain the Project Development Security until the Commencement Date, or until Buyer is required to return the Project Development Security under Section 5.3(c) or any other provision of this Agreement.

(b) As a condition to the achievement of the Commencement Date, Seller shall deliver to Buyer an Acceptable Form of Performance Assurance in the amount of Four Million Eight Hundred Thousand Dollars ($4,800,000), which Acceptable Form of Performance Assurance shall secure all Seller's obligations under this Agreement from and after the Commencement Date, (the "**Delivery Term Security**"). Seller shall maintain the Delivery Term Security in the required amount until the end of the Delivery Term or until Buyer is required to return the Delivery Term Security to Seller as set forth in Section 5.3(c).

(c) Buyer shall return the unused portion of the (i) Project Development Security, if any, to Seller promptly after: (A) the later of (1) Seller's provision of the Delivery Term Security, unless Seller elects to apply the Project Development Security toward the Delivery Term Security and (2) the payment of all Delay Damages due and owing to Buyer or (B) the effective date of any early termination of this Agreement by Buyer promptly upon payment of all damages due and owing to Buyer, and (ii) Delivery Term Security, if any, to Seller promptly after: (A) the Agreement Term has ended, and (B) all obligations of Seller arising under this Agreement are paid (whether directly or indirectly such as through set-off or netting) or performed in full.

(d) Buyer may draw on the Performance Security (i) at any time following Seller's failure to timely pay Delay Damages when due hereunder in the amount of such Delay Damages or any other liquidated damages provided for hereunder, or (ii) upon Seller's failure to make any other payment due to Buyer hereunder in the amount of such unpaid payment, including any Termination Payment, subject to any cure right expressly provided herein. Buyer may draw all or any part of such amounts due to Buyer from any form of security provided under this Section 5.3, and in any sequence, Buyer may elect, in its sole discretion. Any failure of, or delay by, Buyer in electing to draw any amount from the Performance Security shall in no way prejudice Buyer's rights to subsequently recover such amounts from the Performance Security or in any other manner. Within ten (10) Business Days following any draw by Buyer on the Delivery Term Security, Seller shall replenish the amount drawn such that the Delivery Term Security (including the cash held as security under Section 5.3(e)) is restored to the applicable amount set forth in Section 5.3(b), as applicable, other than in connection with termination of this Agreement. Seller shall not be obligated to replenish the Project Development Security following any draw thereupon by Buyer.

(e) Seller shall notify Buyer of the occurrence of a Downgrade Event within five (5) Business Days after obtaining knowledge of the occurrence of such event. Buyer shall notify Seller if at any time Buyer is directed by a Governmental Authority to terminate any relationship with the issuer of any Performance Security. If at any time there shall occur a Downgrade Event or Seller receives notice of Buyer's termination of its relationship with the issuer of any Performance Security, Seller shall replace such Performance Security within ten (10) Business Days after such Downgrade Event or twenty (20) Business Days after receipt of such notice, as applicable. Such replacement security shall meet the requirements of this Section 5.3. If the replacement Performance Security is not provided by Seller, Buyer shall have the right to demand payment of the full amount of the Performance Security, and Buyer shall retain such amount in order to secure Seller's obligations under this Agreement; *provided* that if and to the extent such amount exceeds payment and performance in full of all of Seller's obligations under this Agreement, Buyer shall refund the excess to Seller promptly after all such obligations of Seller under this Agreement have been paid or performed in full.

(f) The Project Development Security shall remain in place from the date it is effective in accordance with clause (a) above until the Commencement Date and the Delivery Term Security shall remain in place continuously for the entire Delivery Term (except, in each case, to the extent drawn upon as provided herein). If any Performance Security is in the form of a letter of credit expiring before the Commencement Date (in the case of Project Development Security) or the end of the Delivery Term (in the case of Delivery Term Security), Seller shall cause their renewal or extension for additional consecutive terms of three hundred sixty (360) Days or more (or, if shorter, the remainder of the time such Performance Security must remain in place in accordance with the prior sentence) no later than thirty (30) Days prior to each expiration date of such letter(s) of credit and written proof of such renewal shall be provided to Buyer as soon as practicable thereafter, but in no event later than fifteen (15) Days prior to the expiration of the same. If any such letter of credit is not renewed or extended as required herein or does not constitute an Acceptable Form of Performance Assurance, Buyer shall have the right to draw immediately upon the entire amount of such letter of credit and to place the amounts so drawn which shall thereafter be treated by Buyer as Performance Security hereunder, at Seller's cost and with Seller's funds, in an account controlled by Buyer until and unless Seller provides a substitute Acceptable Form of Performance Assurance.

(g) Seller shall, from time to time as reasonably requested by Buyer's Authorized Representative, execute, acknowledge, record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary to render fully valid, perfected and enforceable under all Requirements of Law the Performance Security and the rights, Liens and priorities of Buyers with respect to such Performance Security; *provided* that Seller shall not be required to incur costs in excess of *de minimus* administrative costs in connection therewith. Notwithstanding the other provisions of this Agreement, but subject to the cap in Section 11.19(e), the Performance Security: (i) constitutes security for, but is not a limitation of, Seller's obligations under this Agreement, and (ii) shall not be Buyers' exclusive remedy against Seller for Seller's failure to perform in accordance with this Agreement.

Section 5.4 Effect of Review by Buyer. Any review by Buyer of the operation or maintenance of the Facility is solely for the information of Buyer. Buyer shall have no obligation to share the results of any such review or observation with Seller, nor shall any such review or observation or the results thereof (whether or not the results are shared with Seller), nor any failure to conduct any such review, relieve Seller from any of its obligations under this Agreement. By making any such review, Buyer makes no representation as to the economic and technical feasibility, operational capability, or reliability of the Facility. Seller shall in no way represent to any third party that any such review by Buyer of the Facility, including any review of the operation or maintenance of the Facility by Buyer, is a representation by Buyer as to the economic and technical feasibility, operational capability, or reliability of the Facility. Seller is solely responsible for the economic and technical feasibility, operational capability and reliability thereof.

ARTICLE VI
OUTAGES; TITLE AND RISK OF LOSS

Section 6.1 Scheduled Outage.

(a) Seller shall not schedule any Scheduled Outages that would reduce or limit the amount of RAR Attributes during the period from May through October, except for Scheduled Outages that must be scheduled during the foregoing months in order to comply with Prudent Utility Practices or that must be scheduled during the foregoing months to avoid damage to the Facility, for health and safety reasons, to maintain equipment warranties, or in accordance with manufacturer recommendation. No later than sixty (60) days prior to the scheduled Commencement Date and, for each calendar year thereafter, no later than the deadline for providing the CAISO with proposed maintenance outages for the following year as described in the CAISO Tariff, Seller shall provide Buyer with its non- binding written projection of all Scheduled Outages for the succeeding three (3) calendar years (the "**Scheduled Outage Projection**"), which shall not include any Scheduled Outage during the period from May through October except as provided above. In addition, Seller shall cooperate in good faith with Buyer's maintenance scheduling requests consistent with Prudent Utility Practices. The Scheduled Outage Projection shall include information concerning all projected Scheduled Outages during such period, including (i) the anticipated start and end dates of each Scheduled Outage; (ii) a description of the maintenance or repair work to be performed during the Scheduled Outage; and (iii) the anticipated MW capacity of operational capacity, if any, during the Scheduled Outage. Seller shall notify Buyer of any change in the Scheduled Outage Projection as soon as practicable. Seller will use commercially reasonable efforts to accommodate reasonable requests of Buyer with respect to the timing of Scheduled Outages and Seller will, to the extent consistent with Prudent Utility Practices, coordinate Scheduled Outages to coincide with planned transmission outages. In the event of a System Emergency, Seller shall make all reasonable efforts to reschedule any Scheduled Outage previously scheduled to occur during the System Emergency.

(b) In the event of a Forced Outage that is reasonably likely to affect Seller's ability to perform its obligations under this Agreement, Seller shall notify Buyer within twenty-four (24) hours after the commencement of the Forced Outage and, within seven (7) days thereafter, provide detailed information concerning the Forced Outage, including (i) the start and anticipated end dates of the Forced Outage; (ii) a description of the cause of the Forced Outage; (iii) a description of the maintenance or repair work to be performed during the Forced Outage; and (iv) the anticipated MW capacity of operational capacity, if any, during the Forced Outage. Seller shall take all reasonable measures and exercise commercially reasonable efforts to avoid Forced Outages and to limit the duration and extent of any such outages.

Section 6.2 Title; Risk of Loss. Title to each RAR Attribute shall pass from Seller to Buyer at the time that the CIRA interface shows that (a) Seller has a submitted a monthly Supply Plan for such RAR Attribute to CAISO, (b) such Supply Plan matches the corresponding Resource Adequacy Plan submitted by Buyer, and (c) CAISO has accepted such Supply Plan.

ARTICLE VII
RAR ATTRIBUTES

Section 7.1 Purchase and Sale of RAR Attributes. During the Delivery Term, Seller shall deliver and sell, and Buyer shall purchase and receive, all RAR Attributes on the terms and conditions set forth herein. During the Delivery Term, (a) Buyer shall have exclusive rights to the RAR Attributes and all benefits derived therefrom, including the exclusive right to use, market or sell the RAR Attributes and the right to all revenues generated from the use, sale or marketing of the RAR Attributes; and (b) Seller hereby grants, pledges, assigns and otherwise commits to Buyer all of the RAR Attributes which may be used to meet the RAR. In no event shall Buyer have any obligation or liability whatsoever for any debt pertaining to the Facility by virtue of Buyer's ownership of the RAR Attributes or otherwise. Buyer shall reasonably cooperate with Seller in order to permit Seller to deliver and sell the RAR Attributes to Buyer in accordance with this Agreement, including timely submitting Resource Adequacy Plans to CAISO and communicating with CAISO as appropriate in the event of a discrepancy between the Supply Plan and Resource Adequacy Plan or failure of CAISO to validate a Supply Plan.

Section 7.2 Representation Regarding Ownership of the RAR Attributes: Seller represents and covenants that it has not assigned, transferred, conveyed, encumbered, sold or otherwise disposed of and will not in the future assign, transfer, convey, encumber, sell or otherwise dispose of any of the RAR Attributes to any Person other than Buyer or attempt to do any of the foregoing with respect to any of the RAR Attributes . Seller shall not report to any Person that any RAR Attributes belong to any Person other than Buyer. Buyer may, at its own risk and expense, report to any Person that the RAR Attributes belong to it.

Section 7.3 Expected RA Capacity. Seller may reduce the Expected RA Capacity to the extent (a) the Facility's Net Qualifying Capacity and/or Effective Flexible Capacity (each as determined by the CAISO or the PUC, as applicable) is reduced by the CAISO or the PUC, as applicable, for any reason not within the reasonable control of, or the result of the negligence of, Seller; (b) a reduction in the RA Capacity is caused by (i) an Uncontrollable Force, (ii) any transmission outage imposed by CAISO or Transmission Provider for any reason not within the reasonable control of, or the result of the negligence of, Seller, or (iii) a Scheduled Outage during the months of November through April (provided that any Scheduled Outages during months of May through October shall not be excused); or (c) a change of law occurs after the Effective Date that (i) revises the requirements for the provision or receipt of RAR Attributes and (ii) would result in Seller incurring costs or losses in excess of $5,000/MW in the aggregate over the Delivery Term to provide the same amount of RAR Attributes as provided prior to the change of law, but only if such costs or losses may be mitigated through the reduction in the Expected RA Capacity and do not result from the fault or negligence of Seller.

Section 7.4 Failure to Provide Expected RA Capacity.

(a) Seller shall provide Buyer with the Expected RA Capacity by submitting monthly and annual Supply Plans in accordance with the CAISO Tariff. Seller shall deliver notice to Buyer of the RA Capacity that Seller will include in any (i) annual Supply Plan at least forty-five (45) days prior to the CAISO submission deadline for such annual Supply Plan, and (ii) monthly Supply Plan at least fifteen (15) days prior to the CAISO's submission deadline for such

monthly Supply Plan (as applicable, the "**Notification Deadline**"). Seller shall cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the CAISO Tariff. If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected RA Capacity, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the correct Supply Plan or Resource Adequacy Plan for validation before the applicable deadline. If Seller fails to submit a Supply Plan in accordance with the requirements of this Agreement for the entire Expected RA Capacity from the Facility for a given period of time, then Seller shall replace all or a portion of the Expected RA Capacity with replacement resource adequacy capacity from a generating or storage facility other than the Facility that is included in the CAISO Final Net Qualifying Capacity Report and Final Effective Flexible Capacity List of the applicable compliance year ("**Replacement RA Capacity**"), *provided* that such Replacement RA Capacity has RAR Attributes of equivalent or higher quality (including, for the avoidance of doubt, any local resource adequacy requirements attributes) compared to the Expected RA Capacity not provided by Seller from the Facility. Seller shall notify Buyer prior to the Notification Deadline of Seller's intent to provide Replacement RA Capacity, including the relevant Supply Plan, the source, volume, and duration, and such other information as may be reasonably requested by Buyer. Seller shall reimburse Buyer for all additional costs of Buyer arising from or related to Seller providing Replacement RA Capacity.

(b) If Seller fails to provide any portion of the Expected RA Capacity in accordance with Section 7.4(a) and does not provide Replacement RA Capacity for such Expected RA Capacity in accordance with Section 7.4(a), then in either case, for each MW of RA Shortfall, Seller shall pay to Buyer an amount equal to the difference between (i) Buyer's reasonable costs to replace such MW of RA Shortfall (or the prevailing market price in the absence of replacement by Buyer) and (ii) the applicable monthly Seasonal Contract Price times such MW of RA Shortfall. Seller shall use diligent efforts to provide Replacement RA Capacity and shall only be entitled to cure any RA deficiency by paying the amount determined pursuant to the foregoing sentence for the RA Shortfall if Seller has failed to provide sufficient Replacement RA Capacity despite Seller's diligent efforts. The Parties agree that (A) it is impractical or extremely difficult to determine actual damages to which Buyer would be entitled in the foregoing circumstance, and (B) the damages provided for in this Section 7.4(b) are a fair and reasonable calculation of actual damages to Buyer and are not a penalty in such a circumstance.

Section 7.5 Further Action by Seller Regarding RAR Attributes. Seller shall execute and deliver such documents and instruments and take such other action as Buyer or Buyer's Authorized Representative may reasonably request to effect recognition and transfer of the RAR Attributes to Buyer; provided that the Parties acknowledge and agree that as of the Effective Date, the costs associated with the foregoing as required by the CAISO Tariff are de-minimis, and Seller shall not be required to bear any additional costs associated with the foregoing other than (a) such de-minimis costs and (b) any additional costs associated with the foregoing due to any change of the CAISO Tariff, which shall be subject to the Compliance Expenditure Cap.

Section 7.6 Compliance Expenditure Cap.

(a) Notwithstanding anything herein to the contrary, if Seller establishes to Buyer's reasonable satisfaction that a change of law that occurs after the Effective Date would require Seller to incur costs in excess of those which could reasonably have been contemplated as

of the Effective Date in order to comply with Seller's obligations under this Agreement with respect to providing RAR Attributes, and that reducing the Expected RA Capacity in accordance with Section 7.3 does not mitigate such costs, then the Parties agree that the maximum amount of such excess costs and expenses that Seller shall be required to bear during any Contract Year shall be capped at four hundred thousand dollars ($400,000) and in the aggregate during the Delivery Term shall be capped at one million two hundred thousand dollars ($1,200,000) ("**Compliance Expenditure Cap**").

(b) Any actions required for Seller to comply with its obligations set forth in the subsection (a) of this Section 7.6 above, the cost of which will be included in the Compliance Expenditure Cap or covered by the Accepted Compliance Costs, shall be referred to collectively as the "**Compliance Actions**."

(c) If Seller reasonably anticipates the need to incur out-of-pocket expenses in excess of the Compliance Expenditure Cap in order to take any Compliance Action, Seller shall notify Buyer of such anticipated out-of-pocket expenses. Buyer will have sixty (60) days to evaluate such notice (during which time period Seller is not obligated to take any Compliance Actions described in the notice) and shall, within such time, either (i) agree to reimburse Seller for all or some portion of the costs that exceed the Compliance Expenditure Cap (such Buyer-agreed upon costs, the "**Accepted Compliance Costs**"), or (ii) waive Seller's obligation to take such Compliance Actions, or any part thereof for which Buyer has not agreed to reimburse Seller. If Buyer does not respond to a notice given by Seller under this Section 7.6 within sixty (60) days after Buyer's receipt of same, Buyer shall be deemed to have waived its rights to require Seller to take the Compliance Actions that are the subject of the notice, and Seller shall have no further obligations to take, and no liability for a failure to take, such Compliance Actions for the remainder of the Delivery Term.

(d) If Buyer agrees to reimburse Seller for the Accepted Compliance Costs, then Seller shall take such Compliance Actions covered by the Accepted Compliance Costs as agreed upon by Buyer and Buyer shall reimburse Seller for Seller's actual costs above the Compliance Expenditure Cap to effect the Compliance Actions, not to exceed the Accepted Compliance Costs, within sixty (60) days from the time that Buyer receives an invoice and documentation of such costs from Seller. If Buyer agrees to reimburse Seller for the Accepted Compliance Costs for less than all of the costs that exceed the Compliance Expenditure Cap, Seller shall only be obligated to take the Compliance Actions covered by the Accepted Compliance Costs.

ARTICLE VIII
BILLING; PAYMENT; AUDITS; METERING; ATTESTATIONS; POLICIES

Section 8.1 Billing and Payment. Billing and payment for the RAR Attributes purchased by Buyer under this Agreement and for any other amounts due and payable by Buyer hereunder shall be as follows:

(a) On or before the tenth (10th) day of the month following a month for which the RAR Attributes have been provided to Buyer hereunder, Seller shall render an invoice (including the name of the Facility, Seller's address and the contact information of the preparer)

to Buyer showing the Provided RA Capacity for the preceding month and the applicable monthly payment, which amount shall equal to (i) the Flat Contract Price for the portion of the Provided RA Capacity up to fifty percent (50%) of the corresponding monthly Net Qualifying Capacity of the Facility *plus* (ii) the Seasonal Contract Price for the remaining Provided RA Capacity in excess of such threshold, together with reasonable supporting documentation.

(b) Monthly invoices shall be sent to the address set forth in **APPENDIX C** or such other address as is provided by Buyer in writing.

(c) Confirmation of Seller's compliance with the terms and conditions of this Agreement shall accompany monthly invoices.

Section 8.2 Payment. Subject to the provisions of Section 8.3, Buyer shall pay the amounts set forth in each monthly invoice by wire transfer to the accounts designated on the invoice rendered by Seller on or before the thirtieth (30th) day after receipt by Buyer of the applicable invoice. Bills or portions of bills which are not paid by the due date shall thereafter accrue interest at the Interest Rate, from and including the date payment was due until the date such payment is made. Buyer shall not be required to pay any amounts included in an invoice received more than twelve (12) months after the billing period.

Section 8.3 Disputed Invoices. In the event any portion of any invoice is in dispute, the undisputed amount shall be paid when due. The Party disputing a payment shall promptly notify the other Party of the basis for the dispute. Disputes shall be discussed by the Authorized Representatives, who shall use reasonable efforts to amicably and promptly resolve the disputes, and any failure to agree shall be subject to resolution in accordance with Section 11.3. Upon resolution of any dispute, if all or part of the disputed amount is later determined to have been due, then the Party owing such payment or refund shall pay within ten (10) days after receipt of notice of such determination the amount determined to be due plus interest thereon at the Interest Rate from the due date until the date of payment. "**Interest Rate**" shall mean two percent (2%) above the annual rate of interest published daily in The Wall Street Journal as the "Prime Rate" or if such publication or reference is no longer published, the maximum rate from time to time permitted by applicable Requirements of Law. Buyer or Buyer's Authorized Representative may dispute an invoice at any time, *provided* that Buyer or Buyer's Authorized Representative provides Seller with a notification of such dispute, setting forth the details of such dispute in reasonable specificity.

Section 8.4 Buyer's Right of Setoff. In addition to any right now or hereafter granted under applicable law and not by way of limitation of any such rights, Buyer shall have the right at any time or from time to time without notice to Seller or to any other Person, any such notice being hereby expressly waived, to set off against any amount due Seller from Buyer under this Agreement or otherwise any undisputed amount due Buyer from Seller under this Agreement or otherwise, including any undisputed amounts due because of breach of this Agreement or any other obligation and any costs payable by Seller under Section 8.6, Section 11.7(g), or Section 11.9 if and to the extent paid in the first instance by Buyer.

Section 8.5 Records and Audits. Seller shall maintain, and shall cause Seller's subcontractors as applicable to maintain, all records pertaining to the management of this Agreement, related subcontracts and performance of services pursuant to this Agreement, in their

original form, including all billings, metering, and related subcontracts, and in particular all records sufficient to properly reflect all amounts billed to Buyer pursuant to this Agreement. Buyer and the Authorized Auditors shall have the right to discuss such records with Seller's officers and independent public accountants (and by this provision Seller authorizes said accountants to discuss such billings and costs), all at such times and as often as may be reasonably requested. All records shall be retained, and shall be subject to examination and audit by the Authorized Auditors, for a period of not less than four (4) years following the relevant payment made by Buyer hereunder. Seller shall make said records or, to the extent accepted by the Authorized Auditors, photographs, micro-photographs, etc. or other authentic reproductions thereof, available to the Authorized Auditors at Seller's offices located at all reasonable times and without charge. The Authorized Auditors shall have the right to reproduce, photocopy, download, transcribe and the like any such records; *provided* that, Seller may redact such records to remove sensitive confidential information in a reasonable manner. Any information provided by Seller on machine-readable media shall be provided in a format accessible and readable by the Authorized Auditors. Seller shall not, however, be required to furnish the Authorized Auditors with commonly available software. Seller shall, as applicable to the services provided under this Agreement, permit, at any time with fourteen (14) days' prior written notice, audits or examinations by Authorized Auditors, relating to all billings and to verify compliance with all Agreement requirements relative to practices, methods, procedures, performance, compensation and documentation. Examinations and audits shall be performed using generally accepted auditing practices and principles and applicable Governmental Authority audit standards. If Seller utilizes or is subject to Federal Acquisition Regulation, Part 30 and 31, *et seq.* accounting procedures, or a portion thereof, examinations and audits shall utilize such information. To the extent that an Authorized Auditor's examination or audit reveals inaccurate, incomplete or non-current records, or records are unavailable, the records shall be considered defective. Consistent with standard auditing procedures, Seller shall be provided fifteen (15) days to review an Authorized Auditor's examination results or audit and respond to Buyer's Authorized Representative prior to the examination's or audit's finalization and public release. If an Authorized Auditor's examination or audit indicates Seller has been overpaid or underpaid under a previous payment application, Buyer shall promptly notify Seller of the foregoing and the identified overpayment or underpayment amount shall be paid (plus interest thereon at the Interest Rate) within fifteen (15) days of notice to Seller of the identified overpayment or underpayment.

Section 8.6 Taxes. Seller shall be responsible for and shall pay, before the due dates therefor, any and all federal, state and local Taxes incurred by it as a result of entering into this Agreement and all Taxes imposed or assessed with respect to the Facility, the Site, or any other assets of Seller, and all Taxes related to Seller's income. If Buyer is required under any Requirement of Law to remit or pay Taxes that are Seller's responsibility hereunder, Buyer may deduct such amounts from payments to Seller hereunder; if Buyer elects not to deduct such amounts from payments to Seller, Seller shall promptly reimburse Buyer for such amounts promptly upon request. Further, if the Facility is exempt from one or more Taxes at any time and for any reason, and that exemption is lost at any time during the Agreement Term, Seller shall be responsible for any additional Taxes incurred as a result of the loss of that exemption.

ARTICLE IX
REPRESENTATIONS AND WARRANTIES; COVENANTS OF SELLER

Section 9.1 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as of the Effective Date that:

(a) Buyer is a validly existing charter city and municipal corporation under the laws of the State of California and has the legal power and authority to own its properties, to carry on its business as now being conducted and to enter into this Agreement and carry out the transactions contemplated hereby and thereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Buyer of this Agreement, and the fulfillment of and compliance with the provisions of this Agreement, have been duly authorized by all necessary action, and do not and will not require any consent or approval of Buyer's City Council, other than that which has been obtained.

(c) This Agreement constitutes the legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(d) There is no pending, or to the knowledge of Buyer, threatened action or proceeding affecting Buyer before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement.

(e) Buyer is not in violation of any Requirement of Law, which violation(s), individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Buyer, or the ability of Buyer to perform any of its obligations under this Agreement.

(f) Buyer has (i) not entered into this Agreement with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for their respective obligations under this Agreement. No petition in bankruptcy has been filed against Buyer, and Buyer has never made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

Section 9.2 Representations and Warranties of Seller. Seller represents and warrants to Buyer that:

(a) Seller is a corporation or limited liability company duly organized, validly existing and in good standing under the laws of its respective state of incorporation or organization, is qualified to do business in the State of California and (the state where Facility is located, as applicable), and has the legal power and authority to own and lease its properties, to carry on its business as now being conducted and (in the case of Seller) to enter into this Agreement and carry out the transactions contemplated hereby and perform and carry out all covenants and obligations on its part to be performed under and pursuant to this Agreement.

(b) The execution, delivery and performance by Seller of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of and compliance with the provisions of this Agreement, have been duly authorized by all necessary action, and do not and will not require any consent or approval other than those which have already been obtained.

(c) The execution and delivery of this Agreement, the consummation of the transactions contemplated hereby and the fulfillment of and compliance with the provisions of this Agreement, do not conflict with or constitute a breach of or a default under, any of the terms, conditions or provisions of any Requirement of Law, or any organizational documents, agreement, deed of trust, mortgage, loan agreement, other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which it or any of its property is bound, result in a breach of or a default under any of the foregoing or result in or require the creation or imposition of any Lien upon any of the properties or assets of Seller (except as contemplated hereby), and Seller has obtained or will obtain in the ordinary course of business, at no expense to Buyer, all Permits, including, to the extent required, any FERC authorization, required for the performance of its obligations hereunder and thereunder and operation of the Facility in accordance with Prudent Utility Practices, the requirements of this Agreement and all applicable Requirements of Law.

(d) This Agreement constitutes the legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization or similar laws relating to or affecting the enforcement of creditors' rights generally or by general equitable principles, regardless of whether such enforceability is considered in a proceeding in equity or at law.

(e) There is no pending, or to the knowledge of Seller, threatened action or proceeding affecting Seller before any Governmental Authority, which purports to affect the legality, validity or enforceability of this Agreement.

(f) Seller is not in violation of any Requirement of Law, which violation(s), individually or in the aggregate, would reasonably be expected to result in a material adverse effect on the business, assets, operations, condition (financial or otherwise) or prospects of Seller, or the ability of Seller to perform any of its obligations under this Agreement.

(g) Reserved.

(h) Seller has (i) not entered into this Agreement with the actual intent to hinder, delay or defraud any creditor, and (ii) received reasonably equivalent value in exchange for their respective obligations under this Agreement. No petition in bankruptcy has been filed against Seller, and neither Seller nor any of Seller's respective constituent Persons have ever made an assignment for the benefit of creditors or taken advantage of any insolvency act for its benefit as a debtor.

(i) Seller has no reason to believe that any of the Permits required to maintain or operate the Facility in accordance with the requirements of this Agreement and all applicable Requirements of Law will not be timely obtained in the ordinary course of business.

(j) Seller has not used, assigned, transferred, conveyed, encumbered, sold or otherwise disposed of any of RAR Attributes that Seller is required to deliver to Buyer pursuant to this Agreement.

(k) To Seller's knowledge, there are no investigations, inquiries, orders, hearings, actions or other proceedings by or before any Governmental Authority that are pending or, to the best of Seller's knowledge, threatened in connection with any Permit or Environmental Laws with respect to the Facility or the Site. Neither Seller, nor to Seller's knowledge, any third party has used, released, generated, manufactured, produced, or stored in, on, under or about the Site any Hazardous Materials that could reasonably be expected to subject Seller or Buyer to liability under any Environmental Laws. To Seller's knowledge, with the exception of those Hazardous Materials used and stored in accordance with Environmental Laws and pursuant to any applicable Permit, there are no Hazardous Materials used, stored or present at, in, on or under the Site that could reasonably be expected to subject the Seller or Buyer to liability under any Environmental Laws.

(l) Seller has Site Control for the Agreement Term.

(m) Seller has obtained the Full Capacity Deliverability Status for Facility that allows Seller to deliver the RAR Attributes in an amount equal to the Expected RA Capacity.

Section 9.3 Covenant of Seller Related to Site Control. Seller shall at all times maintain Site Control.

Section 9.4 Covenants of Seller Related to Tax Equity Financing.

(a) Seller shall provide Buyer with at least thirty (30) days' prior written notice of the reasonably likely occurrence of any consolidation, merger, or reorganization or other similar transaction, or series of similar transactions, involving Seller or either Parent Entity.

(b) Seller shall provide Buyer with at least thirty (30) days' prior written notice of the reasonably anticipated consummation of a Tax Equity Financing, which notice shall include (i) a reasonable summary of the anticipated provisions related to, and the structure surrounding, the power to Control the management and policies of Seller, and (ii) a statement of the anticipated circumstances under which such provisions and structure could be modified. Such notice shall be in addition to, and not in lieu of, any notice required under Section 11.7.

Section 9.5 Additional Covenants of Seller.

(a) Seller shall maintain the Full Capacity Deliverability Status for Facility that allows Seller to deliver the RAR Attributes in an amount equal to the Expected RA Capacity during the Delivery Term.

(b) Seller shall timely provide all information needed for the RAR Attributes to be shown on (i) the Resource Adequacy Plans that match the information to be included in the Supply Plans, or (ii) the RAR compliance or advisory showings conducted by the CAISO, the PUC, or any other Governmental Authority.

(c) Seller shall timely provide any information requested by Buyer related to the Facility that is required to be provided to the CAISO, the PUC or any other Governmental Authority in order for Buyer to comply with the Requirements of Law.

(d) Seller shall notify the Scheduling Coordinator of the Facility that Seller has transferred the RAR Attributes to Buyer, and shall cause the Scheduling Coordinator to deliver the Supply Plans in accordance with the CAISO Tariff and this Agreement.

(e) Seller shall notify Buyer promptly, and in no event later than five (5) Business Days, following the occurrence of any material event of default on the part of Seller under any Financing Agreement that could reasonably be expected to affect Seller's ability to perform its obligations under this Agreement.

Section 9.6 Additional Related Projects. Seller shall cause the Facility to receive preference and priority in transmission and interconnection rights over new facilities developed by Seller or any Affiliate of Seller using the Point of Interconnection. Seller and its Affiliates shall not share infrastructure, land, equipment or any other rights owned by it in connection with its ownership or operation of the Facility with any other entities without Buyer's prior written consent, not to be unreasonably withheld, conditioned or delayed.

ARTICLE X
DEFAULT; TERMINATION AND REMEDIES; PERFORMANCE DAMAGE

Section 10.1 Default. Each of the following events or circumstances shall constitute a "**Default**" by the responsible Party (the "**Defaulting Party**"):

(a) **Payment Default**. Failure by either Party to pay any amount when and as due under this Agreement which is not cured within thirty (30) days after receiving written notice thereof from the other Party.

(b) **Buyer Performance Default**. Except to the extent caused by a Default of Seller under this Agreement, failure by Buyer to perform any of its duties or obligations under this Agreement (other than any failure described in Section 10.1(a) or (f)) when and as due that is not cured within thirty (30) days after receipt of notice thereof from the Seller.

(c) **Seller Performance Default**. Except to the extent caused by a Default of Buyer under this Agreement, failure by Seller to perform any of its other duties or obligations under this Agreement when and as due (other than any failure described in Section 10.1(a) or (g) through (m)) that is not cured within thirty (30) days after receipt of notice thereof from the Buyer.

(d) **Buyer Breach of Representation and Warranty**. Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other statement made by the Buyer herein that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof.

(e) **Seller Breach of Representation and Warranty**. Inaccuracy in any material respect as of the Effective Date of any representation, warranty, certification or other

statement made by Seller herein that, if capable of being cured, is not cured within thirty (30) days after receipt of notice thereof.

(f) **Buyer Bankruptcy**. Bankruptcy of Buyer.

(g) **Seller Bankruptcy**. Bankruptcy of Seller.

(h) **Performance Security Failure**. The failure of Seller to (i) obtain and maintain the Performance Security in compliance with Section 5.3, (ii) replenish the Delivery Term Security within the period provided under Section 5.3(d) or (iii) replace such Performance Security within the applicable time period set forth Section 5.3 and, in any event, at least thirty (30) days prior to its expiration, or with respect to any obligor providing the Performance Security of Buyer, an event described in clauses (1), (2) or (3) below, in each case unless an alternative Performance Security that complies with the requirements of Section 5.3 is provided within ten (10) Business Days after notice sent by Buyer of any such failure:

(1) the failure of such obligor to honor a drawing or make a payment thereunder;

(2) the Performance Security issued by such obligor shall fail to be in full force and effect in accordance with the terms of this Agreement prior to the satisfaction of all obligations of Seller under this Agreement; or

(3) such obligor shall repudiate, disaffirm, disclaim, or reject, in whole or in part, or challenge the validity of its Performance Security and in any such event, Seller fails to provide a replacement Performance Security.

(i) **Insurance Default**. The failure of Seller to maintain and provide acceptable evidence of the Insurance for the required period of coverage as set forth in **APPENDIX E**; provided that if any coverage or policy required in **APPENDIX E** is not available to Seller on commercially reasonable terms, Seller shall not be in default hereunder if Seller complies with its obligations under Section 11.19(c).

(j) **Fundamental Change of Seller**. Except as permitted by Section 11.7, (i) Seller makes an assignment of its rights or delegation of its obligations under this Agreement, or (ii) a Change in Control occurs.

(k) **Commencement Date Default**. The failure by Seller to achieve the Commencement Date by the Outside Commencement Date.

(l) **Consecutive Shortfall**. The failure by Seller during any two (2) consecutive Contract Years to deliver Provided RA Capacity equal to at least sixty percent (60%) of the Expected RA Capacity for such Contract Years.

(m) **Third-Party Sale**. Seller sells, assigns, or otherwise transfers, or commits to sell, assign, or otherwise transfer, the RAR Attributes, or any portion thereof, to any party other than Buyer during any portion of the Delivery Term.

Section 10.2 Default Remedy.

(a) If Buyer is in Default for nonpayment, subject to any duty or obligation under this Agreement, Seller may continue to provide services pursuant to its obligations under this Agreement; *provided* that nothing in this Section 10.2(a) shall affect Seller's rights and remedies set forth in this Section 10.2. Seller's continued service to Buyer shall not act to relieve Buyer of any of its duties or obligations under this Agreement nor act as a waiver of any prior Default by Buyer.

(b) Notwithstanding any other provision herein, if any Default has occurred and is continuing, the affected Party may, whether or not the dispute resolution procedure set forth in Section 11.3 has been invoked or completed, bring an action in any court of competent jurisdiction as set forth in Section 11.13 seeking injunctive relief in accordance with applicable rules of civil procedure.

(c) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Buyer is the Defaulting Party, Seller may without further notice exercise any rights and remedies provided herein or otherwise available at law or in equity, including termination of this Agreement pursuant to Section 10.3. No failure of Seller to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Seller of any other right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

(d) Except as expressly limited by this Agreement, if a Default has occurred and is continuing and Seller is the Defaulting Party, Buyer may without further notice exercise any rights and remedies provided for herein, or otherwise available at law or equity, including (i) application of all amounts available under the Performance Security against any amounts then payable by Seller to Buyer under this Agreement and (ii) termination of this Agreement pursuant to Section 10.3. No failure of Buyer to exercise, and no delay in exercising, any right, remedy or power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise by Buyer of any right, remedy or power hereunder preclude any other or future exercise of any right, remedy or power.

Section 10.3 Termination for Default.

(a) If a Default occurs, the Party that is not the Defaulting Party (the "**Non-Defaulting Party**") may, for so long as the Default is continuing and without limiting any other rights or remedies available to the Non-Defaulting Party under this Agreement, by notice ("**Termination Notice**") sent to the Defaulting Party, (i) establish a date (which shall be no earlier than the date of such notice and no later than twenty (20) days after the date of such notice) ("**Early Termination Date**") on which this Agreement shall terminate and (ii) withhold any payments due in respect of this Agreement; *provided*, upon the occurrence of any Default of the type described in Section 10.1(f) and (g), this Agreement shall automatically terminate, without notice or other action by either Party as if an Early Termination Date had been declared immediately prior to such event.

(b) If an Early Termination Date has been designated, the Non-Defaulting Party shall determine in a commercially reasonable manner the amounts owing to and from it in respect of prior performance as of the Early Termination Date and calculate in a commercially reasonable manner its Gains, Losses and Costs resulting from the termination of this Agreement and the resulting Settlement Amount. The sum of the net amount owing to or from the Non-Defaulting Party and the Settlement Amount shall be the "**Termination Payment**". Gains, Losses and Costs relating to the RAR Attributes that would have been required to be delivered under this Agreement had it not been terminated shall be determined by comparing the amounts Buyer (if the Non-Defaulting Party) would have paid or Seller (if the Non-Defaulting Party) would have received therefor under this Agreement to the equivalent quantities and relevant market prices either quoted by a bona fide third party offer or which are reasonably expected by Buyer (if the Non-Defaulting Party) or by Seller (if the Non-Defaulting Party) to be available in the market under a replacement contract for this Agreement covering the same products and having a term equal to the Remaining Term at the date of the Termination Notice adjusted to account for differences in transmission, if any. It is expressly agreed that the Non-Defaulting Party shall not be required to enter into any such replacement contract in order to determine its Gains, Losses and Costs or the Settlement Amount. To ascertain the market prices of a replacement contract, the Non-Defaulting Party may consider, among other valuations, bona fide third party offers.

(c) For purposes of the Non-Defaulting Party's determination of its Gains, Losses and Costs and the Settlement Amount, it shall be assumed, regardless of the facts, that Seller would have sold, and Buyer would have purchased, each day during the Remaining Term all RAR Attributes capable of being provided from the Expected RA Capacity.

(d) The Non-Defaulting Party shall aggregate its Gains, Losses and Costs as so determined into a single net amount (the "**Settlement Amount**") and notify the Defaulting Party thereof and of the Termination Payment. The notice shall include a written statement explaining in reasonable detail the calculation of such amounts. The Termination Payment will be paid by the owing Party, within ten (10) Business Days of the Defaulting Party's receipt of such notice, which amount shall bear interest at the Interest Rate from the Early Termination Date until paid. If the Non-Defaulting Party's aggregate Gains exceed its aggregate Losses and Costs, the Settlement Amount shall be zero.

(e) If the Defaulting Party disagrees with the calculation of the Termination Payment and the Parties cannot otherwise resolve their differences, the calculation issue shall be submitted to informal non-binding dispute resolution as provided in Section 11.3. Pending resolution of the dispute, the Defaulting Party shall pay the full amount of the Termination Payment calculated by the Non-Defaulting Party as and when required by this Agreement, subject to the Non-Defaulting Party refunding, with interest at the Interest Rate, any amounts determined to have been overpaid.

(f) For purposes of this Agreement:

(i) "**Gains**" means, with respect to a Party, an amount equal to the present value of the economic benefit (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(ii) "**Losses**" means, with respect to a Party, an amount equal to the present value of the economic loss (exclusive of Costs), if any, resulting from the termination of its obligations under this Agreement, determined in a commercially reasonable manner;

(iii) "**Costs**" means, with respect to a Party, brokerage fees, commissions and other similar transaction costs and expenses reasonably incurred in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace this Agreement, excluding attorneys' fees, if any, incurred in connection with enforcing its rights under this Agreement. Each Party shall use reasonable efforts to mitigate or eliminate its Costs.

(iv) In no event shall a Party's Gains, Losses or Costs include any penalties or similar charges imposed by the Non-Defaulting Party.

(v) The Present Value Rate shall be used as the discount rate in all present value calculations required to determine Gains, Losses and Costs.

(g) At the time for payment of any amount due under this Section, each Party shall pay to the other Party all additional amounts, if any, payable by it under this Agreement.

ARTICLE XI
MISCELLANEOUS

Section 11.1 Authorized Representative. Each Party hereto shall designate an authorized representative who shall be authorized to act on its behalf with respect to those matters contained herein (each an "**Authorized Representative**"), which shall be the functions and responsibilities of such Authorized Representatives. Each Party may also designate an alternate who may act for the Authorized Representative. Within thirty (30) days after execution of this Agreement, each Party shall notify the other Party of the identity of its Authorized Representative, and alternate if designated, and shall promptly notify the other Party of any subsequent changes in such designation. The Authorized Representatives shall have no authority to alter, modify, or delete any of the provisions of this Agreement. Prior to the Commencement Date, the Authorized Representative of each Party will meet periodically to discuss issues related to the sharing of information in connection with the provision of the RAR Attributes. To the extent that an Authorized Representative's contact information is not provided in **APPENDIX C**, at the time a Party designates such Authorized Representative, such Party shall concurrently provide written notice to the other Party of such Authorized Representative's contact information.

Section 11.2 Notices. All notices, requests, demands, consents, approvals, waivers and other communications which are required under this Agreement shall be (a) in writing (regardless of whether the applicable provision expressly requires a writing) and accompanied by an email copy, which shall not itself constitute notice, (b) deemed properly sent if (i) delivered in person, (ii) sent by reliable overnight courier, or (iii) mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, in each case, to the persons at the applicable address and email address (with respect to the email copy of the applicable notice) specified in **APPENDIX C**, and (c) deemed delivered, given, and received (i) on the date of delivery, in the case of delivery in person or (ii) on the date of receipt or rejection in the case of

delivery by overnight courier or registered or certified mail, as shown on the applicable tracking report or return receipt.

Section 11.3 Dispute Resolution.

(a) In the event of any claim, controversy or dispute between the Parties arising out of or relating to or in connection with this Agreement (including any dispute concerning the validity of this Agreement or the scope and interpretation of this Section 11.3) (a "**Dispute**"), either Party (the "**Notifying Party**") may deliver to the other Party (the "**Recipient Party**") notice of the Dispute with a detailed description of the underlying circumstances of such Dispute (a "**Dispute Notice**"). The Dispute Notice shall include a schedule of the availability of the Notifying Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute during the thirty (30) day period following the delivery of the Dispute Notice.

(b) The Recipient Party shall within ten (10) Business Days following receipt of the Dispute Notice, provide to the Notifying Party a parallel schedule of availability of the Recipient Party's senior officers (having a title of senior vice president (or its equivalent) or higher) duly authorized to settle the Dispute. Following delivery of the respective senior officers' schedules of availability, the senior officers of the Parties shall meet and confer as often as they deem reasonably necessary during the remainder of the thirty (30) day period in good faith negotiations to resolve the Dispute to the satisfaction of each Party.

(c) In the event a Dispute is not resolved pursuant to the procedures set forth in Section 11.3(a) and Section 11.3(b) by the expiration of the thirty (30) day period set forth in Section 11.3(a), then either Party may pursue any legal remedy available to it in accordance with the provisions of Section 11.13 of this Agreement.

(d) As stated in Section 11.12, this Agreement shall be governed by, interpreted and enforced in accordance with laws of the State of California, without regard to the conflict of laws principles thereof. In addition to the dispute resolution process set forth in this Section 11.3, parties to this Agreement must comply with California law governing claims against public entities and presentment of such claims.

Section 11.4 Further Assurances. Each Party agrees to execute and deliver all further instruments and documents, and take all further actions, not inconsistent with the provisions of this Agreement, which are reasonably necessary to effectuate the purposes and intent of this Agreement.

Section 11.5 No Dedication of Facilities. Any undertaking by one Party hereto to the other Party under any provisions of this Agreement shall not constitute the dedication of the system or any portion thereof of either Party to the public, the other Party or any other Person, and it is understood and agreed that any such undertaking by either Party shall cease upon the termination of such Party's obligations under this Agreement.

Section 11.6 Uncontrollable Force.

(a) A Party shall not be considered to be in default in the performance of any of its obligations under this Agreement when and to the extent such Party's performance is

prevented or delayed by an Uncontrollable Force; *provided*, the affected Party has given a written detailed description of the full particulars of the Uncontrollable Force to the other Party promptly after becoming aware thereof (and in any event within fourteen (14) days after the initial occurrence of the claimed Uncontrollable Force) (the "**Uncontrollable Force Notice**"), which Uncontrollable Force Notice shall include reasonable information with respect to the nature, cause and date and time of commencement of such Uncontrollable Force, the effect on performance of the affected Party's obligations and the particular obligations so affected, and the anticipated scope and duration of the delay. A Party providing a valid Uncontrollable Force Notice shall be excused from fulfilling its obligations under this Agreement until such time as the Uncontrollable Force has ceased to prevent or delay performance, at which time such Party shall promptly notify the other Party of the resumption of its obligations under this Agreement and resume performance of its obligations. If Seller is unable to deliver, or Buyer is unable to receive, RAR Attributes due to an Uncontrollable Force affecting Seller, Buyer shall have no obligation to pay Seller for the RAR Attributes not delivered or received by reason thereof. In no event shall Buyer be obligated to compensate Seller or any other Person for any losses, expenses or liabilities that Seller or such other Person may sustain as a consequence of any Uncontrollable Force.

(b) Any Party rendered unable to fulfill any of its obligations by reason of an Uncontrollable Force shall exercise due diligence to remove such inability with reasonable dispatch within a reasonable time period and mitigate the effects of the Uncontrollable Force. The affected Party shall deliver to the other Party, on an ongoing basis, regular updated reports containing the foregoing information and any additional documentation and analysis supporting its clam regarding Uncontrollable Force promptly after such information becomes available to the affected Party. The affected Party shall use commercially reasonable efforts to (x) mitigate the duration of, and costs arising from, any suspension of, delay in, or other impact to, the performance of its obligations under this Agreement and (y) continue (to the extent reasonable) to perform its obligations hereunder not affected by such event. The relief from performance shall be of no greater scope and of no longer duration than is required by the Uncontrollable Force. Without limiting the generality of the foregoing, an Uncontrollable Force does not include any of the following: (1) any delay in providing, or cancellation of, any Permit by the issuing Governmental Authority, except to the extent directly caused by an independent Uncontrollable Force; (2) events arising from the failure by Seller to construct, operate or maintain the Facility in accordance with this Agreement, except to the extent directly caused by an independent Uncontrollable Force; (3) delays in or inability of a Party to obtain financing or other economic hardship of any kind, or any reduction in profit associated with the performance of a Party's obligations under this Agreement; (4) Seller's ability to sell any RAR Attributes at a price in excess of those provided in this Agreement; (5) Buyer's ability to purchase any RAR Attributes at a price less than those provided in this Agreement, (6) curtailment or other interruption of any Transmission Service except to the extent caused by the fault or negligence of the claiming Party; (7) failure of third parties to provide goods or services essential to a Party's performance except to the extent caused by an underlying event that otherwise constitutes an Uncontrollable Force; (8) Facility or equipment failure of any kind except to the extent caused by an underlying event that otherwise constitutes an Uncontrollable Force; (9) reductions in the ability of the Facility to store, charge or discharge energy resulting from ordinary wear and tear, deferred maintenance, or operator error, (10) any changes in the financial condition of Buyer, Seller, the Facility Lender or any subcontractor or supplier affecting the affected Party's ability to perform its obligations under this Agreement, (11) any change of law, or change in the manner of enforcement or interpretation of

any law, in each case as such law is in effect as of the Effective Date, and except, with respect to the COVID-19 pandemic, to the extent expressly included in the definition of "Uncontrollable Force", or (12) the COVID-19 pandemic or the effects or impacts thereof, except to the extent expressly included in the definition of "Uncontrollable Force".

(c) Following the Commencement Date, if Seller reduces the Expected RA Capacity pursuant to Section 7.3 by more than fifty percent (50%) from the amount set forth in **APPENDIX H** for an aggregate of one hundred fifty (150) or more consecutive or non-consecutive days during the period from May 1 through October 31 of any (i) two (2) consecutive Contract Years or (ii) three (3) consecutive or non-consecutive Contract Years, Buyer shall have the right to terminate this Agreement effective upon notice to Seller, which notice must be provided by December 1 immediately following such period of the second or the third Contract Year, as applicable. The exercise by Buyer of its right to terminate this Agreement pursuant to this Section shall not render Buyer liable for any losses or damages incurred by any Seller Party. Upon such termination, neither Buyer nor Seller shall have any further liability to the other Party except for obligations that incurred prior to such termination or that survive termination pursuant to Section 2.3.

Section 11.7 Assignment of Agreement; Change in Control.

(a) Buyer may assign this Agreement, without the consent of Seller, to any Person that is a municipally-owned or investor-owned utility or a joint powers authority established under the Act, *provided* that such Person has a credit rating of at least AA- from S&P and Aa3 from Moody's and enters into an assignment and assumption agreement reasonably satisfactory to Seller. Upon any such assignment to such assignee, Buyer shall be relieved of and fully discharged from all of its obligations hereunder, whether such obligations arose before or after the date of such assignment and delegation.

(b) Except as set forth in this Section 11.7, Seller shall not assign any of its rights, or delegate any of its obligations, under this Agreement without the prior written consent of Buyer, which consent shall not be unreasonably withheld or delayed. Any purported assignment or delegation in violation of this provision shall be null and void and of no force or effect. Any Change in Control (whether voluntary or by operation of law) shall be deemed an assignment hereunder. Seller shall, to the extent that it is not prohibited by applicable law, provide Buyer with written notice of any proposed Change in Control no later than sixty (60) days prior to such proposed Change in Control and, if prior notice is not permitted by applicable law, as soon as reasonably practicable. For any Change in Control pursuant to which Seller merges or consolidates with any other Person and ceases to exist, the successor entity to Seller shall execute a written assumption agreement in favor of Buyer pursuant to which any such successor entity shall assume all of the obligations of Seller under this Agreement and agree to be bound by all the terms and conditions of this Agreement. There shall be no amendments or other modifications to this Agreement in connection with a Change in Control unless Buyer consents to such amendments or modifications.

(c) Seller shall not sell or transfer all or any portion of the Facility or the Facility Assets to any Person other than a Person to whom Seller assigns this Agreement in accordance

with this Section 11.7, without the prior written consent of Buyer. Any purported sale or transfer in violation of this Section 11.7 shall be null and void and of no force or effect.

(d) Buyer's consent shall not be required (i) in connection with an assignment to or Change in Control involving a Qualified Transferee, (ii) in connection with the collateral assignment or pledge of this Agreement to any Facility Lender, or (iii) in connection with any passive investment referred to in the definition of "Change in Control" or the pledge, directly or indirectly, of all or a portion of the membership interests in Seller to any Facility Lender as long as in connection with any such assignment or pledge and exercise of remedies by any Facility Lender, the Facility Lender acknowledges and agrees to be bound by the requirement that the Facility be operated and maintained by a Qualified Operator. Seller shall, to the extent that it is not prohibited by applicable law, provide Buyer with written notice of such transaction no later than sixty (60) days prior to such proposed transaction, and, if prior notice is not permitted by applicable law, as soon as reasonably practicable. Notwithstanding the foregoing or anything else expressed or implied herein to the contrary, Seller shall not assign, transfer, convey, encumber, sell or otherwise dispose of all or any portion of the RAR Attributes to any Facility Lender.

(e) To facilitate Seller's obtaining of financing to operate the Facility, Buyer shall provide such consents to assignment (in substantially the form attached hereto as **APPENDIX J**), and estoppels as may be reasonably requested by Seller, or any Facility Lender in connection with the financing of the Facility, including the acquisition of equity for the operation of the Facility; *provided, however*, that the terms of such financing and the documentation relating thereto shall not conflict with the applicable terms and conditions of this Agreement, and Buyer shall have no obligation to agree to any amendment to this Agreement that is proposed in any such consent and that adversely affects Buyer's interests; *provided further* that Buyer shall agree to customary extended cure periods in favor of the Facility Lender.

(f) In no event shall Buyer be liable to any Facility Lender for any claims, losses, expenses or damages whatsoever other than liability Buyer may have to Seller under this Agreement. In the event of any foreclosure, whether judicial or nonjudicial, or any deed in lieu of foreclosure, in connection with any deed of trust, mortgage, or other similar Lien, such Facility Lender or its designee, and their successors in interest and assigns, shall be bound by the covenants and agreements of Seller in this Agreement; *provided, however*, that until the Person who acquires title to the Facility executes and delivers to Buyer a written assumption of Seller's obligations under this Agreement in form and substance acceptable to Buyer, such Person shall not be entitled to any of the benefits of this Agreement. Any sale or transfer of all or any portion of the Facility by Facility Lender or its designee and their successors and assigns thereafter during the term of this Agreement shall be made only to an entity that is a Qualified Transferee.

(g) Seller shall reimburse Buyer for the incremental direct expenses incurred by Buyer in the preparation, negotiation, execution or delivery of any documents requested by Seller or the Facility Lender, and provided by Buyer, pursuant to this Section 11.7.

Section 11.8 Ambiguity. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel, and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the

language, but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.

Section 11.9 Attorneys' Fees and Costs. Both Parties hereto agree that in any action to enforce the terms of this Agreement that each Party shall be responsible for its own attorneys' fees and costs. Each of the Parties to this Agreement was represented by its respective legal counsel during the negotiation and execution of this Agreement. Notwithstanding the foregoing, to the extent Buyer incurs legal costs in order to facilitate a collateral assignment or pledge of this Agreement under Section 11.7, to evaluate whether a Change in Control has occurred, or such other action or review that is at the request of Seller, including in Section 11.7(g), or as may be required due to the actions or omissions of, Seller, Seller shall bear Buyer's reasonable and documented legal costs therefor.

Section 11.10 Voluntary Execution. Both Parties hereto acknowledge that they have read and fully understand the content and effect of this Agreement and that the provisions of this Agreement have been reviewed and approved by their respective counsel. The Parties further acknowledge that they have executed this Agreement voluntarily, subject only to the advice of their own counsel, and do not rely on any promise, inducement, representation or warranty that is not expressly stated herein.

Section 11.11 Entire Agreement; Amendments. This Agreement (including all Appendices and Exhibits) contains the entire understanding concerning the subject matter herein and supersedes and replaces any prior negotiations, discussions or agreements between the Parties, or any of them, concerning that subject matter, whether written or oral, except as expressly provided for herein. This Agreement is a fully integrated document. Each Party acknowledges that no other party, representative or agent, has made any promise, representation or warranty, express or implied, that is not expressly contained in this Agreement that induced the other Party to sign this document. This Agreement may be amended or modified only by an instrument in writing signed by each Party.

Section 11.12 Governing Law. This Agreement shall be governed by, interpreted and enforced in accordance with and construed under the laws of the State of California without regard to conflict of law principles.

Section 11.13 Venue. All litigation arising out of, or relating to, this Agreement shall be brought in a state or federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

Section 11.14 Execution in Counterparts, Electronic Signatures and Document Transmission.

(a) This Agreement may be executed in counterparts, and, upon execution by each signatory, each executed counterpart shall have the same force and effect as an original instrument and as if all signatories had signed the same instrument. Any signature page of this Agreement may be detached from any counterpart of this Agreement without impairing the legal

effect of any signature thereon, and may be attached to another counterpart of this Agreement identical in form hereto by having attached to it one or more signature pages.

(b) The Parties may execute this Agreement by original signature or by electronic signature, each of which shall have the same force and effect. A signed copy of this Agreement transmitted by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement for all purposes, to the extent provided under applicable law, including the Federal Electronic Signatures in Global and National Commerce Act and Records Act, and California's Uniform Electronic Transactions Act.

Section 11.15 Effect of Section Headings. Section headings appearing in this Agreement are inserted for convenience only and shall not be construed as interpretations of text.

Section 11.16 Waiver. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect. Notwithstanding anything expressed or implied herein to the contrary, nothing contained herein shall preclude either Party from seeking and obtaining any available remedies for breaches not rising to the level of a Default, including recovery of damages caused by the breach of this Agreement and specific performance or injunctive relief or any other remedy given under this Agreement or now or hereafter existing in law or equity or otherwise. Seller acknowledges that money damages may not be an adequate remedy for violations of this Agreement and that Buyer may, in its sole discretion, seek and obtain from a court of competent jurisdiction specific performance or injunctive or such other relief as such court may deem just and proper to enforce this Agreement or to prevent any violation hereof. Seller hereby waives any objection to specific performance or injunctive relief. The rights granted herein are cumulative.

Section 11.17 Relationship of the Parties. This Agreement shall not be interpreted to create an association, joint venture or partnership between the Parties hereto or to impose any partnership obligation or liability upon either such Party. Neither Party shall have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or to act as an agent or representative of, the other Party.

Section 11.18 Third Party Beneficiaries. The provisions of this Agreement are solely for the benefit of the Parties hereto, and nothing in this Agreement, whether express or implied, shall be construed to give to, or be deemed to create in, any other Person, whether as a third party beneficiary of this Agreement or otherwise, any legal or equitable right, remedy or claim in respect of this Agreement or any covenant, condition, provision, duty, obligation or undertaking contained or established herein.

Section 11.19 Indemnification; Damage or Destruction; Insurance; Condemnation; Limit of Liability.

(a) **Indemnification**. Seller undertakes and agrees to indemnify and hold harmless Buyer and Buyer's City Council, and all of their officers and employees, agents,

employees, advisors, and Authorized Representatives, and each of the foregoing assigns and successors in interest (collectively, "**Indemnitees**"), and, at the option of Buyer, defend such Indemnitees from and against any and all suits and causes of action (including proceedings before FERC and other regulatory agencies), claims, charges, damages (including indirect, consequential, or incidental), demands, judgments, costs, expenses, civil fines and penalties, other monetary remedies or losses of any kind or nature whatsoever, including but not limited to attorney's fees (including allocated costs of internal counsel) or other monetary remedies and costs of litigation, obligation or liability of any kind or nature whatsoever, in any manner arising by reason of, or incident to, or connected in any manner with:

(i) the performance, non-performance, breach, act, error or omission or willful misconduct of Seller or Seller's officers, employees, agents, subcontractors of any tier that results in intellectual property infringement or leads to death, bodily injury or personal injury to any person, including Seller's employees and agents or third persons, or damage or destruction to any property of any kind or nature whatsoever, of either party or third person, or loss of use; and

(ii) for a period of two years following the satisfaction of the conditions set forth in Section 3.1(d)(i) and Section 3.1(d)(ii), any actual or alleged violation of or failure to comply with CEQA (1) caused by or attributable to Seller's actions or decisions concerning the Facility, including execution and delivery of, or performance of its obligations under, this Agreement, (2) arising from any administrative or judicial challenge to a CEQA EIR, a CEQA IS/(M)ND, a final approval for the Facility and Notice of Determination that the Facility is in compliance with CEQA, or a CEQA Notice of Exemption, or (3) resulting from any failure of the Facility, this Agreement, or both, or any approval for the Facility, this Agreement, or both to comply with CEQA, including a failure to comply with exemption criteria set forth in the CEQA Exemption Certification, if applicable, or with other conditions imposed by CEQA that may be applicable to the Facility, this Agreement, or both;

(collectively under subsections (i) and (ii) above, hereinafter "**Indemnified Liabilities**"), except to the extent caused by willful misconduct or sole negligence of any such Indemnitee. The provisions of this paragraph shall be in addition to, and not exclusive of, any other rights or remedies which Indemnitees have at law, in equity, under this Agreement or otherwise. To the extent that the undertakings to defend, indemnify, pay and hold harmless set forth in this subsection may be unenforceable in whole or in part because they are violative of any law or public policy, Seller shall contribute the maximum portion that it is permitted to pay and satisfy under applicable law to the payment and satisfaction of all Indemnified Liabilities incurred by Indemnitees or any of them.

(b) **Damage or Destruction**. In the event of any damage or destruction of the Facility or any part thereof, the Facility or such part thereof shall, subject to the terms and conditions of the Facility Debt documents, be diligently repaired, replaced or reconstructed by Seller so that the Facility or such part thereof shall be restored to substantially the same general condition and use as existed prior to such damage or destruction, unless a different condition or use is approved by the Buyer, such approval not to be unreasonably withheld, conditioned or delayed. Proceeds of Insurance with respect to such damage or destruction maintained as provided in this Agreement shall, subject to the requirements of the Facility Debt documents, be applied to the payment for such repair, replacement or reconstruction of the damage or destruction.

(c) **Insurance**. Seller shall obtain and maintain the Insurance coverages listed in **APPENDIX E**; provided that if any coverage or policy required in **APPENDIX E** is not available to Seller on commercially reasonable terms, Seller shall within five (5) Business Days after Seller becomes aware of such unavailability, notify Buyer and propose to Buyer the next best coverage or policy that is available on commercially reasonable terms. Buyer shall provide notice to Seller within ten (10) Business Days after receiving Seller's notice whether Buyer accepts or disputes Seller's proposed next best coverage. Buyer shall not unreasonably withhold its acceptance of Seller's proposed next best coverage. If Buyer fails to respond timely, Buyer shall be deemed to have accepted Seller's proposed next best coverage. Within five (5) Business Days following Buyer's acceptance of Seller's proposed next best coverage, if applicable, Seller shall procure such coverage or policy and provide Buyer acceptable evidence of such coverage or policy. Any dispute regarding Seller's proposed next best coverage shall be resolved in accordance with Section 11.3. During the pendency of any such dispute Seller may procure the proposed next best coverage but Seller shall not otherwise have any lapse in coverage of any required policies during the Agreement Term. No lapse in the required insurance coverages shall relieve Seller from its duties and obligations hereunder.

(d) **Condemnation or Other Taking**. Throughout the Agreement Term, Seller shall immediately notify Buyer of the institution of any proceeding for the condemnation or other taking of the Facility or any portion thereof. Buyer may participate in any such proceeding and Seller shall deliver to Buyer all instruments necessary or required by Buyer to permit such participation. Without Buyer's prior written consent, Seller (i) shall not agree to any compensation or award, and (ii) shall not take any action or fail to take any action which would cause the compensation to be determined. To the extent permitted by the Financing Agreements, all awards and compensation for the taking or purchase in lieu of condemnation of the Facility or any portion thereof shall either, at the discretion of Buyer, be paid directly to Buyer (including damages and interest) in the amount of the loss in value of this Agreement to Buyer resulting from such condemnation or taking, or applied toward the repair, restoration, reconstruction or replacement of the Facility.

(e) **Limitation of Liability**. EXCEPT TO THE EXTENT INCLUDED IN (I) DELAY DAMAGES, OR ANY OTHER LIQUIDATED DAMAGES, (II) INDEMNIFICATION OBLIGATIONS BY SELLER TO THIRD PARTIES, AND (III) ANY OTHER SPECIFIC CHARGES EXPRESSLY PROVIDED FOR HEREIN, NEITHER PARTY HEREUNDER SHALL BE LIABLE FOR SPECIAL, INCIDENTAL, EXEMPLARY, INDIRECT, PUNITIVE OR CONSEQUENTIAL DAMAGES, ARISING OUT OF A PARTY'S PERFORMANCE OR NON PERFORMANCE UNDER THIS AGREEMENT, WHETHER BASED ON OR CLAIMED UNDER CONTRACT, TORT (INCLUDING SUCH PARTY'S OWN NEGLIGENCE) OR ANY OTHER THEORY AT LAW OR IN EQUITY, *PROVIDED*, *HOWEVER*, THE FOREGOING LIMITATION OF LIABILITY SHALL NOT APPLY TO LIABILITY ARISING OUT OF THE GROSS NEGLIGENCE, FRAUD OR WILLFUL MISCONDUCT OF A PARTY, OR ANY OF A PARTY'S OFFICERS, AGENTS, EMPLOYEES OR SUBCONTRACTORS OF ANY TIER. Notwithstanding any other provision of this Agreement, in no event shall Seller's liability for any default prior to the Commencement Date under or arising out of this Agreement, including its liability to Buyer for Delay Damages or otherwise in respect of failing to meet a Milestone or achieve the Commencement Date, exceed the initial amount of the Project Development Security set forth in Section 5.3(a) (the "**Pre-COD**

Liability Cap"); *provided, however*, that such limitations shall not apply to any Losses and Costs arising out of (i) Seller's obligations under this Agreement to indemnify and hold harmless Buyer for death, bodily injury, or personal injury to any person or damage or destruction to any property or (ii) the gross negligence, willful misconduct, or fraud of Seller or any of Seller's Affiliates or subcontractors. Notwithstanding anything herein to the contrary, in the event that Seller's liability for any default prior to the Commencement Date under or arising out of this Agreement exceeds the Pre-COD Liability Cap, Buyer shall have the right to terminate this Agreement effective upon notice to Seller, which notice must be provided within sixty (60) days following the date that Seller's liability exceeds the Pre-COD Liability Cap. The exercise by Buyer of its right to terminate this Agreement pursuant to this Section 11.19 shall not render Buyer liable for any losses or damages incurred by any Seller Party. Upon such termination, neither Buyer nor Seller shall have any further liability to the other Party except for obligations that were incurred prior to such termination or that survive termination pursuant to Section 2.3.

Section 11.20 Severability. In the event any of the terms, covenants or conditions of this Agreement, or the application of any such terms, covenants or conditions, shall be held invalid, illegal or unenforceable by any court having jurisdiction, all other terms, covenants and conditions of this Agreement and their application not adversely affected thereby shall remain in force and effect, *provided* that the remaining valid and enforceable provisions materially retain the essence of the Parties' original bargain.

Section 11.21 Confidentiality.

(a) Each Party agrees, and shall use reasonable efforts to cause its parent, subsidiary and Affiliates, and its and their respective directors, officers, employees and representatives, as a condition to receiving confidential information hereunder, to keep confidential, except as required by law, all documents, data, drawings, studies, projections, plans and other written information that relate to economic benefits to or amounts payable by either Party under this Agreement and documents that are clearly marked "Confidential" at the time a Party shares such information with the other Party ("**Confidential Information**"). The provisions of this Section 11.21 shall survive and shall continue to be binding upon the Parties for a period of one (1) year following the date of termination or expiration of this Agreement. Notwithstanding the foregoing, information shall not be considered Confidential Information if such information (i) is disclosed with the prior written consent of the originating Party, (ii) was in the public domain prior to disclosure or is or becomes publicly known or available other than through the action of the receiving Party in violation of this Agreement, (iii) was lawfully in a Party's possession or acquired by a Party outside of this Agreement, which acquisition was not known by the receiving Party to be in breach of any confidentiality obligation, or (iv) is developed independently by a Party based solely on information that is not considered confidential under this Agreement.

(b) Either Party may, without violating this Section 11.21, disclose matters that are made confidential by this Agreement:

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

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

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

(c) If a Party is requested or required, pursuant to any applicable law, regulation, order, rule, ruling or other Requirement of Law, discovery request, subpoena, civil investigation or similar process to disclose any of the Confidential Information, such Party shall provide prompt written notice to the other Party of such request or requirement so that at such other Party's expense, such other Party can seek a protective order or other appropriate remedy concerning such disclosure.

(d) Notwithstanding the foregoing or any other provision of this Agreement, Seller acknowledges that Buyer, as a charter city and municipal corporation, is subject to disclosure as required by the California Public Records Act, Cal. Govt. Code §§ 7920.000 *et seq.* ("**CPRA**") and the Ralph M. Brown Act, Cal. Govt. Code §§ 54950 *et seq.* ("**Brown Act**"). Subject to Buyer's obligations under this Section 11.21, Seller acknowledges that Buyer shall not be in breach of this Agreement or have any liability whatsoever under this Agreement or otherwise for any claims or causes of action whatsoever resulting from or arising out of Buyer copying or releasing to a third party any of the Confidential Information of Seller as required pursuant to CPRA or Brown Act. Notwithstanding the foregoing or any other provision of this Agreement, Buyer may record, register, deliver and file all such notices, statements, instruments and other documents as may be necessary or advisable to render fully valid, perfected and enforceable under all applicable law the credit support contemplated by this Agreement and the rights, Liens and priorities of Buyer with respect to such credit support.

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

to Seller of Buyer's invoices for all fees and costs incurred by all Indemnitees, as well as all damages or liability of any nature.

(f) Each Party acknowledges that any disclosure or misappropriation of Confidential Information by such Party in violation of this Agreement could cause the other Party or their Affiliates irreparable harm, the amount of which may be extremely difficult to estimate, thus making any remedy at law or in damages inadequate. Therefore each Party agrees that the non-breaching Party shall have the right to apply to any court of competent jurisdiction for a restraining order or an injunction restraining or enjoining any breach or threatened breach of this Agreement and for any other equitable relief that such non breaching Party deems appropriate. This right shall be in addition to any other remedy available to the Parties in law or equity, subject to the limitations set forth in Section 11.19(e).

(g) Prior to either Party issuing (or causing its Affiliates to issue) a press release regarding the transactions contemplated by this Agreement, such Party shall use commercially reasonable efforts to provide the other Party with notice thereof.

Section 11.22 Mobile-Sierra. The Parties hereby stipulate and agree that this Agreement was entered into as a result of arm's-length negotiations between the Parties. Further, the Parties believe that, to the extent the sale of RAR Attributes under this Agreement is subject to Sections 205 and 206 of the Federal Power Act, 16 U.S.C. Sections 824d and 824e, the rates, terms and conditions of this Agreement are just and reasonable within the meanings of Sections 205 and 206 of the Federal Power Act, and that the rates, terms and conditions of this Agreement will remain so during the Agreement Term.

Notwithstanding any provision of this Agreement, the Parties waive all rights to challenge the validity of this Agreement or whether it is just and reasonable for and with respect to the Agreement Term, under Sections 205 and 206 of the Federal Power Act, and to request the FERC to revise the terms and conditions and the rates or services specified in this Agreement, and hereby agree not to seek, nor shall they support any third party in seeking, to prospectively or retroactively revise the rates, terms or conditions of this Agreement through application or complaint to FERC or any other state or federal agency, board, court or tribunal, related in any manner as to whether such rates, terms or conditions are just and reasonable or in the public interest under the Federal Power Act, absent prior written agreement of the Parties.

The Parties also agree that, absent prior agreement in writing by both Parties to a proposed change, the standard of review for changes to any rate, charge, classification, term or condition of this Agreement, whether proposed by a Party (to the extent that any provision of this Section is unenforceable or ineffective as to such Party), a non-Party or the FERC acting *sua sponte*, shall be the "public interest" application of the "just and reasonable" standard of review that requires FERC to find an "unequivocal public necessity" or "extraordinary circumstances where the public will be severely harmed" to modify a contract, as set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956), and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish*, 554 U.S. 527 at 550-51 (2008) and *NRG Power Marketing, LLC v. Maine Public Utilities Comm'n*, 558 U.S. 165 (2010).

Section 11.23 Service Contract. The Parties intend that this Agreement will qualify as a "Service Contract" as such term is used in Section 7701(e) of the United States Internal Revenue Code of 1986.

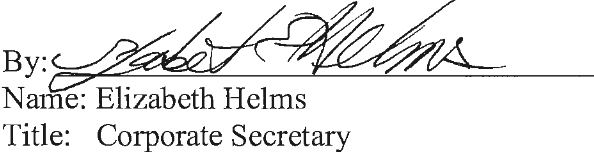
Section 11.24 Time is of the Essence. Time is of the essence for the performance of each of the terms and provisions of this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, each Party was represented by legal counsel during the negotiation and execution of this Agreement and the Parties hereto have executed this Agreement as of the date first set forth above.

VESI 15 LLC, a Delaware limited liability company

By: Viridity Energy Solutions Inc.,
Its Managing Member



By: ______________________
Name: Elizabeth Helms
Title: Corporate Secretary

City of Riverside, a California charter city and municipal corporation

By: ______________________
Name:
Title: City Manager

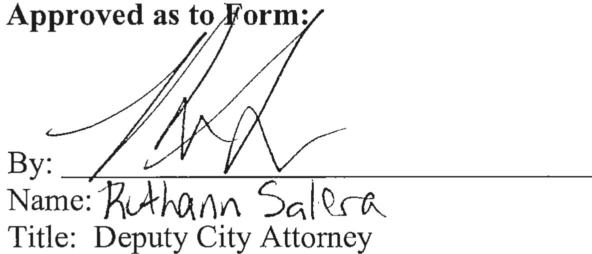
Attest:

By: ______________________
Name:
Title: City Manager

Certified as to Availability of Funds:

By: ______________________
Name:
Title: Chief Financial Officer

Approved as to Form:



By: ______________________
Name: Ruthann Salera
Title: Deputy City Attorney

APPENDIX A
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

CONTRACT PRICE

1. **Seasonal Contract Price and Flat Contract Price**. The "**Seasonal Contract Price**" and "**Flat Contract Price**" are the applicable monthly rates set forth in the table below, as may be modified pursuant to paragraph 2 below.

Month	Seasonal Contract Price	Flat Contract Price
JAN	$1.28	$7.94
FEB	$1.28	$7.94
MAR	$2.76	$7.94
APR	$2.76	$7.94
MAY	$4.24	$7.94
JUN	$9.42	$7.94
JUL	$19.78	$7.94
AUG	$21.26	$7.94
SEP	$19.78	$7.94
OCT	$8.68	$7.94
NOV	$2.76	$7.94
DEC	$1.28	$7.94

2. **Early Commencement Date Bonus**. If Seller achieves the Commencement Date by August 1, 2025, then solely with respect to the first Contract Year, each of the Seasonal Contract Price and the Flat Contract Price shall be increased for 12 months by the amount of the applicable "Early Commencement Date Bonus" set forth in the table below:

Commencement Date	Early Commencement Date Bonus ($/kW-month)
On or before June 1, 2025	$1.35
After June 1, 2025 but on or before July 1, 2025	$1.10

Commencement Date	Early Commencement Date Bonus ($/kW-month)
After July 1, 2025 but on or before August 1, 2025	$0.60

APPENDIX B
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

FACILITY

1. Name of Facility: Shirk Energy Storage Facility
2. Site: 7626 W. Sunnyview Ave., Visalia, CA
3. Facility Owner: VESI 15 LLC
4. Facility Operator: Viridity Energy Solutions Inc.
5. Equipment:
    - (a) Type of Facility: Battery energy storage
    - (b) Nameplate Discharge Capacity: 80MW AC / 320 MWh
6. Interconnection Point: Oak Grove – Riverway 66kV tap at new Woodrat Substation
7. Local Capacity Area: Big Creek/Ventura LCR
8. Guaranteed Commencement Date: March 1, 2026

APPENDIX C
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

BUYER AND SELLER BILLING, NOTIFICATION AND SCHEDULING CONTACT INFORMATION

1. Correspondence for the purpose of designating an Authorized Representative or alternate pursuant to Section 11.1 shall be transmitted to the following addresses:

1.1 If to Buyer:

City of Riverside
3750 University Ave, 5th Floor
Riverside, CA 92501
Telephone: 951-826-5772
Attention: Public Utilities General Manager
Email: ROSAContracts@riversideca.gov

1.2 If to Seller:

Viridity Energy Solutions Inc.
6140 Plumas Street
Reno, NV 89519
Phone: (484) 474-5350
Attn: Asset Management
Email: BESSAssetManagement@ormat.com

With a copy to:

Viridity Energy Solutions Inc.
6140 Plumas Street
Reno, NV 89519
Phone: (484) 474-5350
Attn: Compliance
Email: compliance@ormat.com

2. Billings and payments pursuant to Section 8.1 and **APPENDIX A** shall be transmitted to the following addresses:

2.1 If Billing to Buyer:

City of Riverside
3435 14th St
Riverside, CA 92503
Telephone: 951-826-8514
Attention: Power Resources Settlements
Email: Settlements@riversideca.gov

2.2 If Payment to Buyer:

City of Riverside
3750 University Ave, 5th Floor
Riverside, CA 92501
Telephone: (951) 826-5812
Attention: Treasury Manager-Mitchell Mason
Email: mmason@riversideca.gov

2.3 If Billing to Seller:

Viridity Energy Solutions Inc.
6140 Plumas Street
Reno, NV 89519
Telephone: (484) 534-2222
Attn: VESI Settlements Group
Email: invoices.us@ormat.com

2.4 If Payment to Seller:

Viridity Energy Solutions Inc.
6140 Plumas Street
Reno, NV 89519
Telephone: (484) 534-2222
Attn: VESI Settlements Group
Email: invoices.us@ormat.com

3. All notices required under this Agreement shall be sent pursuant to Section 11.2 to the address specified below.

If to Buyer:

City of Riverside
3750 University Ave, 5th Floor
Riverside, CA 92501
Telephone: 951-826-5772
Attention: Public Utilities General Manager
Email: ROSAContracts@riversideca.gov

With a copy to:

City of Riverside
3435 14th St
Riverside, CA 92503
Telephone: 951-826-8514
Attention: Power Resources Settlements
Email: Settlements@riversideca.gov

If to Seller:

Viridity Energy Solutions Inc.
6140 Plumas Street
Reno, NV 89519
Phone: (484) 474-5350
Attn: Asset Management
Email: BESSAssetManagement@ormat.com

With a copy to:

Viridity Energy Solutions Inc.
6140 Plumas Street
Reno, NV 89519
Telephone: (484) 534-2222
Attn: VESI Settlements Group
Email: invoices.us@ormat.com

4. Following the Commencement Date, and throughout the Delivery Term, all notices related to scheduling of the Facility shall be sent to the following address:

If to Buyer:

City of Riverside

3750 University Ave, 5th Floor
Riverside, CA 92501
Telephone: 951-826-5772
Attention: Public Utilities General Manager
Email: ROSAContracts@riversideca.gov

With a copy to:

City of Riverside
3435 14th St
Riverside, CA 92503
Telephone: 951-826-8514
Attention: Power Resources Settlements
Email: Settlements@riversideca.gov

If to Seller:

Viridity Energy Solutions Inc.
6140 Plumas Street
Reno, NV 89519
Phone: (484) 474-5350
Attn: Asset Management
Email: BESSAssetManagement@ormat.com

APPENDIX D
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

FORM OF LETTER OF CREDIT

IRREVOCABLE AND UNCONDITIONAL DOCUMENTARY LETTER OF CREDIT NO.

Applicant:

____

Beneficiary:

City of Riverside
3750 University Ave, 5th Floor
Riverside, California 92501
Telephone: (951) 826-5812

Amount: [___________]
Expiration Date: [__________][1]
Expiration Place: [__________]:

Ladies and Gentlemen:

We hereby issue our Irrevocable and Unconditional Documentary Letter of Credit ("**Letter of Credit**") in favor of the Beneficiary by order and for the account of the applicant which is available at sight for USD $XX,XXX,XXX by sight payment

(a) upon presentation to us at our office at [bank's address] of: (i) Beneficiary's written demand for payment containing the text of **Exhibit I** and (ii) Beneficiary's signed statement containing the text of **Exhibit II**; or

(b) [upon both Beneficiary's telephone or fax advice of demand to the attention of ____________________ at telephone and/or fax number _______________ and presentation to us by fax or email to address _________________ of: (i) your written

[1] Note: To be one year after issuance, subject to automatic renewals.

demand for payment containing the text of **Exhibit I** and (ii) your statement containing the text of **Exhibit II**.]

Funds may be drawn under this Letter of Credit, from time to time, in one or more drawings, in amounts not exceeding in the aggregate the amount specified above.

Upon presentation to us in conformity with the foregoing prior to or at 12:00 p.m., Pacific Standard Time on any business day, we will, within five days, or, upon presentation to us in conformity with the foregoing after 12:00 p.m. Pacific Standard Time on any business day, we will, within six days, but in either case without any other delay whatsoever, irrevocably and without reserve or condition: (a) if the office set forth above for presentation is in Glendora, California, pay to Beneficiary's order in the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you, or (b) if the office set forth above for presentation is not Glendora, California, issue payment instructions to the Federal Reserve wire transfer system in proper form to transfer to the account at the bank designated by you in the demand, the full amount demanded by you in the same-day funds which are immediately available to you in Glendora, California; provided that, for clarity, we will pay you the demanded amount as long as a conforming presentation is made prior to the expiration date of this Letter of Credit. We agree that if, on the expiration date of this Letter of Credit, the office specified above is not open for business by virtue of an interruption of the nature described in the 2007 Revision of the Uniform Customs and Practices for Documentary Credits, International Chamber of Commerce Publication No. 600 ("**UCP 600**"), in Article 36, this Letter of Credit will be duly honored if the specified statements are presented by you within thirty (30) days after such office is reopened for business.

Payment hereunder shall be made regardless of: (a) any written or oral direction, request, notice or other communication now or hereafter received by us from the Applicant or any other person except Beneficiary, including without limitation any communication regarding fraud, forgery, lack of authority or other defect not apparent on the face of the documents presented by you, but excluding solely an effective written order issued otherwise than at our instance by a court of competent jurisdiction which order is legally binding upon us and specifically orders us not to make such payment; (b) the solvency, existence or condition, financial or other, of the Applicant or any other person or property from whom or which we may be entitled to reimbursement for such payment; and (c) without limiting clause (b) above, whether we are in receipt of or expect to receive funds or other property as reimbursement in whole or in part for such payment. We agree that we will not take any action to cause the issuance of an order described in clause (a) of the preceding sentence. We agree that the time set forth herein for payment of any demand(s) for payment is sufficient to enable us to examine such demand(s) and the related documents(s) referred to above with care so as to ascertain that on their face they appear to comply with the terms of this credit and that if such demand(s) and document(s) on their face appear to so comply, failure to make any such payment within such time shall constitute dishonor of such demand(s) and this credit.

The stated amount of this Letter of Credit may be increased or decreased, and the expiration date of this Letter of Credit may be extended, by an amendment to this Letter of Credit in the form of **Exhibit III**. Any such amendment shall become effective only upon acceptance by your signature on a hard copy amendment.

Beneficiary shall not be bound by any written or oral agreement of any type between us and the Applicant or any other person relating to this credit, whether now or hereafter existing.

We hereby engage with you that Beneficiary's demand(s) for payment in conformity with the terms of this credit will be duly honored as set forth above. All fees and other costs associated with the issuance of and any drawing(s) against this Letter of Credit shall be for the account of the Applicant. All of the rights of the Beneficiary set forth above shall inure to the benefit of its successors. In this connection, in the event of a drawing made by a party other than the Beneficiary, such drawing must be accompanied by the following signed certification:

> "The undersigned does hereby certify that ____[drawer]____ is the successor by operation of law to City of Riverside, the Beneficiary named in [name of Bank] Letter of Credit No. __________."
>
> [name and title]

Except so far as otherwise expressly stated herein, this Letter of Credit is subject to the UCP 600. As to matters not governed by the Uniform Customs, this Letter of Credit shall be governed by and construed in accordance with the laws of the State of California. Any litigation arising out of, or relating to this Letter of Credit, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California.

Yours faithfully,

(name of issuing bank)

By________________________________

Title_______________________________

EXHIBIT I
DEMAND FOR PAYMENT

Re: Irrevocable and Unconditional Documentary Letter of Credit

No. ________________ Dated ___________, 20__

[Insert Bank Address]

To Whom It May Concern:

Demand is hereby made upon you for payment to us of $___________ by deposit to our account no. __________ at [insert name of bank]. This demand is made under, and is subject to and governed by, your Irrevocable and Unconditional Documentary Letter of Credit no. __________ dated __________, 20__ in the amount of $__________ established by you in our favor for the account of ____________________ as the Applicant.

DATED: ____________________, 20__.

CITY OF RIVERSIDE

By:_________________________________
Name:
Title:

Date:

Attest:______________________________
Name:
Title:

EXHIBIT II
STATEMENT

Re: Your Irrevocable and Unconditional Documentary Letter of Credit

No. ________________ Dated ___________, 20__

[Insert Bank Address]

To Whom It May Concern:

Reference is made to your Irrevocable and Unconditional Documentary Letter of Credit no. __________, dated __________, 20____ in the amount of $_____________________ established by you in our favor for the account of ________________________.

We hereby certify to you that $________________ is past due and owing to us by the Applicant.

DATED: ______________, 20__.

CITY OF RIVERSIDE

By:_________________________________
Name:
Title:

Date:

Attest:_______________________________
Name:
Title:

EXHIBIT III
AMENDMENT

Re: Your Irrevocable and Unconditional Documentary Letter of Credit
No. ________________ Dated ___________, 20__

Beneficiary: Applicant:

City of Riverside
3750 University Ave, 5th Floor
Riverside, CA 92501

To Whom It May Concern:

The above referenced Irrevocable and Unconditional Documentary Letter of Credit is hereby amended as follows: by increasing / decreasing / leaving unchanged (*strike two*) the stated amount by $ _______________ to a new stated amount of $ __________________ or by extending the expiration date to _____________________ from ____________________. All other terms and conditions of the Letter of Credit remain unchanged.

This amendment is effective only when accepted by City of Riverside, which acceptance may only be valid by a signature of an authorized representative.

Dated: _______________________

Yours faithfully,

(name of issuing bank)

By_________________________________
Title________________________________

ACCEPTED

City of Riverside

By_________________________________
Title________________________________
Date________________________________

APPENDIX E
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

INSURANCE

I. GENERAL REQUIREMENTS

Seller shall furnish Buyer evidence of coverage from insurers acceptable to Buyer and in a form acceptable to Buyer's Risk Management Section in accordance with Section 11.19(c). Such insurance shall be maintained by Seller at Seller's sole cost and expense. Such insurance shall not limit or qualify the liabilities and obligations of Seller assumed under this Agreement. Buyer shall not, by reason of its inclusion under these policies, incur liability to the insurance carrier for payment of premium for these policies.

Any insurance carried by Buyer which may be applicable shall be deemed to be excess insurance and Seller's insurance is primary for purposes under this Agreement despite any conflicting provision in Seller's policies to the contrary.

Said evidence of insurance shall contain a provision that the policy cannot be canceled or reduced in coverage or amount without first giving thirty (30) days' prior notice thereof (ten (10) days for non-payment of premium) by registered mail or email to Buyer, addressed as follows: City of Riverside, 3750 University Ave, 5th Floor, Riverside, CA 92501, email: ROSAContracts@riversideca.gov

Should any portion of the required insurance be on a "Claims Made" policy, Seller shall, at the policy expiration date following completion of work, provide evidence that the "Claims Made" policy has been renewed or replaced with a retroactive date back to the policy in effect as of the Effective Date with the same limits, terms and conditions of the expiring policy.

Seller shall be responsible for all subcontractors' compliance with the insurance requirements.

II. SPECIFIC COVERAGES REQUIRED

A. Commercial Automobile Liability

Seller shall provide Commercial Automobile Liability insurance, which shall include coverages for liability arising out of the use of owned, non-owned and hired vehicles for performance of the work as required to be licensed under the California, or any other applicable state, vehicle code. The Commercial Automobile Liability insurance shall have not less than one million dollars ($1,000,000.00) combined single limit per occurrence and shall apply to all operations of Seller.

The Commercial Automobile Liability policy shall include Buyer and its and their officers, agents, and employees as additional insureds with Seller and shall insure against liability for death, bodily injury or property damage resulting from the performance of this Agreement. The form of evidence of insurance shall be a Buyer Additional Insured Endorsement or an endorsement to the policy acceptable to Buyer's Risk Management Section.

B. Commercial General Liability

Seller shall provide Commercial General Liability insurance with Blanket Contractual Liability, Independent Contractors, Broad Form Property Damage, Premises and Operations, Products and Completed Operations, fire Legal Liability and Personal Injury coverages included. Such insurance shall provide coverage for total limits actually arranged by Seller, but not less than ten million dollars ($10,000,000.00) per occurrence and in the aggregate. Umbrella or Excess Liability coverages may be used to supplement primary coverages to meet the required limits. Evidence of such coverage shall be on Buyer's Additional Insured Endorsement form or on an endorsement to the policy acceptable to Buyer's Risk Management Section and shall provide for the following:

1. Include Buyer and its officers, agents, and employees as additional insureds with the Named Insured for the activities and operations under this Agreement.

2. Include Severability-of-Interest or Cross-Liability Clause such as: "The policy to which this endorsement is attached shall apply separately to each insured against whom a claim is made or suit is brought, except with respect to the limits of the company's liability."

3. Include a description of the coverages included under the policy.

C. Excess Liability

Seller may use an Umbrella or Excess Liability Coverage to meet coverage limits specified in this Agreement. Seller shall require the carrier for Excess Liability to properly schedule and to identify the underlying policies as provided for Buyer on the Buyer Additional Insured Endorsement Form, or on an endorsement to the policy acceptable to Buyer's Risk Management Section. Such policy shall include, as appropriate, coverage for Commercial General Liability, Commercial Automobile Liability, Employer's Liability or other applicable insurance coverages.

D. Workers' Compensation/Employer's Liability Insurance

Seller shall provide Workers' Compensation insurance covering all of Seller's employees in accordance with the laws of any state in which the work of the Agreement is to be performed and including Employer's Liability insurance, where possible, and a Waiver of Subrogation in favor of Buyer. The limit for Employer's Liability coverage shall be not less than one million dollars ($1,000,000.00) each accident and shall be a separate policy if not included with Workers' Compensation coverage. Evidence of such insurance shall

be in the form of a Buyer Special Endorsement of insurance or on an endorsement to the policy acceptable to Buyer's Risk Management Section. Workers' Compensation/

Employer's Liability exposure may be self-insured, provided that Buyer is furnished with a copy of the certificate issued by the state authorizing Seller to self-insure. Seller shall notify Buyer's Risk Management Section by receipted delivery as soon as possible of the state withdrawing authority to self-insure.

E. Property All Risk Insurance

Seller shall procure and maintain an All Risk Physical Damage policy to insure the full replacement value of the property located at the Facility as described in this Agreement. The policy shall include coverage for expediting expense, extra expense, Business Interruption, ensuing loss from faulty workmanship, faulty materials or faulty design.

APPENDIX F
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

MILESTONE SCHEDULE

No.	Guaranteed Date	Milestone Description	Daily Liquidated Damages/Mitigation Plan
1	December 31, 2024	Receipt of the CEQA Approvals required in Section 3.1(d)(i) and Section 3.1(d)(ii)	Contractual provision without specific daily damages
2	September 1, 2025 Or an earlier date notified by Seller	Commencement of construction of the Facility	$7,500 per day
3	January 15, 2026 Or an earlier date notified by Seller	Achievement of the Commercial Operation Date	Contractual provision without specific daily damages
4	March 1, 2026 Or an earlier date notified by Seller	Achievement of the Commencement Date	$200,000 per month (or portion thereof, without proration)

APPENDIX G-1
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

FORM OF CONSTRUCTION START DATE CERTIFICATION

This certification ("**Certification**") of the Construction Start Date is delivered by VESI 15 LLC ("**Seller**") to City of Riverside ("**Buyer**") in accordance with the terms of that certain Resource Adequacy Purchase and Sale Agreement dated _____________ ___, 202__ ("**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. the engineering, procurement and construction contract related to the Facility was executed with [_________] (the "**EPC Contractor**") on __________;

2. the notice provided by Seller to EPC Contractor by which Seller authorizes the EPC Contractor to begin construction of the Facility without any delay or waiting periods was issued on ______________ (attached); and

3. the Construction Start Date has occurred.

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

VESI 15 LLC

By: ______________________________________
Its: ______________________________________
Date: _____________________________________

APPENDIX G-2
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

FORM OF COMMERCIAL OPERATION DATE CERTIFICATION

In accordance with the terms of that certain Resource Adequacy Purchase and Sale Agreement dated as of ____________, 202_ (as amended, restated, supplemented or otherwise modified from time to time, the "**Agreement**") by and between City of Riverside ("**Buyer**") and VESI 15 LLC ("**Seller**"), in order to determine achievement of Commercial Operation of the Facility, Seller shall demonstrate to Buyer that the Facility is operating in accordance with the terms of the Agreement by delivery of a Commercial Operation Date Certification (the "**Certificate**"), signed by an authorized representative of Seller as to all of the items below. Any capitalized term used herein but not defined in the Certificate shall have the meaning set forth in the Agreement. The Certificate shall be submitted by Seller, along with reasonable documentation as may be requested by Buyer, and certify as to the following:

1. The Facility is operational and interconnected and capable of receiving, storing and discharging energy as required under the Agreement.

2. Construction of the Facility has been completed in accordance with the terms and conditions of the Agreement, the Facility possesses all of the characteristics required by this Agreement.

3. The batteries comprising the Facility have been installed in accordance with the manufacturer's specifications.

4. The Facility has successfully completed all testing required by Prudent Utility Practices or any Requirements of Law to be completed prior to full commercial operation.

5. Seller has obtained the insurance specified on **APPENDIX E** of the Agreement.

6. Seller has obtained all Permits required for the operation and maintenance of the Facility in accordance with this Agreement except for those expected in the ordinary course of business, and all such Permits are final and non-appealable.

7. Seller shall have entered into an agreement providing for the operation and maintenance of the Facility with a Qualified Operator, unless Seller provides the operation and maintenance of the Facility.

8. Seller has provided to Buyer proof of timely registration with NERC for all applicable Function Types in the NERC Compliance Registry in accordance with the currently

effective NERC Rules Of Procedure, including Seller's registration as both Generator Owner and Generator Operator, if Seller is required to so register.

9. Seller has provided to Buyer its mapping of NERC registered Function Types in accordance with the currently-effective WECC Entity Function Mapping procedures, if applicable to Seller.

10. Full Capacity Deliverability Status has been achieved with respect to the Facility.

Upon reasonable notice and during regular business hours, Buyer's representative(s) may inspect the Facility and observe the testing associated with achievement of Commercial Operation, *provided* that such representative(s) of Buyer shall at all times comply with Seller's written instructions regarding safety and security while on the Site.

Signed,

____

Name:
Title:
Date:

APPENDIX H
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

EXPECTED RA CAPACITY

Contract Year	Expected RA Capacity (MW)
0	80
1	79.8
2	78.0
3	76.5
4	75.1
5	73.7
6	72.4
7	71.2
8	70.0
9	68.9
10	67.8
11	66.7
12	65.7
13	64.6
14	69.5
15	68.3

APPENDIX I
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

FORM OF ANNUAL REPORT

A. Performance Summary

[Narrative summary of Facility performance and conditions causing any deviations from Expected RA Capacity for the applicable year]

B. Operational Status

[Narrative report regarding ongoing operations of the Facility during the applicable year, including the status of the operation of the Facility and components thereof, any equipment or operational or maintenance failures, defects or other issues, and any repairs, replacements or other remediation efforts]

C. Downtime and Maintenance

[Narrative description of the reasons for any downtime, maintenance or repairs during the applicable year]

D. Safety and Environment

[Narrative report of any safety or environmental issues for the applicable year]

E. Other

[Narrative description of any other notable developments or circumstances affecting the Facility, including any such information as may be specifically requested by Buyer]

Attachments

[Attach any regularly prepared operations and maintenance status reports of the Facility provided to WECC or any Facility Lenders]

APPENDIX J
TO THE
RESOURCE ADEQUACY PURCHASE AND SALE AGREEMENT
BETWEEN
CITY OF RIVERSIDE
and
VESI 15 LLC

FORM OF CONSENT TO COLLATERAL ASSIGNMENT

This CONSENT AND AGREEMENT (this "**Consent**"), dated as of ___________, 20__, by and among City of Riverside ("**Buyer**"), [_____________] (in its capacity as [collateral agent for the Facility Lender] under the Financing Agreement, as defined below, "**Lender**") and VESI 15 LLC, a [______] limited liability company ("**Seller**"). Each of Buyer, Seller and Lender is referred to under this Agreement as a "**Party**" and together they are referred to as the "**Parties**". Capitalized terms used but not defined herein shall have the meanings set forth in the RA Agreement (as defined below).

RECITALS

A. [_____________] ("**Borrower**")[, an owner of Seller,][2] entered into a [Financing Agreement] with Lender[, as administrative agent and collateral agent and certain other lenders and issuing banks party thereto, (collectively, "Secured Parties")] dated as of ____________, 20__ (the "**Financing Agreement**"), under which Seller will finance the construction of an up to [___] MW nominal nameplate capacity battery energy storage facility (the "**Facility**", as further described in the RA Agreement). Seller and Lender have also entered into a [Guarantee and Security Agreement] (the "**Security Agreement**") under which Seller collaterally assigned its interest under the RA Agreement to Lender as collateral for the credit facilities under the Financing Agreement and a deed of trust or mortgage under which Seller has granted to Lender a lien on the Facility to be recorded in [___] County, California (the "**Financing Deed of Trust**"). Additionally, [_____________] ("**Pledgor**") has entered into a [Guarantee, Pledge and Security Agreement] pursuant to which it has pledged to Lender all of the membership interests in Seller, to secure Borrower's obligations under the Financing Agreement (the "**Pledge Agreement**" and, together with the Security Agreement and Financing Deed of Trust, the "**Lender Collateral Documents**" and together with the Financing Agreement, the "**Financing Documents**"). A true and correct copy of each of the Lender Collateral Documents has been furnished to Buyer.

B. Buyer and Seller entered into that certain Resource Adequacy Purchase and Sale Agreement, dated as of [__________] (as may be amended, supplemented, or modified from time to time, the "**RA Agreement**"), pursuant to which Seller will finance, own, and operate the Facility, and will, except as otherwise provided in the RA Agreement, sell the RAR Attributes to Buyer.

[2] Bracketed language to be included/updated as applicable.

C. Pursuant to Section 11.7(e) of the RA Agreement, Seller has requested Buyer's consent to the assignment, pursuant to the Security Agreement, by Seller to Lender of Seller's interest under the RA Agreement.

AGREEMENT

1. Assignment and Agreement.

1.1 Consent to Assignment. Buyer hereby consents to the collateral assignment to Lender pursuant to the Security Agreement of Seller's rights to and under the RA Agreement, pursuant to the Financing Deed of Trust of Seller's interests in the Facility and pursuant to the Pledge Agreement of Pledgor's membership interests in Seller (together, the "**Assigned Interests**") as security for Borrower's obligations under the Financing Agreement. Subject to the terms and conditions of this Consent, Buyer agrees that in connection with an exercise of its remedies under the Financing Documents, Lender may exercise Seller's rights under the RA Agreement.

1.2 Notices; Right to Cure by Lender. Buyer shall give concurrent notice to Seller and Lender if any event or circumstance set forth in Section 10.1 of the RA Agreement gives rise to a Default or, following expiration of any applicable cure period, could give rise to a Default. Failure of Buyer to provide such notice to Lender shall not constitute a breach of the RA Agreement or this Consent by Buyer and Lender agrees that Buyer shall have no liability to Lender for such failure whatsoever, but if Buyer fails to provide concurrent notice, Buyer shall provide subsequent notice to Lender, and Buyer shall not cancel, suspend or terminate the RA Agreement or its performance thereunder (a) for a period of thirty (30) days from the later to occur of (i) Lender's receipt of such notice and (ii) the expiration of all cure periods available to Seller under the RA Agreement to cure, if such event or circumstance that gives rise or could give rise to a Default is the failure to pay amounts to Buyer that are due and payable under the RA Agreement, or (b) with respect to any other event or circumstance that gives rise or could give rise to a Default (which is not a Non-Curable Default, as defined below), a reasonable opportunity, but no fewer than sixty (60) days, as may be extended by force majeure, from the later to occur of receipt of such notice and the expiration of all cure periods available to Seller under the RA Agreement to cure such event or circumstance (provided that during such cure period Lender or Seller, as applicable, continues to perform each of Seller's other obligations under the RA Agreement). Notwithstanding anything to the contrary herein, if the Default is peculiar to Seller and not curable by Lender (each, a "**Non-Curable Default**"), such as the insolvency, bankruptcy, general assignment for the benefit of the creditors, or appointment of a receiver, trustee, custodian or liquidator of a Seller or its properties, then, notwithstanding any right that Buyer may have to terminate the RA Agreement, Lender, in accordance with the applicable Lender Collateral Documents, shall be entitled to assume the rights and obligations of Seller under the RA Agreement within ninety (90) days after the receipt of the notice of Default from Buyer, and provided such assumption has occurred within such period, Buyer shall not be entitled to terminate the RA Agreement as a result of such Default. If Lender or its successor(s), assignee(s), or designee(s) is prohibited by any court order, stay or injunction, or bankruptcy or insolvency proceedings of Seller from curing the Default or from commencing or prosecuting such proceedings, then the foregoing time periods shall be extended by the period of such prohibition. No claim of Default or termination of the RA Agreement by Buyer shall be binding without notice to Lender and the lapsing of the applicable periods set forth above. If Sellers fail to cure a Default within the applicable period set forth in the RA Agreement and Lender

fails to cure a Default within the applicable cure period set forth above, Buyer shall have all its rights and remedies with respect to such Default as set forth in the RA Agreement.

1.3 Subsequent Owner. Subject to the terms and conditions of this Consent, the Parties agree that the Lender shall, at least thirty (30) days prior to any foreclosure or other transfer of the Facility or the Assigned Interests, notify Buyer of the pendency of such foreclosure or transfer and, in addition, Lender shall subsequently notify Buyer following the occurrence of such foreclosure or transfer. If Lender notifies Buyer in writing that it has foreclosed on the Facility or the Assigned Interests pursuant to the Lender Collateral Documents, or taken a "deed in lieu of foreclosure", Lender or its permitted successor or assigns, or any other purchaser of the Assigned Interests (each such permitted successor or assign or other purchaser of the Assigned Interests, a "**Subsequent Owner**"), shall be recognized as a party substituting for Seller under the RA Agreement so long as such Subsequent Owner meets the qualifications for a Qualified Transferee and the terms and conditions of the RA Agreement as in effect on such date of assignment or foreclosure shall continue to apply to such Subsequent Owner.

1.4 Foreclosure Notice. In the event of any default by Seller under the Financing Agreement that has not been cured as provided hereunder or thereunder, prior to taking any action, whether judicial or non-judicial, to foreclose upon and sell the Facility or the Assigned Interests (in either case, a "**Foreclosure Sale**") pursuant to the Lender Collateral Documents, or prior to taking a deed in lieu of foreclosure, Lender shall, concurrent with any statutory notice required to be delivered to Seller, give notice in writing to Buyer not less than thirty (30) days prior to the date of such Foreclosure Sale or taking of a deed in lieu of foreclosure in the form of **Exhibit A** hereto containing the information specified therein (the "**Foreclosure Notice**").

1.5 Foreclosure Sale. Lender may effect the Foreclosure Sale or take a deed in lieu of foreclosure at any time subject to (x) thirty (30) days' advance notice to Buyer from Lender and (y) the terms of this Consent, the Financing Agreement and the Lender Collateral Documents. In the event that a Foreclosure Sale under the Lender Collateral Documents shall take place (a) Buyer shall have the right to bid at such Foreclosure Sale for the purchase of the Facility, and (b) failing a successful bid by Buyer at such Foreclosure Sale, Lender may sell the Assigned Interests pursuant to such Foreclosure Sale, free of any rights of Buyer under this Section 1.5, and, in each such case, Seller waives, to the extent permitted by law, all rights of redemption, stay or appraisal.

1.6 Third Party Beneficiary. No action of Buyer taken pursuant to the exercise of its rights as provided in this Consent shall be deemed to be a waiver of any right accruing to Buyer on account of the occurrence of any matter which constitutes a default or a breach of Seller's obligations under the Financing Agreement.

1.7 Limitation of Liability.

(a) Seller agrees that it shall indemnify and hold Buyer harmless from any third-party claims, losses, liabilities, damages, costs or expenses (including, without limitation, any direct, indirect or consequential claims, losses, liabilities, damages, costs or expenses, including legal fees) in connection with or arising out of any of the transactions related to the Financing Agreement, any of the Lender Collateral Documents or this Consent.

(b) In the event of any Foreclosure Sale, or any deed in lieu of foreclosure, in connection with any Lender Collateral Documents, Lender or Subsequent Owner, and their successors in interest and assigns, if performance of the RA Agreement is reasonably possible, shall cause the Seller or Subsequent Owner to assume in writing and agree to be bound by the covenants and agreements of Seller in the RA Agreement; *provided, however*, that until the Subsequent Owner executes and delivers to Buyer a written assumption of Seller's obligations under the RA Agreement in form and substance reasonably acceptable to Buyer, such Person will not be entitled to any of the benefits of the RA Agreement. In addition, Lender agrees that in no event shall Buyer be liable to Lender or any Subsequent Owner for any claims, losses, expenses or damages whatsoever other than, following such Person's assumption of Seller's obligations under the RA Agreement in accordance with the prior sentence, liability Buyer may have to Seller under the RA Agreement (without duplication of any liability Buyer owes to the assigning Seller). Any limitations on Seller's liability set forth in the RA Agreement shall apply equally to the Subsequent Owner.

1.8 No Assignment. Buyer agrees that it shall not, without the prior written joint consent of Seller and Lender (such consent to not be unreasonably withheld, conditioned or delayed) sell, assign or transfer any of its rights under the RA Agreement other than in accordance with Section 11.7(a) of the RA Agreement. Lender shall be deemed to have consented to such sale, assignment or transfer should it fail to respond within forty-five (45) days after the date of the notice from Buyer.

1.9 Substitute Agreement. In the event that (a) (i) the RA Agreement is rejected by a trustee or debtor-in-possession in any bankruptcy or insolvency proceeding involving Seller or (ii) the RA Agreement is terminated as a result of any bankruptcy or insolvency proceeding involving Seller, and (b) Lender or a Subsequent Owner shall certify in writing to Buyer, not more than sixty (60) days after the date when such rejection or termination, as applicable, occurs, that it will perform the obligations of Seller as and to the extent required under the RA Agreement, then each of Buyer and Lender or such Subsequent Owner shall execute and deliver to one another a new agreement (a "**New RA Agreement**"), pursuant to which New RA Agreement, Buyer shall agree to perform the remaining obligations contemplated to be performed by Buyer under the original RA Agreement, and Lender or the Subsequent Owner shall agree to perform the remaining obligations contemplated to be performed by Seller under such original RA Agreement, and which shall be for the balance of the remaining term under such original RA Agreement before giving effect to such rejection or termination and shall contain the same conditions, agreements, terms, provisions and limitations as such original RA Agreement (except for any requirements which have been fulfilled by Seller or Buyer prior to such rejection or termination).

2. Payments under the RA Agreement. [Without limiting the rights of Buyer under the RA Agreement and subject to the terms of the RA Agreement, Buyer shall pay any amounts owed in the manner and when required under the RA Agreement directly to the accounts specified below or otherwise designated by Lender to Buyer in writing. From and after such time as an entity qualifies as a Subsequent Owner, Buyer shall pay all such amounts owed directly to or at the written direction of such Subsequent Owner subject to the terms of the RA Agreement. Seller hereby directs Buyer, and Buyer agrees, to make all payments and amounts Buyer is obligated to pay to Seller under the RA Agreement, subject to the terms of the RA Agreement, which payments

shall satisfy any such payment obligations of Buyer to Seller in full and complete satisfaction of Buyer's obligations to Seller under the RA Agreement, to the following account:

Bank Name:	____________________
Account Number:	____________________
ABA Number:	____________________
Account Name:	[____________________] [3]

Lender and Seller agree that any change in payment notification shall become effective within thirty (30) days after receipt by Buyer of written notice thereof in accordance with this Consent. Buyer shall have no liability to Seller or Lender (or their successors and assigns) for making payments due or to become due under the RA Agreement to Lender or for failure to direct such payments to Lender rather than Seller or Seller rather than Lender.

3. Acknowledgements; Representations and Warranties.

(a) Seller and Lender acknowledge that Buyer has not made and hereby makes no representation or warranty, expressed or implied, that Seller has any right, title or interest in the collateral secured by the Lender Collateral Documents (the "**Collateral**") and Lender acknowledges that it has not relied upon any such representations of Buyer. Lender acknowledges that it is responsible for satisfying itself as to the existence and extent of Seller's right, title, and interest in the Collateral.

(b) Except as otherwise expressly provided herein, Lender acknowledges that Buyer shall not have any contractual obligations to Lender, and Lender acknowledges that it has not relied upon any representations of Buyer in connection with its lending arrangements with Seller.

(c) Except in the event of Buyer's breach of this Consent, Seller and Lender acknowledge that Buyer shall have no liability to Seller or Lender resulting from or related to this Consent, or for consenting to any future assignments of the Collateral or any interest of Seller or Lender therein.

(d) Seller and Lender each agree that Buyer shall at all times have (and Buyer hereby expressly reserves) the right to set off or deduct from payments due to Seller under the RA Agreement amounts owing to Buyer by Seller under the RA Agreement, in accordance with the terms of the RA Agreement.

(e) Each of Lender, Seller and Buyer represents and warrants that it is duly authorized to enter into and perform its obligations under this Consent.

(f) Buyer agrees that any foreclosure by Lender on the membership interests in Borrower or Pledgor upon the occurrence of a default by Borrower under the Financing Agreement shall not constitute a breach under the RA Agreement if the Facility is operated and maintained by a Qualified Operator (as defined in the RA Agreement) following any such foreclosure. Lender shall obtain Buyer's consent (such consent not to be unreasonably withheld) prior to any transfer

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[3] Remove bracketed provision if not applicable.

by Lender of the membership interests in Borrower or Pledgor upon the occurrence of a default by Borrower under the Financing Agreement to an entity other than a Qualified Transferee.

4. Miscellaneous.

4.1 Governing Law; Submission to Jurisdiction.

(a) This Consent shall be governed by, interpreted and enforced in accordance with the laws of the State of California, without regard to conflict of law principles.

(b) All litigation arising out of, or relating to this Consent, shall be brought in a State or Federal court in the County of Los Angeles in the State of California. The Parties irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of California and waive any defense of *forum non conveniens*.

4.2 Conflicts. This Consent does not modify or alter any of the terms of the RA Agreement, and to the extent the terms and conditions herein conflict with those in the RA Agreement, the term and conditions of the RA Agreement shall control. Except as set forth herein, Buyer shall have no obligation or liability to Lender with respect to the RA Agreement. For purposes of this provision, Seller and Buyer agree that the extended cure periods provided in Section 1.2, the rights of a Subsequent Owner in Section 1.3, the restriction on assignment in Section 1.8, the payments pursuant to Article 2, and the agreement regarding change in control in Section 3(f) do not constitute a modification or alteration of or conflict with the RA Agreement.

4.3 Counterparts. This Consent may be executed in any number of counterparts and by the different Parties on separate counterparts, each of which, when so executed and delivered, shall be an original, but all of which shall together constitute one and the same instrument.

4.4 Amendment, Waiver. Neither this Consent nor any of the terms hereof may be terminated, amended, supplemented, waived or modified except by an instrument in writing signed by Buyer and Lender, and after the initial funding by any Tax Equity Investor, such Tax Equity Investor.

4.5 Successors and Assigns. This Consent shall bind and benefit Buyer and Lender, and their respective successors and permitted assigns.

4.6 Attorneys' Fees. Seller shall reimburse Buyer for all actual and documented costs and expenses reasonably incurred by Buyer in connection with the facilitation of Seller's collateral assignment or pledge of the RA Agreement, or any other action taken in connection with the transactions contemplated in this Consent, or otherwise pursuant to any request made by Seller or any Lender.

4.7 Representation by Counsel. Each of the Parties was represented by its respective legal counsel during the negotiation and execution of this Consent.

4.8 Estoppel Certificate. Buyer agrees to deliver to the Tax Equity Investors and Lender a customary estoppel certificate substantially in the form of Exhibit B on the date of delivery of this Consent and in connection with the achievement of Commercial Operation of the Facility following receipt of a written request therefor from Seller.

4.9 Notices. Any communications between the Parties or notices provided herein to be given shall be given to the following addresses:

If to Seller:

VESI 15 LLC
[_______________]
[_______________]
[_______________]
[_______________]

If to Lender:

[_______________]

[_______________]
[_______________]
[_______________]
[_______________]

If to Buyer:

City of Riverside
3750 University Ave, 5th Floor
Riverside, CA 92501
Attn: Public Utilities General Manager
Phone: (951) 826-5772
Fax: (951) 826-2450
Email: tcorbin@riversideca.gov

All notices or other communications required or permitted to be given hereunder shall be in writing and shall be considered as properly given (a) if delivered in person, (b) if sent by overnight delivery service, (c) if mailed by first class United States Mail, postage prepaid, registered or certified with return receipt requested, or (d) if sent by facsimile. Any Party may change its address for notice hereunder by giving written notice of such change to the other Parties.

[*Signature page follows*]

IN WITNESS WHEREOF, the Parties have caused this Consent and Agreement to be duly executed and delivered by their respective duly authorized officers as of the date first above written.

CITY OF RIVERSIDE

By:____________________________________
Name: _________________________________
[________]
Date: __________________________________

Attest:

____
[________]

VESI 15 LLC

By:____________________________________
Name: _________________________________
Title: __________________________________

[**LENDER**]

By:____________________________________
Name: _________________________________
Title: __________________________________

EXHIBIT A
to Consent and Agreement

FORM OF FORECLOSURE NOTICE

[Letterhead of Lender]

[Insert date]

Via Certified Mail, Return Receipt Requested
City of Riverside
3750 University Ave, 5th Floor
Riverside, CA 92501
Attn: Public Utilities General Manager

Re: Shirk Energy Storage Project

Ladies and Gentlemen:

This notice is provided to you pursuant to the Consent and Agreement (the "**Consent**") dated as of ___________, 20__, among City of Riverside ("**Buyer**"), ___________, as collateral agent ("**Lender**") and VESI 15 LLC ("**Seller**"). This is a Foreclosure Notice, as defined in the Consent. Capitalized terms used herein and not defined herein have the respective meanings given in the Consent.

As of the date hereof, the following amounts are due and owing by Seller under the Financing Agreement:

Principal: ______________________________
Accrued Interest: ________________________
Reimbursable Amounts: __________________
Fees: __________________________________
Other: _________________________________

As of the date hereof, interest is accruing at the rate of _____% per annum [*Insert if applicable*: and fees are accruing at the rate of _____% per annum]. This interest rate will apply until [*insert date which is end of current interest period*], from which time the interest rate may be higher or lower. A default rate of interest equal to [2]% above the otherwise applicable rate [*does/does not*] currently apply [*If does not currently apply, add: but may be applied at any time*]. [*If applicable, state*: The principal amount of loans shown above does not reflect the entire loan commitment under the Financing Agreement. Additional loans may be made, with or without Seller's consent, and such additional loans will accrue interest as provided in the Financing Agreement.]

An Event of Default, as defined in the Financing Agreement, has occurred and is continuing. The Lender intends to foreclose upon the Assigned Interests or take a deed in lieu of foreclosure on a date estimated to be [*insert day no less than thirty (30) days from the date of notice*]. Such date

may be modified as permitted by law, but will in no event be prior to ninety (90) days after the date hereof.

Very truly yours,

____

EXHIBIT B

FORM OF ESTOPPEL CERTIFICATE

[Date][4]

Reference is made to that certain Resource Adequacy Purchase and Sale Agreement] (the "**RA Agreement**") dated as of [_________], by and between the City of Riverside, a California charter city and municipal corporation in the City of Riverside, California ("**Buyer**") and VESI 15 LLC, a [_________] limited liability company ("**Seller**"). Terms beginning with a capital letter used herein but not defined herein have the same meanings as in the RA Agreement.

1. Buyer hereby confirms and agrees as of the date hereof as follows:

2. The copy of the RA Agreement[, as amended,][5] attached as Appendix A, constitutes a true and complete copy of the RA Agreement.

3. The RA Agreement is in full force and effect and has not been modified or amended in any way [since [________]][6] and constitutes the only agreement between Buyer and Seller other than that certain Consent and Agreement dated as of [__________].

4. Buyer has not transferred or assigned its interest in the RA Agreement.

5. Buyer is not in default under the RA Agreement nor has Buyer breached any of its representations, warranties, agreements or covenants under the RA Agreement and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Buyer under the RA Agreement or that would give Seller the right to terminate the RA Agreement. To Buyer's knowledge, Seller is not in default under the RA Agreement nor, to Buyer's knowledge, has Seller breached any of its representations, warranties, agreements or covenants under the RA Agreement and, to Buyer's knowledge, no facts or circumstances exist which, with the passage of time or the giving of notice nor both, would constitute a default or breach by Seller under the RA Agreement or that would allow Buyer to terminate the RA Agreement.

6. All representations made by Buyer in Section 9.1 of the RA Agreement were true and correct as of the effective date of the RA Agreement and continue to be true and correct.

7. To Buyer's knowledge, no event, act, circumstance or condition constituting an event of Uncontrollable Force under the RA Agreement has occurred and is continuing.

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[4] To be delivered on the date of delivery of the Consent and following COD.

[5] Include amendments, if any.

[6] Insert last date of amendment, if any.

8. Buyer has no present knowledge of any facts entitling Buyer to any material claim, counterclaim or offset against Seller in respect of the RA Agreement.
9. All payments due, if any, under the RA Agreement by Buyer have been paid in full through the period ending on the date hereof.

[signature page follows]

CITY OF RIVERSIDE
By: ______________________
[____________]
[____________]
Date: ______________________
Attest: ______________________
[____________]
[____________]

Appendix A

[follows on next page]

[*attach RA Agreement and any amendments*]

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