CLEAN ENERGY ALLIANCE

AGENDA

Board of Directors Special Meeting Agenda
October 26, 2023, 1:00 p.m.
City of Oceanside, Council Chamber
300 North Coast Hwy, Oceanside CA 92054

Members of the public can observe the livestream of the meeting via Zoom by clicking:

https://us06web.zoom.us/j/81376410530
or telephonically by dialing:
(253) 215-8782
Meeting ID: 813 7641 0530

Members of the public can provide public comment in writing or orally in person as follows:

Written Comments: If you are unable to participate in person and you wish to make a comment, you may submit written comments prior to and during the meeting via email to: Secretary@thecleanenergyalliance.org. All written comments will be posted online and become part of the meeting record. To ensure announcement of receipt of your written comments during the meeting, please submit all written comments by 12:00pm prior to the commencement of the meeting. Public comments received in writing will not be read aloud at the meeting.

Oral Comments: Pursuant to Government Code section 54954.3 members of the public are afforded one minute (with double the time allotted to non-English speakers using a translator) to address the legislative body concerning any item that has been described in the special meeting agenda.

To make oral comments please fill out a speaker card and submit it to the Board Secretary. When you are called to speak, please come forward to the podium and state your name.

CALL TO ORDER

ROLL CALL

PUBLIC COMMENT

Closed Session

Item 1: CONFERENCE WITH LEGAL COUNSEL – ANTICIPATED LITIGATION
Significant exposure to litigation pursuant to paragraph (2) of subdivision (d) of Government Code Section 54956.9 (d): (1 case)

RECESS TO CLOSED SESSION

RECONVENE TO OPEN SESSION

GENERAL COUNSEL ANNOUNCEMENT

ADJOURNMENT

If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA"), please contact Secretary@thecleanenergyalliance.org prior to the meeting for assistance.

CLEAN ENERGY ALLIANCE

AGENDA

Board of Directors Regular Meeting Agenda
October 26, 2023, 2:00 p.m.
City of Oceanside, Council Chamber
300 North Coast Hwy, Oceanside CA 92054

Members of the public can observe the livestream of the meeting via Zoom by clicking:

https://us06web.zoom.us/j/81376410530
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Written Comments: If you are unable to participate in person and you wish to make a comment, you may submit written comments prior to and during the meeting via email to: Secretary@thecleanenergyalliance.org. All written comments will be posted online and become part of the meeting record. To ensure announcement of receipt of your written comments during the meeting, please submit all written comments by 12:00pm prior to the commencement of the meeting. Public comments received in writing will not be read aloud at the meeting.

Oral Comments: Members of the public can address the Board on items on the agenda at the time the item is being addressed or during Public Comments for topics that are not listed on the agenda. Speakers are limited to three (3) minutes each. In conformance with the Brown Act, no Board action can occur on items presented during Public Comment.

To make oral comments please fill out a speaker card and submit it to the Board Secretary. When you are called to speak, please come forward to the podium and state your name. To address the Board regarding an item on the agenda, please fill out a speaker card and submit it to the Board Secretary before the Board Chair announces the item.

CALL TO ORDER

ROLL CALL

FLAG SALUTE

BOARD COMMENTS & ANNOUNCEMENTS

PUBLIC COMMENT

APPROVAL OF MINUTES
July 27, 2023, Special and Regular Meetings
August 31, 2023, Special Meeting
September 28, 2023, Special and Regular Meetings

Consent Calendar

Item 1: **Clean Energy Alliance Treasurer's Report for August 2023**

RECOMMENDATION
Receive and file Clean Energy Alliance Treasurer's Report for August 2023.

Item 2: **Receive Clean Energy Alliance Chief Executive Officer Operational Report and Special Counsel Regulatory Report**

RECOMMENDATION
Receive Clean Energy Alliance Chief Executive Officer Operational Report and Special Counsel Regulatory Report.

Item 3: **Receive Clean Energy Alliance Community Advisory Committee October 5, 2023, Meeting Report**

RECOMMENDATION
Receive Clean Energy Alliance Community Advisory Committee October 5, 2023, Meeting Report.

Item 4: **Consider Approval of Resolution No. 2023-010 Approving the Form of and Authorizing the Execution of a Memorandum of Understanding and Authorizing Participation in the Special District Risk Management Authority's Health Benefits Program**

RECOMMENDATION
Approve Resolution No. 2023-010 approving the form of and authorizing the execution of a Memorandum of Understanding and authorizing participation in the Special District Risk Management Authority's Health Benefits Program.

Item 5: **Consider Approval of 11-Year Power Purchase Agreements with Edwards Solar 1A Group 2 Opco, LLC and Edwards Solar 1A Group 3 Opco, LLC for Resource Adequacy in Satisfaction of a Portion of Clean Energy Alliance's Mid-Term Reliability Requirements**

RECOMMENDATION
Approve 11-Year Power Purchase Agreements for Resource Adequacy with Edwards Solar 1A Group 2 Opco, LLC in an amount not to exceed $12,455,520 and Edwards Solar 1A Group 3 Opco, LLC in an amount not to exceed $1,848,000 in satisfaction of a portion of Clean Energy Alliance's Mid-Term Reliability Requirements. Authorize the Chief

Executive Officer to execute all documents, substantially as to form of attached, subject to Transactions Attorney approval.

Public Hearing

Item 6: **Consider Adoption of Clean Energy Alliance Resolution No. 2023-009 Setting Rates and Approval of Agreements for Clean Energy Alliance Solar Plus Residential Distributed Microgrid Program Providing Solar and Battery Storage Systems**

RECOMMENDATION

1. Conduct the Public Hearing: Open the Public Hearing, Receive Public Testimony, and Close the Public Hearing.
2. Adopt Resolution No. 2023-009 Setting Rates for Clean Energy Alliance Solar + Program Effective November 1, 2023.
3. Approve Power Purchase and Sale Agreement, Program Management Agreement, Program Support Agreement and Framework Distributed Microgrids Agreement with Participate.Energy, LLC and authorize the Chief Executive Officer to execute all documents subject to General and Special Counsel approval.

New Business

Item 7: **Receive Annual Audited Financial Report for the Fiscal Year Ended June 30, 2023**

RECOMMENDATION

Receive and file Clean Energy Alliance Annual Audited Financial Report for the Fiscal Year Ended June 30, 2023.

Item 8: **Consider Approval of Wholesale Market Access Tariff Terms and Conditions, Wholesale Market Access Agreement and Positive Enrollment Agreements with San Diego County Water Authority and Poseidon Resources (Channelside) LP for Enrollment of the Channelside Account at the Carlsbad Desalination Plant**

RECOMMENDATION

1) Approve the Wholesale Market Access Tariff Terms and Conditions;
2) Approve Wholesale Market Access Agreement that includes Positive Enrollment Agreements with San Diego County Water Authority and Poseidon Resources (Channelside) LP for enrollment of the Channelside account at the Carlsbad Desalination Plant. Authorize the Chief Executive Officer to execute all documents, subject to General Counsel approval.

Item 9: **Consider Approval of Clean Energy Alliance Solar Billing Plan (NEM 3.0)**

RECOMMENDATION

CEA Board direct staff to:

- Implement Solar Billing Plan to mirror San Diego Gas & Electric's Solar Billing Plan and maintain CEA's current Net Surplus Compensation methodology effective December 15, 2023; or
- Implement a modified Solar Billing Plan to mirror San Diego Gas & Electric's Solar Billing Plan which provides a $.01 per kWh premium to the Avoided Cost Component and maintain CEA's current Net Surplus Compensation methodology effective December 15, 2023, for 5 years; or
- Do not implement Solar Billing Plan.

Item 10: **Consider Approval of Establishment of a Feed-in-Tariff (Community Solar) Program and Direct Staff to Return with Program Guidelines and Related Documents**

RECOMMENDATION

Approve Establishment of a Feed-In-Tariff (Community Solar) Program with the criteria recommended by staff and direct staff to return with a marketing campaign, program guidelines, application, and power purchase agreement.

BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS

NEXT MEETING: Regular Board Meeting January 25, 2024, City of Oceanside, 300 North Coast Highway, Oceanside, CA 92054

If you are an individual with a disability and need a reasonable modification or accommodation pursuant to the Americans with Disabilities Act ("ADA"), please contact Secretary@thecleanenergyalliance.org prior to the meeting for assistance.

Clean Energy Alliance - Board of Directors
Regular Meeting Minutes
July 27, 2023, 2:00 p.m.
City of Oceanside, Council Chamber
300 North Coast Hwy, Oceanside CA 92054

CALL TO ORDER: Chair Druker called to order the regular meeting of the Clean Energy Alliance at 2:01 p.m.

ROLL CALL: Board Members: Sanchez, Becker, Melendez, Bhat-Patel, Garcia, Chair Druker

FLAG SALUTE: Member Becker led the flag salute.

BOARD COMMENTS & ANNOUNCEMENTS: None

PRESENTATIONS: Recognition of Ty Tosdal, Tosdal APC for Service to Clean Energy Alliance

Chair Druker presented a Certificate of Appreciation to outgoing Regulatory Counsel Ty Tosdal.

Board Members and CEO Boswell expressed gratitude and appreciation to Mr. Tosdal for all the work accomplished on behalf of CEA.

PUBLIC COMMENT: Addressing the Board was Mary Oren regarding solar energy; and Lane Sharman regarding recruitment of CEO and staff, procurement from Sempra Energy SD Gas and Electric, and thermal batteries.

APPROVAL OF MINUTES
May 25, 2023 – Regular Meeting
June 29, 2023 – Special and Regular Meetings

Motion by Member Bhat-Patel, second by Member Becker, to approve the minutes of the May 25, 2023, regular meeting and the June 29, 2023, special and regular meetings.
Motion approved unanimously, 6/0.

Consent Calendar

CEO Boswell pulled Item 3 to be moved to a future meeting.

Item 1: **Clean Energy Alliance Treasurer's Report for May 2023**

RECOMMENDATION
Receive and file Clean Energy Alliance Treasurer's Report for May 2023.

Item 2: **Receive and File Report on Clean Energy Alliance Policies**

RECOMMENDATION
Receive and file report on Clean Energy Alliance policies.

Item 3: **Consider Approving Agreements with Participate.Energy, LLC, and Tesla, Inc. for Distributed Microgrid Solar + Battery Storage Program**

RECOMMENDATION

1) Approve Power Purchase Agreement with Participate.Energy, LLC for Distributed Microgrid Solar + Battery Storage Program and authorize the Chief Executive Officer to execute all documents subject to General and Special Counsel approval.
2) Approve Program Management Agreement with Participate.Energy, LLC for Distributed Microgrid Solar + Battery Storage Program and authorize the Chief Executive Officer to execute all documents subject to General Counsel approval.
3) Approve Program Support Agreement with Participate.Energy, LLC for Distributed Microgrid Solar + Battery Storage Program and authorize the Chief Executive Officer to execute all documents subject to General Counsel approval.
4) Approve Framework Distributed Microgrids Program Agreement with Participate.Energy, LLC and Tesla, Inc. for Distributed Microgrid Solar + Battery Storage Program and authorize the Chief Executive Officer to execute all documents subject to General Counsel approval.

Item 4: **Consider Approval of Participation in the Southern California Coalition for the California Energy Commission Equitable Building Decarbonization Program Grant and Authorize Chief Executive Officer to Submit a Commitment Letter**

RECOMMENDATION

Approve participation in the Southern California Coalition for the California Energy Commission Equitable Building Decarbonization Program Grant and authorize the Chief Executive Officer to submit a Commitment Letter.

Motion by Member Bhat-Patel, second by Member Becker, to approve the remainder of the Consent Calendar.
Motion carried unanimously, 6/0.

New Business

Item 5: **Clean Energy Alliance Operational, Administrative and Regulatory Affairs Update**

RECOMMENDATION

Receive Clean Energy Alliance Chief Executive Officer Operational Report and Special Counsel Regulatory Report.

CEO Barbara Boswell introduced new Regulatory Counsel, Tim Lindl of Keyes and Fox, and updated the Board on enrollment statistics noting that Escondido and San Marcos has just over 3% opt-out rates; and commented on AB 1373 that would impact CEA's procurement autonomy and costs.

Regulatory Counsel Tim Lindle expressed gratitude to outgoing Counsel Ty Tosdal and updated the Board on the following: Resource Adequacy (RA) commenting that the June decision of the Public Utilities Commission (CPUC) requires CCAs to purchase enough energy capacity to serve its customers with a 1% deficiency threshold tied to CCAs ability to expand; Provider of Last Resort (POLR) commenting that the PUC has set out to implement SB 520 to rework the structure in response to Western Community Energy halting service in

So Cal Edison's service territory; Power Charge Indifference Adjustment (PCIA) noting that the main ruling has closed but advocation will continue to keep the PCIA as low as possible in the Energy Resource Recovery Account (ERRA) proceedings and general rate cases; and Net Billing Tariff commenting that the Application for Rehearing was denied, appeal persists and the new tariff is still moving forward.

CEA Board received and filed report.

Item 6: Consider Approving Agreement with Calpine Energy Solutions and Recurve Analytics, Inc. for Summer Peak Load Reduction Pilot Program

RECOMMENDATION

Approve agreement with Calpine Energy Solutions and Recurve Analytics, Inc. for Summer Peak Load Reduction Pilot Program for an amount not to exceed $150,000 and authorize the Chief Executive Officer to execute all documents subject to General Counsel approval.

CEO Boswell presented the item commenting that in addition to increasing the amount of renewable energy, CEA strives to offer programs to their customers to help achieve savings on their overall bill. An opportunity to offer that through a partnership with Calpine Solutions and Recurve for the Summer Peak Load Reduction Pilot Program. The Platform identifies non-residential customers through usage analysis that would be good candidates for energy efficiency projects resulting in reduction in usage during peak times. Additionally, reducing exposure to energy costs during heat events and reducing Resource Adequacy requirements in future years.

Addressing the Board was Lane Sharman.

Motion by Member Becker, second by Member Bhat-Patel to approve the recommendation. Approved unanimously, 6/0

Item 7: Consider Approval of Memorandum of Understanding Between Clean Energy Alliance, Poseidon Resources LP, and San Diego County Water Authority Regarding Enrollment of Carlsbad Desalination Plant

RECOMMENDATION

Approve Memorandum of Understanding between Clean Energy Alliance, Poseidon Resources, LP, and San Diego County Water Authority regarding enrollment of Carlsbad Desalination Plant.

CEO Boswell presented the item noting the recommendation is a culmination of several years of cooperative work between CEA and the San Diego County Water Authority (SDCWA). Ms. Boswell explained that Carlsbad Desalination Plant owned by Poseidon Resources (Channelside) was opted out of CEA service during the 2021 mass enrollment due to significant financial implications to CEA. With continued cooperative discussions a unique opportunity to serve the plant while mitigating risk to CEA has been identified. The new CEA Program called Wholesale Market Access Tariff allows for CEA to manage energy portfolio specific to the Plant's load while passing the cost of energy and incidental costs of managing portfolios passed to Channelside.

Board questions and comments included: Is this an isolated circumstance or are there other high energy use organizations that pose a similar risk of opt-out; and would there still be a rate savings if Channelside opted up to 100% green.

CEO Boswell responded that this particular user has a single account whereas other large users have several accounts carrying a lower level of risk; regarding the 100% green, one of the key MOU terms is consideration of enrolling at a minimum, the Carlsbad default which is 75% carbon free.

Motion by Member Sanchez, second by Member Melendez, to approve the recommendation. Approved unanimously, 6/0.

BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS: None

NEXT MEETING: Special Board Meeting August 31, 2023, City of Oceanside, 300 North Coast Highway, Oceanside, CA 92054

ADJOURN: Chair Druker adjourned the meeting at 2:56 p.m.

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Susan Caputo, MMC
Interim Board Secretary

Clean Energy Alliance - Board of Directors
Special Meeting Minutes
August 31, 2023, 9:00 a.m.
City of Oceanside, Council Chamber
300 North Coast Hwy, Oceanside CA 92054

CALL TO ORDER: Chair Druker called to order the special meeting of the Clean Energy Alliance at 9:04 a.m.

ROLL CALL: Board Members: Becker, Bhat-Patel, Melendez, Garcia, Vice Chair Musgrove, Chair Druker, Board Member Sanchez entered the meeting at 9:07 a.m.

FLAG SALUTE: Vice Chair Musgrove led the flag salute.

PUBLIC COMMENT: None.

New Business

Item 1: **Consider Approval of Resolution No. 2023-006 Establishing Salary Schedule**

RECOMMENDATION
Approve Resolution No. 2023-006 Establishing Salary Schedule.

Motion by Member Bhat-Patel, second by Member Becker, to approve recommendation. Approved unanimously, 7/0.

Closed Session

Public Employment
Title: Chief Executive Officer
Pursuant to Government Code Section 54957

RECESS TO CLOSED SESSION: CEA Board recessed to closed session at 9:09 a.m.

RECONVENE TO OPEN SESSION: CEA Board reconvened to open session at 1:54 p.m.

GENERAL COUNSEL ANNOUNCEMENT: CEA General Counsel Johanna Canlas announced that no action was taken in closed session required to be reported.

ADJOURNMENT: 1:54 p.m.

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Susan Caputo, MMC
Interim Board Secretary

Clean Energy Alliance - Board of Directors
Special Meeting Minutes
September 28, 2023, 1:30 p.m.
City of Oceanside, Council Chamber
300 North Coast Hwy, Oceanside CA 92054

CALL TO ORDER: Chair Druker called to order the special meeting of the Clean Energy Alliance at 1:33 p.m.

ROLL CALL: Board Members: Becker, Bhat-Patel, Melendez, Garcia, Member Sanchez, Member Sannella, Chair Druker

PUBLIC COMMENT: None.

Closed Session

Item 1: **Public Employee Appointment Pursuant to Government Code Section 54957 Title: Chief Executive Officer**

Item 2: **Conference with Labor Negotiator Pursuant to Government Code Section 54957.6 Agency Designated Representatives: CEO Recruitment CEA Board Subcommittee, Johanna N. Canlas, General Counsel, Cindy Krebs, Alliance Resource Consulting Unrepresented Employee: Chief Executive Officer**

RECESS TO CLOSED SESSION: CEA Board recessed to closed session at 1:35 p.m.

RECONVENE TO OPEN SESSION: CEA Board reconvened to open session at 1:53 p.m.

GENERAL COUNSEL ANNOUNCEMENT: General Counsel Johanna Canlas announced that the CEA Board unanimously approved the appointment of Gregory Wade as CEA's next CEO by a vote of 7/0.

ADJOURNMENT: 1:53 p.m.

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Susan Caputo, MMC
Interim Board Secretary

Clean Energy Alliance - Board of Directors
Regular Meeting Minutes
September 28, 2023, 2:00 p.m.
City of Oceanside, Council Chamber
300 North Coast Hwy, Oceanside CA 92054

CALL TO ORDER: Chair Druker called to order the regular meeting of the Clean Energy Alliance at 2:02 p.m.

ROLL CALL: Board Members: Becker, Bhat-Patel, Melendez, Garcia, Sanchez, Sannella, Chair Druker

FLAG SALUTE: Member Becker led the flag salute.

BOARD COMMENTS & ANNOUNCEMENTS: None

PUBLIC COMMENT: None

New Business

Item 1: **Consider Appointment of Chief Executive Officer and Adoption of Resolution No. 2023-008 Approving Employment Agreement**

RECOMMENDATION
Appoint Chief Executive Officer and Adopt Resolution No. 2023-008 Approving the Employment Agreement.

General Counsel Johanna Canlas presented the item noting the recruitment beginning in June 2023 by Alliance Resource Consulting. The subcommittee narrowed the 53 applicants to the top 4 for the Board to interview. Following interview process, the top candidate was identified, and contract negotiated.

PUBLIC COMMENT: Addressing the Board was Sonja Robinson.

Member Melendez expressed gratitude to all involved in recruitment and commented that Mr. Wade was set apart by his passion for climate action and commitment to local community benefit.

Motion by Becker, second by Bhat-Patel, to approve the appointment of Greg Wade as Chief Executive Officer and adopt Resolution No. 2023-008.
Approved unanimously, 7/0.

Mr. Wade addressed the Board expressing gratitude and excitement to continue the work advancing the goals of community choice energy and the goals and objectives of CEA.

Board Members welcomed Mr. Wade to CEA.

Consent Calendar

Item 2: **Clean Energy Alliance Treasurer's Report for June 2023**

RECOMMENDATION
Receive and file Clean Energy Alliance Treasurer's Report for June 2023.

Item 3: **Clean Energy Alliance Treasurer's Report for July 2023**

RECOMMENDATION
Receive and file Clean Energy Alliance Treasurer's Report for July 2023.

Item 4: **Consider Appointment of Mika Nagamine to Community Advisory Committee Representing City of Solana Beach for a Term Through December 2024**

RECOMMENDATION
Appoint Mika Nagamine to Community Advisory Committee Representing City of Solana Beach for a Term Through December 2024.

Item 5: **Consider Adopting Resolution No. 2023-007 Attesting to the Veracity of the 2022 Power Source Disclosure Reports and Power Content Label Addressing the Clean Impact, Clean Impact Plus and Green Impact Power Retail Electric Service Offerings**

RECOMMENDATION
Adopt Resolution No. 2023-007 Attesting to the Veracity of the 2022 Power Source Disclosure Reports and Power Content Label Addressing the Clean Impact, Clean Impact Plus and Green Impact Power Retail Electric Service Offerings.

Item 6: **Consider Approval of 11-Year Power Purchase Agreement for Resource Adequacy with Edwards Solar 1A, LLC in Satisfaction of a Portion of Clean Energy Alliance's Mid-Term Reliability Requirements**

RECOMMENDATION
Approve 11-Year Power Purchase Agreement for Resource Adequacy with Edwards Solar 1A, LLC in Satisfaction of a portion of Clean Energy Alliance's Mid-Term Reliability Requirements, for an amount not to exceed $14,305,000. Authorize the Chief Executive Officer to execute all documents, substantially as to form of attached, subject to Transactions Attorney approval.

Member Becker commented on Item 4 stating that Mika Nagamine is on the Climate Action Committee in Solana Beach and will bring a lot of value to the CEA CAC.

Motion by Member Sanchez, second by Member Sannella to approve the consent calendar. Approved unanimously, 7/0.

New Business

Item 7: **Receive Clean Energy Alliance Chief Executive Officer Operational Report and Special Counsel Regulatory Report**

RECOMMENDATION

Receive Clean Energy Alliance Chief Executive Officer Operational Report and Special Counsel Regulatory Report.

CEO Boswell updated the Board on current recruitments for CEA indicating that CEA staff will be built quickly once new CEO is active.

Tim Lindl and Jake Schlesinger of Keyes & Fox LLP updated the Board on the following: SDG&E's Phase I General Rate Case (GRC) commenting that the goal of this phase is ensuring utility generation costs do not last in the PCIA in perpetuity, the aim is to get the CPUC to tell the utilities when reinvesting in facilities the vintage should be addressed so that customers that depart SDG&E after 2004/2008 vintage (CEA customers) don't pay for the reinvestment costs that change capacity, extension of life or change in nature; regarding SDG&E's Phase II General Rate Case the two main issues are Rate and Tariff Design that has to do with how PCIA is shown on customer bills and Schedule S (Standby Service) for large customers that have their own generation, currently San Diego CCAs are unable to serve these customers due to the inability to mirror SDG&E's rates; and lastly CEA's Petition for Modification in the Integrated Resource Planning (IRP) proceeding – Prior CPUC decision required SDG&E to purchase 49MW of capacity just before 86,000 departures in Escondido and San Marcos in addition to 200K in San Diego Community Poer service territory. CPUC acknowledged unfairness and allowed CEA to purchase capacity from SDG&E, but SDG&E refused to provide enough to account for Escondido and San Marcos, CEA filed for clarification to avoid $50-$96M in costs over the next 12 years, CPUC decision is anticipated October 12.

Member Becker expressed appreciation to the Regulatory Counsel and commented on the frustration of the actions of SDG&E.

PUBLIC COMMENT: Addressing the Board was Rob Howard.

CEA Board received reports.

BOARD MEMBER REQUESTS FOR FUTURE AGENDA ITEMS: Advocate CPUC

NEXT MEETING: Regular Board Meeting October 26, 2023, City of Oceanside, 300 North Coast Highway, Oceanside, CA 92054

ADJOURN: Chair Druker adjourned the meeting at 2:42 p.m.

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Susan Caputo, MMC
Interim Board Secretary

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Andy Stern, Interim Chief Financial Officer/Treasurer

ITEM 1: Clean Energy Alliance Treasurer's Report for August 2023

RECOMMENDATION

Receive and File Clean Energy Alliance (CEA) Interim Treasurer's Report for August 2023.

BACKGROUND AND DISCUSSION

This report provides the Board with the following financial information through August 31, 2023:

- Statement of Financial Position (Unaudited and preliminary) – Reports assets, liabilities, and financial position of the CEA as of August 31, 2023.
- Statement of Revenues, Expenses and Changes in Net Position (Unaudited and preliminary) for the twelve months ended August 31, 2023.
- Budget to Actuals Comparison Schedule (Unaudited and preliminary) – Reports actual revenues and expenditures compared to the annual amended budget as of August 31, 2023.
- List of Payments Issued – Reports payments issued for August 2023.

As of August 31, 2023, liabilities represent invoices and estimated accruals for energy and services received but not yet paid. The noncurrent liabilities relate to debt with JPMorgan as well as amounts due to the member cities of Carlsbad, Del Mar and Solana Beach. CEA is currently making interest only payments on the debt from JPMorgan. The amounts due to the member agency were for start-up costs and services provided to CEA for the period December 2019 to June 2020. These invoices are scheduled to be paid three years from the time CEA is operational.

CLEAN ENERGY ALLIANCE
STATEMENT OF NET POSITION
As of August 31, 2023

ASSETS	
Current assets	
Cash and cash equivalents	$ 20,218,574
Accounts receivable, net of allowance	17,238,176
Accrued revenue	19,657,702
Prepaid expenses	4,160,135
Deposits	399,000
Total current assets	61,673,587
Noncurrent assets	
Restricted cash	207,000
Deposits	771,376
Total noncurrent assets	978,376
Total assets	62,651,963
LIABILITIES	
Current liabilities	
Accrued cost of electricity	26,155,549
Accounts payable	475,788
Other accrued liabilities	151,941
Interest payable	193,754
Due to member agencies	504,017
Bank note payable	5,000,000
Total current liabilities	32,481,049
Noncurrent liabilities	
Security deposits - energy suppliers	496,150
Bank note payable	18,950,000
Total noncurrent liabilities	19,446,150
Total liabilities	51,927,199
NET POSITION	
Unrestricted	10,724,764
Total net position	$ 10,724,764

These financial statements do not contain note disclosures, have not been subjected to an audit or review or compilation engagement, and no assurance is provided on them.

CLEAN ENERGY ALLIANCE
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN NET POSITION
Two Months ended August 31, 2023

OPERATING REVENUES		
Electricity sales, net	$	51,332,941
OPERATING EXPENSES		
Cost of electricity		33,034,915
Contract services		700,586
Other operating expenses		53,440
Total operating expenses		33,788,941
Operating income (loss)		17,544,000
NONOPERATING REVENUES (EXPENSES)		
Interest income		5,521
Interest expense		(372,473)
Nonoperating revenues (expenses), net		(366,952)
CHANGE IN NET POSITION		17,177,048
Net position at beginning of period		(6,452,284)
Net position at end of period	$	10,724,764

These financial statements do not contain note disclosures, have not been subjected to an audit or review or compilation engagement, and no assurance is provided on them.

BUDGET TO ACTUALS COMPARISON SCHEDULE

At its June 2023, board meeting, the CEA Board approved the Fiscal Year (FY) 2023/24 budget approving $213,361,000 in total operating and nonoperating expenses. For the year-to-date, $35,204,000 has been expended. Revenues from electricity sales for the year-to-date reached $52,381,000. The overall change in available fund balance (ignoring loan proceeds) for the year-to-date was an increase of $17,177,000.

The Budget to Actuals Comparison Schedules as of August 31, 2023, is shown on the next page.

CLEAN ENERGY ALLIANCE
BUDGETARY COMPARISON SCHEDULE
Two Months ended August 31, 2023

	ANNUAL BUDGET	YEAR-TO-DATE ACTUAL	ANNUAL BUDGET REMAINING
Operating Revenues			
Energy Sales	$ 230,915,000	52,380,552	$ 178,534,448
Total Operating Revenue	**230,915,000**	**52,380,552**	**178,534,448**
Operating Expenses			
Power Supply	200,000,000	33,034,915	166,965,085
Data Manager / Call Center	2,500,000	316,262	2,183,738
Staffing/Consultants	3,000,000	73,286	2,926,714
Legal Services	467,500	60,569	406,931
Professional Services	1,448,885	221,708	1,227,177
Audit Services	10,000	-	10,000
Software & Licenses	15,000	2,750	12,250
Membership Dues	292,040	47,840	244,200
G & A (includes Bad Debt expense)	4,927,780	1,079,222	3,848,558
Total Operating Expenses	**212,661,205**	**34,836,552**	**177,824,653**
Operating Income (Loss)	**18,253,795**	**17,544,000**	**709,795**
Financing			
Net Interest Income (Expense)	**(700,000)**	**(366,952)**	**(333,048)**
Change in Net Position	**$ 17,553,795**	**$ 17,177,048**	**$ 376,747**

These financial statements do not contain note disclosures, have not been subjected to an audit or review or compilation engagement, and no assurance is provided on them.

LIST OF PAYMENTS ISSUED

The report on the following page provides the detail of payments issued by CEA for the month. All payments were within approved budget.

PAYMENTS ISSUED DURING AUGUST 2023

Date	Type	Vendor	Description	Amount
08/01/2023	Wire	Elk Hills Power, LLC	Showing Month & Year: October -2023	690,000.00
08/01/2023	Wire	JPMorgan	Interests Expense	170,397.58
08/01/2023	Wire	SAAVI ENERGY SOLUTIONS, LLC.	Firm Resource Adequacy	105,000.00
08/01/2023	Wire	SAAVI ENERGY SOLUTIONS, LLC.	Firm Resource Adequacy	618,750.00
08/03/2023	ACH/CK	Neyenesch Printers	Mailing	2,212.25
08/07/2023	ACH/CK	USPS	August 2023 - Postage Payment	451.24
08/07/2023	ACH/CK	USPS	August 2023 - Postage Payment	71.86
08/10/2023	ACH/CK	Tripepi, Smith & Associates, Inc.	July 2023 - Communications and Marketing Service	13,546.53
08/11/2023	ACH/CK	Burke, Williams & Sorensen, LLP	PROFESSIONAL SERVICES CEO RECRUITMENT - GC	10,688.35
08/11/2023	Wire	DYNEGY	Capacity Purchases - October 2023	220,000.00
08/11/2023	ACH/CK	Keyes & Fox LLP	June 2023 - Professional Services	21,481.50
08/11/2023	ACH/CK	Neyenesch Printers	CEA Name Plate- Tim Lindl	1,564.13
08/11/2023	ACH/CK	The Bayshore Consulting Group	July 2023 - CEO, Clerk Services & Reimbursable Expenses	22,247.98
08/14/2023	ACH/CK	THE ENERGY AUTHORITY	July 2023 - CAISO Weekly Settlement	48,483.92
08/14/2023	ACH/CK	USPS	August 2023 - Postage Payment	187.04
08/14/2023	ACH/CK	USPS	August 2023 - Postage Payment	365.49
08/18/2023	ACH/CK	City of Del Mar	Reimburse City of Del Mar for Panelist Lunch	46.00
08/21/2023	Wire	LEAPFROG POWER, INC.	August 2023 - Capacity Purchase	2,200.00
08/21/2023	ACH/CK	Maher Accountancy	August 2023 - Accounting, cash disbursements and related	9,500.00
08/21/2023	Wire	SDG&E	July 2023 - Capacity Purchase	108,763.50
08/21/2023	Wire	SDG&E	July 2023 - Capacity Purchase - MCAM	63,527.30
08/21/2023	Wire	SDG&E	July 2023 - REC Sales	533,806.95
08/21/2023	Wire	SEMPRA	July 2023 - Capacity Purchases	517,400.00
08/21/2023	ACH/CK	USPS	August 2023 - Postage Payment	1,000.78
08/22/2023	ACH/CK	USPS	August 2023 - Postage Payment	366.92
08/23/2023	Wire	Grade 6 Oil LLC	BILLING PERIOD - July 2023 RA	325,600.00
08/23/2023	ACH/CK	WREGIS	Transferred Rec	63.90
08/24/2023	ACH/CK	Alliance Resource Consulting	First, Second, Third Billings - executive recruitment	28,000.00
08/24/2023	ACH/CK	Calpine Energy Solutions	June 2023 Services	152,669.00
08/24/2023	ACH/CK	Hall Energy Law PC	June 2023 - Energy Procurement Counsel Services	2,349.50
08/24/2023	ACH/CK	Keyes & Fox LLP	July 2023 - Professional Services	11,623.00
08/24/2023	ACH/CK	SDG&E	For services rendered under Schedule CCA for period	87,239.44
08/24/2023	ACH/CK	Multiple Customers	NEM Cash Out	36,018.27
08/25/2023	ACH/CK	Braun Blaising Smith Wynne	June 2023 - Professional Services - General Matters	1,846.63
08/25/2023	ACH/CK	Lupa Affairs Llc	July 2023 - Professional Service	1,715.00
08/25/2023	Wire	Powerex	Transactions for the Period of August 2023	143,541.67
08/25/2023	Wire	Resi Station LLC	Proxy Demand Response CEA July 2023	19,600.00
08/25/2023	ACH/CK	San Elijo Life	Banner Advertisement	100.00
08/25/2023	ACH/CK	STERN, ANDREW	CFO Services - For the period from 7/22/23-8/21/23	7,500.00
08/25/2023	Wire	Tecolote Wind LLC	July 2023 - Resource Adequacy	39,937.50
08/25/2023	ACH/CK	The Coast News Group	CNI AD	500.00
08/25/2023	ACH/CK	USPS	August 2023 - Postage Payment	536.96
08/25/2023	ACH/CK	USPS	August 2023 - Postage Payment	518.30
08/28/2023	ACH/CK	Tripepi, Smith & Associates, Inc.	July 2023 - Communications and Marketing Service	1,097.50
08/28/2023	ACH/CK	USPS	August 2023 - Postage Payment	235.73
08/29/2023	Wire	Avanti Executive Suites	September 2023 -Rent	1,423.74
08/29/2023	ACH/CK	CLIMATE ACTION CAMPAIGN	Nexus Silver Sponsorship	5,000.00
08/29/2023	ACH/CK	Maher Accountancy	Access to Bill.com software and mailing costs	2,112.84
08/29/2023	ACH/CK	Pacific Energy Advisors, Inc	July 2023 - Technical Consulting Advisors	26,280.00
08/29/2023	ACH/CK	SDG&E	For services May and June 2023	65,881.80
08/30/2023	ACH/CK	THE ENERGY AUTHORITY	July 2023 - Resource Management Monthly Fees	11,700.00
08/31/2023	ACH/CK	Tosdal APC	June 2023 - Regulatory Services	8,291.25
			Total for Operating Account	**4,143,441.35**
08/23/2023	Lockbox	Exelon Generation Company,LLC	June 2023 - Power Purchase	2,392,974.40
08/23/2023	Lockbox	Direct Energy	June 2023 - Power purchase Hedge	918,132.68
08/23/2023	Lockbox	Morgan Stanley Capital Group,	July 2023 - Capacity Purchase & Energy Purchase	3,147,767.84
08/23/2023	Lockbox	Shell Oil North America	July 2023 - Capacity SWAP & Energy Purchase	2,049,522.70
			Total for Lockbox Account	**8,508,397.62**

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 2: Clean Energy Alliance Operational, Administrative and Regulatory Affairs Update

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RECOMMENDATION

1) Receive and File Operational and Administrative Update Report from Chief Executive Officer.
2) Receive Regulatory Affairs Report from Keyes & Fox, Special Counsel.

BACKGROUND AND DISCUSSION

This report provides an update to the Clean Energy Alliance (CEA) Board regarding the status of operational, administrative, and regulatory affairs activities.

OPERATIONAL UPDATE

Oceanside & Vista April 2024 Enrollment

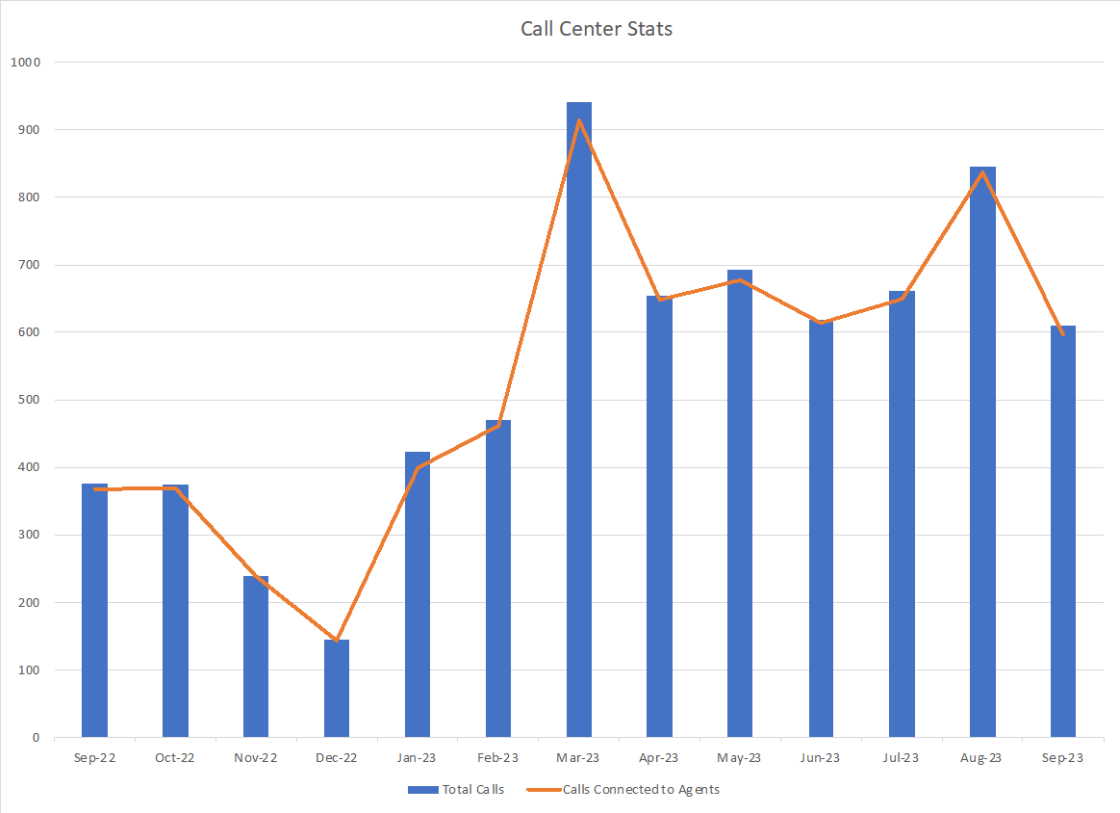
In planning to serve customers in their city, the City Councils of Oceanside and Vista will select the default power supply that customers will be automatically enrolled in. The options are:

Clean Impact – 50% Renewable
Clean Impact Plus – 75% Carbon Free
Green Impact – 100% Renewable

Vista City Council will consider the options at their November 14 meeting and Oceanside at their November 15 meeting.

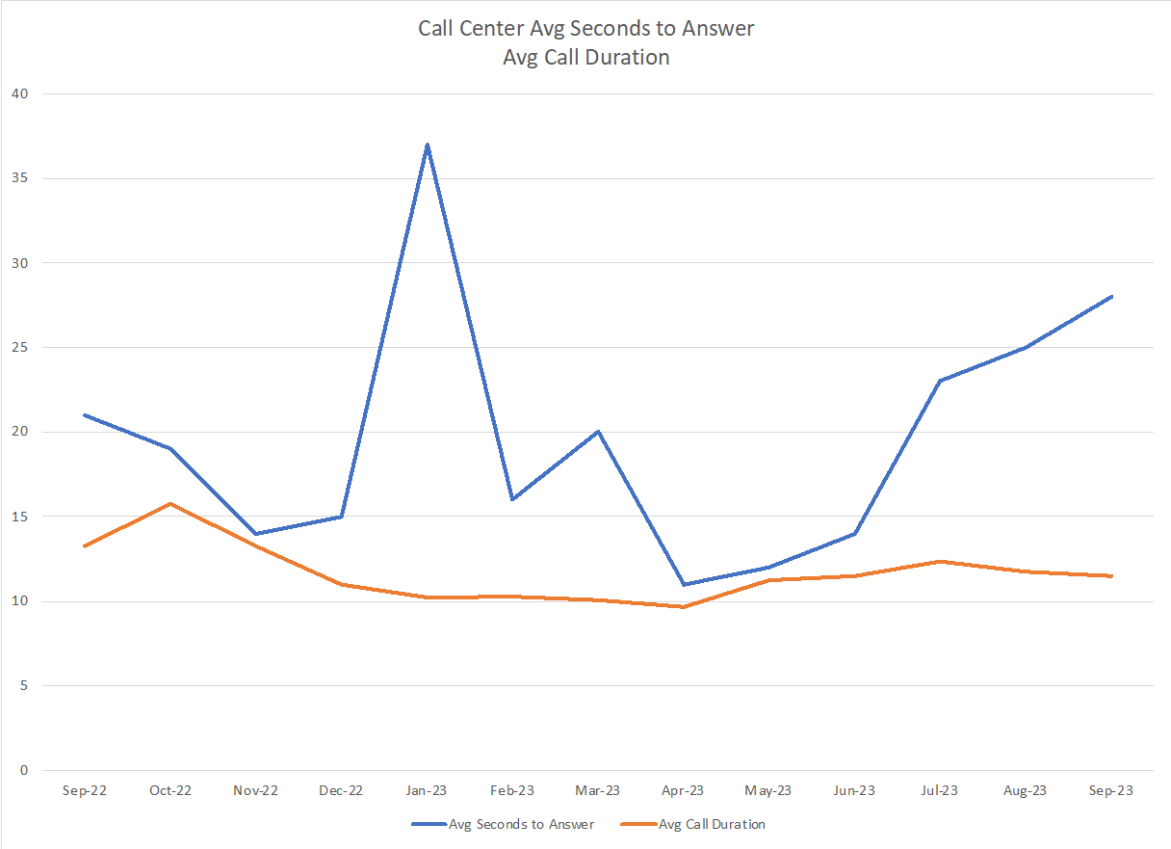
Call Center Activity and Participation Statistics

The charts below reflect customer activity through September 30, 2023:



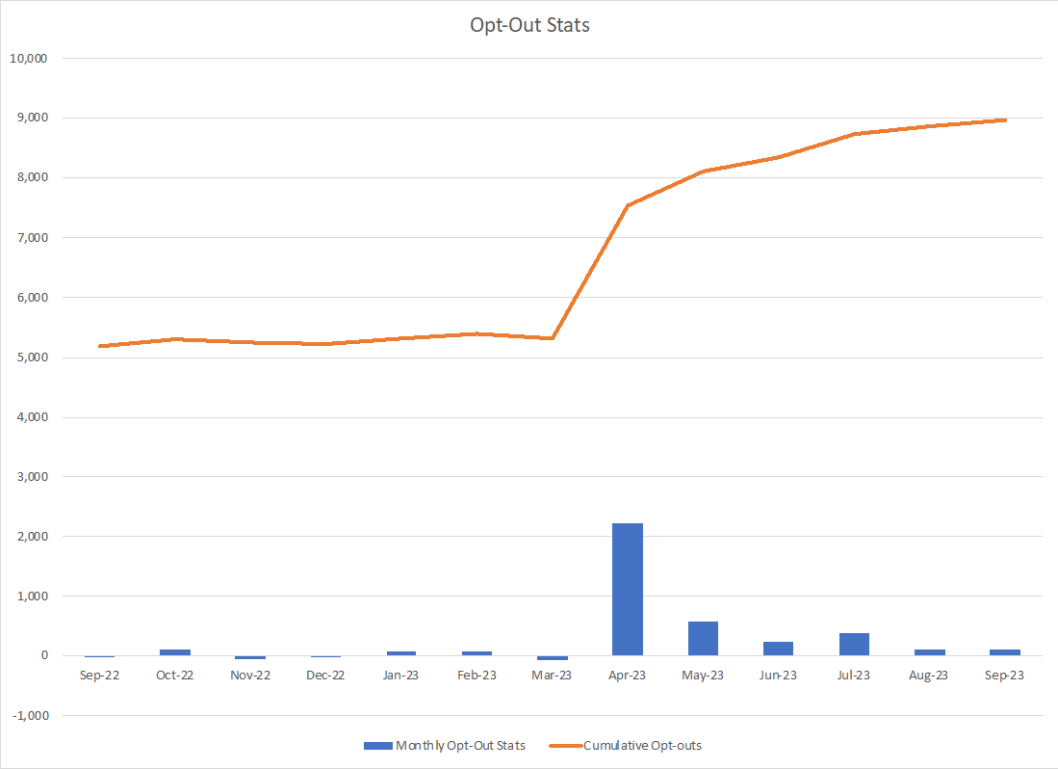
Calls to CEA are trending at normal levels with the most common topic being Net Energy Metering questions. This can be attributed to the on-going enrollments of Net Energy Metering customers in Escondido and San Marcos.

The following chart reflects call center average seconds to answer and average call duration:



Average time to answer during September was 28 seconds and duration of calls averaged about 11 minutes.

The following chart reflects the monthly and cumulative opt-outs through September 30, 2023, for CEA. The statistics reflect all 5 cities combined.



CEA's participation is approximately 95%, with 108 opt-outs compared to 119 in August 2023.

The following chart reflects enrollments in CEA's power supply products:

POWER SUPPLY PRODUCT	AUGUST 2023	SEPTEMBER 2023	Net Change
Clean Impact – 50% Renewable	432	442	+ 10
Clean Impact Plus - 75% Carbon Free	147,887	147,699	-188
Green Impact – 100% Renewable	577	586	+ 9
TOTAL ACCOUNTS	**148,896**	**148,727**	**-169**

Risk Oversight Committee

Pursuant to CEA's Energy Risk Management Policy, the Risk Oversight Committee met September 7, 2023. The Committee reviewed CEA's recent procurement activity, current portfolio positions and future procurement targets, and portfolio mark to market and counterparty exposure. The Committee also met on September 19, 2023, to review CEA's financial position. The Committee confirmed that CEA is in compliance with its Energy Risk Management Policy. The next regular meeting of the Committee is scheduled for December 7, 2023.

Contracts $50,000 - $100,000 entered into by Chief Executive Officer

VENDOR	DESCRIPTION	AMOUNT
None		

REGULATORY UPDATE

CEA's regulatory attorney, Tim Lindl, Keyes & Fox, will provide an update to the Board on current regulatory activities (Attachment A).

FISCAL IMPACT

There is no fiscal impact by this action.

ATTACHMENTS

Attachment A – Keyes & Fox Regulatory Update Report

KEYES&FOX LLP

EQ Research

Clean Energy Alliance

Regulatory Monitoring Report

To: Clean Energy Alliance (CEA) Board of Directors

From: Tim Lindl, Partner, Keyes & Fox LLP
Jacob Schlesinger, Partner, Keyes & Fox LLP
Jason Hoyle, Principal Analyst, EQ Research, LLC

Subject: Monthly Regulatory Update

Date: October 20, 2023

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

IRP Rulemaking | R.20-05-003

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

Recent Developments: The August 24 Proposed Decision (PD) that would deny the Petition for Modification (filed October 28, 2022) of D.22-05-015 filed jointly by San Diego Clean Power and Clean Energy Alliance was withdrawn from the agenda of the Commission's October 12 meeting. The Petition requested modification of the provision in D.22-05-015 allowing a one-time purchase of resource adequacy capacity to account for load migration to CCAs in between the issuance of D.19-11-016 and D.22-05-015, and it sought to use the year-ahead load forecast as the basis for determining the resource adequacy capacity available via the one-time purchase rather than the actual load being served at the time D.22-05-015 was issued. Keyes & Fox presented the Petition to the Board at its September meeting.

Analysis: **Withdrawal of the PD is good news for CEA**, suggesting the Commission may reverse its position and adopt the Petition.

Next Steps: If the Commission reverses its position, it will re-issue a new PD or an alternate PD for party comments.

SDG&E 2024 RATES: (SDG&E 2024 ERRA Forecast | A.23-05-013)

Background: The annual Energy Resource and Recovery Account (ERRA) forecast proceedings establish the amount of the Power Charge Indifference Adjustment (PCIA) and other nonbypassable charges (NBCs) for the following year, as well as fuel and purchased power costs associated with serving bundled customers that utilities may recover in rates.

Recent Developments: In SDG&E's October Update (Testimony), PCIA rates are projected to be the following:

Rate Group	PCIA 2013 Vintage	PCIA 2014 Vintage	PCIA 2015 Vintage	PCIA 2016 Vintage	PCIA 2017 Vintage	PCIA 2018 Vintage	PCIA 2019 Vintage	PCIA 2020 Vintage	PCIA 2021 Vintage	PCIA 2022 Vintage	PCIA 2023 Vintage	PCIA 2024 Vintage
Residential	0.00624	0.00626	0.00155	0.00571	0.00036	(0.00040)	0.00194	(0.00485)	0.00046	0.03120	0.03676	0.03676
Small Commercial	0.00484	0.00485	0.00119	0.00443	0.00026	(0.00034)	0.00151	(0.00386)	0.00536	0.03386	0.03849	0.03849
Medium & Large C&I	0.00620	0.00622	0.00131	0.00574	0.00004	(0.00079)	0.00185	(0.00587)	0.00683	0.04752	0.05333	0.05333
Agriculture	0.00428	0.00430	0.00097	0.00391	0.00013	(0.00041)	0.00125	(0.00355)	0.00234	0.02046	0.02507	0.02507
Streetlighting	0.00360	0.00361	0.00090	0.00329	0.00021	(0.00023)	0.00112	(0.00278)	0.00395	0.02468	0.02828	0.02828
System Total	0.00596	0.00597	0.00138	0.00547	0.00021	(0.00055)	0.00181	(0.00507)	0.00268	0.03640	0.04191	0.04191

Analysis and Next Steps: CEA and its attorneys are in the process of closely reviewing the updated testimony and corresponding rates. Comments are due October 27, 2023. A Proposed Decision is anticipated in late mid-to-late November. The rates adopted in the Proposed Decision will be revised one final time at the end of December based on year-to-date actuals in October and November of 2023.

Diablo Canyon | R.23-01-007

Background: This rulemaking was opened to implement provisions of SB 846 (Stats. 2022, Ch. 239) which the Commission to consider the potential extension of operations at the Diablo Canyon Nuclear Power Plant. Licenses for the plant's two units are set to expire November 2, 2024 (Unit 1) and August 26, 2025 (Unit 2), but SB 846 is part of an effort to extend operations until October 31, 2029 (Unit 1) and October 31, 2030 (Unit 2).

Recent Developments: Briefing has concluded in this proceeding and oral argument is scheduled for November 7.

Analysis: A key issue identified in the Scoping Ruling is whether and how the benefits of extended operations, including resource adequacy and GHG-free attributes, should be allocated among the load-serving entities (LSEs). With the sole exception of PG&E and two other parties, all parties – including SCE and SDG&E – agree that capacity and GHG-free attributes from Diablo Canyon should be allocated to LSEs. Such an allocation could save CEA its load-share portion of at least $400 million in RA costs each year.

Next Steps: A proposed decision is expected in October or November in order to meet the deadline of the end of 2023 for a final decision to be issued.

Income Graduated Fixed Charge (Demand Flexibility | R.22-07-005)

Background: This rulemaking was opened to update the CPUC's rate design principles and guidance for advancing demand flexibility, and the proceeding may also modify, consolidate, or eliminate existing dynamic rate pilots. Phase 1-Track A will establish an **income-graduated fixed charge** for residential rates for all investor-owned electric utilities in accordance with Assembly Bill 205 (Stats. 2022, ch. 61). Phase 1-Track B first adopted rate design and demand flexibility principles and is now considering broad expansion of the several pilot programs.

Recent Developments: Opening briefs on the Track A income-graduated fixed charge were filed on October 6. The Joint Brief of PG&E, SCE, and SDG&E calls for an initial implementation of income-graduated fixed charges based on three income tiers that will incorporate a fourth tier in a future implementation for income levels greater than 650% of the federal poverty level. The IOUs' proposals are shown in the table below. SDG&E's illustrative rates in the initial implementation would have an average fixed charge of $60/month, with a first-tier charge of $24/month for CARE customers with incomes less than or equal to 100% of the federal poverty level, a second-tier charge of $34/month for all other CARE/FERA customers, and a third-tier charge of $73/month for non-CARE/FERA customers. The joint IOUs' proposal is significantly higher than CalAdvocates' recent "First Version" proposed fixed charges of $4, $7, and about $30/month charges for CARE customers with incomes less than or equal to 100% of the federal poverty line, other CARE/FERA customers, and non-CARE/FERA customers, respectively.

Next Steps: A proposed decision is expected in March or April of 2024.

Income Graduated Fixed Charge Rate Proposal Tables

PG&E

Income Bracket	Criteria	PG&E IGFC - Future Version ($/month)	PG&E IGFC - First Version ($/month)
Average Fixed Charge		$53	$42
1	CARE (<=100% FPL)	$15	$13
2	All other CARE/FERA	$30	$26
3	Non-CARE/FERA <=650% FPL	$51	$51
4	Non-CARE/FERA >650% FPL	$92	$51

SDG&E

Income Bracket	Criteria	SDG&E IGFC - Future Version ($/month)	SDG&E IGFC - First Version ($/month)
Average Fixed Charge		$74	$60
1	CARE (<=100% FPL)	$24	$24
2	All other CARE/FERA	$34	$34
3	Non-CARE/FERA <=650% FPL	$73	$73
4	Non-CARE/FERA >650% FPL	$128	$73

SCE

Income Bracket	Criteria	SCE IGFC - Future Version ($/month)	SCE IGFC - First Version ($/month)
Average Fixed Charge		$49	$41
1	CARE (<=100% FPL)	$15	$10
2	All other CARE/FERA	$20	$15
3	Non-CARE/FERA <=650% FPL	$51	$51
4	Non-CARE/FERA >650% FPL	$85	$51

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Dwight Worden, Alternate Del Mar Board Member, Community Advisory Committee Chair

ITEM 3: Receive and File Clean Energy Community Advisory Committee October 5, 2023, Meeting Report

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RECOMMENDATION

Receive and File Clean Energy Community Advisory Committee October 5, 2023, Meeting Report.

BACKGROUND AND DISCUSSION

The Clean Energy Alliance (CEA) Community Advisory Committee (CAC) meets the first Thursday of even months, with the most recent meeting on October 5, 2023. The CEA Board of Directors establishes the work plan for the CAC annually.

Pursuant to the 2023 Work Plan, the CAC agenda included the following items:

- Chief Executive Officer Update
- Update on Clean Energy Alliance Solar Plus Program
- Input on Solar Billing Plan Implementation (NEM 3.0)
- Input on Clean Energy Alliance Feed-In-Tariff
- Input into Subcommittee Reports for Preparation to Present to the CEA Board January 25, 2024.

The input provided by the CAC on the Solar Plus Program, Solar Billing Plan and Feed-In-Tariff is incorporated into the individual staff reports for these items on this Board agenda. Due to time constraints, the input into the Subcommittee Reports was postponed to the December 7, 2023, CAC meeting.

FISCAL IMPACT

None

ATTACHMENTS

None

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 4: Consider Approval of Resolution No. 2023-010 Approving the Form of and Authorizing the Execution of a Memorandum of Understanding and Authorizing Participation in the Special District Risk Management Authority's Health Benefits Program

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RECOMMENDATION

Approve Resolution No. 2023-010 approving the form of and authorizing the execution of a Memorandum of Understanding and authorizing participation in the Special District Risk Management Authority's Health Benefits Program.

BACKGROUND AND DISCUSSION

At its regular meeting May 25, 2023, the Clean Energy Alliance (CEA) Board approved CEA's Employee Benefits, which included a provision for health insurance. In addition, as part of its Fiscal Year 2023/24 Budget the addition of full-time staff was approved. Recruitments for the new positions are underway, and it is now appropriate for CEA to select its health insurance provider in anticipation of the impending new hires.

Staff evaluated two options for health insurance provider, including participation in the Special District Risk Management Authority (SDRMA) health benefits program and using a private insurance broker for health insurance.

Through the evaluation process, staff learned that the health insurance rates for employees going through the private insurance broker would be different for each employee based on the demographics of the employees due to CEA's small employee group. Going through SDRMA, CEA would have the benefit of blended health insurance rates for employees due to the benefit of SDRMA's larger pool.

Staff prepared a cost analysis of the two options using an assumption of 5 employees, with various family structures, including with a spouse and dependents, spouse with no dependents, single with dependents and single no dependents. The offering of a PPO plan was used for the cost analysis.

The following chart summarizes the results:

MEDICAL INSURANCE	SDRMA	Private Broker
Annual Employee out of pocket (Individual/Family)	$1,600/$4,200	$3,800/$7,600
Est. Monthly Total Premiums – Employees & Dependents	$14,200	$13,500

DENTAL INSURANCE	SDRMA	Private Broker
Annual Maximum Benefit	$2,000	$2,000
Est. Monthly Total Premiums – Employees & Dependents	$575	$840

Based on the comparison of the two options, staff recommends participation in the SDRMA health benefits program.

FISCAL IMPACT

CEA's approved employee benefit plan provides that CEA will pay 100% of premium cost for enrolled employees and 50% for each enrolled dependent. Costs of the premiums are included in CEA's adopted Fiscal Year 2023/24 budget.

ATTACHMENTS

Resolution No. 2023-010 approving the form of and authorizing the execution of a Memorandum of Understanding and authorizing participation in the Special District Risk Management Authority's Health Benefits Program.

RESOLUTION NO. 2023-010

A RESOLUTION OF THE OF THE BOARD OF DIRECTORS OF CLEAN ENERGY ALLIANCE APPROVING THE FORM OF AND AUTHORIZING THE EXECUTION OF A MEMORANDUM OF UNDERSTANDING AND AUTHORIZING PARTICIPATION IN THE SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY'S HEALTH BENEFITS PROGRAM

WHEREAS, Clean Energy Alliance (CEA), is a joint powers authority established on November 4, 2019, and duly organized and existing under the Joint Exercise of Powers Act (Government Code Section 6500 *et seq*.) and by virtue of the laws of the State of California, has determined that it is in the best interest and to the advantage of CEA to participate in the Health Benefits Program offered by Special District Risk Management Authority (the "Authority"); and

WHEREAS, the Authority was formed in 1986 in accordance with the provisions of California Government Code 6500 *et seq.,* for the purpose of providing risk financing, risk management programs and other coverage protection programs; and

WHEREAS, participation in Authority programs requires CEA to execute and enter into a Memorandum of Understanding which states the purpose and participation requirements for the Health Benefits Program; and

WHEREAS, all acts, conditions and things required by the laws of the State of California to exist, to have happened, and to have been performed precedent to and in connection with the consummation of the transactions authorized hereby do exist, have happened, and have been performed in regular and due time, form and manner as required by law, and CEA is now duly authorized and empowered, pursuant to each and every requirement of law, to consummate such transactions for the purpose, in the manner and upon the terms herein provided.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF DIRECTORS OF CLEAN ENERGY ALLIACE, AS FOLLOWS:

Section 1. Findings. The Clean Energy Alliance's Governing Body hereby specifically finds and determines that the actions authorized hereby relate to the public affairs of the Clean Energy Alliance.

Section 2. Memorandum of Understanding. The Memorandum of Understanding, to be executed and entered into by and between CEA and the Authority, in the form presented at this meeting and attached as Exhibit A is hereby approved. CEA's Chief Executive Officer and Interim Chief Financial Officer ("Authorized Officers") are hereby authorized and directed, for and in the name and on behalf of CEA, to execute and deliver to the Authority the Memorandum of Understanding.

Section 3. Program Participation. CEA's Governing Body approves participating in the Special District Risk Management Authority's Health Benefits Program.

Section 4. Other Actions. The Authorized Officers of CEA are each hereby authorized and directed to execute and deliver any and all documents which are necessary in order to

consummate the transactions authorized hereby and all such actions heretofore taken by such officers are hereby ratified, confirmed and approved.

Section 5. Effective Date. This resolution shall take effect immediately upon its passage.

APPROVED AND ADOPTED this 26th day of October 2023, by the following vote:

AYES:

NOES:

ABSENT:

ABSTAIN:

David Druker, Chair

ATTEST:

Susan Caputo, Interim Board Secretary

MEMORANDUM OF UNDERSTANDING

THIS MEMORANDUM OF UNDERSTANDING (HEREAFTER "MEMORANDUM") IS ENTERED INTO BY AND BETWEEN THE SPECIAL DISTRICT RISK MANAGEMENT AUTHORITY (HEREAFTER "SDRMA") AND THE CLEAN ENERGY ALLIANCE (HEREAFTER "ENTITY") WHO IS SIGNATORY TO THIS MEMORANDUM.

WHEREAS, on August 1, 2006, SDRMA was appointed administrator for the purpose of enrolling small public entities into the Public Risk Innovation, Solutions and Management (PRISM) Health and/or Employee Benefits Small Group Program (hereinafter "PROGRAM"); and

WHEREAS, the terms and conditions of the PROGRAM as well as benefit coverage, rates, assessments, and premiums are governed by the PRISM Health Committee and/or PRISM Employee Benefits Committee for the PROGRAM (the "COMMITTEE") and not SDRMA; and

WHEREAS, ENTITY desires to enroll and participate in the PROGRAM.

NOW THEREFORE, SDRMA and ENTITY agree as follows:

1. PURPOSE**.** ENTITY is signatory to this MEMORANDUM for the express purpose of enrolling in the PROGRAM.

2. ENTRY INTO PROGRAM**.** ENTITY shall enroll in the PROGRAM by making application through SDRMA which shall be subject to approval by the PROGRAM's Underwriter and governing documents and in accordance with applicable eligibility guidelines.

3. MAINTENANCE OF EFFORT**.** PROGRAM is designed to provide an alternative health benefit solution to all participants of the ENTITY including active employees, retired employees (optional), dependents (optional) and public officials (optional). ENTITY public officials may participate in the PROGRAM only if they are currently being covered and their own ENTITY's enabling act, plans and policies allow it. ENTITY must contribute at least the minimum percentage required by the eligibility requirements

4. PREMIUMS. ENTITY understands that premiums and rates for the PROGRAM are set by the COMMITTEE. ENTITY will remit monthly premiums based upon rates established for each category of participants and the census of covered employees, public officials, dependents and retirees.

   Rates for the ENTITY and each category of participant will be determined by the COMMITTEE designated for the PROGRAM based upon advice from its consultants and/or a consulting Benefits Actuary and insurance carriers. In addition, SDRMA adds an administrative fee to premiums and rates for costs associated with administering the PROGRAM. Rates may vary depending upon factors including, but not limited to,

demographic characteristics, loss experience of all public entities participating in the PROGRAM and differences in benefits provided (plan design), if any.

SDRMA will administrate a billing to ENTITY each month, with payments due by the date specified by SDRMA. Payments received after the specified date will accrue penalties up to and including termination from the PROGRAM. Premiums are based on a full month, and there are no partial months or prorated premiums. Enrollment for mid-year qualifying events and termination of coverage will be made in accordance with the SDRMA Program Administrative Guidelines.

5. BENEFITS. Benefits provided to ENTITY participants shall be as set forth in ENTITY's Plan Summary for the PROGRAM and as agreed upon between the ENTITY and its recognized employee organizations as applicable. Not all plan offerings will be available to ENTITY, and plans requested by ENTITY must be submitted to PROGRAM underwriter for approval.

6. COVERAGE DOCUMENTS. Except as otherwise provided herein, coverage documents from each carrier outlining the coverage provided, including terms and conditions of coverage, are controlling with respect to the coverage of the PROGRAM and will be provided by SDRMA to each ENTITY. SDRMA will provide each ENTITY with additional documentation, defined as the SDRMA Program Administrative Guidelines which provide further details on administration of the PROGRAM.

7. PROGRAM FUNDING. It is the intent of this MEMORANDUM to provide for a fully funded PROGRAM by any or all of the following: pooling risk; purchasing individual stop loss coverage to protect the pool from large claims; and purchasing aggregate stop loss coverage.

8. ASSESSMENTS. Should the PROGRAM not be adequately funded for any reason, pro-rata assessments to the ENTITY may be utilized to ensure the approved funding level for applicable policy periods. Any assessments which are deemed necessary to ensure approved funding levels shall be made upon the determination and approval of the COMMITTEE in accordance with the following:

   a. Assessments/dividends will be used sparingly. Generally, any over/under funding will be factored into renewal rates.

   b. If a dividend/assessment is declared, allocation will be based upon each ENTITY'S proportional share of total premiums paid for the preceding 3 years. An ENTITY must be a current participant to receive a dividend, except upon termination of the PROGRAM and distribution of assets.

c. ENTITY will be liable for assessments for 12 months following withdrawal from the PROGRAM.

d. Fund equity will be evaluated on a total PROGRAM-wide basis as opposed to each year standing on its own.

9. WITHDRAWAL. ENTITY may withdraw subject to the following condition: ENTITY shall notify SDRMA and the PROGRAM in writing of its intent to withdraw at least 90 days prior to their requested withdrawal date. ENTITY may rescind its notice of intent to withdraw. Once ENTITY withdraws from the PROGRAM, there is a 3-year waiting period to come back into the PROGRAM, and the ENTITY will be subject to underwriting approval again.

10. LIAISON WITH SDRMA. Each ENTITY shall maintain staff to act as liaison with SDRMA and between the ENTITY and SDRMA'S designated PROGRAM representative.

11. GOVERNING LAW. This MEMORANDUM shall be governed in accordance with the laws of the State of California.

12. VENUE. Venue for any dispute or enforcement shall be in Sacramento, California.

13. ATTORNEY FEES. The prevailing party in any dispute shall be entitled to an award of reasonable attorney fees.

14. COMPLETE AGREEMENT. This MEMORANDUM together with the related PROGRAM documents constitutes the full and complete agreement of the ENTITY.

15. SEVERABILITY. Should any provision of this MEMORANDUM be judicially determined to be void or unenforceable, such determination shall not affect any remaining provision.

16. AMENDMENT OF MEMORANDUM. This MEMORANDUM may be amended by the SDRMA Board of Directors and such amendments are subject to approval of ENTITY'S designated representative, or alternate, who shall have authority to execute this MEMORANDUM. Any ENTITY who fails or refuses to execute an amendment to this MEMORANDUM shall be deemed to have withdrawn from the PROGRAM on the next annual renewal date.

17. EFFECTIVE DATE. This MEMORANDUM shall become effective on the later of the first date of coverage for the ENTITY or the date of signing of this MEMORANDUM by the Chief Executive Officer or Board President of SDRMA.

18. EXECUTION IN COUNTERPARTS. This MEMORANDUM may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

In Witness Whereof, the undersigned have executed the MEMORANDUM as of the date set forth below.

Dated: _____ By: _____

Special District Risk
Management Authority

Dated: _____ By: _____

Clean Energy Alliance

Tel 800.537.7790
Fax 916.231.4111
www.sdrma.org

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 5: Consider Approval of 11-Year Power Purchase Agreements with Edwards Solar 1A Group 2 Opco, LLC and Edwards Solar 1A Group 3 Opco, LLC for Resource Adequacy in Satisfaction of a Portion of Clean Energy Alliance's Mid-Term Reliability Requirements

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RECOMMENDATION

Approve 11-Year Power Purchase Agreements for Resource Adequacy with Edwards Solar 1A Group 2 Opco, LLC in an amount not to exceed $12,455,520 and Edwards Solar 1A Group 3 Opco, LLC in an amount not to exceed $1,848,000 in satisfaction of a portion of Clean Energy Alliance's Mid-Term Reliability Requirements. Authorize the Chief Executive Officer to execute all documents, substantially as to form of attached, subject to Transactions Attorney approval.

BACKGROUND AND DISCUSSION

At its September 28, 2023 regular meeting, the Clean Energy Alliance (CEA) Board approved an 11-year power purchase agreement with Edwards Solar 1A. Subsequent to the Board action, it was determined that two agreements were needed, as there are two projects that are delivering the product each with its own business name. The terms, including price, length and quantity remain the same.

California Public Utilities Commission (CPUC) Decision 21-06-035 required all load serving entities, including community choice aggregators, to procure additional resources for replacement of Diablo Canyon, among other requirements. The CPUC Decision requires:

- The Project is not on the baseline list of resources published by the CPUC on August 24, 2021;
- Project online by 8/1/2023, 6/1/2024, 6/1/2025 or 6/1/2026, with a preference for an earlier date;
- Available for a term of at least 10 years;
- Must be non-fossil fueled;
- Requires new build baseload renewable energy which is either geothermal or biomass.

Pursuant to the Decision, CEA has participated in several solicitations and bilateral agreement negotiations. Through these processes, CEA identified the Edwards Solar 1A Group 2 and Edwards Solar 1A Group 3 projects as a projects that meet the procurement requirements as established by the CPUC

Midterm Reliability Procurement requirement. The terms of the proposed agreements are for a period of eleven (11) years, to begin delivering January 1, 2024, for a total amount not to exceed $14,303,520.

Staff recommends the Board authorize the Chief Executive Officer to execute the final agreements, subject to the Transactions Attorney approval.

FISCAL IMPACT

The costs related to the procurement have been factored into the financial pro-forma.

ATTACHMENTS

Redacted Draft Power Purchase Agreement with Edwards Solar 1A Group 2 Opco, LLC
Redacted Draft Power Purchase Agreement with Edwards Solar 1A Group 3 Opco, LLC

EXECUTION VERSION
OCTOBER 11, 2023

RESOURCE ADEQUACY CONFIRMATION LETTER

This confirmation letter ("Confirmation") confirms the transaction agreed to as of the last dated signature on the signature page hereto (the "Confirmation Date"), between Clean Energy Alliance, a California joint powers authority, and ES 1A Group 2 Opco, LLC, a Delaware limited liability company, by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product ("the Transaction"). This Confirmation is governed by Master Power Purchase and Sale Agreement (version 2.1., modified 4/25/00), as published by the Edison Electric Institute (the "EEI Form") as modified by the Cover Sheet in Annex A attached hereto and incorporated by reference (collectively, the "Master Agreement"), all of which form a part of this Agreement. All provisions contained in or incorporated by reference in the EEI Form will govern this Agreement except as expressly modified herein or in Annex A, as if the Parties had executed such an agreement based on the EEI Form (as if modifications or elections specified in the Annex A were made on the Cover Sheet); provided, however, that the Parties acknowledge and agree that the Collateral Annex is not a part of and is not applicable to this Agreement. This Transaction shall constitute a "Transaction" under the Master Agreement. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". In the event of any inconsistency between the provisions of the Master Agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction. Capitalized terms not otherwise defined in this Confirmation or the Master Agreement are defined in the Tariff. References to Sections are references to Sections of this Confirmation unless otherwise stated.

ARTICLE 1
TRANSACTION TERMS

Buyer: Clean Energy Alliance

Seller: ES 1A Group 2 Opco, LLC

Product, Delivery Period, Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A and B are incorporated into this Confirmation.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Buyer, and Buyer will purchase and receive from Seller, the Expected Quantity of the Product from the Shown Unit(s), where "Expected Quantity" is the Quantity less any excused deductions to the Quantity for Force Majeure and/or for excused reductions in Unit NQC for which Seller has provided notice pursuant to Section 2.1(h) and/or for excused reductions in Unit EFC for which Seller has provided notice pursuant to Section 2.1(i).

(b) Seller will deliver the Product by submitting to CAISO in its Supply Plan the Shown Unit(s) and the applicable characteristics of the Shown Unit(s) and Product for Buyer, as further specified in Appendix B, all in compliance with this Confirmation.

(c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Buyer for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Expected Quantity.

(d) Seller may sell and deliver from a Shown Unit. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. Seller will identify the Shown Unit(s) and Expected Quantity for a Showing Month by providing Buyer with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

(e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(f) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Shown Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Expected Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if Seller fails to submit a Supply Plan for the volume of Expected Quantity for any Showing Month in such amount as instructed by Buyer (but not to exceed the Expected Quantity) for the applicable Showing Month. Buyer will have received the Product if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Buyer's instruction to withhold all or part of the Expected Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Product if Buyer fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) [Reserved].

(h) Excused Reductions in Unit NQC: Seller's obligation to deliver any of the Quantity during the Delivery Period will be excused if a Unit described in Appendix B experiences a reduction in Unit NQC after the Confirmation Date as determined by CAISO and Seller has provided notice of such reduction to Buyer by the

Notification Deadline for the applicable Showing Month. The extent to which Seller's obligation to deliver is excused will equal (i) the Quantity multiplied by (ii) the total amount (in MW) by which the Unit NQC was reduced since the Confirmation Date, divided by (iii) the Unit NQC as of the Confirmation Date. If a Unit described in Appendix B experiences such a reduction in Unit NQC, then Seller may, but is not obligated to, provide the applicable part of the Quantity from any Shown Unit.

(i) Excused Reductions in Unit EFC: Seller's obligation to deliver any of the Quantity during the Delivery Period will be excused if a Unit described in Appendix B experiences a reduction in Unit EFC after the Confirmation Date for such Unit as determined by CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline for the applicable Showing Month. The extent to which Seller's obligation to deliver is excused will equal (i) the Quantity multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Confirmation Date, divided by (iii) the Unit EFC as of the Confirmation Date. If a Unit described in Appendix B experiences such a reduction in Unit EFC, then Seller may, but is not obligated to, provide the applicable part of the Quantity from any Shown Unit.

(j) Change in RA Requirements: If, after the Confirmation Date, the CAISO or the CPUC (i) replaces NQC as the value utilized to measure the qualifying capacity of a Unit described in Appendix B that can be applied toward compliance with RAR, or (ii) otherwise changes the methodology for calculating the Unit NQC or the applicable successor value such that the Unit NQC or applicable successor value of a Unit described in Appendix B would be reduced (each a "Change in RA Requirements"), then from and after each such Change in RA Requirements (A) Seller will provide notice to Buyer stating the equivalent amount of qualifying capacity of a Unit described in Appendix B (or, if such Unit is registered with CAISO as a Hybrid Resource at such time, the portion of such equivalent amount of qualifying capacity that is attributable to the battery energy storage system component of such Unit) that can be applied toward compliance with RAR following the Change in RA Requirements (the "Compliance Adjusted Unit NQC"), and (B) Seller will be excused from delivering the portion of the Quantity equal to (I) the Quantity, multiplied by (II) the difference between the Unit NQC as calculated under the CPUC and CAISO resource adequacy counting rules as of the Confirmation Date, minus the Compliance Adjusted Unit NQC applicable after the Change in RA Requirements, divided by (III) the Unit NQC as calculated under the CPUC and CAISO resource adequacy counting rules as of the Confirmation Date.

2.2 Buyer's Remedies for Seller's Failure to Deliver Expected Quantity

(a) If Seller fails to deliver any part of the Expected Quantity as required herein for any Showing Month and such failure is not excused under the terms of the Agreement ("Shortfall Quantity"), then Seller is liable for damages pursuant to Section 4.1 of

the Master Agreement. Buyer will use commercially reasonable efforts to purchase replacement Capacity Attributes comparable to the Product to replace the Shortfall Quantity.

(b) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO or other Governmental Body resulting from Seller's unexcused failure to deliver the Product. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. Seller will have no obligation to Buyer under this Section 2.2(b) in respect of the portion of the Expected Quantity for any portion of the Delivery Period for which Seller has paid damages pursuant to Section 2.2(a) of this Confirmation and Section 4.1 of the Master Agreement. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Buyer may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the Master Agreement.

2.3 Buyer's Re-Sale of Product

(a) Buyer may re-sell all or part of the Product; provided that any such re-sale will not relieve Buyer of any of its obligations under this Agreement and any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.3(a). For any such a resale, Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of Subsequent Buyer. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than five (5) Business Days before the Notification Deadline for the Showing Month for which Buyer has resold the Product. Buyer will notify Seller of any subsequent changes or further resales no later than five (5) Business Days before the Notification Deadline for the Showing Month for which Buyer has resold the Product.

2.4 Seller's Remedies for Buyer's Failure to Receive Expected Quantity

If Buyer fails to receive any part of the Expected Quantity as required herein for any Showing Month, and such failure is not excused under the terms of the Agreement, then Buyer is liable for damages pursuant to Section 4.2 of the Master Agreement. If Buyer resells any portion of the Product to a Subsequent Buyer and that Subsequent Buyer fails to receive any portion of the resold Product, such failure will be deemed a failure of Buyer to receive the Product hereunder, and Buyer is liable for damages pursuant to Section 4.2 of the Master Agreement.

ARTICLE 3
PAYMENTS

3.1 Payment

Buyer shall pay for the Product as provided in Article Six of the Master Agreement and this Confirmation. Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (a) ten (10) Calendar Days after Buyer's receipt of Seller's invoice (which may be given upon the first day of the Showing Month) and (b) the twentieth (20^{th}) of the Showing Month, or if the twentieth (20^{th}) is not a Business Day the next following Business Day. The "Monthly RA Capacity Payment" shall equal the product of (i) the applicable Contract Price for that Showing Month, (ii) the Expected Quantity for the Showing Month and (iii) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that (A) the Expected Quantity in clause (ii) of the Monthly RA Capacity Payment formula shall be reduced by the portion, if any, of Expected Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month, and (B) following a Change in RA Requirements, the Expected Quantity of Product delivered in accordance with Section 2.1 for each Showing Month thereafter shall be multiplied by the Compliance Adjustment Factor for purposes of calculating the Monthly RA Capacity Payment pursuant to this Section 3.1.

3.2 Allocation of Other Payments and Costs

(a) Seller will receive and is entitled to retain any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Buyer must promptly report receipt of any such revenues to Seller. Buyer must pay to Seller any such amounts described in this Section 3.2(a) received by Buyer or its SC or a Subsequent Buyer or its SC. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Buyer under the Master Agreement.

(b) Buyer is to receive and retain all revenues associated with the Expected Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such

revenues to Buyer. Seller must pay to Buyer any such amounts received by Seller, or a Unit's SC, owner, or operator. Without prejudice to its other rights, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Master Agreement.

(c) If CAISO designates any part of the Expected Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify Buyer and, to the extent permitted under the Tariff, not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

(d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER BUYER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Unit's SC to schedule or make available to CAISO the Expected Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Buyer is not liable for the failure of Seller or the Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

4.2 Seller's and Buyer's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Buyer's rights to the Expected Quantity of the Product for the sole benefit of Buyer or any Subsequent Buyer. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the balance of benefits and burdens of the Transaction as of the Confirmation Date.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Buyer throughout the Delivery Period that:

(a) no part of the Expected Quantity of the Product during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b) the Unit qualifies under the Tariff for the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Unit in respect of each Showing Month of the Delivery Period does not exceed the NQC for that Unit during the applicable Showing Month of the Delivery Period;

(d) if applicable, Seller has notified either the Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Expected Quantity of Product for the Delivery Period to Buyer; and

(e) Seller has notified or will notify the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2(b) and that such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

4.4 CPUC Mid-Term Reliability Requirements.

(a) The Parties acknowledge that Buyer intends to apply the Product purchased under this Agreement towards a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decision 21-06-035. Seller represents and warrants to Buyer that:

i. as of the Confirmation Date, the Unit described in Appendix B is not on the baseline list of resources published by the CPUC on August 24, 2021, which, as of the Confirmation Date, is available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_baseline_gen_list.xlsx;

ii. The Product includes the exclusive right to claim the Quantity of the Product from the Unit described in Appendix B as an incremental resource for purposes of CPUC Decision 21-06-035; and

iii. Seller has not and will not sell, assign or transfer the right to claim procurement of the Quantity of the Product from the Unit described in Appendix B as an incremental resource for purposes of CPUC Decision 21-06-035 during the Delivery Term to any other person or entity.

(b) Seller will provide additional information and documentation reasonably requested by Buyer that is available to Seller and not already separately available to Buyer and is necessary to enable Buyer to demonstrate that the Quantity of the Product from the Unit described in Appendix B meets the procurement mandates set forth in CPUC Decision 21-06-035.

(c) Buyer (i) represents and warrants to Seller that Buyer will not report to the CPUC or any Governmental Body or otherwise claim that it is entitled to any capacity from the Unit described in Appendix B for purposes of CPUC Decision 21-06-

035 in excess of the Quantity of the Product from the Unit described in Appendix B ("Excess IRP Attributes"), and (ii) acknowledges and agrees that Seller may retain any Excess IRP Attributes for its own benefit or sell any Excess IRP Attributes to one or more third parties and retain all associated revenue free and clear of any claim by Buyer.

ARTICLE 5
ADDITIONAL MASTER AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

Notwithstanding anything to the contrary in this Agreement, Seller's aggregate liability to Buyer for any Events of Default of Seller hereunder, including without limitation, any Termination Payment due to Buyer as a result of such Events of Default, shall not exceed

.

5.2 Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, (i) Buyer may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose information to a Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any competitive solicitation process of Buyer, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Buyer may disclose information (excluding pricing to any Subsequent Buyer.

5.3 Dodd-Frank Act

Each Party represents and warrants to the other that it is an "eligible commercial entity" and an "eligible contract participant" within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively. Without limiting Section 10.10 of the Master Agreement, the Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Governing Law

This Confirmation and any portion of the Master Agreement applicable to this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

ARTICLE 6
COLLATERAL REQUIREMENTS

6.1 Seller Collateral

To secure its obligations under this Agreement, Seller shall deliver Seller Performance Security to Buyer within thirty (30) days after the Confirmation Date. "Seller Performance Security" means (i) cash or (ii) Letter of Credit in the amount o

Promptly following the end of the Delivery Period, Buyer shall promptly return to Seller the unused portion of the Seller Performance Security, subject to any draws made by Buyer in accordance with this Confirmation, upon Seller's written request.

6.2 Buyer Collateral

Buyer is not required to post any credit support for this Transaction.

ARTICLE 7
ASSIGNMENT FOR FINANCING

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, (a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller, and (b) Seller shall have the right at any time and from time to time to create or provide for a security interest in, or convey in trust its respective rights, titles and interests in this Agreement to a lender, mortgagee, or trustee under deeds of trust, mortgages or indentures, or to secured parties under a security agreement as security for its present or future bonds or other obligations or securities, or to any lender(s), lessor(s) or tax equity investor(s) and other parties providing any financing or refinancing and any successor(s) or assigns thereto ("Secured Party") with respect to any Unit described in Appendix B to the Confirmation, without the consent of Buyer, and without such Secured Party assuming or becoming in any respect obligated to perform any of the obligations of the Parties hereto. Any such Secured Party and any successor thereof by action of law or otherwise, and any purchaser, transferee or assignee of any thereof may, without need for the prior consent of the other Party, succeed to and acquire all the rights, titles and interests of Seller in this Agreement, and may foreclose upon said rights, titles and interests of Seller, provided any such Secured Party and any successor thereof by action of law or otherwise, and any purchaser, transferee or assignee of any thereof has agreed in writing to be bound by this Agreement and shall have complied with the obligations of Seller to provide Seller Performance Security hereunder. Upon the written request of Seller, Buyer shall execute, or arrange for the delivery of, such consents, estoppels and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of any Unit described in Appendix B to the Confirmation or any part thereof, including a form of financing party consent and agreement, each of which documents and instruments shall be in form and substance reasonably acceptable to Buyer and Seller shall agree to pay for the reasonable third party legal review expenses of Buyer in compliance with such requests.

AGREED AS OF THE CONFIRMATION DATE:

ES 1A GROUP 2 OPCO, LLC		**CLEAN ENERGY ALLIANCE**	
By:	_____	By:	_____
Name:	Don Vawter	Name:	_____
Title:	Vice President	Title:	_____
Date:	_____	Date:	_____

APPENDIX A
DEFINED TERMS

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

"Capacity Attributes" means attributes of the Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"Change in RA Requirements" has the meaning set forth in Section 2.1(j).

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.

"Co-Located Resource" has the meaning set forth in the Tariff.

"Compliance Adjustment Factor" means a ratio, the numerator of which is the aggregate Unit NQC value of the Unit(s) described in Appendix B as calculated under the CPUC and CAISO resource adequacy counting rules as of the Confirmation Date, and the denominator of which is the aggregate Compliance Adjusted Unit NQC of the Unit(s) described in Appendix B.

"Compliance Adjusted Unit NQC" has the meaning set forth in Section 2.1(j).

"Compliance Obligations" means, as applicable based on the Product specifications, RAR, Local RAR and FCR.

"Compliance Showings" means the applicable LSE's compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"CPUC" means the California Public Utilities Commission.

"CPUC Decisions" means any currently effective or future decisions, resolutions, or rulings related to resource adequacy issued by the CPUC.

"Delivery Period" has the meaning set forth in Appendix B.

"Effective Flexible Capacity" or "EFC" has the meaning set forth in the Tariff.

"FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"Hybrid Resource" has the meaning set forth in the Tariff.

"Initial Unit EFC" means, for each Unit described in Appendix B, the initial Effective Flexible Capacity for such Unit as set by CAISO as of the Confirmation Date.

"Initial Unit NQC" means, for each Unit described in Appendix B, the initial Net Qualifying Capacity for such Unit as set by CAISO as of the Confirmation Date.

"Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"LSE" means "Load Serving Entity" as such term is used in Section 40.9 of the Tariff.

"MW" means megawatt.

"Net Qualifying Capacity" or "NQC" has the meaning set forth in the Tariff.

"Notification Deadline" is fifteen (15) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

"Product" means Capacity Attributes applicable to compliance with RAR and FCR from Units that meet the specifications contained in the "Product" section of Appendix B.

"RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, but excluding Local RAR and FCR.

"SC" means Scheduling Coordinator as defined in the Tariff.

"Showing Month" means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

"Shown Unit" means one or more of the Units specified by Seller in a Supply Plan.

"Subsequent Buyer" means the buyer of Product from Buyer in a re-sale of Product by Buyer.

"Tariff" means the CAISO Tariff, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

"Unit" means any generation unit described in Appendix B.

"Unit EFC" means Unit Effective Flexible Capacity and is, for a given date of determination, the lesser of the Initial Unit EFC as set by CAISO as of the Confirmation Date and the Effective Flexible Capacity of the Unit as set by CAISO on such date of determination. If such Unit is registered with CAISO as a Hybrid Resource as of the date of determination, then the Unit EFC will be the portion of the Effective Flexible Capacity of such Unit on such date of determination that is attributable to the battery energy storage system component of such Unit.

"Unit NQC" means Unit Net Qualifying Capacity and is, for a given date of determination, the lesser of the Initial Unit NQC as set by CAISO as of the Confirmation Date and the Net Qualifying Capacity of the Unit as set by CAISO on such date of determination. If such Unit is registered with CAISO as a Hybrid Resource as of the date of determination, then the Unit NQC will be the portion of the Net Qualifying Capacity of such Unit on such date of determination that is attributable to the battery energy storage system component of such Unit.

APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☒ RAR ☐ Local RAR ☒ FCR

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone: System
MCC Bucket: 4*
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): 2*

* If the MCC Bucket or Flexible Capacity Category definition or eligibility criteria are modified by the CPUC, the CAISO or other Governmental Body having jurisdiction over Compliance Obligations, Seller will provide attributes in the category that the Unit described in Appendix B is eligible to provide without requiring a reduction in Unit NQC or Unit EFC or the portion of the Unit NQC or Unit EFC that can be shown in the Supply Plan for such Unit.

Delivery Period: "Delivery Period" means the period of time beginning with the Showing Month of June 2024 through and including the Showing Month of December 2035, unless terminated earlier in accordance with the terms of this Agreement.

Quantity and Contract Price:

RAR and FCR

Showing Month and Year	Quantity (MW)	Contract Price ($/kW-mo.)
EACH SHOWING MONTH DURING THE DELIVERY PERIOD	JAN – DEC = 6.74	

Unit

ES 1A Group 2 Opco, LLC solar project includes the subprojects EdSan 2 Edwards 3 and EdSan 2 solar photovoltaic generating facilities ("PV Facilities") and an integrated battery energy storage system ("Storage Facility"), located in Kern County, CA. For any period in which the PV Facility and the Storage Facility are registered with the CAISO as a Hybrid Resource, the Unit described in this Appendix B will be the combined PV Facility and Storage Facility. For any period in which the PV Facility and the Storage Facility are registered with the CAISO as Co-Located Resources, the Unit described in this Appendix B will be the Storage Facility only.

Unit Specific Information**	
Resource Name	EdSan 2 Edwards 3
Physical Location	
CAISO Resource ID	
SCID of Resource	
Unit NQC by month (e.g., Jan=50,Feb=65)	
Unit EFC by month (e.g., Jan=30, Feb=50)	
Resource Type (e.g., gas, hydro, solar, etc.)	Solar plus Storage
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	2*
TAC Area (e.g., PG&E, SCE)	SCE
Prorated Percentage of Unit Factor	N/A
Prorated Percentage of Unit Flexible Factor	N/A
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	Kern
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4*

Unit Specific Information**	
Resource Name	EdSan 2
Physical Location	
CAISO Resource ID	
SCID of Resource	
Unit NQC by month (e.g., Jan=50,Feb=65)	
Unit EFC by month (e.g., Jan=30, Feb=50)	
Resource Type (e.g., gas, hydro, solar, etc.)	Solar plus Storage
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	2*
TAC Area (e.g., PG&E, SCE)	SCE
Prorated Percentage of Unit Factor	N/A
Prorated Percentage of Unit Flexible Factor	N/A

Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	Kern
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4*

* If the Resource Category or Minimum Qualified Flexible Capacity Category definition or eligibility criteria are modified by the CPUC, the CAISO or other Governmental Body having jurisdiction over Compliance Obligations, Seller will provide attributes in the category that the Unit described in Appendix B is eligible to provide without requiring a reduction in Unit NQC or Unit EFC or the portion of the Unit NQC or Unit EFC that can be shown in the Supply Plan for such Unit.
** The information set forth in this table reflects the Storage Facility only.

ANNEX A

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 04/25/00) ("*Master Agreement*") is made as of the Confirmation Date ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name: ES 1A Group 2 Opco, LLC ("**Party A**")

All Notices:
Street: 437 Madison Avenue, Suite A
City: New York, NY Zip: 10022
Attn: Business Management
Phone: 646-829-3910
Facsimile: 646-829-3901
Duns: to be provided by Party A
Federal Tax ID Number: 47-4807929

Invoices:
Attn: Accounts Payable
Phone: 661-822-2458
Facsimile: 661-822-2401

Scheduling:
Attn: Operations 24/7 Desk
Phone: 646-829-3957
Facsimile: 661-822-2401

Payments:
Attn: Treasury Department
Phone: 646-829-3920
Facsimile: 646-829-3901

Wire Transfer:

To be updated

Credit and Collections:
Attn: Treasury Department
Phone: 646-829-3920
Facsimile: 646-829-3901

Name: Clean Energy Alliance, a California joint powers authority ("**CEA**" or "**Party B**")

All Notices:
5857 Owens Ave, Suite 2023
Carlsbad, CA 92008
Attn: Chief Executive Officer
Phone: (760) 209-6177
Email: ceo@thecleanenergyalliance.org
Duns: 117585162
Federal Tax ID Number: 84-3839142

Confirmations:
Attn: Barbara Boswell, CEO
Phone: (760) 209-6177
Email: ceo@thecleanenergyalliance.org

Scheduling:
Attn: Jaclyn Harr, The Energy Authority
Phone: (408) 306-0432
Email: jharr@teainc.org

Payments:
Attn: Andy Stern, Chief Financial Officer
Phone: (760) 209-6177
Email: astern@thecleanenergyalliance.org

Wire Transfer:
BNK: River City Bank
ABA: 121133416
ACCT: 7714609947

Credit and Collections:
Attn: Andy Stern, Chief Financial Officer
Phone: (760) 209-6177
Email: astern@thecleanenergyalliance.org

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: General Counsel
Phone: 646-829-3908
Facsimile: 646-829-3901

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: General Counsel
Phone: (619) 814-5813

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff: Tariff _____ Dated _____ Docket Number _____

Party B Tariff: N/A

Article Two

Transaction Terms and Conditions ☑ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☑ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

☐ Cross Default for Party A: N/A

☐ Party A:_____ Cross Default Amount

☐ Other Entity:_____ Cross Default Amount $_____

☐ Cross Default for Party B: N/A

☐ Party B:_____ Cross Default Amount $_____

☐ Other Entity:_____ Cross Default Amount

5.6 Closeout Setoff:

☑ Option A (Applicable if no other selection is made.)
☐ Option B
☐ Option C (No Setoff)

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☐ Option A
☐ Option B Specify: _____
☑ Option C Specify: None

(b) Credit Assurances:

☑ Not Applicable
☐ Applicable

(c) Collateral Threshold:

☑ Not Applicable
☐ Applicable

(d) Downgrade Event:

☑ Not Applicable
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

☐ Other:
Specify:_____

(e) Guarantor for Party B: N/A

Guarantee Amount: N/A

8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A
☐ Option B Specify: _____
☑ Option C Specify: None

(b) Credit Assurances:

☑ Not Applicable
☐ Applicable

(c) Collateral Threshold:

☑ Not Applicable
☐ Applicable

(d) Downgrade Event:

☑ Not Applicable
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:
Specify:_____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article Ten

Confidentiality ☑ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☑ Party B is a Governmental Entity or Public Power System
☑ Add Section 3.6. If not checked, inapplicable
☑ Add Section 8.4. If not checked, inapplicable

Other Changes:

1) In Section 1.3, insert the phrase "and, in the case of any such petition instituted or presented against it, that petition remains undismissed and unstayed for a period of ninety (90) days" at the end of clause "(i)".

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) In Section 1.12, (a) delete the word "issues" in the fourth line and replace it with "issuers" and (b) insert "and if such ratings are different, the lowest of such ratings shall apply" after the word "Sheet" in the last line.

4) Section 1.23 is amended by inserting in the thirteenth line thereof before the phrase "foregoing factors" the word "two."

5) Section 1.24 is amended by adding before the period at the end thereof the following: "in accordance with Section 5.2".

6) A new Section 1.26A is added as follows:

"1.26A "Joint Powers Agreement" means the Joint Powers Agreement, effective as of November 4, 2019, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated."

7) Section 1.27 is amended by deleting the phrase "or a foreign bank with a U.S. branch" and replacing it with the phrase "or a U.S. branch of a foreign bank."

8) Section 1.46 is deleted in its entirety.

9) In Section 1.50, delete the reference to "Section 2.4" and replace it with "Section 2.5".

10) Section 1.51 is amended by (i) inserting the phrase "for delivery" in the second line after the word "purchases" and before the phrase "at the Delivery Point" and (ii) deleting the phrase "at Buyer's option" from the fifth line and replacing it with the phrase "absent a purchase".

11) Section 1.52 is amended by (i) deleting the words "Rating" and "Group" from the first line and replacing with "Financial Services LLC" and (ii) by replacing the words in the parenthetical with "a subsidiary of McGraw-Hill Companies, Inc."

12) Section 1.53 is amended by:

(i) deleting the phrase "at the Delivery Point" from the second line;

(ii) deleting the phrase in line 5 "at the Seller's option" and replacing it with "absent a sale"; and

(iii) inserting after the word "liability" in the ninth line the following: "provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0)."

13) Section 1.56 is amended by deleting the words "pursuant to Section 5.2" and by adding before the period at the end thereof the following: ", as determined in accordance with Section 5.2."

14) Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

15) In Section 2.1, delete the first sentence in its entirety and replace it with the following: "A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties."

16) In Section 2.3, delete the section in its entirety and replace it with the following:

"2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties ("Confirmation"). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties."

17) In Section 2.4, delete "either orally or" after "agreed to" in the 7th line.

18) In Section 2.5, delete the section in its entirety and specify it as "Reserved".

19) In Section 5.1(a), change "three (3) Business Days" to "five (5) Business Days".

20) In Section 5.1(b), insert the phrase "and such Party does not fully mitigate the adverse consequences of such false or misleading representation or warranty to the other Party within thirty (30) days after written notice thereof" after the word "repeated" in the last line.

21) In Section 5.1(c), change "three (3) Business Days" to "thirty (30) days".

22) In Section 5.1(e), insert the phrase "if such failure is not remedied within five (5) Business Days after written notice thereof" after the word "hereof" in the last line.

23) Section 5.1(g) is deleted in its entirety and replaced with the following:

"if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming immediately due and payable; provided, however, that it shall not constitute an

Event of Default under this Section 5.1(g) if (i) such event, condition or failure is a failure to pay caused by an error or omission of an administrative or operational nature, (ii) funds were available to such Party to enable it to make the relevant payment when due, and (iii) such event, condition or failure is remedied on or before the third Business Day after receipt of written notice of its occurrence"

24) Section 5.1(h)(v), insert the phrase "made in connection with this Agreement" after the phrase "any guaranty".

25) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

"(i) With respect to Party B, an Event of Default (as defined under the Security Documents) or default of Party B occurs under one or more of the Security Documents (as defined in Schedule M) and such Event of Default or default continues after giving effect to any applicable notice requirement or cure or grace period under the Security Documents."

26) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: "as soon thereafter as is reasonably practicable"; and

(ii) adding the following to the end of that provision: "then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party's calculation of the net Settlement Amount results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then for purposes of the calculation of the Termination Payment, such Settlement Amount shall be deemed to be zero dollars ($0.00)."

27) In Section 5.7, (a) delete the phrase "(a)" in the first sentence and (b) delete the following phrase in the first sentence "or (b) a Potential Event of Default".

28) In Section 6.3, (a) delete "two (2)" in the fifth sentence and replace it with "five (5)" and (b) in lines 3, 16 & 18, change "twelve (12) months" to "twenty-four (24) months".

29) Section 7.1 shall be amended by:

(i) adding "SET FORTH IN THIS AGREEMENT" after "INDEMNITY PROVISION" and before "OR OTHERWISE," in the fifth sentence;

(ii) adding in the nineteenth line the words "PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND

5.3." immediately after the words "ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE"; and

(iii) adding at the end of the last sentence the words "AND ARE NOT PENALTIES."

30) A new Section 8.4 is added as follows:

"Section 8.4 UCC Waiver: Section 8 and Schedule M of the Agreement and the Security Documents sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, and in Schedule M of the Agreement and the Security Documents, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party or Member that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived."

31) In Section 10.2, delete the phrase "(including any Confirmation accepted in accordance with Section 2.3)" from Sections 10.2(ii), (iii), (iv), (vi), (vii), (viii), (x) and (xi).

32) In Section 10.2(ii), insert the clause ", except all permits necessary to install, operate and maintain the generating facilities and sell the output therefrom in the case of Party A, which Party A reasonably expects to be obtained in the ordinary course of business prior to delivery of Product under this Agreement;" at the end thereof.

33) In Section 10.2(viii), add the following after "doing," in the 7th line:

"nor is it relying on any unique or special expertise of the other Party and it is not in any special relationship of trust or confidence with respect to the other Party,"

34) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

"Each party acknowledges and agrees that (i) certain transaction(s) hereunder are intended to constitute a "forward contract" providing a "contractual right" within the meaning of such terms under Title 11 of the United States Code, as amended (the "Bankruptcy Code"); (ii) it is a "forward contract merchant" within the meaning of the Bankruptcy Code with respect to any transaction that constitutes a "forward contract," (iii) all payments made or to be made by one party to the other party pursuant to this contract constitute a "settlement payment" within the meaning of the Bankruptcy Code; (iv) all transfers of adequate assurance, prepayment or similar performance assurance by one party to the other party under this contract constitute a "margin payment" within the meaning of the Bankruptcy Codes; (v) each party shall have the "contractual right" to terminate, liquidate, accelerate, or offset the transaction as a "master netting agreement participant" within the meaning of the Bankruptcy Code; and (vi) the parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code."

35) In Section 10.6, delete "NEW YORK" and replace with "CALIFORNIA".

36) Section 10.7 is amended to add before each occurrence of the word "facsimile" the phrase "electronic mail".

37) In Section 10.8, (a) delete the following "Except to the extent herein provided for" and (b) add the following to the end thereof:

"This Master Agreement and any Confirmation hereunder may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by electronic mail transmission shall be effective as delivery of a manually executed signature page."

38) In Section 10.9, (a) insert the words "copies of" after the word "examine" and (b) in line 9, change "twelve (12) months" to "twenty-four (24) months".

39) Section 10.11, shall be amended by adding the following:

(i) the phrase "or the completed Cover Sheet to this Master Agreement" immediately before the phrase "to a third party" in line three;

(ii) the phrase "Affiliates, actual or potential provider of debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Project, contractors" immediately prior to the phrase "counsel, accountants, or advisors" in line four;

(iii) in the seventh line thereof, between the word "proceeding" and the semi-colon, which immediately follows, the words "applicable to such Party or any of its Affiliates";

(iv) an additional sentence at the end of Section 10.11: "The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index."; and

(v) the following at the end of the last sentence: "Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 7920 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act. Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act. In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information" and the disclosing Party, the "Disclosing Party"), the Party receiving such request (the "Receiving Party") as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it."

40) The following Mobile-Sierra clause shall be added as Section 10.12:

"Section 10.12 Standard of Review/Modifications.

(a) Absent the agreement of all Parties to the 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 waiver in the next paragraph below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the 'public interest' standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956), and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008).

(b) Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by applicable law, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties."

41) The following shall be added as Section 10.13:

"Section 10.13 Imaged Agreement. Any fully executed Agreement, Confirmation or other related document, or recording may be scanned and stored electronically, or stored on computer tapes and disks, as may be practicable (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Confirmation if introduced as evidence in automated facsimile form, any recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of any Imaged Agreement (or photocopies of the transcription of such Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence."

16. The following is added as a new Section 10.14:

"Section 10.14 No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B's constituent members, in connection with this Agreement."

17. The following is added as a new Section 10.15:

"Section 10.15 Party A's Deliveries. Upon request, Party A shall provide to Party B (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution,

delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith."

SCHEDULE M GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM

Schedule M is hereby amended as follows:

A. The Parties agree to add the following definitions in Article One:

"**Account Control Agreement**" has the meaning in the Security Documents.

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

"**Collateral Agent**" has the meaning in the Security Documents.

"**Depositary Bank**" has the meaning in the Security Documents.

"**Intercreditor and Collateral Agency Agreement**" means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

"**PPA Provider**" has the meaning in the Intercreditor and Collateral Agency Agreement.

"**Secured Account**" means the Lockbox Account (as defined in the Security Agreement) and any other accounts subject to the Security Agreements.

"**Secured Creditors**" means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

"**Security Agreement**" means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

"**Security Documents**" means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement, among the Depositary Bank, Party B and the Collateral Agent.

"**Special Fund**" means the Secured Account, which is set aside and pledged to satisfy Party B's obligations hereunder and out of which amounts shall be paid to satisfy all of Party B's obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of "**Force Majeure**" in Article One:

"If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity."

C. The Parties agree to add the following sections to Article Three:

"Section 3.4 **Party B's Deliveries**. Upon request by Party A, Party B shall provide Party A (a) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (b) the incumbency and signatures of the signatories of Party B executing this Master

Agreement and any Confirmations executed in connection herewith, and setting forth the names and signatures of employees of Party B with authority to act on behalf of Party B.

Section 3.5 **No Immunity Claim**. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or the Secured Account from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

Section 3.6 **Party B Security**. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents."

D. The Parties agree to add the following section to Article Eight:

"Section 8.4 **Party B Security**. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents through execution and delivery of a Joinder (as defined in the Intercreditor and Collateral Agency Agreement). Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein."

E. The Parties agree to add the following representations and warranties to Section 10.2:

"Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, to the extent applicable, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by Party B will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Party B or any members of Party B otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B."

F. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

"IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY."

EXECUTION VERSION
October 11, 2023

RESOURCE ADEQUACY CONFIRMATION LETTER

This confirmation letter ("Confirmation") confirms the transaction agreed to as of the last dated signature on the signature page hereto (the "Confirmation Date"), between Clean Energy Alliance, a California joint powers authority, and ES 1A Group 3 Opco, LLC, a Delaware limited liability company, by which Seller agrees to sell and deliver, and Buyer agrees to purchase and receive, the Product ("the Transaction"). This Confirmation is governed by Master Power Purchase and Sale Agreement (version 2.1., modified 4/25/00), as published by the Edison Electric Institute (the "EEI Form") as modified by the Cover Sheet in Annex A attached hereto and incorporated by reference (collectively, the "Master Agreement"), all of which form a part of this Agreement. All provisions contained in or incorporated by reference in the EEI Form will govern this Agreement except as expressly modified herein or in Annex A, as if the Parties had executed such an agreement based on the EEI Form (as if modifications or elections specified in the Annex A were made on the Cover Sheet); provided, however, that the Parties acknowledge and agree that the Collateral Annex is not a part of and is not applicable to this Agreement. This Transaction shall constitute a "Transaction" under the Master Agreement. The Master Agreement and this Confirmation shall be collectively referred to herein as the "Agreement". In the event of any inconsistency between the provisions of the Master Agreement and this Confirmation, this Confirmation will prevail for the purpose of this Transaction. Capitalized terms not otherwise defined in this Confirmation or the Master Agreement are defined in the Tariff. References to Sections are references to Sections of this Confirmation unless otherwise stated.

ARTICLE 1
TRANSACTION TERMS

Buyer: Clean Energy Alliance

Seller: ES 1A Group 3 Opco, LLC

Product, Delivery Period, Quantity, Contract Price and other specifics of the Product are in Appendix B. Appendices A and B are incorporated into this Confirmation.

ARTICLE 2
DELIVERY OBLIGATIONS AND ADJUSTMENTS

2.1 Sale and Delivery of Product

(a) For each Showing Month of the Delivery Period, Seller will sell and deliver to Buyer, and Buyer will purchase and receive from Seller, the Expected Quantity of the Product from the Shown Unit(s), where "Expected Quantity" is the Quantity less any excused deductions to the Quantity for Force Majeure and/or for excused reductions in Unit NQC for which Seller has provided notice pursuant to Section 2.1(h) and/or for excused reductions in Unit EFC for which Seller has provided notice pursuant to Section 2.1(i).

(b) Seller will deliver the Product by submitting to CAISO in its Supply Plan the Shown Unit(s) and the applicable characteristics of the Shown Unit(s) and Product for Buyer, as further specified in Appendix B, all in compliance with this Confirmation.

(c) Seller will cause all Supply Plans to meet and be filed in conformance with the requirements of the CPUC and the Tariff. Seller will submit, or cause the Unit's SC to submit, on a timely basis with respect to each applicable Showing Month, Supply Plans in accordance with the Tariff and CPUC requirements to identify and confirm the Product delivered to Buyer for each Showing Month of the Delivery Period. The total amount of Product identified and confirmed for each day of such Showing Month will equal the Expected Quantity.

(d) Seller may sell and deliver from a Shown Unit. In no event shall a Shown Unit utilize coal or coal materials as a source of fuel. Seller will identify the Shown Unit(s) and Expected Quantity for a Showing Month by providing Buyer with the specific Unit information contemplated in Appendix B no later than the Notification Deadline for the relevant Showing Month.

(e) If CAISO rejects either the Supply Plan or the Resource Adequacy Plan with respect to any part of the Expected Quantity for the Shown Unit in any Showing Month, the Parties will confer, make such corrections as are necessary for acceptance, and resubmit the corrected Supply Plan or Resource Adequacy Plan for validation before the applicable deadline for the Showing Month.

(f) The Product is delivered and received when the CIRA Tool shows the Supply Plan accepted for the Product from the Shown Unit by CAISO or Seller complies with Buyer's instruction to withhold all or part of the Expected Quantity from Seller's Supply Plan for any Showing Month during the Delivery Period. Seller has failed to deliver the Product if Seller fails to submit a Supply Plan for the volume of Expected Quantity for any Showing Month in such amount as instructed by Buyer (but not to exceed the Expected Quantity) for the applicable Showing Month. Buyer will have received the Product if (i) Seller's Supply Plan is accepted by the CAISO for the applicable Showing Month or (ii) Seller complies with Buyer's instruction to withhold all or part of the Expected Quantity from Seller's Supply Plan for the applicable Showing Month. Seller will not have failed to deliver the Product if Buyer fails or chooses not to submit the Shown Unit and the Product in its Resource Adequacy Plan with the CPUC or CAISO.

(g) [Reserved].

(h) Excused Reductions in Unit NQC: Seller's obligation to deliver any of the Quantity during the Delivery Period will be excused if a Unit described in Appendix B experiences a reduction in Unit NQC after the Confirmation Date as determined by CAISO and Seller has provided notice of such reduction to Buyer by the

Notification Deadline for the applicable Showing Month. The extent to which Seller's obligation to deliver is excused will equal (i) the Quantity multiplied by (ii) the total amount (in MW) by which the Unit NQC was reduced since the Confirmation Date, divided by (iii) the Unit NQC as of the Confirmation Date. If a Unit described in Appendix B experiences such a reduction in Unit NQC, then Seller may, but is not obligated to, provide the applicable part of the Quantity from any Shown Unit.

(i) Excused Reductions in Unit EFC: Seller's obligation to deliver any of the Quantity during the Delivery Period will be excused if a Unit described in Appendix B experiences a reduction in Unit EFC after the Confirmation Date for such Unit as determined by CAISO and Seller has provided notice of such reduction to Buyer by the Notification Deadline for the applicable Showing Month. The extent to which Seller's obligation to deliver is excused will equal (i) the Quantity multiplied by (ii) the total amount (in MW) by which the Unit EFC was reduced since the Confirmation Date, divided by (iii) the Unit EFC as of the Confirmation Date. If a Unit described in Appendix B experiences such a reduction in Unit EFC, then Seller may, but is not obligated to, provide the applicable part of the Quantity from any Shown Unit.

(j) Change in RA Requirements: If, after the Confirmation Date, the CAISO or the CPUC (i) replaces NQC as the value utilized to measure the qualifying capacity of a Unit described in Appendix B that can be applied toward compliance with RAR, or (ii) otherwise changes the methodology for calculating the Unit NQC or the applicable successor value such that the Unit NQC or applicable successor value of a Unit described in Appendix B would be reduced (each a "Change in RA Requirements"), then from and after each such Change in RA Requirements (A) Seller will provide notice to Buyer stating the equivalent amount of qualifying capacity of a Unit described in Appendix B (or, if such Unit is registered with CAISO as a Hybrid Resource at such time, the portion of such equivalent amount of qualifying capacity that is attributable to the battery energy storage system component of such Unit) that can be applied toward compliance with RAR following the Change in RA Requirements (the "Compliance Adjusted Unit NQC"), and (B) Seller will be excused from delivering the portion of the Quantity equal to (I) the Quantity, multiplied by (II) the difference between the Unit NQC as calculated under the CPUC and CAISO resource adequacy counting rules as of the Confirmation Date, minus the Compliance Adjusted Unit NQC applicable after the Change in RA Requirements, divided by (III) the Unit NQC as calculated under the CPUC and CAISO resource adequacy counting rules as of the Confirmation Date.

2.2 Buyer's Remedies for Seller's Failure to Deliver Expected Quantity

(a) If Seller fails to deliver any part of the Expected Quantity as required herein for any Showing Month and such failure is not excused under the terms of the Agreement ("Shortfall Quantity"), then Seller is liable for damages pursuant to Section 4.1 of

the Master Agreement. Buyer will use commercially reasonable efforts to purchase replacement Capacity Attributes comparable to the Product to replace the Shortfall Quantity.

(b) Seller agrees to indemnify, defend and hold harmless Buyer from any penalties, fines or costs assessed against Buyer by the CPUC, CAISO or other Governmental Body resulting from Seller's unexcused failure to deliver the Product. The Parties will use commercially reasonable efforts to minimize such penalties, fines or costs; provided, that in no event will Buyer be required to use or change its utilization of its owned or controlled assets or market positions to minimize these penalties, fines or costs. Seller will have no obligation to Buyer under this Section 2.2(b) in respect of the portion of the Expected Quantity for any portion of the Delivery Period for which Seller has paid damages pursuant to Section 2.2(a) of this Confirmation and Section 4.1 of the Master Agreement. If Seller fails to pay the foregoing penalties, fines or costs, or fails to reimburse Buyer for those penalties, fines or costs, then, without prejudice to its other rights and remedies, Buyer may setoff and recoup those penalties, fines or costs against any future amounts it may owe to Seller under this Confirmation or the Master Agreement.

2.3 Buyer's Re-Sale of Product

(a) Buyer may re-sell all or part of the Product; provided that any such re-sale will not relieve Buyer of any of its obligations under this Agreement and any such re-sale must not increase Seller's obligations hereunder other than as set forth in this Section 2.3(a). For any such a resale, Resource Adequacy Plan of Buyer as used herein will refer to the Resource Adequacy Plan of Subsequent Buyer. Seller will, or will cause the Unit's SC, to follow Buyer's instructions with respect to providing such resold Product to Subsequent Buyers, to the extent such instructions are consistent with Seller's obligations under this Confirmation. Seller will, and will cause the Unit's SC, to take all commercially reasonable actions and execute all documents or instruments reasonably necessary to allow such Subsequent Buyers to use such resold Product in a manner consistent with Buyer's rights under this Confirmation. If Buyer incurs any liability to a Subsequent Buyer due to the failure of Seller or the Unit's SC to comply with this Confirmation, Seller will be liable to Buyer for the same amounts Seller would have owed Buyer under this Confirmation if Buyer had not resold the Product.

(b) Buyer will notify Seller in writing of any resale of Product and the Subsequent Buyer no later than five (5) Business Days before the Notification Deadline for the Showing Month for which Buyer has resold the Product. Buyer will notify Seller of any subsequent changes or further resales no later than five (5) Business Days before the Notification Deadline for the Showing Month for which Buyer has resold the Product.

2.4 Seller's Remedies for Buyer's Failure to Receive Expected Quantity

If Buyer fails to receive any part of the Expected Quantity as required herein for any Showing Month, and such failure is not excused under the terms of the Agreement, then Buyer is liable for damages pursuant to Section 4.2 of the Master Agreement. If Buyer resells any portion of the Product to a Subsequent Buyer and that Subsequent Buyer fails to receive any portion of the resold Product, such failure will be deemed a failure of Buyer to receive the Product hereunder, and Buyer is liable for damages pursuant to Section 4.2 of the Master Agreement.

ARTICLE 3
PAYMENTS

3.1 Payment

Buyer shall pay for the Product as provided in Article Six of the Master Agreement and this Confirmation. Buyer shall make a Monthly RA Capacity Payment to Seller for each Unit by the later of (a) ten (10) Calendar Days after Buyer's receipt of Seller's invoice (which may be given upon the first day of the Showing Month) and (b) the twentieth (20th) of the Showing Month, or if the twentieth (20th) is not a Business Day the next following Business Day. The "Monthly RA Capacity Payment" shall equal the product of (i) the applicable Contract Price for that Showing Month, (ii) the Expected Quantity for the Showing Month and (iii) 1,000, rounded to the nearest penny (i.e., two decimal places); provided, however, that (A) the Expected Quantity in clause (ii) of the Monthly RA Capacity Payment formula shall be reduced by the portion, if any, of Expected Quantity for the Showing Month that was not delivered in accordance with Section 2.1 for such Showing Month, and (B) following a Change in RA Requirements, the Expected Quantity of Product delivered in accordance with Section 2.1 for each Showing Month thereafter shall be multiplied by the Compliance Adjustment Factor for purposes of calculating the Monthly RA Capacity Payment pursuant to this Section 3.1.

3.2 Allocation of Other Payments and Costs

(a) Seller will receive and is entitled to retain any revenues from, and must pay all costs charged by, CAISO or any other third party with respect to the Unit(s) for (i) start-up, shutdown, and minimum load costs, (ii) capacity for ancillary services, (iii) energy sales, (iv) flexible ramping product, or (v) black start or reactive power services. Buyer must promptly report receipt of any such revenues to Seller. Buyer must pay to Seller any such amounts described in this Section 3.2(a) received by Buyer or its SC or a Subsequent Buyer or its SC. Without prejudice to its other rights and remedies, Seller may setoff and recoup any such amounts that are not paid to it against any amounts owed to Buyer under the Master Agreement.

(b) Buyer is to receive and retain all revenues associated with the Expected Quantity of Product during the Delivery Period, including any capacity and availability revenues from the Capacity Procurement Mechanism, or its successor, RUC Availability Payments, or its successor, but excluding payments described in Section 3.2(a)(i)-(v) or 3.2(d). Seller must promptly report receipt of any such

revenues to Buyer. Seller must pay to Buyer any such amounts received by Seller, or a Unit's SC, owner, or operator. Without prejudice to its other rights, Buyer may set off and recoup any such amounts that are not paid to it against amounts owed to Seller under the Master Agreement.

(c) If CAISO designates any part of the Expected Quantity as Capacity Procurement Mechanism Capacity, then Seller will, or will cause the Unit's SC to, within one Business Day of the time Seller receives notification from CAISO, notify Buyer and, to the extent permitted under the Tariff, not accept any such designation by CAISO unless and until Buyer has agreed to accept such designation.

(d) Any Availability Incentive Payments or Non-Availability Charges are for Seller to receive and pay.

ARTICLE 4
OTHER BUYER AND SELLER COVENANTS

4.1 CAISO Requirements

Seller must schedule or cause the Unit's SC to schedule or make available to CAISO the Expected Quantity of the Product during the Delivery Period, in compliance with the Tariff, and perform all, or cause the Unit's SC, owner, or operator to perform all, obligations under applicable law and the Tariff relating to the Product. Buyer is not liable for the failure of Seller or the Unit's SC, owner, or operator to comply with the Tariff, and for any penalties, fines or costs imposed on Seller or the Unit's SC, owner, or operator for such noncompliance.

4.2 Seller's and Buyer's Duties to Take Actions to Allow Product Utilization

Throughout the Delivery Period, Buyer and Seller will take all commercially reasonable actions and execute all documents or instruments reasonably necessary to ensure Buyer's rights to the Expected Quantity of the Product for the sole benefit of Buyer or any Subsequent Buyer. If necessary, the Parties further agree to negotiate in good faith to amend this Confirmation to conform this Transaction to subsequent clarifications, revisions, or decisions rendered by CAISO or an applicable Governmental Body to maintain the balance of benefits and burdens of the Transaction as of the Confirmation Date.

4.3 Seller's Representations and Warranties

Seller represents and warrants to Buyer throughout the Delivery Period that:

(a) no part of the Expected Quantity of the Product during the Delivery Period has been committed by Seller to any third party to satisfy Compliance Obligations or analogous obligations in any CAISO or non-CAISO markets;

(b) the Unit qualifies under the Tariff for the Product;

(c) the aggregation of all amounts of Capacity Attributes that Seller has sold, assigned, or transferred for the Unit in respect of each Showing Month of the Delivery Period does not exceed the NQC for that Unit during the applicable Showing Month of the Delivery Period;

(d) if applicable, Seller has notified either the Unit's SC or the entity from which Seller purchased the Product that Seller has transferred the Expected Quantity of Product for the Delivery Period to Buyer; and

(e) Seller has notified or will notify the Unit's SC that Buyer is entitled to the revenues set forth in Section 3.2(b) and that such SC is obligated to promptly deliver those revenues to Buyer, along with appropriate documentation supporting the amount of those revenues.

4.4 CPUC Mid-Term Reliability Requirements.

(a) The Parties acknowledge that Buyer intends to apply the Product purchased under this Agreement towards a portion of its obligations to procure capacity to meet mid-term reliability requirements specified by the CPUC in CPUC Decision 21-06-035. Seller represents and warrants to Buyer that:

i. as of the Confirmation Date, the Unit described in Appendix B is not on the baseline list of resources published by the CPUC on August 24, 2021, which, as of the Confirmation Date, is available at: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_baseline_gen_list.xlsx;

ii. The Product includes the exclusive right to claim the Quantity of the Product from the Unit described in Appendix B as an incremental resource for purposes of CPUC Decision 21-06-035; and

iii. Seller has not and will not sell, assign or transfer the right to claim procurement of the Quantity of the Product from the Unit described in Appendix B as an incremental resource for purposes of CPUC Decision 21-06-035 during the Delivery Term to any other person or entity.

(b) Seller will provide additional information and documentation reasonably requested by Buyer that is available to Seller and not already separately available to Buyer and is necessary to enable Buyer to demonstrate that the Quantity of the Product from the Unit described in Appendix B meets the procurement mandates set forth in CPUC Decision 21-06-035.

(c) Buyer (i) represents and warrants to Seller that Buyer will not report to the CPUC or any Governmental Body or otherwise claim that it is entitled to any capacity from the Unit described in Appendix B for purposes of CPUC Decision 21-06-

035 in excess of the Quantity of the Product from the Unit described in Appendix B ("Excess IRP Attributes"), and (ii) acknowledges and agrees that Seller may retain any Excess IRP Attributes for its own benefit or sell any Excess IRP Attributes to one or more third parties and retain all associated revenue free and clear of any claim by Buyer.

ARTICLE 5
ADDITIONAL MASTER AGREEMENT AMENDMENTS; GENERAL PROVISIONS

5.1 Termination Payment

Notwithstanding anything to the contrary in this Agreement, Seller's aggregate liability to Buyer for any Events of Default of Seller hereunder, including without limitation, any Termination Payment due to Buyer as a result of such Events of Default, shall not exceed

.

5.2 Confidentiality

Notwithstanding Section 10.11 of the Master Agreement, (i) Buyer may disclose information in order to support its Compliance Showings or otherwise show it has met its Compliance Obligations; (ii) Seller may disclose information to a Unit's SC or as necessary for Supply Plans; (iii) each Party may disclose information to the independent evaluator or other administrator of any competitive solicitation process of Buyer, which in turn may disclose such information to CAISO or any Governmental Body; and (iv) Buyer may disclose information (excluding pricing to any Subsequent Buyer.

5.3 Dodd-Frank Act

Each Party represents and warrants to the other that it is an "eligible commercial entity" and an "eligible contract participant" within the meaning of United States Commodity Exchange Act §§1a(17) and 1a(18), respectively. Without limiting Section 10.10 of the Master Agreement, the Parties intend this Transaction to be a "customary commercial arrangement" as described in Section II.A.1 of Commodity Futures Trading Commission, *Proposed Guidance, Certain Natural Gas and Electric Power Contracts*, 81 Fed. Reg. 20583 at 20586 (Apr. 8, 2016) and a "Forward Capacity Transaction" within the meaning of Commodity Futures Trading Commission, *Final Order in Response to a Petition From Certain Independent System Operators and Regional Transmission Organizations To Exempt Specified Transactions Authorized by a Tariff or Protocol Approved by the Federal Energy Regulatory Commission*, 78 Fed. Reg. 19,880 (Apr. 2, 2013).

5.4 Governing Law

This Confirmation and any portion of the Master Agreement applicable to this Transaction and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law.

ARTICLE 6
COLLATERAL REQUIREMENTS

6.1 Seller Collateral

To secure its obligations under this Agreement, Seller shall deliver Seller Performance Security to Buyer within thirty (30) days after the Confirmation Date. "Seller Performance Security" means (i) cash or (ii) Letter of Credit in the amount of

Promptly following the end of the Delivery Period, Buyer shall promptly return to Seller the unused portion of the Seller Performance Security, subject to any draws made by Buyer in accordance with this Confirmation, upon Seller's written request.

6.2 Buyer Collateral

Buyer is not required to post any credit support for this Transaction.

ARTICLE 7
ASSIGNMENT FOR FINANCING

Neither Party shall assign this Agreement or its rights hereunder without the prior written consent of the other Party, which consent shall not be unreasonably withheld; provided, however, (a) Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to an Affiliate of Seller, and (b) Seller shall have the right at any time and from time to time to create or provide for a security interest in, or convey in trust its respective rights, titles and interests in this Agreement to a lender, mortgagee, or trustee under deeds of trust, mortgages or indentures, or to secured parties under a security agreement as security for its present or future bonds or other obligations or securities, or to any lender(s), lessor(s) or tax equity investor(s) and other parties providing any financing or refinancing and any successor(s) or assigns thereto ("Secured Party") with respect to any Unit described in Appendix B to the Confirmation, without the consent of Buyer, and without such Secured Party assuming or becoming in any respect obligated to perform any of the obligations of the Parties hereto. Any such Secured Party and any successor thereof by action of law or otherwise, and any purchaser, transferee or assignee of any thereof may, without need for the prior consent of the other Party, succeed to and acquire all the rights, titles and interests of Seller in this Agreement, and may foreclose upon said rights, titles and interests of Seller, provided any such Secured Party and any successor thereof by action of law or otherwise, and any purchaser, transferee or assignee of any thereof has agreed in writing to be bound by this Agreement and shall have complied with the obligations of Seller to provide Seller Performance Security hereunder. Upon the written request of Seller, Buyer shall execute, or arrange for the delivery of, such consents, estoppels and other documents as may be reasonably necessary in order for Seller to consummate any financing or refinancing of any Unit described in Appendix B to the Confirmation or any part thereof, including a form of financing party consent and agreement, each of which documents and instruments shall be in form and substance reasonably acceptable to Buyer and Seller shall agree to pay for the reasonable third party legal review expenses of Buyer in compliance with such requests.

AGREED AS OF THE CONFIRMATION DATE:

ES 1A GROUP 3 OPCO, LLC		**CLEAN ENERGY ALLIANCE**	
By:	_____	By:	_____
Name:	Don Vawter	Name:	_____
Title:	Vice President	Title:	_____
Date:	_____	Date:	_____

APPENDIX A
DEFINED TERMS

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

"Capacity Attributes" means attributes of the Unit that may be counted toward Compliance Obligations, including: flexibility, dispatchability, physical location or point of electrical interconnection of the Unit; Unit ability to generate at a given capacity level, provide ancillary services, or ramp up or down at a given rate; any current or future defined characteristics, certificates, tags, credits, or accounting constructs of the Unit, howsoever entitled, identified from time to time by the CAISO or a Governmental Body having jurisdiction over Compliance Obligations.

"Change in RA Requirements" has the meaning set forth in Section 2.1(j).

"CIRA Tool" means the CAISO Customer Interface for Resource Adequacy.

"Co-Located Resource" has the meaning set forth in the Tariff.

"Compliance Adjustment Factor" means a ratio, the numerator of which is the aggregate Unit NQC value of the Unit(s) described in Appendix B as calculated under the CPUC and CAISO resource adequacy counting rules as of the Confirmation Date, and the denominator of which is the aggregate Compliance Adjusted Unit NQC of the Unit(s) described in Appendix B.

"Compliance Adjusted Unit NQC" has the meaning set forth in Section 2.1(j).

"Compliance Obligations" means, as applicable based on the Product specifications, RAR, Local RAR and FCR.

"Compliance Showings" means the applicable LSE's compliance with the resource adequacy requirements of the CPUC for an applicable Showing Month.

"CPUC" means the California Public Utilities Commission.

"CPUC Decisions" means any currently effective or future decisions, resolutions, or rulings related to resource adequacy issued by the CPUC.

"Delivery Period" has the meaning set forth in Appendix B.

"Effective Flexible Capacity" or "EFC" has the meaning set forth in the Tariff.

"FCR" means the flexible capacity requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, the CAISO pursuant to the Tariff, or other Governmental Body having jurisdiction over Compliance Obligations and includes any non-binding advisory showing which an LSE is required to make with respect to flexible capacity.

"Governmental Body" means any federal, state, local, municipal or other government; any governmental, regulatory or administrative agency, commission or other authority lawfully exercising or entitled to exercise any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power; and any court or governmental tribunal.

"Hybrid Resource" has the meaning set forth in the Tariff.

"Initial Unit EFC" means, for each Unit described in Appendix B, the initial Effective Flexible Capacity for such Unit as set by CAISO as of the Confirmation Date.

"Initial Unit NQC" means, for each Unit described in Appendix B, the initial Net Qualifying Capacity for such Unit as set by CAISO as of the Confirmation Date.

"Local RAR" means the local resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations.

"LSE" means "Load Serving Entity" as such term is used in Section 40.9 of the Tariff.

"MW" means megawatt.

"Net Qualifying Capacity" or "NQC" has the meaning set forth in the Tariff.

"Notification Deadline" is fifteen (15) Business Days before the relevant deadlines for the corresponding Compliance Showings applicable to the relevant Showing Month.

"Product" means Capacity Attributes applicable to compliance with RAR and FCR from Units that meet the specifications contained in the "Product" section of Appendix B.

"RAR" means the resource adequacy requirements established for LSEs by the CPUC pursuant to the CPUC Decisions, by CAISO pursuant to the Tariff, or by any other Governmental Body having jurisdiction over Compliance Obligations, but excluding Local RAR and FCR.

"SC" means Scheduling Coordinator as defined in the Tariff.

"Showing Month" means the calendar month of the Delivery Period that is the subject of the related Compliance Showing.

"Shown Unit" means one or more of the Units specified by Seller in a Supply Plan.

"Subsequent Buyer" means the buyer of Product from Buyer in a re-sale of Product by Buyer.

"Tariff" means the CAISO Tariff, including any current CAISO-published "Operating Procedures" and "Business Practice Manuals," in each case as amended or supplemented from time to time.

"Unit" means any generation unit described in Appendix B.

"Unit EFC" means Unit Effective Flexible Capacity and is, for a given date of determination, the lesser of the Initial Unit EFC as set by CAISO as of the Confirmation Date and the Effective Flexible Capacity of the Unit as set by CAISO on such date of determination. If such Unit is registered with CAISO as a Hybrid Resource as of the date of determination, then the Unit EFC will be the portion of the Effective Flexible Capacity of such Unit on such date of determination that is attributable to the battery energy storage system component of such Unit.

"Unit NQC" means Unit Net Qualifying Capacity and is, for a given date of determination, the lesser of the Initial Unit NQC as set by CAISO as of the Confirmation Date and the Net Qualifying Capacity of the Unit as set by CAISO on such date of determination. If such Unit is registered with CAISO as a Hybrid Resource as of the date of determination, then the Unit NQC will be the portion of the Net Qualifying Capacity of such Unit on such date of determination that is attributable to the battery energy storage system component of such Unit.

APPENDIX B
PRODUCT AND UNIT INFORMATION

Product:

☒ RAR ☐ Local RAR ☒ FCR

and all Capacity Attributes related to such Product.

Additional Product Information (fill in all that apply):
CAISO Zone: System
MCC Bucket: 4*
CPUC Local Area (if applicable): N/A
Flexible Capacity Category (if applicable): 2*

* If the MCC Bucket or Flexible Capacity Category definition or eligibility criteria are modified by the CPUC, the CAISO or other Governmental Body having jurisdiction over Compliance Obligations, Seller will provide attributes in the category that the Unit described in Appendix B is eligible to provide without requiring a reduction in Unit NQC or Unit EFC or the portion of the Unit NQC or Unit EFC that can be shown in the Supply Plan for such Unit.

Delivery Period: "Delivery Period" means the period of time beginning with the Showing Month of June 2024 through and including the Showing Month of December 2035, unless terminated earlier in accordance with the terms of this Agreement.

Quantity and Contract Price:

RAR and FCR

Showing Month and Year	Quantity (MW)	Contract Price ($/kW-mo.)
EACH SHOWING MONTH DURING THE DELIVERY PERIOD	JAN – DEC = 1.0	

Unit

ES 1A Group 3 Opco, LLC solar project includes the subprojects EdSan 2 Edwards 1A solar photovoltaic generating facilities ("PV Facilities") and an integrated battery energy storage system ("Storage Facility"), located in Kern County, CA. For any period in which the PV Facility and the Storage Facility are registered with the CAISO as a Hybrid Resource, the Unit described in this Appendix B will be the combined PV Facility and Storage Facility. For any period in which the PV Facility and the Storage Facility are registered with the CAISO as Co-Located Resources, the Unit described in this Appendix B will be the Storage Facility only.

Unit Specific Information**	
Resource Name	EdSan 2 Edwards 1A
Physical Location	
CAISO Resource ID	
SCID of Resource	
Unit NQC by month (e.g., Jan=50,Feb=65)	
Unit EFC by month (e.g., Jan=30, Feb=50)	
Resource Type (e.g., gas, hydro, solar, etc.)	Solar plus Storage
Minimum Qualified Flexible Capacity Category (Flex 1, 2 or 3)	2*
TAC Area (e.g., PG&E, SCE)	SCE
Prorated Percentage of Unit Factor	N/A
Prorated Percentage of Unit Flexible Factor	N/A
Capacity Area (CAISO System, Fresno, Sierra, Kern, LA Basin, Bay Area, Stockton, Big Creek-Ventura, NCNB, San Diego-IV or Humboldt)	Kern
Resource Category as defined by the CPUC (DR, 1, 2, 3, 4)	4*

* If the Resource Category or Minimum Qualified Flexible Capacity Category definition or eligibility criteria are modified by the CPUC, the CAISO or other Governmental Body having jurisdiction over Compliance Obligations, Seller will provide attributes in the category that the Unit described in Appendix B is eligible to provide without requiring a reduction in Unit NQC or Unit EFC or the portion of the Unit NQC or Unit EFC that can be shown in the Supply Plan for such Unit.

** The information set forth in this table reflects the Storage Facility only.

ANNEX A

MASTER POWER PURCHASE AND SALE AGREEMENT

COVER SHEET

This *Master Power Purchase and Sale Agreement* (Version 2.1; modified 04/25/00) ("*Master Agreement*") is made as of the Confirmation Date ("Effective Date"). The *Master Agreement*, together with the exhibits, schedules and any written supplements hereto, the Party A Tariff, if any, the Party B Tariff, if any, any designated collateral, credit support or margin agreement or similar arrangement between the Parties and all Transactions shall be referred to as the "Agreement." The Parties to this *Master Agreement* are the following:

Name: ES 1A Group 3 Opco, LLC ("**Party A**")

All Notices:
Street: 437 Madison Avenue, Suite A
City: New York, NY Zip: 10022
Attn: Business Management
Phone: 646-829-3910
Facsimile: 646-829-3901
Duns: to be provided by Party A
Federal Tax ID Number: 47-4807929

Invoices:
Attn: Accounts Payable
Phone: 661-822-2458
Facsimile: 661-822-2401

Scheduling:
Attn: Operations 24/7 Desk
Phone: 646-829-3957
Facsimile: 661-822-2401

Payments:
Attn: Treasury Department
Phone: 646-829-3920
Facsimile: 646-829-3901

Wire Transfer:

To be updated

Credit and Collections:
Attn: Treasury Department
Phone: 646-829-3920
Facsimile: 646-829-3901

Name: Clean Energy Alliance, a California joint powers authority ("**CEA**" or "**Party B**")

All Notices:
5857 Owens Ave, Suite 2023
Carlsbad, CA 92008
Attn: Chief Executive Officer
Phone: (760) 209-6177
Email: ceo@thecleanenergyalliance.org
Duns: 117585162
Federal Tax ID Number: 84-3839142

Confirmations:
Attn: Barbara Boswell, CEO
Phone: (760) 209-6177
Email: ceo@thecleanenergyalliance.org

Scheduling:
Attn: Jaclyn Harr, The Energy Authority
Phone: (408) 306-0432
Email: jharr@teainc.org

Payments:
Attn: Andy Stern, Chief Financial Officer
Phone: (760) 209-6177
Email: astern@thecleanenergyalliance.org

Wire Transfer:
BNK: River City Bank
ABA: 121133416
ACCT: 7714609947

Credit and Collections:
Attn: Andy Stern, Chief Financial Officer
Phone: (760) 209-6177
Email: astern@thecleanenergyalliance.org

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: General Counsel
Phone: 646-829-3908
Facsimile: 646-829-3901

With additional Notices of an Event of Default or Potential Event of Default to:
Attn: General Counsel
Phone: (619) 814-5813

The Parties hereby agree that the General Terms and Conditions are incorporated herein, and to the following provisions as provided for in the General Terms and Conditions:

Party A Tariff: Tariff _____ Dated _____ Docket Number _____

Party B Tariff: N/A

Article Two

Transaction Terms and Conditions ☑ Optional provision in Section 2.4. If not checked, inapplicable.

Article Four

Remedies for Failure to Deliver or Receive ☑ Accelerated Payment of Damages. If not checked, inapplicable.

Article Five

Events of Default; Remedies

☐ Cross Default for Party A: N/A

☐ Party A:_____ Cross Default Amount

☐ Other Entity:_____ Cross Default Amount $_____

☐ Cross Default for Party B: N/A

☐ Party B:_____ Cross Default Amount $_____

☐ Other Entity:_____ Cross Default Amount

5.6 Closeout Setoff:

☑ Option A (Applicable if no other selection is made.)
☐ Option B
☐ Option C (No Setoff)

Article Eight

Credit and Collateral Requirements

8.1 Party A Credit Protection:

(a) Financial Information:

☐ Option A
☐ Option B Specify: _____
☑ Option C Specify: None

(b) Credit Assurances:

☑ Not Applicable
☐ Applicable

(c) Collateral Threshold:

☑ Not Applicable
☐ Applicable

(d) Downgrade Event:

☑ Not Applicable
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party B if Party B's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party B is not rated by either S&P or Moody's

☐ Other:
Specify:_____

(e) Guarantor for Party B: N/A

Guarantee Amount: N/A

8.2 Party B Credit Protection:

(a) Financial Information:

☐ Option A
☐ Option B Specify: _____
☑ Option C Specify: None

(b) Credit Assurances:

☑ Not Applicable
☐ Applicable

(c) Collateral Threshold:

☑ Not Applicable
☐ Applicable

(d) Downgrade Event:

☑ Not Applicable
☐ Applicable

If applicable, complete the following:

☐ It shall be a Downgrade Event for Party A if Party A's Credit Rating falls below _____ from S&P or _____ from Moody's or if Party A is not rated by either S&P or Moody's

☐ Other:
Specify:_____

(e) Guarantor for Party A: N/A

Guarantee Amount: N/A

Article Ten

Confidentiality ☑ Confidentiality Applicable If not checked, inapplicable.

Schedule M

☐ Party A is a Governmental Entity or Public Power System
☑ Party B is a Governmental Entity or Public Power System
☑ Add Section 3.6. If not checked, inapplicable
☑ Add Section 8.4. If not checked, inapplicable

Other Changes:

1) In Section 1.3, insert the phrase "and, in the case of any such petition instituted or presented against it, that petition remains undismissed and unstayed for a period of ninety (90) days" at the end of clause "(i)".

2) Section 1.4 is amended by deleting the first sentence and replacing it to read as follows: "Business Day" means any day except a Saturday, Sunday, the Friday immediately following the Thanksgiving holiday or a Federal Reserve Holiday.

3) In Section 1.12, (a) delete the word "issues" in the fourth line and replace it with "issuers" and (b) insert "and if such ratings are different, the lowest of such ratings shall apply" after the word "Sheet" in the last line.

4) Section 1.23 is amended by inserting in the thirteenth line thereof before the phrase "foregoing factors" the word "two."

5) Section 1.24 is amended by adding before the period at the end thereof the following: "in accordance with Section 5.2".

6) A new Section 1.26A is added as follows:

   "1.26A "Joint Powers Agreement" means the Joint Powers Agreement, effective as of November 4, 2019, as amended, providing for the formation of Party B, as such agreement may be further amended or amended and restated."

7) Section 1.27 is amended by deleting the phrase "or a foreign bank with a U.S. branch" and replacing it with the phrase "or a U.S. branch of a foreign bank."

8) Section 1.46 is deleted in its entirety.

9) In Section 1.50, delete the reference to "Section 2.4" and replace it with "Section 2.5".

10) Section 1.51 is amended by (i) inserting the phrase "for delivery" in the second line after the word "purchases" and before the phrase "at the Delivery Point" and (ii) deleting the phrase "at Buyer's option" from the fifth line and replacing it with the phrase "absent a purchase".

11) Section 1.52 is amended by (i) deleting the words "Rating" and "Group" from the first line and replacing with "Financial Services LLC" and (ii) by replacing the words in the parenthetical with "a subsidiary of McGraw-Hill Companies, Inc."

12) Section 1.53 is amended by:

(i) deleting the phrase "at the Delivery Point" from the second line;

(ii) deleting the phrase in line 5 "at the Seller's option" and replacing it with "absent a sale"; and

(iii) inserting after the word "liability" in the ninth line the following: "provided, further, if the Seller is unable after using commercially reasonable efforts to resell all or a portion of the Product not received by the Buyer, the Sales Price with respect to such unsold Product shall be deemed equal to zero (0)."

13) Section 1.56 is amended by deleting the words "pursuant to Section 5.2" and by adding before the period at the end thereof the following: ", as determined in accordance with Section 5.2."

14) Section 1.60 is amended by inserting the words "in writing" immediately following the words "agreed to".

15) In Section 2.1, delete the first sentence in its entirety and replace it with the following: "A Transaction, or an amendment, modification or supplement thereto, shall be entered into only upon a writing signed by both Parties."

16) In Section 2.3, delete the section in its entirety and replace it with the following:

"2.3 Confirmation. A Transaction shall be entered into only by a written confirmation in a form mutually agreeable to both Parties and signed by both Parties ("Confirmation"). Notwithstanding anything to the contrary in this Master Agreement, the Master Agreement and any and all Confirmations may not be amended or modified except by an instrument in writing signed by both of the Parties."

17) In Section 2.4, delete "either orally or" after "agreed to" in the 7th line.

18) In Section 2.5, delete the section in its entirety and specify it as "Reserved".

19) In Section 5.1(a), change "three (3) Business Days" to "five (5) Business Days".

20) In Section 5.1(b), insert the phrase "and such Party does not fully mitigate the adverse consequences of such false or misleading representation or warranty to the other Party within thirty (30) days after written notice thereof" after the word "repeated" in the last line.

21) In Section 5.1(c), change "three (3) Business Days" to "thirty (30) days".

22) In Section 5.1(e), insert the phrase "if such failure is not remedied within five (5) Business Days after written notice thereof" after the word "hereof" in the last line.

23) Section 5.1(g) is deleted in its entirety and replaced with the following:

"if the applicable cross default section in the Cover Sheet is indicated for such Party, the occurrence and continuation of a default, event of default or other similar condition or event in respect of such Party or any other party specified in the Cover Sheet for such Party under one or more agreements or instruments, individually or collectively, relating to indebtedness for borrowed money in an aggregate amount of not less than the applicable Cross Default Amount (as specified in the Cover Sheet), which results in such indebtedness becoming immediately due and payable; provided, however, that it shall not constitute an

Event of Default under this Section 5.1(g) if (i) such event, condition or failure is a failure to pay caused by an error or omission of an administrative or operational nature, (ii) funds were available to such Party to enable it to make the relevant payment when due, and (iii) such event, condition or failure is remedied on or before the third Business Day after receipt of written notice of its occurrence"

24) Section 5.1(h)(v), insert the phrase "made in connection with this Agreement" after the phrase "any guaranty".

25) Section 5.1 is further amended by replacing the period at the end of subsection (h) with a semicolon, and adding new subsections which read as follows:

"(i) With respect to Party B, an Event of Default (as defined under the Security Documents) or default of Party B occurs under one or more of the Security Documents (as defined in Schedule M) and such Event of Default or default continues after giving effect to any applicable notice requirement or cure or grace period under the Security Documents."

26) Section 5.2 is amended by:

(i) deleting the following phrase from the last line: "as soon thereafter as is reasonably practicable"; and

(ii) adding the following to the end of that provision: "then each such Transaction shall be terminated as soon thereafter as reasonably practicable, and upon termination shall be deemed to be a Terminated Transaction and the Termination Payment payable in connection with all such Transactions shall be calculated in accordance with Section 5.3 below). The Gains and Losses for each Terminated Transaction shall be determined by the Non-Defaulting Party calculating the amount that would be incurred or realized to replace or to provide the economic equivalent of the remaining payments or deliveries in respect of that Terminated Transaction. In making such calculation, the Non-Defaulting Party may reference information supplied by one or more third parties including, without limitation, quotations (either firm or indicative) of relevant rates, prices, yields, yield curves, volatilities, spreads or other relevant market data in the relevant markets. Third parties supplying such information may include dealers, brokers and information vendors, including, without limitation, Intercontinental Exchange, Inc. If the Non-Defaulting Party's calculation of the net Settlement Amount results in an amount that would be due to the Defaulting Party (i.e. the Defaulting Party was in-the-money), then for purposes of the calculation of the Termination Payment, such Settlement Amount shall be deemed to be zero dollars ($0.00)."

27) In Section 5.7, (a) delete the phrase "(a)" in the first sentence and (b) delete the following phrase in the first sentence "or (b) a Potential Event of Default".

28) In Section 6.3, (a) delete "two (2)" in the fifth sentence and replace it with "five (5)" and (b) in lines 3, 16 & 18, change "twelve (12) months" to "twenty-four (24) months".

29) Section 7.1 shall be amended by:

(i) adding "SET FORTH IN THIS AGREEMENT" after "INDEMNITY PROVISION" and before "OR OTHERWISE," in the fifth sentence;

(ii) adding in the nineteenth line the words "PROVIDED, HOWEVER, NOTHING IN THIS SECTION SHALL AFFECT THE ENFORCEABILITY OF THE PROVISIONS OF THIS AGREEMENT EXPRESSLY ALLOWING FOR SPECIAL DAMAGES, INCLUDING BUT NOT LIMITED TO REMEDIES FOR FAILURE TO DELIVER/RECEIVE IN SECTIONS 4.1 AND 4.2, AND CALCULATION AND PAYMENT OF THE TERMINATION PAYMENT IN SECTIONS 5.2 AND

5.3." immediately after the words "ANY INDEMNITY PROVISIONS SET FORTH IN THIS AGREEMENT OR OTHERWISE"; and

(iii) adding at the end of the last sentence the words "AND ARE NOT PENALTIES."

30) A new Section 8.4 is added as follows:

"Section 8.4 UCC Waiver: Section 8 and Schedule M of the Agreement and the Security Documents sets forth the entirety of the agreement of the Parties regarding credit, collateral and adequate assurances. Except as expressly set forth in the options elected by the Parties in respect of Sections 8.1 and 8.2, and in Schedule M of the Agreement and the Security Documents, neither Party:

(a) has or will have any obligation to post margin, provide letters of credit, pay deposits, make any other prepayments or provide any other financial assurances, in any form whatsoever, or

(b) will have reasonable grounds for insecurity with respect to the creditworthiness of a Party or Member that is complying with the relevant provisions of Section 8 of this Agreement;

and all implied rights relating to financial assurances arising from Section 2-609 of the Uniform Commercial Code or case law applying similar doctrines, are hereby waived."

31) In Section 10.2, delete the phrase "(including any Confirmation accepted in accordance with Section 2.3)" from Sections 10.2(ii), (iii), (iv), (vi), (vii), (viii), (x) and (xi).

32) In Section 10.2(ii), insert the clause ", except all permits necessary to install, operate and maintain the generating facilities and sell the output therefrom in the case of Party A, which Party A reasonably expects to be obtained in the ordinary course of business prior to delivery of Product under this Agreement;" at the end thereof.

33) In Section 10.2(viii), add the following after "doing," in the 7th line:

"nor is it relying on any unique or special expertise of the other Party and it is not in any special relationship of trust or confidence with respect to the other Party,"

34) Section 10.2(ix) shall be deleted in its entirety and replaced with the following:

"Each party acknowledges and agrees that (i) certain transaction(s) hereunder are intended to constitute a "forward contract" providing a "contractual right" within the meaning of such terms under Title 11 of the United States Code, as amended (the "Bankruptcy Code"); (ii) it is a "forward contract merchant" within the meaning of the Bankruptcy Code with respect to any transaction that constitutes a "forward contract," (iii) all payments made or to be made by one party to the other party pursuant to this contract constitute a "settlement payment" within the meaning of the Bankruptcy Code; (iv) all transfers of adequate assurance, prepayment or similar performance assurance by one party to the other party under this contract constitute a "margin payment" within the meaning of the Bankruptcy Codes; (v) each party shall have the "contractual right" to terminate, liquidate, accelerate, or offset the transaction as a "master netting agreement participant" within the meaning of the Bankruptcy Code; and (vi) the parties are entities entitled to the rights under, and protections afforded by, Sections 362, 546, 553, 556, 560, 561 and 562 of the Bankruptcy Code."

35) In Section 10.6, delete "NEW YORK" and replace with "CALIFORNIA".

36) Section 10.7 is amended to add before each occurrence of the word "facsimile" the phrase "electronic mail".

37) In Section 10.8, (a) delete the following "Except to the extent herein provided for" and (b) add the following to the end thereof:

"This Master Agreement and any Confirmation hereunder may be signed in any number of counterparts with the same effect as if the signatures to counterparty were upon a single instrument. Delivery of an executed signature page of this Master Agreement and any Confirmation by electronic mail transmission shall be effective as delivery of a manually executed signature page."

38) In Section 10.9, (a) insert the words "copies of" after the word "examine" and (b) in line 9, change "twelve (12) months" to "twenty-four (24) months".

39) Section 10.11, shall be amended by adding the following:

(i) the phrase "or the completed Cover Sheet to this Master Agreement" immediately before the phrase "to a third party" in line three;

(ii) the phrase "Affiliates, actual or potential provider of debt, equity or tax equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the Project, contractors" immediately prior to the phrase "counsel, accountants, or advisors" in line four;

(iii) in the seventh line thereof, between the word "proceeding" and the semi-colon, which immediately follows, the words "applicable to such Party or any of its Affiliates";

(iv) an additional sentence at the end of Section 10.11: "The Parties agree and acknowledge that nothing in this Section 10.11 prohibits a Party from disclosing any one or more of the commercial terms of a Transaction (other than the name of the other Party unless otherwise agreed to in writing by the Parties) to any industry price source for the purpose of aggregating and reporting such information in the form of a published energy price index."; and

(v) the following at the end of the last sentence: "Party A and Party B acknowledge and agree that the Master Agreement and any Confirmations executed in connection therewith are subject to the requirements of the California Public Records Act (Government Code Section 7920 et seq.). Party B acknowledges that Party A may submit information to Party B that the other party considers confidential, proprietary, or trade secret information pursuant to the Uniform Trade Secrets Act (Cal. Civ. Code section 3426 et seq.), or otherwise protected from disclosure pursuant to an exemption to the California Public Records Act. Party A acknowledges that Party B may submit to Party A information that Party B considers confidential or proprietary or protected from disclosure pursuant to exemptions to the California Public Records Act. In order to designate information as confidential, the disclosing party must clearly stamp and identify the specific portion of the material designated with the word "Confidential". The parties agree not to over-designate material as confidential. Over-designation would include stamping whole agreements, entire pages or series of pages as Confidential that clearly contain information that is not confidential. Upon request or demand of any third person or entity not a party to this Agreement ("Requestor") for production, inspection and/or copying of information designated by a Party as confidential information (such designated information, the "Confidential Information" and the disclosing Party, the "Disclosing Party"), the Party receiving such request (the "Receiving Party") as soon as practical, shall notify the Disclosing Party that such request has been made as specified in the Cover Sheet. The Disclosing Party shall be solely responsible for taking whatever legal steps are necessary to protect information deemed by it to be Confidential Information and to prevent release of information to the Requestor by the Receiving Party. If the Disclosing Party takes no such action after receiving the foregoing notice from the Receiving Party, the Receiving Party shall be permitted to comply with the Requestor's demand and is not required to defend against it."

40) The following Mobile-Sierra clause shall be added as Section 10.12:

"Section 10.12 Standard of Review/Modifications.

(a) Absent the agreement of all Parties to the 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 waiver in the next paragraph below is unenforceable or ineffective as to such Party), a non-party or FERC acting *sua sponte*, shall be the 'public interest' standard of review set forth in United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co., 350 U.S. 348 (1956), and clarified by Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish 554 U.S. 527 (2008).

(b) Notwithstanding any provision of Agreement, and absent the prior written agreement of the Parties, each Party, to the fullest extent permitted by applicable law, for itself and its respective successors and assigns, hereby also expressly and irrevocably waives any rights it can or may have, now or in the future, whether under Sections 205, 206, or 306 of the Federal Power Act or otherwise, to seek to obtain from FERC by any means, directly or indirectly (through complaint, investigation, supporting a third party seeking to obtain or otherwise), and each hereby covenants and agrees not at any time to seek to so obtain, an order from FERC changing any Section of this Agreement specifying any rate or other material economic terms and conditions agreed to by the Parties."

41) The following shall be added as Section 10.13:

"Section 10.13 Imaged Agreement. Any fully executed Agreement, Confirmation or other related document, or recording may be scanned and stored electronically, or stored on computer tapes and disks, as may be practicable (the "Imaged Agreement"). The Imaged Agreement, if introduced as evidence on paper, the Confirmation if introduced as evidence in automated facsimile form, any recording, if introduced as evidence in its original form and as transcribed onto paper, and all computer records of the foregoing, if introduced as evidence in printed format, in any judicial, arbitration, mediation or administrative proceedings, will be admissible as between the Parties to the same extent and under the same conditions as other business records originated and maintained in documentary form. Neither Party shall object to the admissibility of any Imaged Agreement (or photocopies of the transcription of such Imaged Agreement) on the basis that such were not originated or maintained in documentary form under either the hearsay rule, the best evidence rule or other rule of evidence. However, nothing herein shall be construed as a waiver of any other objection to the admissibility of such evidence."

16. The following is added as a new Section 10.14:

"Section 10.14 No Recourse Against Constituent Members of Party B. Party B is organized as a Joint Powers Authority in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) and is a public entity separate from its constituent members. Party B will solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Party A will have no rights and will not make any claims, take any actions or assert any remedies against any of Party B's constituent members, or the officers, directors, advisors, contractors, consultants or employees of Party B or Party B's constituent members, in connection with this Agreement."

17. The following is added as a new Section 10.15:

"Section 10.15 Party A's Deliveries. Upon request, Party A shall provide to Party B (i) a certificate of good standing issued by the Delaware Secretary of State as of a recent date, (ii) resolutions of the managers, members, or other governing body, as applicable, of Party A approving the execution,

delivery and performance of this Master Agreement and any Confirmations executed in connection therewith, and (iii) the incumbency and signatures of the signatories of Party A executing this Master Agreement and any Confirmations executed in connection herewith."

SCHEDULE M GOVERNMENTAL ENTITY OR PUBLIC POWER SYSTEM

Schedule M is hereby amended as follows:

A. The Parties agree to add the following definitions in Article One:

"**Account Control Agreement**" has the meaning in the Security Documents.

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

"**Collateral Agent**" has the meaning in the Security Documents.

"**Depositary Bank**" has the meaning in the Security Documents.

"**Intercreditor and Collateral Agency Agreement**" means the Intercreditor and Collateral Agency Agreement, among the Collateral Agent, Party A, Party B and the PPA Providers party thereto from time to time.

"**PPA Provider**" has the meaning in the Intercreditor and Collateral Agency Agreement.

"**Secured Account**" means the Lockbox Account (as defined in the Security Agreement) and any other accounts subject to the Security Agreements.

"**Secured Creditors**" means each PPA Provider that is a party to the Intercreditor and Collateral Agency Agreement and its respective successors and assigns.

"**Security Agreement**" means the Security Agreement, between Party B and Collateral Agent, as collateral agent for the benefit of the Secured Creditors.

"**Security Documents**" means, collectively, the Intercreditor and Collateral Agency Agreement, the Security Agreement and the Account Control Agreement, among the Depositary Bank, Party B and the Collateral Agent.

"**Special Fund**" means the Secured Account, which is set aside and pledged to satisfy Party B's obligations hereunder and out of which amounts shall be paid to satisfy all of Party B's obligations under this Master Agreement for the entire Delivery Period.

B. The following sentence shall be added to the end of the definition of "**Force Majeure**" in Article One:

"If the Claiming Party is a Governmental Entity or Public Power System, Force Majeure does not include any action taken by the Governmental Entity or Public Power System in its governmental capacity."

C. The Parties agree to add the following sections to Article Three:

"Section 3.4 **Party B's Deliveries**. Upon request by Party A, Party B shall provide Party A (a) certified copies of all ordinances, resolutions, public notices and other documents evidencing the necessary authorizations with respect to the execution, delivery and performance by Party B of this Master Agreement and (b) the incumbency and signatures of the signatories of Party B executing this Master

Agreement and any Confirmations executed in connection herewith, and setting forth the names and signatures of employees of Party B with authority to act on behalf of Party B.

Section 3.5 **No Immunity Claim**. Party B warrants and covenants that with respect to its contractual obligations hereunder and performance thereof, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or the Secured Account from (a) suit, (b) jurisdiction of court (provided that such court is located within a venue permitted under the Agreement), (c) relief by way of injunction, order for specific performance or recovery of property, (d) attachment of assets, or (e) execution or enforcement of any judgment; provided, however, that nothing in this Agreement shall waive the obligations and/or rights set forth in the California Government Claims Act (Government Code Section 810 et seq.).

Section 3.6 **Party B Security**. With respect to each Transaction, Party B shall have created and set aside a Special Fund and shall have entered into the Security Documents."

D. The Parties agree to add the following section to Article Eight:

"Section 8.4 **Party B Security**. As credit protection to Party A, and as a condition to the effectiveness of the Confirmation, Party A and Party B shall have entered into the Security Documents through execution and delivery of a Joinder (as defined in the Intercreditor and Collateral Agency Agreement). Party A shall have the rights and remedies specified in the Security Documents and Party B shall comply with its duties, obligations and responsibilities as specified therein."

E. The Parties agree to add the following representations and warranties to Section 10.2:

"Party B represents and warrants to Party A continuing throughout the term of this Master Agreement, with respect to this Master Agreement and each Transaction, as follows: (i) all acts necessary to the valid execution, delivery and performance of this Master Agreement, including without limitation, to the extent applicable, competitive bidding, public notice, election, referendum, prior appropriation or other required procedures has or will be taken and performed as required under the Act and all applicable laws, ordinances, or other applicable regulations, (ii) all persons making up the governing body of Party B are the duly elected or appointed incumbents in their positions and hold such positions in good standing in accordance with the Act and other applicable laws, (iii) entry into and performance of this Master Agreement by Party B are for a proper public purpose within the meaning of the Act and all other relevant constitutional, organic or other governing documents and applicable law, (iv) the term of this Master Agreement does not extend beyond any applicable limitation imposed by the Act or other relevant constitutional, organic or other governing documents and applicable law, (v) Party B's obligations to make payments with respect to this Master Agreement and each Transaction are to be made solely from the Special Fund, (vi) entry into and performance of this Master Agreement and each Transaction by Party B will not adversely affect the exclusion from gross income for federal income tax purposes of interest on any obligation of Party B or any members of Party B otherwise entitled to such exclusion, and (vii) obligations to make payments hereunder do not constitute any kind of indebtedness of Party B or create any kind of lien on, or security interest in, any property or revenues of Party B."

F. The Parties agree to add the following sentence at the end of Section 10.6 - Governing Law:

"IN RESPECT OF THE APPLICABILITY OF THE ACT AS HEREIN PROVIDED, THE LAWS OF THE STATE OF CALIFORNIA SHALL APPLY."

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 6: Consider Adoption of Resolution No. 2023-009 Setting Rates and Approval of Agreements for Clean Energy Alliance Solar Plus Residential Distributed Microgrid Program Providing Solar and Battery Storage Systems

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RECOMMENDATION.

1) Conduct the Public Hearing: Open the Public Hearing, Receive Public Testimony, and Close the Public Hearing.
2) Adopt Resolution No. 2023-009 Setting Rates for Solar + Program effective November 1, 2023.
3) Approve Power Purchase Agreement, Program Management Agreement, Program Support Agreement and Framework Distributed Microgrids Agreement with Participate.Energy, LLC for Distributed Microgrid Solar + Battery Storage Program and authorize the Chief Executive Officer to execute all documents subject to General and Special Counsel approval.

BACKGROUND AND DISCUSSION

Clean Energy Alliance (CEA) received an unsolicited proposal through its Unsolicited Proposals process from Participate.Energy, LLC (Participate or PE), offering their Distributed Microgrids Program (Program) to CEA. The Program is being offered by Participate through their partnership with Tesla, Inc. and is being implemented at CCAs throughout Southern California. After meeting with the program administrators at Participate, staff brought forward a presentation to the CEA Board at its February 23, 2023, regular meeting. At that meeting, the Board directed staff to work with PE to develop a program for CEA customers and return with the required documents to establish the program within CEA's service territory at a future Board meeting.

The Program offers customers access to solar and battery storage systems with no out of pocket up-front costs, down payment, or credit check. Customers do not buy the system, rather, they enter into an agreement to allow the system to be installed at their residence and enroll in a new rate program with CEA for the purchase of the solar power and monthly fee for the battery.

The benefits to CEA's customers include:

- Access to clean solar energy and battery storage without the up-front out of pocket costs;
- Access to solar and battery storage systems for underserved communities;

- Residential Renters component to program to provide access to solar and battery systems not previously available for renters;
- Same control and usage of the battery as customers who outright purchase similar systems from Tesla, Inc.;
- Energy costs savings due to the avoided transmission and delivery charges when using the solar energy and energy from the battery storage system;
- Predictable rates through CEA's new rate.

This is considered a distributed microgrid program because CEA is the purchaser of the energy being generated by the systems, as opposed to the individual customers buying the system from the solar provider. In this way, a portion of CEA's renewable energy for its portfolio comes from these systems on our residential customer rooftops. The locally generated renewable energy can by claimed as part of CEA's energy portfolio for meeting state requirements, which is not the case in the more traditional solar system sales transaction.

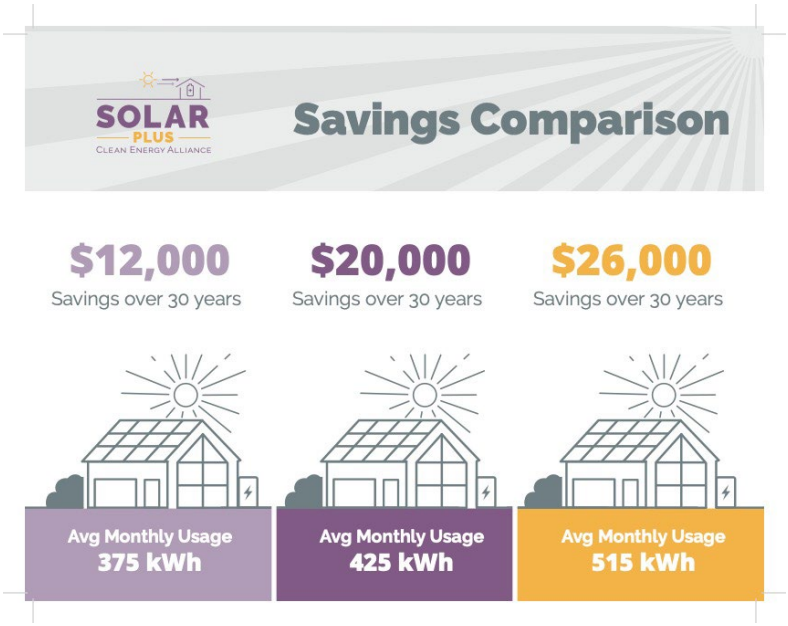
Solar Plus Rate

Customers enrolled in CEA's Solar Plus Program will pay the Solar Plus Rate for energy that is generated by the system and used by the customer, including the solar energy that is put into the battery. Customers are able to include pre-constructions costs, such as roof repairs or electric panel upgrades, related to the installation of the solar and battery storage system in the Solar Plus Rate.

The proposed rates are:

$0.145 per kWh with $750 of less Pre-Construction Costs
$0.15 per kWh with $751 - $2,500 Pre-Construction Costs
$0.155 per kWh with $2,501 - $5,000 Pre-Construction Costs
$115 per month Battery Fee 1st Battery
$75 per month for each additional Battery

Based on the proposed rates customers are anticipated to realize savings through the 30-year term of the program, as demonstrated below:

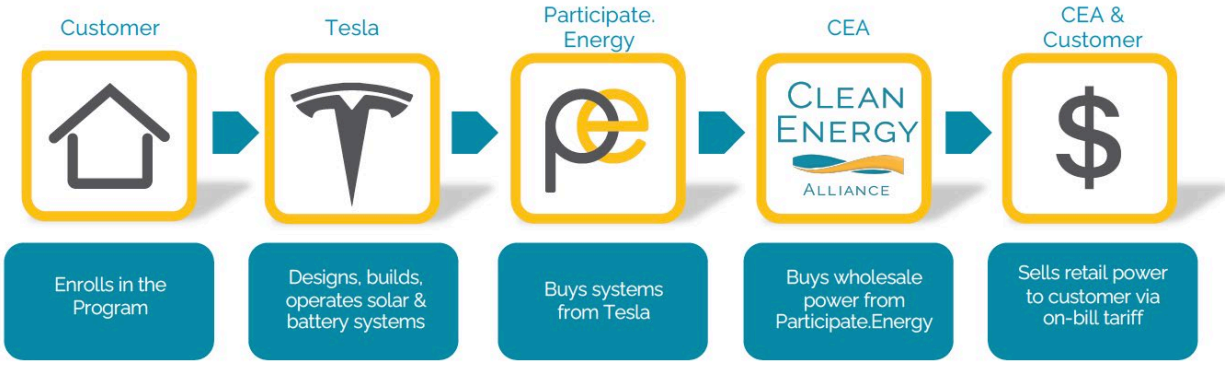


Savings are achieved by the flat rate structure of the Solar Plus program and avoiding transmission and delivery charges while maximizing the use of the energy stored in the battery during peak rate times.

Potential savings increases with higher average monthly usage. The savings projections take into account the new Solar Billing Plan being implemented by San Diego Gas & Electric December 15, 2023.

Participate.Energy and Tesla, Inc. Agreements

Under the terms of the agreements, Participate develops, finances, and owns the solar and battery storage systems and Tesla, Inc. installs, operates and maintains the systems under an agreement with Participate. CEA purchases the electricity generated by the solar system from Participate through a Power Purchase Agreement. Unlike the traditional solar model, CEA has the benefit of claiming the renewable energy generation as part of its renewable energy portfolio. The following graphic visually depicts the program process.



CEA agrees to market and support the program to its residential customers and is compensated for the marketing of the program through the Program Management and Program Support Agreements.

There are four agreements that CEA executes to establish the Program:

- **Power Purchase Agreement** (Attachment A) – establishes the terms, conditions, and price for CEA's purchase of the solar energy and provides the rights for CEA to claim the renewable attributes of the energy;

- **Program Management Agreement** (Attachment B) – establishes CEA's responsibilities to market the program to CEA's customers and encourage participation in the Distributed Microgrids Program, for which CEA will be compensated by Participate.Energy;

- **Program Support Agreement** (Attachment C) – establishes CEA's responsibilities to provide program support for the systems, for which CEA will be compensated by Participate.Energy;

- **Framework Distributed Microgrids Program Agreement** (Attachment D) – establishes the terms and conditions under which CEA, Participate and Tesla, Inc. will perform.

CEA's Community Advisory Committee (CAC) heard a presentation on the proposed Solar Plus Program and were generally supportive and expressed the following questions and concerns:

- There are other markets other than California Independent System Operator to maximize value of battery storage and for grid reliability.
    - Acknowledged this is correct.
- In future can other company solar & battery systems be used?
    - Participate.Energy indicated it could be possible in the future.
- Did CEA consider phasing?
    - By the nature of the roll-out, this program will be defacto phased. CEA will market the program via social media outlets and in person events. Based on the experience in other CCA territories that have implemented this program, the applications are relatively slow.
- Is it possible for customers that already have solar to access just the battery?
    - This is contemplated for a future phase.
- Potential for liabilities should be carefully considered by CEA when implementing this program.
    - CEA's legal team has considered the liabilities and language is included to address the exposure.

FISCAL IMPACT

Funding for the energy purchase through the Power Purchase Agreement are included in the Energy Supply line item of the adopted Fiscal Year 2023/24 budget.

ATTACHMENTS

Attachment A – Residential Solar/Energy Storage Program Power Purchase and Sale Agreement
Attachment B – Program Management Agreement
Attachment C – Program Support Agreement
Attachment D – Framework Distributed Microgrids Program Agreement
Attachment E – Rate Public Hearing Notice

RESIDENTIAL SOLAR / ENERGY STORAGE PROGRAM

POWER PURCHASE AND SALE AGREEMENT

BETWEEN

CLEAN ENERGY ALLIANCE, A CALIFORNIA JOINT POWERS AUTHORITY

AND

PARTICIPATE.ENERGY LLC

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Exhibits:

RESIDENTIAL SOLAR / ENERGY STORAGE PROGRAM

POWER PURCHASE AND SALE AGREEMENT

This Residential Solar / Energy Storage Program Power Purchase and Sale Agreement (this "**Agreement**") is made and effective as of _____, 2023 (the "**Effective Date**"), by and between **Participate.Energy LLC**, a Delaware limited liability company ("**Seller**") and Clean Energy Alliance, A California joint powers authority ("**Buyer**"). Seller and Buyer are sometimes referred to herein individually as a "**Party**" and jointly as the "**Parties**." Unless the context otherwise specifies or requires, capitalized terms in this Agreement have the meanings set forth in Article 1.

RECITALS

A, Seller desires to develop, design, construct, finance, own and operate residential solar and energy storage systems to be located at private residences within Buyer's service territory that are participating in Buyer's community choice aggregation program (each a **"System"** or, collectively, the **"Systems"**).

B. Seller desires to sell to Buyer, and Buyer is willing to purchase from Seller the Product generated by each System pursuant to the terms and conditions of this Agreement.

C. Buyer and Seller intend that Seller will add Systems to this Agreement from time to time during the Portfolio Term. Each System, once such System has reached Commercial Operation evidenced by delivery from Seller to Buyer of (i) written confirmation from the System installer that such System has been completed, and (ii) an updated Included Systems List attached hereto as Exhibit A listing such new System as a system covered under this Agreement, shall be covered under the terms of this Agreement, and Buyer shall purchase from Seller the Product generated by such System as of the Commercial Operation Date.

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

ARTICLE 1
DEFINITIONS

1.1 **Contract Definitions**. The following terms, when used herein with initial capitalization, shall have the meanings set forth below:

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

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

"**Bankrupt**" means with respect to any entity, such entity that (a) files a petition or otherwise commences, authorizes or acquiesces in the commencement of a proceeding or cause of action under any bankruptcy, insolvency, reorganization or similar Law, (b) has any such petition filed or commenced against it which remains unstayed or undismissed for a period of sixty (60) days, (c) makes an assignment or any general arrangement for the benefit of creditors, (d) otherwise becomes bankrupt or insolvent (however evidenced), (e) has a liquidator, administrator, receiver, trustee, conservator or similar official appointed with respect to it or any substantial portion of its property or assets, or (f) is generally unable to pay its debts as they fall due.

"**Bankruptcy Code**" means the United States Bankruptcy Code (11 U.S.C. §101 *et seq*.), as amended, and any successor statute.

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

"**Buyer**" has the meaning set forth in the preamble.

"Buyer's Service Territory" means the service territory of Buyer

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

"Commercial Operation" means, with respect to each System, the condition existing when (i) all conditions to operate the System, including without limitation all applicable regulatory authorizations, approvals and permits for the operation of the System have been obtained, satisfied and complied with, and are in full force and effect, in order to produce, sell and transmit Energy.

"Commercial Operation Date" means the first date of Commercial Operation of a System after completion of a System as confirmed in writing by the System installer.

"**Confidential Information**" has the meaning set forth in Section 20.1.

"**Contract Capacity**" means, with respect to each System the kW AC capacity measured at the Delivery Point set forth in the Included Systems List with respect to such System.

"**Capacity Charge**" has the meaning set forth in Section 4.3.

"**Contract Price**" has the meaning set forth in Section 4.3.

"**Contract Term**" has the meaning set forth in Section 3.1.

"**Contract Year**" means with respect to any and all Systems a twelve (12) month period beginning on the Commercial Operation Date and each successive twelve (12) month period thereafter during the Contract Term.

"Customer" means the property owner of the property in Buyer's Service Territory where a System is located and which is served under Buyer's community choice aggregation program.

"Customer Agreement" means an agreement between the Seller and Customer relating to (a) the installation of the System at the property, (b) the sale of power generated by the System by Seller to Buyer, and (3) the sale by Buyer to the Customer of an amount of electric power, which is equivalent to electric power generated by the System located on the property.

"**Costs**" means, with respect to the Non-Defaulting Party, brokerage fees, commissions and other similar third-party transaction costs and expenses reasonably incurred by such Party either in terminating any arrangement pursuant to which it has hedged its obligations or entering into new arrangements which replace the Agreement; and all reasonable attorneys' fees and expenses incurred by the Non-Defaulting Party in connection with terminating the Agreement.

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

"**Defaulting Party**" has the meaning set forth in Section 12.1(a).

"**Delivered Energy**" means with respect to each System all Energy produced from the System as measured in kWh at the System Delivery Point.

"**Delivery Point**" or **"System Delivery Point"** means with respect to each System the point of delivery for Energy as set forth in the final as-built plans for such System.

"**Early Termination Date**" has the meaning set forth in Section 12.2.

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

"**Energy**" means metered electrical energy, measured in kWh, which is produced by each System or by a number of Systems in the aggregate.

"**Energy Rate**" has the meaning set forth in Section 4.3.

"**Event of Default**" has the meaning set forth in Section 12.1.

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

"**Force Majeure Event**" has the meaning set forth in Section 11.1.

"**Future Environmental Attributes**" shall mean, with respect to each System, any and all generation attributes (other than Green Attributes or Renewable Energy Incentives) under the RPS regulations and/or under any and all other international, federal, regional, state or other law, rule, regulation, bylaw, treaty or other intergovernmental compact, decision, administrative decision,

program (including any voluntary compliance or membership program), competitive market or business method (including all credits, certificates, benefits, and emission measurements, reductions, offsets and allowances related thereto) that are attributable, now, or in the future, to the generation of electrical energy by the System.

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

"**Governmental Authority**" means any federal, state, provincial, local or municipal government, any political subdivision thereof or any other governmental, congressional or parliamentary, regulatory, or judicial instrumentality, authority, body, agency, department, bureau, or entity with authority to bind a Party at law; *provided*, *however*, that "Governmental Authority" shall not in any event include the Buyer except to the extent the Buyer is exercising its authority as a local government and not in furtherance of this Agreement.

"**Green Attributes**" means any and all credits, benefits, emissions reductions, offsets, and allowances, howsoever entitled, attributable to the generation from the System, and its displacement of conventional Energy generation. Green Attributes include but are not limited to Renewable Energy Credits, as well as: (1) any avoided emissions of pollutants to the air, soil or water such as sulfur oxides (SOx), nitrogen oxides (NOx), carbon monoxide (CO) and other pollutants; (2) any avoided emissions of carbon dioxide (CO2), methane (CH4), nitrous oxide, hydrofluorocarbons, perfluorocarbons, sulfur hexafluoride and other greenhouse gases (GHGs) that have been determined by the United Nations Intergovernmental Panel on Climate Change, or otherwise by law, to contribute to the actual or potential threat of altering the Earth's climate by trapping heat in the atmosphere;[1] (3) the reporting rights to these avoided emissions, such as Green Tag Reporting Rights. Green Tag Reporting Rights are the right of a Green Tag Purchaser to report the ownership of accumulated Green Tags in compliance with federal or state law, if applicable, and to a federal or state agency or any other party at the Green Tag Purchaser's discretion, and include without limitation those Green Tag Reporting Rights accruing under Section 1605(b) of The Energy Policy Act of 1992 and any present or future federal, state, or local law, regulation or bill, and international or foreign emissions trading program. Green Tags are accumulated on a MWh basis and one Green Tag represents the Green Attributes associated with

[1] Avoided emissions may or may not have any value for GHG compliance purposes. Although avoided emissions are included in the list of Green Attributes, this inclusion does not create any right to use those avoided emissions to comply with any GHG regulatory program.

one (1) MWh of Energy. Green Attributes do not include (i) any energy, capacity, reliability or other power attributes from the System, (ii) production tax credits associated with the construction or operation of the System and other financial incentives in the form of credits, reductions, or allowances associated with the System that are applicable to a state or federal income taxation obligation, (iii) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits, or (iv) emission reduction credits encumbered or used by the System for compliance with local, state, or federal operating and/or air quality permits. If the System is a biomass or landfill gas System and Seller receives any tradable Green Attributes based on the greenhouse gas reduction benefits or other emission offsets attributed to its fuel usage, it shall provide Buyer with sufficient Green Attributes to ensure that there are zero net emissions associated with the production of electricity from the System.

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

"Included Systems List" means a list of Systems covered by the terms of this Agreement, of which Seller will sell to Buyer, and Buyer will purchase from Seller the Product generated by each System listed thereon. The Included System List will be amended by means of Seller delivering an updated Included Systems List to Buyer from time to time, listing any new System completed by Seller. The initial Included Systems List is attached hereto as Exhibit A and subsequent Included Systems List amended as stated above shall automatically replace any prior Included Systems List as Exhibit A attached hereto. Absent manifest error or fraud, each updated Included Systems List shall be binding upon the Parties.

"**Indemnified Party**" has the meaning set forth in Section 18.1.

"**Indemnifying Party**" has the meaning set forth in Section 18.1.

"**Installed Capacity**" means, with respect to each System, the System demonstrated peak System electrical output measured in kW AC at the System Delivery Point.

"**Interest Rate**" has the meaning set forth in Section 9.2.

"**kW**" means kilowatts measured in alternating current.

"**kWh**" means kilowatt-hour.

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

"**Lender**" means, collectively, any Person (i) providing senior or subordinated construction, interim or long-term debt or equity financing or refinancing for or in connection with the development, construction, purchase, installation or operation of the System, whether that

financing or refinancing takes the form of private debt, equity, public debt or any other form (including financing or refinancing provided to a member or other direct or indirect owner of Seller), including any equity investor directly or indirectly providing financing or refinancing for the System or purchasing equity ownership interests of Seller and/or its Affiliates, and any trustee or agent acting on their behalf, (ii) providing interest rate or commodity protection under an agreement hedging or otherwise mitigating the cost of any of the foregoing obligations and/or (iii) participating in a lease financing (including a sale leaseback or leveraged leasing structure) with respect to the System.

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

"**MW**" means megawatts measured in alternating current.

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

"**Non-Defaulting Party**" has the meaning set forth in Section 12.2.

"**Notice**" shall, unless otherwise specified in the Agreement, mean written communications by a Party to be delivered by hand delivery, United States mail, overnight courier service, facsimile. or electronic messaging (e-mail), provided that any notice given by email is only effective upon the sender's receipt of confirmation (generated by the recipient's email system or otherwise) that the notice has been received.

"**Party**" has the meaning set forth in the preamble.

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

"Portfolio Term" means the time period commencing on the Effective Date and ending on the 5th anniversary thereof.

"Pre-Construction Expenses" means expenses incurred by Seller or its contractors prior to construction of a System to prepare the System site for System integration, which may include, without limitation, removal of copper or other materials from roof; upgrade roof structure; removal of existing solar PV; removal or relocation of AC unit; removal or repair of existing generator; removal of existing battery backup; removal or relocation of existing solar thermal; removal or

relocation of rooftop vents; removal of trees or obstructions and tree trimming; cleaning of roof surface; repair of electrical code violation; removal or relocation of shelving; or master-panel upgrade (MPU).

"**Product**" means, with reference to each System, all electric energy produced by the System throughout the System Delivery Term; all Green Attributes; and all Resource Adequacy Benefits, if any; generated by, associated with or attributable to the System throughout the System Delivery Term.

"**Prudent Operating Practice**" means the practices, methods and standards of professional care, skill and diligence engaged in or approved by a significant portion of the electric power industry for facilities of similar size, type, and design, that, in the exercise of reasonable judgment, in light of the facts known at the time, would have been expected to accomplish results consistent with Law, reliability, safety, environmental protection, applicable codes, and standards of economy and expedition. Prudent Operating Practices are not necessarily defined as the optimal standard practice method or act to the exclusion of others, but rather refer to a range of actions reasonable under the circumstances.

"**Qualified Assignee**" means any Person that has (or will contract with a Person that has) competent experience in the operation and maintenance of similar electrical generation systems and is financially capable of performing Seller's obligations (considering such Person's own financial wherewithal and that of such Person's guarantor or other credit support) under this Agreement.

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

"**Renewable Energy Incentives**" means with respect to each System: (a) all federal, state, or local Tax credits or other Tax benefits associated with the construction, ownership, or production of electricity from the System (including credits under Sections 38, 45, 46 and 48 of the Internal Revenue Code of 1986, as amended); and (b) any other form of incentive relating in any way to the System that are not a Green Attribute or a Future Environmental Attribute.

"**Resource Adequacy Benefits**" means the rights and privileges attached to the System that satisfy any entity's resource adequacy obligations, as those obligations are set forth in CPUC Decisions 04-01-050, 04-10-035, 05-10-042, 06-06-064, 06-07-031 and any subsequent CPUC ruling or decision and shall include any local, zonal or otherwise locational attributes associated with the System.

"**Seller**" has the meaning set forth in the preamble.

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

"**System(s)**" has the meaning set forth in the Recitals hereto.

"System Delivery Term" means with respect to each System the period of twenty-five (25) Contract Years beginning on the Commercial Operation Date and ending on the twentieth (25^{th}) anniversary of the Commercial Operation Date, unless terminated earlier or extended in accordance with the terms and conditions of this Agreement. In the event of an extension of a Customer Agreement beyond 25 years, the System Delivery Term for the respective System shall be extended to be co-terminus with such Customer Agreement upon notice to Buyer.

"**System Forecast List**" has the meaning set forth in Section 20.1. The format of the System Forecast List shall be substantially similar to the format of the Included Systems List.

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

"**Termination Payment**" has the meaning set forth in Section 12.3.

"**Terminated Transaction**" has the meaning set forth in Section 12.2.

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

"**WREGIS Certificate Deficit**" has the meaning set forth in Section 4.8**Error! Reference s ource not found.**.

"**WREGIS Certificate(s)**" means "Certificate(s)" as defined by WREGIS in the WREGIS Operating Rules and are designated as eligible for complying with the California Renewables Portfolio Standard.

"**WREGIS Operating Rules**" means those operating rules and requirements adopted by WREGIS as of October 2022, as subsequently amended, supplemented or replaced (in whole or in part) from time to time.

1.2 **Rules of Interpretation**. In this Agreement, except as expressly stated otherwise or unless the context otherwise requires:

(a) headings and the rendering of text in bold and italics are for convenience and reference purposes only and do not affect the meaning or interpretation of this Agreement;

(b) words importing the singular include the plural and vice versa and the masculine, feminine and neuter genders include all genders;

(c) the words "hereof", "herein", and "hereunder" and words of similar import shall refer to this Agreement as a whole and not to any particular provision of this Agreement;

(d) a reference to an Article, Section, paragraph, clause, Party, or Exhibit is a reference to that Section, paragraph, clause of, or that Party or Exhibit to, this Agreement unless otherwise specified, and in the event of a conflict, the provisions of the main body of this Agreement shall prevail over the provisions of any attachment or annex;

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

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

(g) the term "including" means "including without limitation" and any list of examples following such term shall in no way restrict or limit the generality of the work or provision in respect of which such examples are provided;

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

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

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

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

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

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

ARTICLE 2
SYSTEMS, COMMERCIAL OPERATION, FORECASTING

2.1 **Systems**. During the Portfolio Period, Seller shall use reasonable commercial efforts to design, develop and install Systems in Buyer's Service Territory. Each System developed by Seller in Buyer's Service Territory shall be developed exclusively for inclusion under the terms of this Agreement.

2.2 **Commercial Operation.** Within ten (10) days after a System qualified under Section 2.1 above has reached Commercial Operation, Seller shall deliver to Buyer confirmation by the System installer either in hardcopy or electronic that such System has been completed and an updated Included Systems List adding such System thereon. Upon delivery of the updated Included Systems List, such System shall be covered under the terms of this Agreement.

2.3 **Forecasting.** Within ten (10) days after the end of each calendar quarter during the Portfolio Period, Seller shall deliver to Buyer a list (the **"System Forecast List"**) with Systems which Seller forecasts to place into Commercial Operation within ninety (90) days after the date of the System Forecast List.

ARTICLE 3
TERM

3.1 **Contract Term**. The term of this Agreement (**"Contract Term")** consists of the Portfolio Term and the System Delivery Term, and shall commence on the Effective Date and shall remain in full force and effect with respect to each System until the end of the applicable System Delivery Term unless earlier terminated as provided herein.

3.2 **Contract Term Extension.** Buyer shall have the right, but not the obligation, to extend the System Delivery Term for any System for two additional five (5) Contract Years at the then-current Contract Price, but Seller must receive Notice of such extension at least one hundred twenty days (120) before the end of the initial Contract Term or the then current extension term thereof.

3.3 **Survival of Contract Provisions.** Applicable provisions of this Agreement shall continue in effect after termination, including early termination and indemnity, to the extent necessary to enforce or complete the duties, obligations or responsibilities of the Parties arising prior to termination. The confidentiality obligations of the Parties under Article 19 shall remain in full force and effect for two (2) years following the termination of this Agreement, and all audit rights shall remain in full force and effect four (4) years following the termination of this Agreement.

ARTICLE 4
PURCHASE AND SALE

4.1 **Sale of Product.** Subject to Seller's document deliveries to Buyer under Section 2.2 above and the terms and conditions of this Agreement, during the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller at the applicable Energy Rate (as defined in Section 4.3 below), all of the Product produced by a System delivered to the System Delivery Point. At its sole discretion, Buyer may re-sell or use for another purpose all or a portion of the Product. Buyer will have exclusive rights to offer, bid, or otherwise submit the Product from the System for resale in the market, and retain and receive any and all related revenues. Buyer

has no obligation to purchase from Seller any Product from any System that is not or cannot be delivered to the System Delivery Point as a result of any circumstance, including, an outage of the System, a Force Majeure Event affecting Buyer's ability to receive the Product (but not its ability to transmit the Product from the System Delivery Point). In no event shall Seller have the right to procure any element of the Product for sale or delivery to Buyer from sources other than the Systems covered under the terms of this Agreement.

4.2 **Sale of Green Attributes**. During the Delivery Term, Seller shall sell and deliver to Buyer, and Buyer shall purchase from Seller, all of the Green Attributes, attributable to the Energy produced by a Systems covered under the terms of this Agreement at no additional cost.

4.3 **Compensation**. The contract price payable by Buyer to Seller hereunder (the "**Contract Price**") shall be calculated as the sum of Energy Rate and Capacity Charge (as defined below).

(a) Energy Rate. For each kWh delivered to a System Delivery Point Buyer shall pay Seller the following amounts (the **"Energy Rate"**) during the first Contract Year of each System Delivery Term:

(i) ( ) for Systems with Pre-Construction Costs of seven hundred fifty Dollars ($750.00) or less;

(ii) ( ) for Systems with Pre-Construction Costs exceeding seven hundred fifty Dollars ($750.00) but less than two thousand five hundred Dollars ($2,500);

(iii) ( ) for Systems with Pre-Construction Costs exceeding two thousand five hundred Dollars ($2,500) but less than five thousand Dollars ($5,000)

The applicable Energy Rate for the first Contract Year of the System Delivery Term will be set forth on the Included Systems List for each System. For each subsequent Contract Year during the System Delivery Term, the Energy Rate shall increase by one and nine-tenth percent (1.9%) annually.

(b) The Parties may agree in writing (pursuant to the Notice requirements defined above) to apply a modified Energy Rate to any System to be covered by the terms of this Agreement from time to time. Capacity Charge. For each System that includes an installed and operational Tesla Powerwall, Buyer shall pay Seller a monthly fee (the **"Capacity Charge"**) in the amount of ( ), *provided, that* the Capacity Charge shall be reduced to ( ) for any additional Tesla Powerwall installed at the same System site.

4.4 **Ownership of Renewable Energy Incentives**. Seller shall have all right, title and interest in and to all Renewable Energy Incentives. Buyer acknowledges that any Renewable Energy Incentives belong to Seller. If any Renewable Energy Incentives, or values representing the same, are initially credited or paid to Buyer, Buyer shall cause such Renewable Energy Incentives or values relating to same to be assigned or transferred to Seller without delay. Buyer

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

4.5 **Future Environmental Attributes.**

(a) The Parties acknowledge and agree that as of the Effective Date, environmental attributes sold under this Agreement are restricted to Green Attributes; however, Future Environmental Attributes may be created by a Governmental Authority through Laws enacted after the Effective Date. In such event, Buyer shall bear all costs associated with the transfer, qualification, verification, registration and ongoing compliance for such Future Environmental Attributes, but there shall be no increase in the Contract Price. Upon Seller's receipt of Notice from Buyer of Buyer's intent to claim such Future Environmental Attributes, the Parties shall determine the necessary actions and additional costs associated such Future Environmental Attributes. Seller shall have no obligation to alter the System unless the Parties have agreed on all necessary terms and conditions relating to such alteration and Buyer has agreed to reimburse Seller for all costs associated with such alteration.

(b) If Buyer elects to receive Future Environmental Attributes pursuant to Section 4.5(a), the Parties agree to negotiate in good faith with respect to the development of further agreements and documentation necessary to effectuate the transfer of such Future Environmental Attributes, including agreement with respect to (i) appropriate transfer, delivery and risk of loss mechanisms, and (ii) appropriate allocation of any additional costs, as set forth above; *provided*, that the Parties acknowledge and agree that such terms are not intended to alter the other material terms of this Agreement.

4.6 **Sale of Energy to Customers.** Except as otherwise agreed in writing between Buyer and Seller from time to time, Buyer agrees to sell the electric energy produced by the System throughout the System Delivery Term at a price not higher than the Energy Rate and at terms no less favorable than the terms set forth under this Agreement.

4.7 **Transfer of Renewable Energy Credits. .**

(a) *Tracking of RECs in WREGIS*. Seller warrants that all necessary steps to allow the Renewable Energy Credits transferred to Buyer to be tracked in the Western Renewable Energy Generation Information System will be taken prior to first delivery of Product under the terms of this Agreement [STC REC-2].:

(b) *Transfer of Renewable Energy Credits*. Seller and, if applicable, its successors, represents and warrants that throughout the System Delivery Term for each applicable System, the Renewable Energy Credits relating to such System transferred to Buyer conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default

if Seller has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

(c) *Eligibility.* Seller, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource ("ERR") as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project's output delivered to Buyer qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if Seller has used commercially reasonable efforts to comply with such change in law.

(d) *References.* With respect to the immediately preceding paragraphs, (i) the reference in Section 4.7(a) to "first delivery under the contract" has the same meaning as "first delivery of Delivered Energy under this Agreement," (ii) the references in Section 4.7(c) to "Project" have the same meaning as "System," and (iii) the references in Section 4.7(c)(ii) to "the Project's output" have the same meaning as "Delivered Energy."

(e) *Governing Law.* This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17].

4.8 **WREGIS.**

(a) Seller shall, take all reasonable commercial actions and execute all documents or instruments necessary to ensure that all WREGIS Certificates associated with all Renewable Energy Credits corresponding to all Delivered Energy are issued and tracked for purposes of satisfying the requirements of the California Renewables Portfolio Standard and transferred in a timely manner to Buyer for Buyer's sole benefit. Seller shall transfer the Renewable Energy Credits to Buyer. Seller shall comply with all Laws, including the WREGIS Operating Rules, regarding the certification and transfer of such WREGIS Certificates to Buyer and Buyer shall be given sole title to all such WREGIS Certificates.

(b) Prior to the Commercial Operation Date, Seller shall register the System with WREGIS and establish an account with WREGIS ("**Seller's WREGIS Account**"), which Seller shall maintain until the end of the System Delivery Term for the last System to operate under the terms of this Agreement. Seller shall transfer the WREGIS Certificates using "**Forward Certificate Transfers**" (as described in the WREGIS Operating Rules) from Seller's WREGIS Account to the WREGIS account(s) of Buyer or the account(s) of a designee that Buyer identifies by Notice to Seller ("**Buyer's WREGIS Account**") with not less than 30 days prior written notice or such longer notice as is required for Seller to meet mandatory notice periods under WREGIS Operating Rules. Seller shall be responsible for all expenses associated with registering each System with WREGIS, establishing and maintaining Seller's WREGIS Account, paying WREGIS Certificate issuance and transfer fees, and transferring WREGIS Certificates from Seller's WREGIS Account to Buyer's WREGIS Account.

(c) Seller shall cause Forward Certificate Transfers to occur on a monthly basis in accordance with the certification procedure established by the WREGIS Operating Rules. Since WREGIS Certificates will only be created for whole MWh amounts of Delivered Energy generated, any fractional MWh amounts (i.e., kWh) will be carried forward until sufficient generation is accumulated for the creation of a WREGIS Certificate.

(d) Seller shall, at its sole expense, ensure that the WREGIS Certificates for a given calendar month correspond with the Delivered Energy for such calendar month as evidenced by each System's metered data.

(e) Due to the ninety (90) day delay in the creation of WREGIS Certificates relative to the timing of invoice payment under Section 9.2, Buyer shall make an invoice payment for a given month in accordance with Section 9.2 before the WREGIS Certificates for such month are formally transferred to Buyer in accordance with the WREGIS Operating Rules and this Section 4.8. Notwithstanding this delay, Buyer shall have all right and title to all such WREGIS Certificates upon payment to Seller in accordance with Section 9.2.

(f) A "**WREGIS Certificate Deficit**" means any deficit or shortfall in WREGIS Certificates delivered to Buyer for a calendar month as compared to the Delivered Energy for the same calendar month ("**Deficient Month**") caused by an error or omission of Seller. If any WREGIS Certificate Deficit is caused, or the result of any action or inaction by Seller, then the amount of Delivered Energy in the Deficient Month shall be reduced by the amount of the WREGIS Certificate Deficit for purposes of calculating Buyer's payment to Seller under Article 9; provided, however, that such adjustment shall not apply to the extent that Seller resolves the WREGIS Certificate Deficit within ninety (90) days after the Deficient Month. Without limiting Seller's obligations under this Section 4.8, if a WREGIS Certificate Deficit is caused solely by an error or omission of WREGIS, the Parties shall cooperate in good faith to cause WREGIS to correct its error or omission.

If WREGIS changes the WREGIS Operating Rules after the Effective Date or applies the WREGIS Operating Rules in a manner inconsistent with this Section 4.8 after the Effective Date, the Parties promptly shall modify this Section 4.8 as reasonably required to cause and enable Seller to transfer to Buyer's WREGIS Account a quantity of WREGIS Certificates for each given calendar month that corresponds to the Delivered Energy in the same calendar month.

ARTICLE 5
OBLIGATIONS AND DELIVERIES

5.1 Delivery.

(a) Energy. Subject to the terms and conditions of this Agreement, Seller shall make available and Buyer shall accept all Delivered Energy on an as-generated, instantaneous basis at the respective System Delivery Point. Notwithstanding anything to the contrary in this Agreement (including with respect to any Force Majeure Event), as between Buyer and Seller, Buyer shall be responsible for all charges, penalties, ratcheted demand or similar charges, and any

transmission related charges, including imbalance penalties or congestion charges associated with Delivered Energy from and after the System Delivery Point.

(b) Green Attributes. Seller hereby provides and conveys all Green Attributes associated with the Delivered Energy as part of the Product being delivered. Seller represents and warrants that Seller holds the rights to all Green Attributes from the System, and Seller agrees to convey and hereby conveys all such Green Attributes to Buyer as included in the delivery of the Product from the System.

5.2 **Title and Risk of Loss.**

(a) Energy. Title to and risk of loss related to the Delivered Energy generated by each System shall pass and transfer from Seller to Buyer at the System Delivery Point.

(b) Green Attributes. Title to and risk of loss related to the Green Attributes shall pass and transfer from Seller to Buyer upon the transfer of such Green Attributes in accordance with WREGIS.

ARTICLE 6
TAXES

6.1 **Allocation of Taxes and Charges**. Seller shall pay or cause to be paid all Taxes on or with respect to any System or on or with respect to the sale and making available Product to Buyer, that are imposed on Product prior to the System Delivery Point. Buyer shall pay or cause to be paid all Taxes on or with respect to the delivery to and purchase by Buyer of Product that are imposed on Product at and from a System Delivery Point (other than withholding or other Taxes imposed on Seller's income, revenue, receipts or employees). Notwithstanding the foregoing, each Party shall be responsible for its own Taxes calculated based on the income or profits generated in connection with the purchase and sale of the Product hereunder. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, such Party shall promptly pay the Taxes due and then seek and receive reimbursement from the other for such Taxes. In the event any sale of Energy hereunder is exempt from or not subject to any particular Tax, Buyer shall provide Seller with all necessary documentation within thirty (30) days after the Effective Date to evidence such exemption or exclusion. If Buyer does not provide such documentation, then Buyer shall indemnify, defend, and hold Seller harmless from any liability with respect to Taxes from which Buyer claims it is exempt.

6.2 **Cooperation**. Each Party shall use reasonable efforts to implement the provisions of and administer this Agreement in accordance with the intent of the Parties to minimize all Taxes, so long as no Party is materially adversely affected by such efforts. The Parties shall cooperate to minimize Tax exposure; *provided*, *however*, that neither Party shall be obligated to incur any financial or operational burden to reduce Taxes for which the other Party is responsible hereunder without receiving due compensation therefore from the other Party.

ARTICLE 7
MAINTENANCE OF SYSTEMS

7.1 **Maintenance of Systems**. Seller shall comply with Law and Prudent Operating Practice relating to the operation and maintenance of all System covered under this Agreement, and the generation and sale of Product generated therefrom.

7.2 **Maintenance of Health and Safety**. Seller shall take reasonable safety precautions with respect to the operation, maintenance, repair and replacement of each System. If Seller becomes aware of any circumstances relating to a System that create an imminent risk of damage or injury to any Person or any Person's property, Seller shall take prompt, reasonable action to prevent such damage or injury and shall give Buyer's emergency contact identified on Exhibit D Notice of such condition. Such action may include disconnecting and removing all or a portion of such System, or suspending the supply of Energy from such System to Buyer.

ARTICLE 8
METERING

8.1 **Metering**. Seller shall measure the amount of Energy produced at each System using a commercially available, revenue-grade metering system. Such meter shall be installed and maintained at Seller's cost. Each meter shall be kept under seal, such seals to be broken only when the meters are to be tested, adjusted, modified or relocated. In the event that Seller breaks a seal, Seller shall notify Buyer as soon as practicable. In addition, Seller hereby agrees to provide all meter data to Buyer in a form reasonably acceptable to Buyer.

8.2 **Meter Verification**. Seller shall install meters with a measuring accuracy of 99.5% or higher in all Systems and promptly repair or replace, at its cost, meters that are inaccurate or malfunctioning. Without limiting the foregoing, if Seller has reason to believe there may be a meter malfunction, or upon Buyer's reasonable request, Seller at its expense shall test the meters of a reasonable sample of all Systems then covered under this Agreement, but in any case, not more than ten percent (10%) of all installed Systems. The tests shall be conducted by independent third-parties qualified to conduct such tests. Buyer shall be notified seven (7) days in advance of such tests and have a right to be present during such tests. If a meter is inaccurate it shall be promptly repaired or replaced. If a meter is inaccurate by more than one percent (1%) and it is not known when the meter inaccuracy commenced (if such evidence exists such date will be used to adjust prior invoices), then the invoices covering the period of time since the last meter test for the respective System shall be adjusted for the amount of the inaccuracy on the assumption that the inaccuracy persisted during one-half of such period. If testing of meters from a reasonable sample of all Systems covered under his Agreement discovers more than ten percent 10% of tested meters being inaccurate by more than one percent (1%) each, Buyer may request testing of an additional reasonable sample of all Systems then covered under this Agreement, but in any case, not more than an additional ten percent (10%) of all installed Systems.

ARTICLE 9
INVOICING AND PAYMENT; CREDIT

9.1 **Invoicing**. Seller shall make good faith efforts to deliver an aggregate invoice to Buyer for the Contract Price due for all Systems then covered under this Agreement no later than fifteen (15) Business Days after the end of the prior monthly billing period.

9.2 **Payment**. Buyer shall make payment to Seller for the Contract Price due and payable by wire transfer or ACH payment to the bank account provided on each monthly invoice. Buyer shall pay undisputed invoice amounts within thirty (30) days after receipt of the invoice. If such due date falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance. If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to 10% of the total amount due. If the due date occurs on a day that is not a Business Day, the late payment charge shall begin to accrue on the next succeeding Business Day.

9.3 **Books and Records**. To facilitate payment and verification, each Party shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement, for a period of at least four (4) years or as otherwise required by Law. Upon fifteen (15) days' Notice to Seller, Buyer shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

9.4 **Payment Adjustments; Billing Errors**. Payment adjustments shall be made if Buyer or Seller discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 9.5, or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment. If the required adjustment is in favor of Buyer, Buyer's monthly payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Seller, Seller shall add the adjustment amount to Buyer's next monthly invoice. Adjustments in favor of either Buyer or Seller shall bear interest, until settled in full, in accordance with Section 9.2, accruing from the date on which the non-erring Party received Notice thereof.

9.5 **Billing Disputes**. A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered, or within six (6) months of any Customer disputing the correctness of any invoice, whichever is longer. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within five (5) Business Days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 9.5 within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period or a claim is alleged by a Customer regarding inaccuracies in invoices. If an

invoice is not rendered within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

9.6 **Netting of Payments**. The Parties hereby agree that they shall discharge mutual debts and payment obligations due and owing to each other on the same date through netting, in which case all amounts owed by each Party to the other Party for the purchase and sale of Product during the monthly billing period under this Agreement, including any related damages calculated pursuant to Exhibits B and F, interest, and payments or credits, shall be netted so that only the excess amount remaining due shall be paid by the Party who owes it.

ARTICLE 10
NOTICES

10.1 **Addresses for the Delivery of Notices**. Any Notice required, permitted, or contemplated hereunder shall be in writing, shall be addressed to the Party to be notified at the address set forth Exhibit B or at such other address or addresses as a Party may designate for itself from time to time by Notice hereunder.

10.2 **Acceptable Means of Delivering Notice**. Each Notice required, permitted, or contemplated hereunder shall be deemed to have been validly served, given or delivered as follows: (a) if sent by United States mail with proper first class postage prepaid, three (3) Business Days following the date of the postmark on the envelope in which such Notice was deposited in the United States mail; (b) if sent by a regularly scheduled overnight delivery carrier with delivery fees either prepaid or an arrangement with such carrier made for the payment of such fees, the next Business Day after the same is delivered by the sending Party to such carrier; (c) if sent by electronic communication (including electronic mail, facsimile, or other electronic means) effective upon the sender's receipt of confirmation that the notice has been received; or (d) if delivered in person, upon receipt by the receiving Party. Notwithstanding the foregoing, Notices of outages or other scheduling or dispatch information or requests, may be sent by electronic communication and shall be considered delivered upon successful completion of such transmission.

ARTICLE 11
FORCE MAJEURE

11.1 **Definition.**

(a) "**Force Majeure Event**" means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.

(b) Without limiting the generality of the foregoing, so long as the following events, despite the exercise of reasonable efforts, cannot be avoided by, and are beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance or noncompliance, a Force Majeure

Event may include an act of God or the elements, such as flooding, lightning, hurricanes, tornadoes, or ice storms; explosion; fire; volcanic eruption; flood; epidemic; landslide; mudslide; sabotage; terrorism; earthquake; or other cataclysmic events; an act of public enemy; war; blockade; civil insurrection; riot; civil disturbance; or strikes or other labor difficulties caused or suffered by a Party or any third party except as set forth below.

(c) Notwithstanding the foregoing, the term "**Force Majeure Event**" does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Buyer's ability to buy Energy at a lower price than the Contract Price, Buyer's inability economically to use or resell the Product purchased hereunder, or Seller's ability to sell Energy at a higher price than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the System; (ii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above; (iv) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the System; (v) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the System; or (vi) any equipment failure except if such equipment failure is caused by a Force Majeure Event.

11.2 **No Liability If a Force Majeure Event Occurs**. Neither Seller nor Buyer shall be liable to the other Party in the event it is prevented from performing its obligations hereunder in whole or in part due to a Force Majeure Event. The Party rendered unable to fulfill any obligation by reason of a Force Majeure Event shall take reasonable actions necessary to remove such inability with due speed and diligence. Nothing herein shall be construed as permitting that Party to continue to fail to perform after said cause has been removed. The obligation to use due speed and diligence shall not be interpreted to require resolution of labor disputes by acceding to demands of the opposition when such course is inadvisable in the discretion of the party having such difficulty. Neither Party shall be considered in breach or default of this Agreement if and to the extent that any failure or delay in the Party's performance of one or more of its obligations hereunder is caused by a Force Majeure Event. The occurrence and continuation of a Force Majeure Event shall not suspend or excuse the obligation of a Party to make any payments due hereunder.

11.3 **Notice**. In the event of any delay or nonperformance resulting from a Force Majeure Event, the Party suffering the Force Majeure Event shall (a) as soon as practicable, notify the other Party in writing of the nature, cause, estimated date of commencement thereof, and the anticipated extent of any delay or interruption in performance, and (b) notify the other Party in writing of the cessation or termination of such Force Majeure Event, all as known or estimated in good faith by the affected Party; *provided*, *however*, that a Party's failure to give timely Notice shall not affect such Party's ability to assert that a Force Majeure Event has occurred unless the delay in giving Notice materially prejudices the other Party.

11.4 **Termination Following Force Majeure Event**. If a Force Majeure Event has occurred that has caused either Party to be wholly or partially unable to perform its obligations hereunder, and has continued for a consecutive eight (8) month period, then the non-claiming Party may terminate this Agreement upon Notice to the other Party with respect to the System

experiencing the Force Majeure Event. Upon any such termination, the non-claiming Party shall have no liability to the Force Majeure Event claiming Party, save and except for those obligations specified in Section 3.3.

ARTICLE 12
DEFAULTS; REMEDIES; TERMINATION

12.1 **Events of Default. An "Event of Default" shall mean,**

(a) with respect to a Party (the "**Defaulting Party**") that is subject to the Event of Default the occurrence of any of the following:

(i) the failure by such Party to make, when due, any payment required pursuant to this Agreement and such failure is not remedied within ten (10) Business Days after Notice thereof;

(ii) any representation or warranty made by such Party herein is false or misleading in any material respect when made or when deemed made or repeated, and such default is not remedied within thirty (30) days after Notice thereof;

(iii) the failure by such Party to perform any material covenant or obligation set forth in this Agreement (except to the extent constituting a separate Event of Default) and such failure is not remedied within thirty (30) days after Notice thereof;

(iv) such Party becomes Bankrupt;

(v) such Party assigns this Agreement or any of its rights hereunder other than in compliance with Section 15.2;

(vi) such Party consolidates or amalgamates with, or merges with or into, or transfers all or substantially all of its assets to, another entity and, at the time of such consolidation, amalgamation, merger or transfer, the resulting, surviving or transferee entity fails to assume all the obligations of such Party under this Agreement to which it or its predecessor was a party by operation of Law or pursuant to an agreement reasonably satisfactory to the other Party;

(vii) with respect to Seller as the Defaulting Party, if at any time, Seller delivers or attempts to deliver to a System Delivery Point for sale under this Agreement Energy that was not generated by the respective System.

12.2 **Remedies; Declaration of Early Termination Date**. If an Event of Default with respect to a Defaulting Party shall have occurred and be continuing, the other Party ("**Non-Defaulting Party**") shall have the right (a) to send Notice, designating a day, no earlier than the day such Notice is deemed to be received and no later than twenty (20) Business Days after such Notice is deemed to be received, as an early termination date ("**Early Termination Date**") of (i) the inclusion of a System under this Agreement and the respective System Delivery Term, if the Event of Default only relates to such System, or (ii) this Agreement, if the Event of Default relates to all Systems (in each case, (i) and (ii), the "**Terminated Transaction**"), and either the System

Delivery Term (in case of option (i)) or the Contract Term (in case of Option (ii) will terminate effective as of the Early Termination Date, and all amounts owing between the Parties shall accelerate (under option (a), however, only with respect to the terminated System), and the Non-Defaulting Party may collect liquidated damages calculated in accordance with Section 12.3 (*Termination Payment)* below; (b) to withhold any payments due to the Defaulting Party under this Agreement (but under option (a)(i) only with respect to the terminated System); (c) to suspend performance (but under option (a)(i) only with respect to the terminated System); and (d) to exercise any other right or remedy available at law or in equity, including injunctive relief to the extent permitted under this Agreement, except to the extent such remedies are expressly limited under this Agreement

12.3 **Termination Payment**. The Termination Payment ("**Termination Payment**") for a Terminated Transaction shall be the aggregate of all Settlement Amounts relating to such Terminated Transaction plus any or all other amounts due to the Non-Defaulting Party relating thereto netted into a single amount. If the Non-Defaulting Party's aggregate Gains relating to a Terminated Transaction exceed its aggregate Losses and Costs related thereto, if any, resulting from the termination of this Agreement, the Termination Payment shall be zero. The Non-Defaulting Party shall calculate, in a commercially reasonable manner, a Settlement Amount for the Terminated Transaction as of the Early Termination Date. Third parties supplying information for purposes of the calculation of Gains or Losses may include, without limitation, dealers in the relevant markets, end-users of the relevant product, information vendors and other sources of market information. The Settlement Amount shall not include consequential, incidental, punitive, exemplary, indirect or business interruption damages, lost revenues or lost profits; provided, however, that any lost Green Attributes shall be deemed direct damages covered by this Agreement. Without prejudice to the Non-Defaulting Party's duty to mitigate, the Non-Defaulting Party shall not have to enter into replacement transactions to establish a Settlement Amount. Each Party agrees and acknowledges that (a) the actual damages that the Non-Defaulting Party would incur in connection with a Terminated Transaction would be difficult or impossible to predict with certainty, (b) the Termination Payment described in this section is a reasonable and appropriate approximation of such damages, and (c) the Termination Payment described in this section is the exclusive remedy of the Non-Defaulting Party in connection with a Terminated Transaction but shall not otherwise act to limit any of the Non-Defaulting Party's rights or remedies if the Non-Defaulting Party does not elect a Terminated Transaction as its remedy for an Event of Default by the Defaulting Party.

12.4 **Notice of Payment of Termination Payment**. As soon as practicable after a Terminated Transaction, Notice shall be given by the Non-Defaulting Party to the Defaulting Party of the amount of the Termination Payment and whether the Termination Payment is due to the Non-Defaulting Party. The Notice shall include a written statement explaining in reasonable detail the calculation of such amount and the sources for such calculation. The Termination Payment shall be made to the Non-Defaulting Party, as applicable, within ten (10) Business Days after such Notice is effective.

12.5 **Disputes With Respect to Termination Payment**. If the Defaulting Party disputes the Non-Defaulting Party's calculation of the Termination Payment, in whole or in part, the Defaulting Party shall, within ten (10) Business Days of receipt of the Non-Defaulting Party's calculation of the Termination Payment, provide to the Non-Defaulting Party a detailed written

explanation of the basis for such dispute. Disputes regarding the Termination Payment shall be determined in accordance with Article 17.

12.6 **Rights And Remedies Are Cumulative**. Except where liquidated damages are provided as the exclusive remedy, the rights and remedies of a Party pursuant to this Article 12 shall be cumulative and in addition to the rights of the Parties otherwise provided in this Agreement.

12.7 **Mitigation**. Any Non-Defaulting Party shall be obligated to mitigate its Costs, losses and damages resulting from any Event of Default of the other Party under this Agreement.

ARTICLE 13
LIMITATION OF LIABILITY AND EXCLUSION OF WARRANTIES.

13.1 **No Consequential Damages**. EXCEPT TO THE EXTENT PART OF AN EXPRESS REMEDY OR MEASURE OF DAMAGES HEREIN, NEITHER PARTY SHALL BE LIABLE TO THE OTHER OR ITS INDEMNIFIED PERSONS FOR ANY SPECIAL, PUNITIVE, EXEMPLARY, INDIRECT, INCIDENTAL, OR CONSEQUENTIAL DAMAGES, OR LOSSES OR DAMAGES FOR LOST REVENUE, BUSINESS INTERRUPTION OR LOST PROFITS, WHETHER FORESEEABLE OR NOT, ARISING OUT OF, OR IN CONNECTION WITH THIS AGREEMENT, BY STATUTE, IN TORT OR CONTRACT, EXCEPT TO THE EXTENT REQUIREDUNDER ANY INDEMNITY PROVISION OR OTHERWISE WITH RESPECT TO CLAIMS BY THIRD PARTIES.

13.2 **Waiver and Exclusion of Other Damages**. THE PARTIES CONFIRM THAT THE EXPRESS REMEDIES AND MEASURES OF DAMAGES PROVIDED IN THIS AGREEMENT SATISFY THE ESSENTIAL PURPOSES HEREOF. ALL LIMITATIONS OF LIABILITY CONTAINED IN THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, THOSE PERTAINING TO SELLER'S LIMITATION OF LIABILITY AND THE WAIVER OF CONSEQUENTIAL DAMAGES, SHALL APPLY EVEN IF THE REMEDIES FOR BREACH OF WARRANTY PROVIDED IN THIS AGREEMENT ARE DEEMED TO "FAIL OF THEIR ESSENTIAL PURPOSE" OR ARE OTHERWISE HELD TO BE INVALID OR UNENFORCEABLE.

FOR BREACH OF ANY PROVISION FOR WHICH AN EXPRESS AND EXCLUSIVE REMEDY OR MEASURE OF DAMAGES IS PROVIDED, SUCH EXPRESS REMEDY OR MEASURE OF DAMAGES SHALL BE THE SOLE AND EXCLUSIVE REMEDY, THE OBLIGOR'S LIABILITY SHALL BE LIMITED AS SET FORTH IN SUCH PROVISION, AND ALL OTHER REMEDIES OR DAMAGES AT LAW OR IN EQUITY ARE WAIVED.

IF NO REMEDY OR MEASURE OF DAMAGES IS EXPRESSLY PROVIDED HEREIN, THE OBLIGOR'S LIABILITY SHALL BE LIMITED TO DIRECT DAMAGES ONLY. THE VALUE OF ANY TAX BENEFITS, DETERMINED ON AN AFTER-TAX BASIS, LOST DUE TO BUYER'S DEFAULT (WHICH SELLER HAS NOT BEEN ABLE TO MITIGATE AFTER USE OF REASONABLE EFFORTS) AND AMOUNTS DUE IN CONNECTION WITH THE RECAPTURE OF ANY RENEWABLE ENERGY INCENTIVES, IF ANY, SHALL BE DEEMED TO BE DIRECT DAMAGES.

TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE ANTICIPATED HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE BE SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE. THE PARTIES HEREBY WAIVE ANY RIGHT TO CONTEXT SUCH PAYMENTS AS AN UNREASONABLE PENALTY.

THE PARTIES ACKNOWLEDGE AND AGREE THAT MONEY DAMAGES AND THE EXPRESS REMEDIES PROVIDED FOR HEREIN ARE AN ADEQUATE REMEDY FOR THE BREACH BY THE OTHER OF THE TERMS OF THIS AGREEMENT, AND EACH PARTY WAIVES ANY RIGHT IT MAY HAVE TO SPECIFIC PERFORMANCE WITH RESPECT TO ANY OBLIGATION OF THE OTHER PARTY UNDER THIS AGREEMENT.THE PARTIES ACKNOWLEDGE AND AGREE THAT THIS SECTION 13.2 DOES NOT APPLY TO ANY PARTY'S INDEMNIFICATION OBLIGATIONS WITH RESPECT TO CLAIMS MADE BY THIRD PARTIES.

ARTICLE 14
REPRESENTATIONS AND WARRANTIES; AUTHORITY

14.1 **Seller's Representations and Warranties**. As of the Effective Date, Seller represents and warrants as follows:

(a) Seller is a limited liability company, duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization or formation, and is qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on the business or financial condition of Seller and is registered to do business in the State of California.

(b) Seller has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Seller's performance under this Agreement. The execution, delivery and performance of this Agreement by Seller has been duly authorized by all necessary corporate action on the part of Seller and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Seller or any other party to any other agreement with Seller.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Seller with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Seller, subject to any permits that have not yet been obtained by Seller, the documents of formation of Seller or any outstanding trust indenture, deed

of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Seller is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Seller. This Agreement is a legal, valid and binding obligation of Seller enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

14.2 **Buyer's Effective Date Representations and Warranties**. As of the Effective Date, Buyer represents and warrants as follows:

(a) Buyer is a validly existing community choice aggregator, duly organized, validly existing and in good standing under the laws of the State of California and the rules, regulations and orders of the California Public Utilities Commission.

(b) Buyer has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement, except where such failure does not have a material adverse effect on Buyer's performance under this Agreement. The execution, delivery and performance of this Agreement by Buyer has been duly authorized by all necessary action on the part of Buyer and does not and will not require the consent of any trustee or holder of any indebtedness or other obligation of Buyer or any other party to any other agreement with Buyer.

(c) The execution and delivery of this Agreement, consummation of the transactions contemplated herein, and fulfillment of and compliance by Buyer with the provisions of this Agreement will not conflict with or constitute a breach of or a default under any Law presently in effect having applicability to Buyer, including but not limited to community choice aggregation, competitive bidding, public notice, open meetings, election, referendum, or prior appropriation requirements, the documents of formation of Buyer or any outstanding trust indenture, deed of trust, mortgage, loan agreement or other evidence of indebtedness or any other agreement or instrument to which Buyer is a party or by which any of its property is bound.

(d) This Agreement has been duly executed and delivered by Buyer. This Agreement is a legal, valid and binding obligation of Buyer enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditors' rights or by the exercise of judicial discretion in accordance with general principles of equity.

(e) Buyer warrants and covenants that with respect to its contractual obligations under this Agreement, it will not claim immunity on the grounds of sovereignty or similar grounds with respect to itself or its revenues or assets from (1) suit, (2) jurisdiction of court, (3) relief by way of injunction, order for specific performance or recovery of property, (4) attachment of assets, or (5) execution or enforcement of any judgment.

14.3 **General Covenants**. Each Party covenants that commencing on the Effective Date and continuing throughout the Contract Term:

(a) It shall continue to be duly organized, validly existing and in good standing under the laws of the jurisdiction of its formation and to be qualified to conduct business in each jurisdiction where the failure to so qualify would have a material adverse effect on its business or financial condition;

(b) It shall maintain (or obtain from time to time as required) all regulatory authorizations necessary for it to legally perform its obligations under this Agreement; and

(c) It shall perform its obligations under this Agreement in compliance with all terms and conditions in its governing documents and any contracts to which it is a party and in material compliance with any Law.

ARTICLE 15
ASSIGNMENT

15.1 **General Prohibition on Assignments**. Except as provided below and in Article 15, neither Seller nor Buyer may voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party. Neither Seller nor Buyer shall unreasonably withhold, condition or delay any requested consent to an assignment that is allowed by the terms of this Agreement. Any such assignment or delegation made without such written consent or in violation of the conditions to assignment set out below shall be null and void.

15.2 **Permitted Assignment; Change of Control of Seller**. Seller may, without the prior written consent of Buyer, transfer or assign this Agreement to: (a) an Affiliate of Seller; (b) any Person succeeding to all or substantially all of the assets of Seller (whether voluntary or by operation of law); or (c) subject to Section 16.1, a Lender as collateral, *provided however*, that in each of the foregoing situations, the assignee shall be a Qualified Assignee; *provided*, *further*, that in each such case, Seller shall give Notice to Buyer no fewer than fifteen (15) Business Days before such assignment that (i) notifies Buyer of such assignment and (ii) provides to Buyer a written agreement signed by the Person to which Seller wishes to assign its interests which (y) provides that such Person will assume all of Seller's obligations and liabilities under this Agreement upon such transfer or assignment and (z) certifies that such Person shall meet the definition of a Qualified Assignee. In the event that Buyer, in good faith, does not agree that Seller's assignee meets the definition of a Qualified Assignee, then either Seller must agree to remain financially responsible under this Agreement, or Seller's assignee must provide payment security in an amount and form reasonably acceptable to Buyer. Any direct or indirect change of control of Seller (whether voluntary or by operation of Law) shall be deemed an assignment under this Section 15.2. Any assignment by Seller, its successors or assigns under this Section 15.2 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Buyer.

15.3 **Change of Control of Buyer**. Buyer may assign its interests in this Agreement to an Affiliate of Buyer or to any entity that has acquired all or substantially all of Buyer's assets or business, whether by merger, acquisition or otherwise without Seller's prior written consent, *provided* that no fewer than fifteen (15) Business Days before such assignment Buyer (a) notifies Seller of such assignment and (b) provides to Seller a written agreement signed by the Person to

which Buyer wishes to assign its interests stating that (i) such Person agrees to assume all of Buyer's obligations and liabilities under this Agreement and under any consent to assignment and other documents previously entered into by Seller as described in Section 16.2(b) and (ii) such Person has the financial capability to perform all of Buyer's obligations under this Agreement. In the event that Seller, in good faith, does not agree that Buyer's assignee has the financial capability to perform all of Buyer's obligations under this Agreement, then either Buyer must agree to remain financially responsible under this Agreement, or Buyer's assignee must provide payment security in an amount and form reasonably acceptable to Seller. Any assignment by Buyer, its successors or assigns under this Section 15.3 shall be of no force and effect unless and until such Notice and agreement by the assignee have been received by Seller.

ARTICLE 16
LENDER ACCOMMODATIONS

16.1 **Granting of Lender Interest**. Notwithstanding Section 15.2 or Section 15.3, either Party may, without the consent of the other Party, grant an interest (by way of collateral assignment, or as security, beneficially or otherwise) in its rights and/or obligations under this Agreement to any Lender. Each Party's obligations under this Agreement shall continue in their entirety in full force and effect. Promptly after granting such interest, the granting Party shall notify the Buyer in writing of the name, address, and telephone and facsimile numbers of any Lender to which the granting Party's interest under this Agreement has been assigned. Such Notice shall include the names of the Lenders to whom all written and telephonic communications may be addressed. After giving the other Party such initial Notice, the granting Party shall promptly give the other Party Notice of any change in the information provided in the initial Notice or any revised Notice.

16.2 **Rights of Lender**. If a Party grants an interest under this Agreement as permitted by Section 16.1, the following provisions shall apply:

(a) Lender shall have the right, but not the obligation, to perform any act required to be performed by the granting Party under this Agreement to prevent or cure a default by the granting Party in accordance with Section 12.2, and such act performed by Lender shall be as effective to prevent or cure a default as if done by the granting Party.

(b) The other Party shall cooperate with the granting Party or any Lender, to execute or arrange for the delivery of certificates, consents, opinions, estoppels, amendments and other documents reasonably requested by the granting Party or Lender in order to consummate any financing or refinancing and shall enter into reasonable agreements with such Lender that provide that Buyer recognizes the Lender's security interest and such other provisions as may be reasonably requested by Seller or any such Lender; provided, however, that all costs and expenses (including reasonable attorney's fees) incurred by Buyer in connection therewith shall be borne by Seller.

(c) Each Party agrees that no Lender shall be obligated to perform any obligation or be deemed to incur any liability or obligation provided in this Agreement on the part of the granting Party or shall have any obligation or liability to the other Party with respect to this Agreement except to the extent any Lender has expressly assumed the obligations of the granting

Party hereunder; *provided* that non-granting Party shall nevertheless be entitled to exercise all of its rights hereunder in the event that the granting Party or Lender fails to perform the granting Party's obligations under this Agreement.

16.3 **Cure Rights of Lender**. The non-granting Party shall provide Notice of the occurrence of any Event of Default described in Section 12.1 or 12.2 hereof to any Lender, and such Party shall accept a cure performed by any Lender and shall negotiate in good faith with any Lender as to the cure period(s) that will be allowed for any Lender to cure any granting Party Event of Default hereunder. The non-granting Party shall accept a cure performed by any Lender so long as the cure is accomplished within the applicable cure period so agreed to between the non-granting Party and any Lender. Notwithstanding any such action by any Lender, the granting Party shall not be released and discharged from and shall remain liable for any and all obligations to the non-granting Party arising or accruing hereunder.

ARTICLE 17
DISPUTE RESOLUTION

17.1 **Governing Law**. This agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. Venue shall be San Diego County, California.

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

ARTICLE 18
INDEMNIFICATION

18.1 **Indemnification.**

(a) To the extent permitted by Law, each Party (the "**Indemnifying Party**") agrees to indemnify, defend and hold harmless the other Party and its Affiliates, directors, officers, officials, employees, members, volunteers and agents (collectively, the "**Indemnified Party**") from and against all claims, demands, losses, liabilities, penalties, actions, proceedings, costs and expenses (including reasonable attorneys' fees) of any character, kind or nature, including, but not limited to for personal injury or death to Persons and damage to the property of any third party to the extent arising out of, resulting from, or caused by the acts or omissions, or illegal, negligent, or in case of any third-party claim negligent, or willful misconduct of the Indemnifying Party, its Affiliates, its directors, officers, officials, employees, members, volunteers, agents, or Indemnifying Party's breach of this Agreement, in the performance of or failure to perform this Agreement or relating to the Systems.

(b) Nothing in this Section 18.1 shall enlarge or relieve Seller or Buyer of any liability to the other for any breach of this Agreement. Neither Party shall be indemnified for its damages resulting from its negligence, intentional acts, illegal acts or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence. These indemnity provisions shall not be construed to relieve any insurer of its obligation to pay claims consistent with the provisions of a valid insurance policy.

18.2 **Claims**.

(a) Promptly after receipt by a Party of any claim or notice of the commencement of any action, administrative, or legal proceeding, or investigation as to which the indemnity provided for in this Article 18 may apply, the Indemnified Party shall notify the Indemnifying Party in writing of such fact. The Indemnifying Party shall assume the defense thereof with counsel designated by such Party and satisfactory to the Indemnified Party, *provided*, *however*, that if the defendants in any such action include both the Indemnified Party and the Indemnifying Party and the Indemnified Party shall have reasonably concluded that there may be legal defenses available to it which are different from or additional to, or inconsistent with, those available to the Indemnifying Party, the Indemnified Party shall have the right to select and be represented by separate counsel, at the Indemnifying Party's expense, unless a liability insurer is willing to pay such costs. If the Indemnifying Party fails to assume the defense of a claim meriting indemnification, the Indemnified Party may at the expense of the Indemnifying Party contest, settle, or pay such claim, *provided* that settlement or full payment of any such claim may be made only following consent of the Indemnifying Party or, absent such consent, written opinion of the Indemnified Party's counsel that such claim is meritorious or warrants settlement.

ARTICLE 19
INSURANCE

19.1 **Insurance.**

(a) General Liability. Seller shall maintain, or cause to be maintained at its sole expense, (i) commercial general liability insurance, including products and completed operations hazardous materials/environmental coverage and personal injury insurance, in a minimum amount of one million dollars ($1,000,000) per occurrence, and an annual aggregate of not less than two million dollars ($2,000,000), endorsed to provide contractual liability in said amount, specifically covering Seller's obligations under this Agreement and naming Buyer as an additional insured; and (ii) an umbrella insurance policy in a minimum limit of liability of five million dollars ($5,000,000). Defense costs shall be provided as an additional benefit and not included within the limits of liability. Such insurance shall contain standard cross-liability and severability of interest provisions.

(b) Employer's Liability Insurance. Seller shall maintain, or cause to be maintained at its sole expense, Employers' Liability insurance in an amount not less than one million dollars ($1,000,000.00) for injury or death occurring as a result of each accident. With

regard to bodily injury by disease, the one million-dollar ($1,000,000) policy limit will apply to each employee.

(c) Workers Compensation Insurance. Seller, if it has employees, shall also maintain at all times during the Contract Term workers' compensation and employers' liability insurance coverage in accordance with applicable requirements of Law. Each Party hereby grants to the other Party a waiver of any right to subrogation that any insurer of said first Party may acquire against said other Party by virtue of the payment of any loss under such insurance. This provision applies regardless of whether or not said other Party has requested a waiver of subrogation endorsement from the insurer.

(d) Business Auto Insurance. Seller shall maintain at all times during the Contract Term business auto insurance for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. Such insurance shall cover liability (any auto) arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement.

(e) Construction All-Risk Insurance. Seller shall maintain or cause to be maintained during the construction of the System prior to the Commercial Operation Date, construction all-risk form property insurance covering the System during such construction periods, and naming the Seller (and Lender if any) as the loss payee.

(f) Subcontractor Insurance. Seller shall require all of its subcontractors to carry: (i) comprehensive general liability insurance with a combined single limit of coverage not less than one million dollars ($1,000,0000 each occurrence and two million dollars ($2,000,000) general aggregate limit, with a five million ($5,000,000) umbrella.; (ii) workers' compensation insurance and employers' liability coverage in accordance with applicable requirements of Law; and (iii) business auto insurance (any auto) arising out of Seller's use of all owned (if any), non-owned and hired vehicles, including trailers or semi-trailers in the performance of the Agreement for bodily injury and property damage with limits of one million dollars ($1,000,000) per occurrence. All subcontractors shall name Seller as an additional insured to insurance carried pursuant to clauses (f)(i) and (f)(iii). All subcontractors shall provide a primary endorsement and a waiver of subrogation to Seller for the required coverage pursuant to this Section 19.1(f).

(g) Cyber Liability Insurance. Seller shall maintain Cyber Liability Insurance with limits not less than $2,000,000 per occurrence or claim, $2,000,000 aggregate. Coverage shall be sufficiently broad to respond to the duties and obligations as are undertaken by us in this Agreement and shall include claims involving infringement of intellectual property, infringement of copyright, trademark, trade dress, invasion of privacy violations, information theft, damage to or destruction of electronic information, release of private information, alteration of electronic information, extortion and network security. The policy shall provide coverage for breach response costs as well as regulatory fines and penalties as well as credit monitoring expenses with limits sufficient to respond to such obligations. All defense costs shall be outside the limits of the policy.

(h) Evidence of Insurance. Seller shall deliver to Buyer certificates of insurance evidencing such coverage prior to the execution of the Agreement. These certificates shall specify that Buyer shall be given at least thirty (30) days prior Notice by Seller in the event

of any material modification, cancellation or termination of coverage. Such insurance shall be primary coverage without right of contribution from any insurance of Buyer. Any other insurance maintained by Seller is for the exclusive benefit of Seller and shall not in any manner inure to the benefit of Buyer. Seller shall also comply with all insurance requirements by any renewable energy or other incentive program administrator or any other applicable authority.

(i) Failure to Comply with Insurance Requirements. If Seller fails to comply with any of the provisions of this Article 19, Seller, among other things and without restricting Buyer's remedies under the law or otherwise, shall, at its own cost and expense, act as an insurer and provide insurance in accordance with the terms and conditions above. With respect to the required general liability, umbrella liability and commercial automobile liability insurance, Seller shall provide a current, full and complete defense to Buyer, its subsidiaries and affiliates, and their respective officers, directors, shareholders, agents, employees, assigns, and successors in interest, in response to a third-party claim in the same manner that an insurer would have, had the insurance been maintained in accordance with the terms and conditions set forth above. In addition, alleged violations of the provisions of this Article 19 means that Seller has the initial burden of proof regarding any legal justification for refusing or withholding coverage and Seller shall face the same liability and damages as an insurer for wrongfully refusing or withholding coverage in accordance with the laws of California.

ARTICLE 20
CONFIDENTIAL INFORMATION

20.1 **Definition of Confidential Information**. The following constitutes "**Confidential Information**," whether oral or written which is delivered by Seller to Buyer or by Buyer to Seller including: (a) proposals and negotiations until this Agreement is approved and executed by the Buyer, and (b) information that either Seller or Buyer stamps or otherwise identifies as "confidential" or "proprietary" before disclosing it to the other and (c) information that is protected by applicable Law, including, personally identifiable information of Customers. Confidential Information does not include (i) information that was publicly available at the time of the disclosure, other than as a result of a disclosure in breach of this Agreement; (ii) information that becomes publicly available through no fault of the recipient after the time of the delivery; (iii) information that was rightfully in the possession of the recipient (without confidential or proprietary restriction) at the time of delivery or that becomes available to the recipient from a source not subject to any restriction against disclosing such information to the recipient; and (iv) information that the recipient independently developed without a violation of this Agreement.

20.2 **Duty to Maintain Confidentiality**. Confidential Information will retain its character as Confidential Information but may be disclosed by the recipient if and to the extent such disclosure is required (a) to be made by any requirements of Law, including but not limited to the California Public Records Act (Government Code Section 7920 *et seq*.) and the Brown Act (Government Code Section 54950 *et seq*.), (b) pursuant to an order of a court or (c) in order to enforce this Agreement. The originator or generator of Confidential Information may use such information for its own uses and purposes, including the public disclosure of such information at its own discretion.

20.3 **Irreparable Injury; Remedies**. Buyer and Seller each agree that disclosing Confidential Information of the other in violation of the terms of this Article 20 may cause irreparable harm, and that the harmed Party may seek any and all remedies available to it at law or in equity, including injunctive relief and/or notwithstanding Section 13.2, consequential damages.

20.4 **Disclosure to Lender**. Notwithstanding anything to the contrary in this Article 20, Confidential Information may be disclosed by Seller to any potential Lender or any of its agents, consultants or trustees so long as the Person to whom Confidential Information is disclosed agrees in writing to be bound by the confidentiality provisions of this Article 20 to the same extent as if it were a Party.

ARTICLE 21
MISCELLANEOUS

21.1 **Entire Agreement; Integration; Exhibits**. This Agreement, together with Exhibits attached hereto constitutes the entire agreement and understanding between Seller and Buyer with respect to the subject matter hereof and supersedes all prior agreements relating to the subject matter hereof, which are of no further force or effect. The Exhibits attached hereto are integral parts hereof and are made a part of this Agreement by reference. The headings used herein are for convenience and reference purposes only. In the event of a conflict between the provisions of this Agreement and those of any Exhibit, the provisions of this Agreement shall prevail, and such Exhibit shall be corrected accordingly. This Agreement shall be considered for all purposes as prepared through the joint efforts of the Parties and shall not be construed against one Party or the other as a result of the preparation, substitution, submission or other event of negotiation, drafting or execution hereof.

21.2 **Amendments**. This Agreement may only be amended, modified or supplemented by an instrument in writing executed by duly authorized representatives of Seller and Buyer; *provided*, that, for the avoidance of doubt, this Agreement may not be amended by electronic mail communications.

21.3 **No Waiver**. Waiver by a Party of any default by the other Party shall not be construed as a waiver of any other default.

21.4 **No Agency, Partnership, Joint Venture or Lease**. Seller and the agents and employees of Seller shall, in the performance of this Agreement, act in an independent capacity and not as officers or employees or agents of Buyer. Under this Agreement, Seller and Buyer intend to act as energy service provider and energy service recipient, respectively, and do not intend to be treated as, and shall not act as, partners in, co-venturers in or lessor/lessee with respect to the System or any business related to the System. This Agreement shall not impart any rights enforceable by any third party (other than a permitted successor or assignee bound to this Agreement).

21.5 **Severability**. In the event that any provision of this Agreement is unenforceable or held to be unenforceable, the Parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby. The Parties shall, however, use their best endeavors to agree on the replacement of the void, illegal or unenforceable provision(s) with legally

acceptable clauses which correspond as closely as possible to the sense and purpose of the affected provision and this Agreement as a whole.

21.6 **Forward Contract**. The Parties acknowledge and agree that this Agreement and the transactions contemplated by this Agreement constitute a "forward contract" within the meaning of the Bankruptcy Code and that Buyer and Seller are each "forward contract merchants" within the meaning of the Bankruptcy Code

21.7 **Mobile-Sierra**. Notwithstanding any other provision of this Agreement, neither Party shall seek, nor shall they support any third party seeking, to prospectively or retroactively revise the rates, terms or conditions of service of this Agreement through application or complaint to FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, or any other provisions of the Federal Power Act, absent prior written agreement of the Parties. Further, absent the prior written agreement in writing by both Parties, the standard of review for changes to the rates, terms or conditions of service of this Agreement proposed by a Party, a non-Party or the FERC acting *sua sponte* shall be the "public interest" standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp., 350 U.S. 332 (1956) and Federal Power Commission v. Sierra Pacific Power Co*., 350 U.S. 348 (1956).

21.8 **Counterparts**. This Agreement may be executed in one or more counterparts, all of which taken together shall constitute one and the same instrument and each of which shall be deemed an original.

21.9 **Electronic Delivery**. This Agreement may be duly executed and delivered by a Party by execution and electronic (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

21.10 **Binding Effect**. This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns.

[remainder of this page intentionally left blank]

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

SELLER	**BUYER**
Participate.Energy LLC, a Delaware limited liability company	CLEAN ENERGY ALLIANCE, a California joint powers authority
	By: _____
By: _____	Name: _____
Name: _____	Its: Chief Executive Officer
Its: General Manager	

EXHIBIT A
INCLUDED SYSTEMS LIST

SYSTEM NAME or ID	**SYSTEM SITE ADDRESS or LOCATION**	**SYSTEM SYSTEM SIZE (kWAC)**	**ESTIMATED FIRST YEAR ANNUAL PRODUCTION** (kWh)	**FIRST YEAR ENERGY RATE**	**ENERGY STORAGE** (No. of Tesla Powerwall Units)

EXHIBIT B
NOTICES

Seller:
Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@partcipate.energy

With a copy to:

Buyer:
Clean Energy Authority
5857 Owens Ave, 3rd Floor
Carlsbad, CA 92008
Attn: Chief Executive Officer
Email: ceo@thecleanenergyalliance.org
Phone: (760) 209-6177

With a copy to:
Name: Johanna N. Canlas
Burke, Williams & Sorensen, LLP
501 West Broadway, Suite 1600
San Diego, CA 92101

Phone: (619) 814-5813
Facsimile: (619) 814-6799
Email: jcanlas@bwslaw.com

Scheduling:
Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@partcipate.energy

EXHIBIT C

EMERGENCY CONTACT INFORMATION

BUYER:
Chief Executive Officer
5857 Owens Ave, 3rd Floor
Carlsbad, CA 92008
Phone: (760) 209-6177
Email: ceo@thecleanenergyalliance.org

SELLER:
Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@partcipate.energy

PROGRAM MANAGEMENT AGREEMENT

This Program Management Agreement (this "***Agreement***") dated effective as of [ ], (the *"**Effective Date**"*) is by and between **CLEAN ENERGY ALLIANCE, A CALIFORNIA JOINT POWERS AUTHORITY** ("***Program Manager***"), and **Participate.Energy LLC**, a Delaware limited liability company (the "***Owner***"). The parties hereto are sometimes herein referred to individually as a "***Party***" and collectively as the "***Parties***".

RECITALS

A. Program Manager, Owner and Tesla, Inc. (***"Installer"***) have entered into certain agreements for the creation of a distributed solar and energy storage program for residential electricity customers in Program Manager's service territory (the ***"Program"***). Under the terms of the Program, Owner will develop, finance, and own residential solar and energy storage systems to be located at private residences within Program Manager's service territory (each a ***"System"*** or, collectively, the ***"Systems"***), Installer will install the Systems under an installation contract between Installer and Owner (***"Installation Contract"***), and Program Manager will buy from Owner the energy and certain energy attributes and benefits generated by each System under the terms of a certain power purchase agreement between the Parties of even date herewith (the ***"Power Purchase Agreement"***).

B. Owner does not independently maintain the internal capability to perform the Program Management Services (as defined below) that Owner requires in connection with the installation of the Systems, and Program Manager's capabilities are expected to provide significant benefits to Owner. Therefore, Owner desires to engage Program Manager to manage certain aspects of the origination of potential customers in Program Manager's service territory, all as further set forth herein (the ***"Program Management Services"***).

AGREEMENT

In consideration of the above recitals, the premises and mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Appointment and Term; Assumption of Development Responsibilities; Standard of Performance**. Owner hereby appoints Program Manager to render the Program Management Services as further described in the *Schedule of Program Management Services* attached hereto as Exhibit A. Program Manager hereby accepts such appointment. The term of this Agreement shall be co-terminus with the term of the Power Purchase Agreement (***"Term"***). Program Manager shall use such diligence, care and prudence in the performance of its obligations hereunder as are commercially reasonable, and shall devote such time, effort and skills of its personnel as a reasonable service Program Manager in like position would do in like circumstances.

2. **Limitations and Restrictions**. Notwithstanding any provisions of this Agreement, Program Manager shall not take any action, expend any sum, make any decision, give any consent, approval or authorization, or incur any obligation with respect to any of the following matters unless and until the same has been approved by Owner:

(a) alteration of any System contemplated by the Installation Contract, except for such matters as may be expressly delegated in writing to Program Manager by Owner; or

(b) any proposed change in the installation of a System, or in the plans and specifications therefor as previously approved by Owner, that increases the cost thereof, or any other change that would affect the design, cost, value or quality of any of a System, except for such matters as may be expressly delegated in writing to Program Manager by Owner.

3. **Standard of Conduct.**

a) Program Manager shall provide the Program Management Services, perform its other obligations and exercise its rights or powers under this Agreement in a prudent manner, with the degree of skill and judgment normally exercised by Program Managers performing Program Management Services for communications and outreach, and in accordance with: (i) any applicable laws and regulations; and (ii) any agreement, instrument or other document to which Owner is a party, and that Owner has delivered to Program Manager, that relates to a System or any component thereof (***"Project Documents"***), except to the extent that Owner provides Program Manager with written instructions not to do so in the event that Owner is contesting in good faith the validity or application of any such applicable laws and regulations or such term and condition of a System Document, in any reasonable manner.

b) Program Manager may, at any time, if it reasonably considers it to be necessary or appropriate, request written instruction from Owner with respect to any matter contemplated by this Agreement and may defer action thereon pending the receipt of such written instructions.

c) Each of the Parties shall advise the other promptly, if it becomes aware of any material inconsistency between any of the following:

(i) Owner's instructions given in accordance with this Agreement from time to time;

(ii) any System Document;

(iii) Required insurance (if any); and

(iv) any applicable laws and regulations or Permit.

d) Any action taken by Program Manager in accordance with the written instructions of Owner, or failure to act pending the receipt of such written instructions, shall be deemed to be within the scope of Program Manager's authority and in accordance with its obligations under this Agreement and, without limitation, shall not constitute gross negligence or willful misconduct as referred in Section 10(b).

4. **Accounts and Records**.

(a) Program Manager shall keep such books of account and other records relating to each System as may be required by applicable laws and regulations or as reasonably requested by Owner in writing. All accounts and records relating to a System, including all correspondence, shall be surrendered to Owner upon demand without charge therefor.

(b) All books and records prepared or maintained by Program Manager shall be kept and maintained at all times at secure locations accessible to Owner for audit, inspection and copying by Owner or any representative or auditor therefor or supervisory or regulatory authority upon reasonable written request.

(c) During the Term, Program Manager shall keep Owner reasonably informed as to the status of the Program Management Services provided by Program Manager. Each Party shall notify the other Party in writing of any material event related to the Program Management Services provided by Program Manager hereunder.

5. **Accrual Schedule**. The Program Management Agreement Fee (as defined below) shall be earned in full for a System when a System is placed in service for purposes of Sections 48 and 168 of the Internal Revenue Code, as amended, and shall be paid promptly when a System has reached final completion under the terms of the respective Installation Contract (collectively, ***"Final Completion"***).

6. **Compensation**. As consideration for Program Manager's Program Management Services to be performed under this Agreement, Owner will pay Program Manager a fee (the ***"Program Management Agreement Fee"***) equal to ( ) multiplied by each Watt/dc of solar generating capacity for each System that has reached Final Completion and for which Program Manager has confirmed in a legally binding manner that such System will be covered under the Power Purchase Agreement for the term thereof. The Parties may agree upon a different Program Management Agreement Fee from time to time in writing.

7. **Default and Remedies**. If Program Manager defaults in the performance of any of its material covenants or obligations under this Agreement and such default continues unremedied for a period of 30 days after written notice thereof from Owner to Program Manager, Owner shall have the right, at its election, to exercise one or more of the following rights and remedies; *provided, however,* if the default is of such a nature that it cannot be cured within the 30-day period, and Program Manager has begun to cure each default within the 30-day period, Program Manager shall have an additional 60 days in which to cure said default provided it acts in good faith and with due diligence to cure the same (all of which shall be cumulative); *provided, further, however,* that a default under any agreement with a contractor, subcontractor, engineer or equipment Program Manager for a System, or a delay due to action or inaction by the utility shall not be deemed a default under the Agreement:

(a) terminate this Agreement; and

(b) enforce the provisions of this Agreement by legal proceedings for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy and recover damages caused by any breach by Program

Manager of the provisions of this Agreement, including court costs, reasonable attorneys' fees and other expenses incurred in the enforcement of the obligations of Program Manager hereunder; and

(c) exercise any and all rights and remedies that Owner (or its Members) may have under applicable laws and regulations; and

(d) in addition to any rights now or hereafter granted under applicable laws and regulations and not by way of limitation of any such rights, upon the occurrence of any event of default hereunder that is not cured within the time period specified in this Section 7, Owner is authorized to set off and to apply any amounts payable to Program Manager hereunder against and on account of the obligations of Program Manager to Owner hereunder.

8. **Indemnity and Liability**

(a) Limitation of Liability.

(i) Notwithstanding any provision in this Agreement to the contrary, no Party, nor their respective Affiliates, nor any of their respective officers, directors, employees, agents, contractors, subcontractors, vendors, shareholders, members, partners or representatives, shall be liable hereunder for any consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill or any other special or incidental damages, it being understood that the Parties' indemnification obligations under this Section 8 are not and shall not be deemed to be consequential or indirect loss or damage under this Section 8.

(ii) Except as provided in this Section 8, Program Manager shall have no liability hereunder to Owner for damages or other amounts in connection with a breach by Program Manager of this Agreement or a failure by Program Manager to perform the Program Management Services in accordance with the terms and conditions hereof or otherwise as a result of the Program Management Services performed by Program Manager pursuant to this Agreement.

(iii) The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times, whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability, or breach of the Party indemnified, released or whose liabilities are limited, and shall extend to the partners, members, principals, shareholders, directors, officers, employees, volunteers and agents of each Party and its Affiliates.

(b) Indemnity. To the extent that it may lawfully do so, each of Program Manager and Owner hereby agree to indemnify, defend (with counsel of its reasonable choosing), and hold harmless the other party and its directors, agents, officers, officials, members, employees and volunteers from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, ("Claim") whether directly or indirectly arising from or connected to: (i) bodily injury, death, personal injury, or property damage caused by the illegal acts or omissions, gross negligence, or in case of any third-party claim negligence, creation or maintenance of a dangerous condition of property, or intentional infliction of harm, including any workers' compensation suits, liability, or expense, arising from or connected with Program Management Services performed by or on behalf

of the indemnifying party by any person pursuant to this Agreement; (ii) nonpayment for labor, materials, appliances, teams, or power, performed on, or furnished or contributed to the Site; (iii) any Claim brought by a Customer arising out of the acts or omissions of the indemnifying party; or (vi) any Claim related to any System arising out of the acts or omissions of the indemnifying party. Notwithstanding the above, neither Program Manager nor Owner shall be required to defend, indemnify and hold harmless the other for such other party's illegal or negligent acts and omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

9. **Notices.** Any notice, request, demand or other communication which is required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of receipt by the applicable Party if personally delivered; (ii) when transmitted by the applicable Party if transmitted by telecopy, electronic mail, or other digital transmission method, subject to the sender's facsimile machine receiving the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by email, mail or telephone to sender that he/she has received the facsimile or electronic mail message; and (iii) when received by the applicable Party, if sent for next day delivery to a domestic address by recognized overnight delivery service or, if sent by certified or registered mail, return receipt requested.

Notices shall be given:

If to Owner, to:

Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@partcipate.energy

If to Program Manager, to:

Clean Energy Alliance
5857 Owens Ave, 3rd Floor
Carlsbad, CA 92008
Attn: Chief Executive Officer
Phone: 760-209-6177
Email: ceo@thecleanenergyalliance.org

10. **General Provisions**.

(a) No Agency Relationship. This Agreement does not create an agency relationship between the Parties and does not establish a joint venture or partnership between the Parties. Except as expressly set forth herein, neither Party has the authority to bind the other Party or represent to any person that the Party is an agent of the other Party.

(b) Agreement. This Agreement consists of the terms and conditions set forth herein, as well as the appendices hereto, which are incorporated by reference herein and made part hereof. In the event of a conflict, variation or inconsistency between the appendices hereto and the terms and conditions contained in the body of this Agreement, the latter shall control and be given priority.

(c) Relationship of the Parties.

(i) Program Manager has been retained by Owner as an independent contractor to solely perform the Program Management Services on behalf of Owner.

(ii) Without limiting the relationship of any Party under any other agreement, nothing contained or implied in this Agreement shall constitute or be deemed to constitute any Party as the partner of any other Party for any purpose whatsoever; or create, or be deemed to create, any partnership between any Party and the any other Party.

(iii) No Party shall by virtue of this Agreement have the power or authority to enter into any agreement or undertaking for or to act on behalf of or otherwise to bind the any other Party as to any matter or thing to be done in relation to a System or to the provision of the Program Management Services save as may be expressly authorized in this Agreement or agreed in writing between the Parties from time to time.

(d) Entire Agreement. This Agreement, the Schedules and Exhibits attached hereto contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, undertakings and agreements. Neither Party will be bound by or deemed to have made in connection herewith any representations, warranties, commitments or undertakings, except those contained herein.

(e) Captions; Exhibits. Titles or captions of sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All exhibits and appendices attached hereto shall be considered a part hereof as though fully set forth herein.

(f) Amendment. This Agreement may not be amended or modified in any way unless such amendment or modification is in writing signed by duly authorized representatives of each Party.

(g) No Waivers. It is understood and agreed that any delay, waiver or omission by Owner or Program Manager to exercise any right or power arising from any breach or default by Owner or Program Manager with respect to any of the terms, provisions, or covenants of this Agreement shall not be construed to be a waiver by Owner or Program Manager of any subsequent

breach or default of the same or other terms, provisions or covenants on the part of Owner or Program Manager. No waiver of any right or power by any Party under this Agreement shall be deemed effective unless in writing and signed by the waiving Party.

(h) [Reserved].

(i) Representations and Warranties.

(i) Each Party represents and warrants to the other that:

(A) it is duly formed and validly existing under the laws of its jurisdiction of formation and is registered and authorized to do business in the State of California;

(B) it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under, this Agreement;

(C) all corporate or company action required by it validly and duly to authorize the execution and delivery of, and to exercise its rights and perform its obligations under, this Agreement has been duly taken; and

(D) this Agreement constitutes a valid and binding agreement enforceable against it in accordance with its terms.

(ii) Except as expressly provided in this Agreement or as required by law, no Party makes any warranties or guarantees to the other, either express or implied, with respect to the Facility, the Program Management Services or any other subject matter of this Agreement, and, to the extent permitted by law, each Party disclaims and waives any implied warranties or warranties imposed by law.

(j) Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by the Parties and each counterpart shall be deemed an original instrument as against any Party who has signed it.

(k) Electronic Delivery. This Agreement may be duly executed and delivered by a Party in electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

(l) Dispute Resolution. In the event a dispute arises between the Parties regarding the application or interpretation of this Agreement, the aggrieved Party shall promptly notify the other Party of its intent to invoke this dispute resolution procedure within forty-five (45) business days after such dispute arises. If a dispute occurs beyond the forty-five (45) business day threshold, Parties shall act in good faith using reasonably commercial efforts to resolve such dispute. If the Parties shall fail to resolve the dispute within ten (10) business days after delivery of such notice, each Party shall, within five (5) business days thereafter, nominate a senior officer of its management to meet at the facility, or at any other mutually agreed location, to resolve the dispute.

If the dispute remains unresolved within ten (10) business days after such a meeting has commenced, each Party, without further delay, shall have the right to pursue any and all remedies available at law or in equity. The pendency of any dispute under this Agreement shall not of itself relieve any Party of any duty to perform under this Agreement.

(m) Non-Recourse. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of any of the partners, members, shareholders, or affiliates of the Parties, or any of their respective directors, officers, employees, agents, representatives, or volunteers (each, a ***"Protected Person"***) for the payment of any amounts due or the performance of any other obligation of any Party under this Agreement. Each Party shall look solely to the assets of the other Parties for the satisfaction of each and every right or remedy under or in connection with this Agreement. In furtherance of the foregoing, Owner and Program Manager each agrees that it shall neither seek or obtain, nor be entitled to seek or obtain, any deficiency or other judgment against any Protected Person for any action or inaction under or in connection with this Agreement, and Owner and Program Manager each releases all such Protected Persons from any such claims by Program Manager or Owner, as the case may be.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Program Management Services Agreement as of the date first written above.

PROGRAM MANAGER:

Clean Energy Alliance,
a California Joint Powers Authority,

By: _____
Name: Barbara Boswell
Title: Chief Executive Officer

OWNER:

Participate.Energy LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

PROGRAM MANAGEMENT SERVICES SCHEDULE

Program Management Services shall consist of:

a) preparing materials and conduct communications and outreach to residential electric power customer in its service territory to promote the Program and to encourage the installation of Systems by its customers.

PROGRAM SUPPORT AGREEMENT

This Program Support Agreement (this "***Agreement***") dated effective as of_____, (the *"**Effective Date**"*) is by and between **CLEAN ENERGY AUTHORITY, A JOINT POWERS AUTHORITY** ("***Member***"), and **Participate.Energy LLC**, a Delaware limited liability company (the "***Owner***"). The parties hereto are sometimes herein referred to individually as a "***Party***" and collectively as the "***Parties***".

RECITALS

A. Member, Owner and Tesla, Inc. (***"O&M Provider"***) have entered into certain agreements for the creation of a distributed solar and energy storage program for residential electricity customers in Member's service territory (the ***"Program"***). Under the terms of the Program, Owner will develop, finance, and own residential solar and energy storage systems to be located at private residences within Member's service territory (each a ***"System"*** or, collectively, the ***"Systems"***), O&M Provider will operate and maintain the Systems under an O&M Contract between O&M Provider and Owner (the ***"O&M Contract"***), Member will buy from Owner the energy and certain energy attributes and benefits generated by each System under the terms of that certain power purchase agreement between the Parties of even date herewith (the ***"Power Purchase Agreement"***), and sell the electric power generated by a System to the residential customer in Member's service territory, where the System is located (the ***"Customer"***).

B. The Parties intend that Systems will be added to this Agreement and the Power Purchase Agreement from time to time during the term of the Power Purchase Agreement.

C. Owner does not independently maintain the internal capability to perform the Program Support Services (as defined below) that Owner requires in connection with the operation and maintenance of the Systems, and Member's capabilities are expected to provide significant benefits to Owner. Therefore, Owner desires to engage Member to support certain aspects of the Systems operations and management as further set forth herein (the ***"Program Support Services"***).

AGREEMENT

In consideration of the above recitals, the premises and mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

1. **Appointment and Term; Assumption of Development Responsibilities; Standard of Performance**. Owner hereby appoints Member to render the Program Support Services as further described in the *Schedule of Program Support Services* attached hereto as Exhibit A. Member hereby accepts such appointment. The term of this Agreement shall be co-terminus with the term of the Power Purchase Agreement (***"Term"***). Member shall use such diligence, care and prudence in the performance of its obligations hereunder as are commercially reasonable, and shall devote such time, effort and skills of its personnel as is commercially reasonable.

2. **Standard of Conduct.**

a) Member shall provide the Program Support Services, perform its other obligations and exercise its rights or powers under this Agreement in a prudent manner, and in accordance with: (i) any applicable laws and regulations and permits; and (ii) any agreement, instrument or other document to which Owner is a party, and that Owner has delivered to Member, that relates to the development, construction, Owner or a System or any component thereof (***"System Documents"***), except to the extent that Owner provides Member with written instructions not to do so in the event that Owner is contesting in good faith the validity or application of any such applicable laws and regulations or such term and condition of a System Document, in any reasonable manner.

b) Member may, at any time, if it reasonably considers it to be necessary or appropriate, request written instruction from Owner with respect to any matter contemplated by this Agreement and may defer action thereon pending the receipt of such written instructions.

c) Each of the Parties shall advise the other promptly, if it becomes aware of any material inconsistency between any of the following:

(i) Owner's instructions given in accordance with this Agreement from time to time;

(ii) any System Document;

(iii) required insurance (if any); and

(iv) any applicable laws and regulations or permit.

d) Any action taken by Member in accordance with the written instructions of Owner, or failure to act pending the receipt of such written instructions, shall be deemed to be within the scope of Member's authority and in accordance with its obligations under this Agreement and, without limitation, shall not constitute gross negligence or willful misconduct as referred in Section 7.

3. **Accounts and Records**.

(a) Member, on behalf of Owner, shall keep such books of account and other records relating to each System as may be required by applicable laws and regulations or reasonably requested by Owner in writing. All accounts and records relating to a System, including all correspondence, shall be surrendered to Owner upon demand without charge therefor.

(b) All books and records prepared or maintained by Member shall be kept and maintained at all times at secure locations accessible to Owner for audit, inspection and copying by Owner or any representative or auditor therefor or supervisory or regulatory authority upon reasonable written request.

(c) During the Term, Member shall keep Owner informed as to the status of the Program Support Services provided by Member hereunder in a frequency Member and Owner may agree to from time to time. Each Party shall notify the other Party of any material event related to the Program Support Services provided by Member hereunder.

4. **Compensation and Payment**.

(a) As consideration for Member's Program Support Services to be performed under this Agreement, Owner will pay Member a fee (the ***"Program Support Services Fee"***) equal to (i) ( ) multiplied by each Kilowatt-hour of solar energy generation for each System that has been placed into operation and for which Member has confirmed in a legally binding manner that such System will be covered under the Power Purchase Agreement for the term thereof, plus (ii) ( ) per month for each Tesla Powerwall installed as part of a System that has been placed into operation and for which Member has confirmed in a legally binding manner that such System will be covered under the Power Purchase Agreement for the term thereof. The Parties may agree upon a different Program Support Services Fee from time to time in writing.

(b) The Program Support Services Fee shall become due and payable on a quarterly basis, not later than the fifteenth (15^{th}) day after the end of each calendar quarter during the Term (each, a ***"Fee Calculation Period"***), *provided, that* payment of any Program Support Services Fee due and payable shall be limited to funds available to Owner from Net Operating Cash Flow during such Fee Calculation Period. The term ***"Net Operating Cash Flow"*** as used in this Agreement shall mean the cash proceeds received by Owner from Member under the terms of the Power Purchase Agreement during a Fee Calculation Period, reduced by (i) actual or reasonably estimated operating and maintenance expenses for all Systems in operation at any time during such Fee Calculation Period, including, without limitation insurance expenses and reasonably estimated reasonable and industry-standard reserves for losses, and actual or reasonably estimated System equipment replacement costs during the Term and reserves therefore, (ii) actual or reasonably estimated income or other taxes payable by Buyer with respect to such cash proceeds (iii) preferred distributions to be made and any cash flow payable, or revenue or profit participation allocated to tax or sponsor equity investors unaffiliated with Owner in accordance with the terms and conditions of the then current charter documents of Owner, and (iv) payment of all obligations, including without limitation payment of principal and interest, under any loan document binding Owner at any time during such Fee Calculation Period, or for which any System operating at any time during such Fee Calculation Period has been placed as collateral.

(c) Together with any Program Support Services Fee payment, Owner shall provide Member a written accounting for the Program Support Fee due in reasonable detail. In addition, if payment for a Fee Calculation Period is reduced to available funds for payment for the respective Fee Calculation Period in accordance with Section 4(b), above, Owner shall provide Member a written accounting in reasonable detail supporting any fee reduction during such Fee Calculation Period.

(d) Any portion of the Program Support Services Fee reduced during one Fee Calculation Period in accordance with Section 4(b), above, shall be added to the Program Support Services Fee becoming due and payable in the following Fee Calculation Period subject, however, to availability funds from Net Operating Cash Flow during such following Fee Calculation Period and on an ongoing basis thereafter.

(e) To facilitate payment and verification, Owner shall maintain all books and records necessary for billing and payments, including copies of all invoices under this Agreement,

for a period of at least four (4) years or as otherwise required by applicable laws and regulations. Upon fifteen (15) days' Notice to Owner, Member shall be granted reasonable access to the accounting books and records pertaining to all invoices generated pursuant to this Agreement.

(f) Payment adjustments shall be made if Owner or Member discovers there have been good faith inaccuracies in invoicing that are not otherwise disputed under Section 4(h), or there is determined to have been a meter inaccuracy sufficient to require a payment adjustment under the Power Purchase Agreement. If the required adjustment is in favor of Owner, Owner's quarterly Program Support Services Fee payment shall be credited in an amount equal to the adjustment. If the required adjustment is in favor of Member, Member shall add the adjustment amount to Owner's next quarterly Program Support Fee payment obligation, subject, however, to the limitations set forth in Section 4(b), above.

(g) If a payment due date under Section 4(b), above, falls on a weekend or legal holiday, such due date shall be the next Business Day. Payments made after the due date will be considered late and will bear interest on the unpaid balance . If the amount due is not paid on or before the due date or if any other payment that is due and owing from one party to another is not paid on or before its applicable due date, a late payment charge shall be applied to the unpaid balance and shall be added to the next billing statement. Such late payment charge shall be calculated based on an annual interest rate equal to 10% (the ***"Interest Rate"***) of the total amount due. If the due date occurs on a day that is not a business day, the late payment charge shall begin to accrue on the next succeeding business day. The payment of any late payment fee by Owner shall be subject to availability of funds from Net Operating Cash Flow.

(h) A Party may, in good faith, dispute the correctness of any invoice or any adjustment to an invoice, rendered under this Agreement or adjust any invoice for any arithmetic or computational error within twelve (12) months of the date the invoice, or adjustment to an invoice, was rendered. In the event an invoice or portion thereof, or any other claim or adjustment arising hereunder, is disputed, payment of the undisputed portion of the invoice shall be required to be made when due. Any invoice dispute or invoice adjustment shall be in writing and shall state the basis for the dispute or adjustment. Payment of the disputed amount shall not be required until the dispute is resolved. Upon resolution of the dispute, any required payment shall be made within two (2) business days of such resolution along with interest accrued at the Interest Rate from and including the original due date to but excluding the date paid. Inadvertent overpayments shall be returned upon request or deducted by the Party receiving such overpayment from subsequent payments, with interest accrued at the Interest Rate from and including the date of such overpayment to but excluding the date repaid or deducted by the Party receiving such overpayment. Any dispute with respect to an invoice is waived if the other Party is not notified in accordance with this Section 4(h) within twelve (12) months after the invoice is rendered or subsequently adjusted, except to the extent any misinformation was from a third party not affiliated with any Party and such third party corrects its information after the twelve-month period or was intentional by any Party and discovered by another Party after the twelve-month period. If an invoice is not issued within twelve (12) months after the close of the month during which performance occurred, the right to payment for such performance is waived.

5. **Default and Remedies**. If either Party defaults in the performance of any of its material covenants or obligations under this Agreement and such default continues unremedied for a period of (a) ten (10) days, in case of any monetary default, or (b) thirty (30) days in case of non-monetary default, in each after written notice thereof from the non-defaulting Party to the defaulting Party, the non-defaulting Party shall have the right, at its election, to exercise one or more of the following rights and remedies; *provided, however,* if a non-monetary default is of such a nature that it cannot be cured within said thirty (30) day period, and the defaulting Party has begun to cure each default within the 30-day period, the defaulting Party shall have an additional 60 days in which to cure said default provided it acts in good faith and with due diligence to cure the same (all of which shall be cumulative); *provided, further, however,* that a default under any agreement with a contractor, subcontractor, engineer or equipment manager for a System, or a delay due to action or inaction by the utility shall not be deemed a default under the Agreement:

(a) terminate this Agreement; and

(b) enforce the provisions of this Agreement by legal proceedings for the specific performance of any covenant or agreement contained herein or for the enforcement of any other appropriate legal or equitable remedy and recover damages caused by any breach by the defaulting Party of the provisions of this Agreement, including court costs, reasonable attorneys' fees and other expenses incurred in the enforcement of the obligations of the Defaulting Party hereunder; and

(c) exercise any and all rights and remedies that the non-defaulting Party may have under applicable laws and regulations; and

(d) in addition to any rights now or hereafter granted under applicable laws and regulations and not by way of limitation of any such rights, upon the occurrence of any event of default hereunder that is not cured within the time period specified in this Section 5, the non-defaulting Party is authorized to set off and to apply any amounts payable to the defaulting Party hereunder against and on account of the obligations of defaulting Party to the non-defaulting Party hereunder.

6. **Indemnity and Liability**

(a) Limitation of Liability.

(i) Notwithstanding any provision in this Agreement to the contrary, no Party, nor their respective Affiliates, nor any of their respective officers, directors, employees, agents, contractors, subcontractors, vendors, shareholders, members, partners or representatives, shall be liable hereunder for any consequential or indirect loss or damage, including loss of profit, cost of capital, loss of goodwill or any other special or incidental damages, it being understood that the Parties' indemnification obligations under this Section 6 are not and shall not be deemed to be consequential or indirect loss or damage under this Section 6.

(ii) Except as provided in this Section 6, Member shall have no liability hereunder to Owner for damages or other amounts in connection with a breach by Member of this Agreement or a failure by Member to perform the Program Support Services in accordance with

the terms and conditions hereof or otherwise as a result of the Program Support Services performed by Member pursuant to this Agreement.

(iii) The Parties further agree that the waivers and disclaimers of liability, indemnities, releases from liability, and limitations on liability expressed in this Agreement shall survive termination or expiration of this Agreement, and shall apply at all times, whether in contract, equity, tort or otherwise, even in the event of the fault, negligence, including sole negligence, strict liability, or breach of the Party indemnified, released or whose liabilities are limited, and shall extend to the partners, members, principals, shareholders, directors, officers, employees, volunteers and agents of each Party and its Affiliates.

(b) Indemnity. To the extent that it may lawfully do so, each of Member and Owner hereby agree to indemnify, defend (with counsel of its reasonable choosing), and hold harmless the other party and its directors, agents, officers, officials, members, employees and volunteers from and against any and all liability or claim of liability, loss or expense, including defense costs and legal fees and claims for damages of whatsoever character, nature and kind, ("Claim") whether directly or indirectly arising from or connected to: (i) bodily injury, death, personal injury, or property damage to the extent caused by the illegal acts or omissions, gross negligence, or in case of any third-party claim negligence, creation or maintenance of a dangerous condition of property, or intentional infliction of harm, including any workers' compensation suits, liability, or expense, arising from or connected with Program Support Services performed by or on behalf of the indemnifying party by any person pursuant to this Agreement; (ii) nonpayment for labor, materials, appliances, teams, or power, performed on, or furnished or contributed to the Site; (iii) any Claim brought by a Customer arising out of the acts or omissions of the indemnifying party; or (vi) any Claim related to any System arising out of the acts or omissions of the indemnifying party. Notwithstanding the above, neither Member nor Owner shall be required to defend, indemnify and hold harmless the other for such other party's illegal or negligent acts and omissions or willful misconduct. It is the intent of the Parties that where negligence is determined to have been joint or contributory, principles of comparative negligence will be followed, and each Party shall bear the proportionate cost of any loss damage, expense or liability attributable to that Party's negligence.

7. **Notices.** Any notice, request, demand or other communication which is required or permitted under this Agreement shall be in writing and shall be deemed to have been duly given: (i) on the date of receipt by the applicable Party if personally delivered; (ii) when transmitted by the applicable Party if transmitted by telecopy or email, subject to the sender's facsimile machine receiving the correct answerback of the addressee and confirmation of uninterrupted transmission by a transmission report or the recipient confirming by email, mail or telephone to sender that he/she has received the facsimile or electronic mail message; and (iii) when received by the applicable Party, if sent for next day delivery to a domestic address by recognized overnight delivery service or, if sent by certified or registered mail, return receipt requested.

Notices shall be given:

If to Owner, to:

Participate.Energy LLC
2093 Philadelphia Pike #3125,
Claymont, DE 19703.
Attn: Ethan Friedman
Phone: 917-301-2621
Email: ethan@participate.energy

If to Member, to:

Clean Energy Alliance
5857 Owens Ave, 3rd Floor
Carlsbad, CA 92008
Attn: Chief Executive Officer
Phone: (760) 209-6177
Email: ceo@thecleanenergyalliance.org

8. **General Provisions**.

(a) No Agency Relationship. This Agreement does not create an agency relationship between the Parties and does not establish a joint venture or partnership between the Parties. Except as expressly set forth herein, no Party has the authority to bind the other Party or represent to any person that the Party is an agent of the other Party.

(b) Agreement. This Agreement consists of the terms and conditions set forth herein, as well as the appendices hereto, which are incorporated by reference herein and made part hereof. In the event of a conflict, variation or inconsistency between the appendices hereto and the terms and conditions contained in the body of this Agreement, the latter shall control and be given priority.

(c) Relationship of the Parties.

(i) Member has been retained by Owner as an independent contractor to solely perform the Program Support Services on behalf of Owner.

(ii) Without limiting the relationship of any Party under any other agreement, nothing contained or implied in this Agreement shall constitute or be deemed to constitute any Party as the partner of any other Party for any purpose whatsoever; or create, or be deemed to create, any partnership between any Party and the any other Party.

(iii) No Party shall by virtue of this Agreement have the power or authority to enter into any agreement or undertaking for or to act on behalf of or otherwise to bind the any other Party as to any matter or thing to be done in relation to a System or to the provision of the Program Support Services save as may be expressly authorized in this Agreement or agreed in writing between the Parties from time to time.

(d) Entire Agreement. This Agreement, the Schedules and Exhibits attached hereto contains the entire agreement between the Parties with respect to the subject matter hereof and supersedes all prior negotiations, undertakings and agreements. Neither Party will be bound by or deemed to have made in connection herewith any representations, warranties, commitments or undertakings, except those contained herein.

(e) Captions; Exhibits. Titles or captions of sections contained in this Agreement are inserted only as a matter of convenience and for reference, and in no way define, limit, extend, describe or otherwise affect the scope or meaning of this Agreement or the intent of any provision hereof. All exhibits and appendices attached hereto shall be considered a part hereof as though fully set forth herein.

(f) Amendment. This Agreement may not be amended or modified in any way unless such amendment or modification is in writing signed by duly authorized representatives of each Party.

(g) No Waivers. It is understood and agreed that any delay, waiver or omission by Owner or Member to exercise any right or power arising from any breach or default by Owner or Member with respect to any of the terms, provisions, or covenants of this Agreement shall not be construed to be a waiver by Owner or Member of any subsequent breach or default of the same or other terms, provisions or covenants on the part of Owner or Member. No waiver of any right or power by any Party under this Agreement shall be deemed effective unless in writing and signed by the waiving Party.

(h) [Reserved].

(i) Representations and Warranties.

(i) Each Party represents and warrants to the other that:

(A) it is duly formed and validly existing under the laws of its jurisdiction of formation and is registered and authorized to do business in the State of California;

(B) it has the legal right and full power and authority to execute and deliver, and to exercise its rights and perform its obligations under, this Agreement;

(C) all corporate or company action required by it validly and duly to authorize the execution and delivery of, and to exercise its rights and perform its obligations under, this Agreement has been duly taken; and

(D) this Agreement constitutes a valid and binding agreement enforceable against it in accordance with its terms.

(ii) Except as expressly provided in this Agreement or as required by law, no Party makes any warranties or guarantees to the other, either express or implied, with respect to

the System, Program Support Services or any other subject matter of this Agreement, and, to the extent permitted by law, each Party disclaims and waives any implied warranties or warranties imposed by law.

(j) Counterparts. The Parties may execute this Agreement in two or more counterparts, which shall, in the aggregate, be signed by the Parties and each counterpart shall be deemed an original instrument as against any Party who has signed it.

(k) Electronic Delivery. This Agreement may be duly executed and delivered by a Party in electronic format (including portable document format (.pdf)) delivery of the signature page of a counterpart to the other Party.

(l) Dispute Resolution. In the event a dispute arises between the Parties regarding the application or interpretation of this Agreement, the aggrieved Party shall promptly notify the other Party of its intent to invoke this dispute resolution procedure within forty-five (45) business days after such dispute arises. If a dispute occurs beyond the forty-five (45) business day threshold, Parties shall act in good faith using reasonably commercial efforts to resolve such dispute. If the Parties shall fail to resolve the dispute within ten (10) business days after delivery of such notice, each Party shall, within five (5) business days thereafter, nominate a senior officer of its management to meet at the facility, or at any other mutually agreed location, to resolve the dispute. If the dispute remains unresolved within ten (10) business days after such a meeting has commenced, each Party, without further delay, shall have the right to pursue any and all remedies available at law or in equity. The pendency of any dispute under this Agreement shall not of itself relieve any Party of any duty to perform under this Agreement.

(m) Non-Recourse. Notwithstanding anything to the contrary provided in this Agreement, it is specifically understood and agreed that there shall be absolutely no personal liability on the part of any of the partners, members, shareholders, or affiliates of the Parties, or any of their respective directors, officers, employees, agents, representatives or volunteers, (each, a ***"Protected Person"***) for the payment of any amounts due or the performance of any other obligation of any Party under this Agreement. Each Party shall look solely to the assets of the other Parties for the satisfaction of each and every right or remedy under or in connection with this Agreement. In furtherance of the foregoing, Owner and Member each agrees that it shall neither seek or obtain, nor be entitled to seek or obtain, any deficiency or other judgment against any Protected Person for any action or inaction under or in connection with this Agreement, and Owner and Member each releases all such Protected Persons from any such claims by Member or Owner, as the case may be.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Program Support Agreement as of the date first written above.

MEMBER:

Clean Energy Authority,
a California Joint Powers Authority,

By: _____
Name: Barbara Boswell
Title: Chief Executive Officer

OWNER:

Participate.Energy LLC
a Delaware limited liability company

By: _____
Name: _____
Title: _____

EXHIBIT A

PROGRAM SUPPORT SERVICES SCHEDULE

1. Member shall provide Level 1 System Support for all Systems included under the Power Purchase Agreement, including without limitation maintaining and coordinating all personnel, activities, and infrastructure reasonably required for such Level 1 Support Services. ***"Level 1 Support Services"*** shall consist of:

    a) Provide first contact and customer interaction for any System-related communication via email and telephone;

    b) Clarify general System functions and features via email or telephone upon receipt of customer requests;

    c) To the extent reasonably possible by telephone or email, verify, analyze and correct System problems reported by customers;

    d) Create incident reports, including initial analysis, for System problems that cannot be corrected by telephone or email;

    e) Forward incident reports to O&M Provider promptly upon report of any System problem that cannot be corrected by Member by telephone or email; and

    f) Periodic reporting to Owner and O&M Provider of all significant System-related customer interactions.

Framework Distributed Energy Resource Program Agreement

This **Framework Distributed Energy Resource Program Agreement** (this "Agreement") is entered into as of [_____] (the "Effective Date"), among the parties listed below (each, a "Party" and together the "Parties"). This Agreement comprises (i) the Key Terms set out below (the "Key Terms"), and (ii) all schedules referenced in the "Attachments" section of the Key Terms.

Key Terms	
This Agreement sets out the terms and conditions on which the Clean Energy Alliance ("**Member**") shall market and offer a program for the deployment of traditional solar PV systems and Powerwalls ("System") to certain residential customers ("**Customers**") and new homes builders ("**Builders**") located in the Member territory, with sales and educational support provided by Member, product and product installation support provided by Tesla, purchase and operation of System by Participate.Energy, LLC ("**The Program Fund**") for the sale of energy from the Systems to Member for resale to Customers (the "**Program**").	
Parties:	
Tesla:	Tesla, Inc., a corporation organized under the laws of Delaware.
Member:	Clean Energy Alliance, a California joint powers authority.
The Program Fund:	Participate.Energy, LLC, a Delaware limited liability company.
Framework Agreement Term:	
Term:	The period commencing on the Effective Date and ending on the second (2nd) anniversary of the Effective Date (the "**Term**"), which shall automatically be extended for additional, one-year periods upon the expiration of the then-current Term unless terminated early in accordance with this Agreement.
Notices:	
Tesla Notice Address:	1 Tesla Road, Austin, TX 78725, USA. Attn: Energy Notices / Legal Department Phone: +1. 512.516.8177. Email: energynotices@tesla.com.
Tesla Address for submission of Purchase Orders:	www.tesla.com
Member Notice Address:	Clean Energy Alliance Attn: Chief Executive Officer 5857 Owens Ave, 3rd Floor Carlsbad, CA 92008 ceo@thecleanenergyalliance.org
Program Fund Notice Address:	Participate.Energy, LLC Attn: Ethan Friedman c/o Virtual Post Solutions, Inc. 2093 Philadelphia Pike #3125 Claymont, DE 19703 ethan@participate.energy

NDA:	
NDAs:	The non-disclosure agreement dated [MMM DD, YYYY] between Tesla, the Program Fund and Member.
Attachments:	
The attachments below are incorporated by reference into this Agreement. In the event of any conflict, the order of precedence shall be (i) these Key Terms and (ii) the Schedules, in order of appearance.	
Schedule 1:	Program Terms and Conditions
Schedule 2:	Pricing
Attachment A:	Form of Customer Agreement
Attachment B:	Form of New Homes Builder Framework Agreement
Attachment C:	Form of Customer Order – Program Terms

EXECUTED by the Parties on the Effective Date.

CLEAN ENERGY ALLIANCE
_____ (SIGNATURE)
Barbara Boswell (PRINT NAME)
Chief Executive Officer (PRINT TITLE)

TESLA, INC.	**PARTICIPATE.ENERGY, LLC**
_____ (SIGNATURE)	_____ (SIGNATURE)
_____ (PRINT NAME)	_____ (PRINT NAME)
_____ (PRINT TITLE)	_____ (PRINT TITLE)

Schedule 1
Program Terms and Conditions

1. The Program. The objective of the Program is to deploy eligible Systems with a target of 500 MW of direct current capacity throughout the territorial boundaries of Member utilizing the distributed microgrids program within service territories managed by Member (the "Territory"), as further set forth in this Agreement (the "Objective").

2. Program Development.

   (a) Geographic Focus. Member shall target all residential Customers and Builders located or operating within the portion of the Territory that is located within Member's jurisdictional boundaries (the "Member Territory") through the Master Marketing Plan.

   (b) Site Eligibility. Eligible sites include existing single-family residential properties ("Existing Homes") and single-family residential properties under construction by participating Builders in accordance with a New Homes Builder Framework ("New Homes") located in the Member Territory.

   (c) Marketing Strategy & Outreach. The Master Marketing Plan shall be jointly developed by the Parties and designed to enlist the participation of Customers and Builders located in the Member Territory.

      (i) Marketing Strategy. Within sixty (60) days, Member shall develop a strategy for marketing and promoting the Program, including:

         1. Specific tactics that will be used to execute the Master Marketing Plan strategy;

         2. An annual budget and description of dedicated resources that will be used to support Program marketing efforts;

         3. Specific communications to be made through its sales channels; and

         4. Dedicated education and links to the Tesla Products offering on the Member website.

      (ii) Marketing Outreach. Member shall provide consistent and targeted marketing outreach consistent with the Master Marketing Plan to prospective Customers and Builders in the Member Territory.

   (d) Sales Support. Member shall:

      (i) Provide sales support for interested Customers and Builders by phone and email.

      (ii) Provide educational information regarding Tesla Products, economics, billing, maintenance, installation and technical performance of the System and components thereof as provided by Tesla; and

      (iii) Convert inbound interest and leads into Orders that (i) that Customers may submit to Tesla through the Existing Homes Retrofit Energy Order Tool; and (ii) participating Builders may submit to Tesla through the New Homes Energy Order Tool.

   (e) Order Funding. The Program Fund shall facilitate the establishment of a fund (the "Program Fund") that shall be obligated to pay for Orders placed in accordance with the Program criteria set forth herein and that shall own and operate the Systems in accordance with the terms and conditions of each Customer Agreement.

3. Customer Eligibility; Engagement.

   (a) Eligibility. To be eligible for participation in the Program, a Customer must: (i) either own an Existing Home or have entered into an agreement with a Builder to purchase a New Home, (ii) be an existing participant, or agree to become a participant in the Member's Community Choice Aggregation program with utility service provided by San Diego Gas & Electric ("Utility"), (iii) agree

to host a System installed on the home and to provide the Program Fund, as System owner, and its agents with a non-exclusive license (the "Site License") for access to the Site for the entire term of the Customer's participation in the Program for the purposes operating and maintaining the System; and (iv) agree to purchase an equivalent amount of energy generated by the System pursuant to a Solar Power Purchase & Energy Storage Services Agreement (each, a "Customer Agreement") using the form attached hereto as Attachment A.

(b) Customer Engagement. Member shall encourage Customers with New Homes to accept the transfer and assumption of a Customer Agreement from a participating Builder in accordance with the terms and conditions of the applicable New Homes Builder Framework as more particularly described in Section 4. Member shall encourage Customers with Existing Homes to place Orders directly with Tesla and to enter into a Customer Agreement in accordance with Section 5.

4. New Homes Builder Framework Agreement.

(a) Builder Framework Agreement. During the Term, the Parties may consider Builders for participation in the Program. Upon Tesla confirmation of Builder eligibility, the Program Fund and each participating Builder will enter into a New Homes Builder Framework Agreement (the "Builder Framework") in the form attached as Attachment B. Material deviations from the Builder Framework are not permitted without unanimous written agreement of the Parties.

(b) Builder Framework Obligations. The Program Fund will require, pursuant to each Builder Framework, that Builders deliver and maintain the following to remain eligible for participation in the Program:

(i) A fully executed Builder Framework;

(ii) Community Specific Terms setting forth the Tesla Product Suite, eligible System information and Pricing applicable to the particular subdivision of new homes (each, a "Community");

(iii) An executed Builder non-disclosure agreement in the form attached to the Builder Framework;

(iv) Orders as set forth in Section 5 placed in accordance with each Builder Framework;

(v) For each Order, a "solar ready" home that will include internal conduit installation, roof dry in and order details developed in consultation with the buyer of each applicable home in the Community (each, a "Home Owner") sufficient for Tesla to complete installation of Tesla Products and the home to pass inspection by the applicable building department as the authority having jurisdiction ("AHJ"); and

(vi) Ongoing compliance with the Builder Framework and Program requirements as Tesla and Member may mutually agree to update from time to time.

5. Orders.

(a) During the Term, Member shall direct eligible Customers to the Existing Homes Energy Order Tool at www.tesla.com and Builders to the New Homes Energy Order Tool developed by Tesla for each Builder to place orders for Tesla Products for installation on Existing Homes or New Homes in the Member Territory in accordance with these Program terms and the form of Customer Order – Program Terms set forth in Attachment C ("Orders").

(b) Tesla shall deliver and install Tesla Products in accordance with each applicable Order. The Program Fund shall purchase and pay for the quantities and types of Tesla Products at the prices stated in each applicable Order. Tesla will review each submitted Order to ensure that it tracks the Program criteria and the Community Specific Terms, if applicable. If Tesla reasonably believes that the Order does not track the Program criteria or the Community-Specific Terms, it will notify the Parties and the Parties will then reasonably cooperate to resolve the issue.

(c) For each Order that is accepted by Tesla (each, an "Accepted Order"), Tesla shall supply, install and commission the Tesla Products at the Site identified in that Accepted Order in accordance with

that Accepted Order and the Work Standards described in Section 8(a) (the "Work"). Accepted Orders will be subject to Tesla's standard terms and conditions.

(d) For purposes of this Agreement and each Accepted Order, "Tesla Products" means a Traditional PV System with a Powerwall, as more particularly set forth in the Community Specific Guidelines of each Builder Framework. A "Traditional PV System" means a traditional solar photovoltaic generating system comprising of solar modules, an inverter and various balance of system components. A "Powerwall" means an energy storage system manufactured by Tesla and accompanying Tesla accessories. Each Traditional PV System, Powerwall shall consist of those that correspond to the specifications published in the Tesla Partner Portal as of the date when an Order for such Tesla Product is submitted.

(e) Tesla agrees to provide Member with access to a platform managed by Tesla that enables access to and control of distributed energy resource assets ("DER Assets"), manufactured by Tesla and owned directly or indirectly by Member or the Program Fund, for monitoring, aggregation, and control (the "Aggregation Platform"). Tesla will not charge Member or the Program Fund any fees for access or use of the platform, but otherwise reserves the right to establish the terms and conditions for Member's access to the Aggregation Platform within an Aggregation Platform Subscription Agreement in a form mutually acceptable to the parties. Access to the Aggregation Platform excludes aggregation services offered by Tesla.

(f) The Parties acknowledge and agree that Tesla can choose at any time to discontinue a product, feature or option related to any one or more Tesla Products and, in Tesla's sole discretion, can choose whether to provide a comparable product, feature or option, or terminate any affected Order before installation of any Tesla Product. If Tesla fails to provide a comparable product, feature or option to Member's reasonable satisfaction, Member may terminate any affected Order before installation of any Tesla Product.

6. Pricing; Order Payment.

(a) Pricing. Programmatic pricing for Tesla Products is set forth in Schedule 2 (the "Pricing"). The System size or design may be adjusted by Tesla in its reasonable discretion based on a variety of factors, including installation complexity or product availability, provided that the Pricing remains at or below the Pricing set forth on the Program website. If that happens, we will update the Pricing in the applicable Order; Orders with updated Pricing that exceeds the Pricing set forth on the Program website and that are not accepted will be terminated.

(b) Order Payment. For Accepted Orders, the price for the Work performed by Tesla under each Accepted Order shall be the Contract Price identified in that Accepted Order. The Program Fund shall pay the Contract Price for each Accepted Order plus applicable taxes within 30 days after receipt of Tesla's invoice, which Tesla shall provide after the affected Tesla Products have been installed and passed inspection by the AHJ. Passed inspection shall also be deemed "Acceptance" in this Agreement and in each Builder Framework.

(c) Price Adjustments. Tesla may request a Pricing increase from time to time, provided, that any requested Pricing increase shall be limited to the pricing charged for similar Systems and Tesla Products online through www.tesla.com. Within 5 business days after receipt of a written Pricing increase request, Program Fund shall, in writing, either reject (providing detailed reasons for rejection) and provide Tesla a reasonable Pricing counter-offer, or accept the requested Pricing increase. Should Program Fund provide a Pricing counter-offer, Tesla shall either reject (providing detailed reasons for rejection) or accept such counter-offer within 5 business days after receipt. Any Pricing increase agreed to between Tesla and Program Fund shall take effect and be binding for all Orders placed through www.tesla.com at the later of (i) the business day following Program Fund's written acceptance of the Pricing increase , or (ii) if Program Fund requires a change to the Customer pricing as result of the Pricing increase, the business day after the adjusted Customer pricing has been included in the Existing Homes Retrofit Energy Order Tool and the New Homes Energy Order Tool. Should Tesla and Program Fund fail to agree upon the amount of a Pricing

increase, Tesla shall not be obligated to accept any additional Orders.

7. Title; Risk of Loss. Title to and risk of loss for the Tesla Products shall pass to the Program Fund after Acceptance.

8. Permits. Customers and Builders, as the case may be, shall bear the obligation to obtain and maintain all permits required for Tesla to install each Tesla Product (the "Permits"), except that Tesla shall include the cost of Permits in Orders for Existing Homes.

9. Installation.

   (a) Work Standards. Tesla, or its approved subcontractors, will perform the Work according to Tesla's standard practices and the "Tesla Work Standards" set forth in Exhibit 2 to each Builder Framework exercising the reasonable skill and care of an installation contractor and in accordance with mandatory laws, regulations and permits applicable to the Work.

   (b) Subcontractors. Tesla will be responsible for all work performed by, and acts or omissions of, each subcontractor and will ensure that all subcontractors are licensed as required by applicable law.

   (c) Safety. Tesla shall ensure that all Tesla employees and subcontractors comply with Builder's safety procedures and requirements while on Sites during prosecution of the Work.

10. Failure to Perform.

   (a) If any Party believes that any other Party is not satisfying its obligations under this Agreement or with respect to an Order, such Party must notify the other Party in writing. Whichever Party is notified of not meeting its obligations will have 30 days after receiving that notice to correct the issue. If not, whoever gave the notice can terminate the affected Order or this Agreement in accordance with Section 13.

   (b) In addition, if Tesla notifies the Parties of the Program Fund's failure to pay the Price for an Order, Tesla can suspend work on that Order and, if not cured within ten (10) days, Tesla can suspend performance under this Agreement.

   (c) If a Customer or Builder terminates an Order for Tesla's failure to perform before installation of the Tesla Products for that Order has commenced, Tesla will return any payment(s) made toward the Price for those products.

   (d) If either party terminates an Order for the other party's failure to perform, except as specified in the next sentence, Tesla may take back all components of any Tesla Products Tesla delivered but that have not yet been installed for that Order and shall not have any further obligation to deliver product pursuant to this Agreement or that Order. In addition, if an Order is terminated pursuant to this Section, Tesla will complete the installation of Tesla Products where installation is partially complete, unless otherwise requested by the Program Fund (in which case, Tesla will deinstall and remove the Tesla Products from the affected home and return the jobsite to its original condition, at no cost). Each Party will also be able to pursue all rights and remedies available at law or in equity with respect to the failure to perform, except as otherwise provided in Section 13, below. Breaches of one or more Orders will not constitute breaches under any other Orders or under this Agreement, and breaches of this Agreement independent of any Orders shall not constitute breaches of any Orders.

11. Warranties.

   (a) Starting on the date of installation, Tesla warrants to the Program Fund that all materials, equipment and work furnished by Tesla as part of an Order will be:

      (i) of good quality, free from fault and defects, and

      (ii) performed in a good and workmanlike manner, in accordance with all applicable laws,

building codes and ordinances, and in strict conformity with the Order.

If the Program Fund notifies Tesla within 1 year after Acceptance (for Existing Homes) or the initial close of escrow by a Home Owner (for New Homes), Tesla shall, at its sole expense, immediately correct or replace any Work that is defective or determined to be not in accordance with the requirements of the above warranties.

(b) Tesla's warranties in this Agreement are limited, as they do not cover (i) any defect or damage to the extent caused (A) by events that are (1) beyond Tesla's reasonable control, (2) not reasonably foreseeable, and (3) not caused by Tesla's or its subcontractor's negligence, or (B) by Customer or Program Fund misuse or negligence, and (ii) any material or equipment connected to the Tesla Products that Tesla did not install. Tesla is not providing any warranties in connection with this Agreement other than those in this Agreement or in the product warranties provided by Tesla pursuant to Section 11(c), even if those other warranties are express or implied by any law.

(c) Tesla's warranties under this Agreement shall in all cases survive termination of this Agreement and the transfer of title in the home to a third-party purchaser, except for a Home Owner (whose warranty is set forth in Sections 11(e) and 11(f)).

(d) With respect to any warranty claim by the Program Fund under Section 11(a) for the correction, replacement and warranty work, the remedies set forth in Section 11(a) and in Sections 10(d) and 11, as applicable, are the Program Fund's sole and exclusive remedies. For clarity, the foregoing shall not limit the Program Fund's ability to bring claims for other purposes not related to the correction, replacement and warranty work as set forth in this Section 11(d), including, without limitation, the Program Fund's rights to indemnification under Section 14.

(e) If a Home Owner exercises a buyout option and purchases any Tesla Product from the Program Fund, Tesla will cover each Home Owner with limited warranties for Tesla Products in the forms attached as Exhibit 3 to each Builder Framework, as applicable.

(f) In addition, Tesla will provide to each Home Owner the workmanship warranty attached as Exhibit 4 to each Builder Framework, assuming the Program Fund assigns that warranty to the Home Owner.

(g) The manuals and equipment warranties for Tesla Products are available upon request after each Order.

12. Proprietary Rights.

(a) Ownership. As between the Parties, Tesla shall remain the sole and exclusive owner of any and all Proprietary Rights associated with the System or any parts or derivations thereof. "Proprietary Rights" means patents, trademarks, copyrights, mask work rights, trade secrets and any other intellectual or proprietary rights. Tesla represents and warrants that the System does not and will not infringe on the intellectual property rights of third parties.

(b) License. Tesla hereby grants to Member, a limited, non-exclusive, non-sublicensable, non-transferable license to use the materials that Tesla provides for implementing the Master Marketing Plan and marketing the Plan in accordance with this Agreement. Except for the foregoing, no license or other right to Tesla's Proprietary Rights is granted or implied hereby.

13. Termination.

(a) Termination for Cause. Each Party may terminate its participation in this Agreement or any Accepted Order for cause in the event (i) an insolvency event involving one of the other Parties; or (iii) any Party has materially breached any provision of this Agreement (other than non-payment) and, within 30 days after receipt of written notice of such breach from a non-breaching party, the breaching party has failed to cure such breach or, in the event the breach cannot reasonably be cured within such 30 day period, submit a plan for cure acceptable to each non-breaching party in its reasonable discretion. The termination of this Agreement by any single Party shall result in the termination of this Agreement as to all Parties.

(b) Insolvency Event. An "Insolvency Event" occurs with respect to a Party (i) if it is adjudged bankrupt; (ii) if it makes a composition or arrangement with its creditors; (iii) if it has a winding up petition or a petition for an administration order presented against it; (iv) if it has a receiver or manager or administrative receiver or provisional liquidator appointed; or (v) upon the happening of any other event of insolvency.

(c) Effects of Termination. Except as otherwise set forth in this Agreement, the expiration or termination of this Agreement will not affect any rights or obligations of the Parties that were incurred or that accrued prior to such expiration or termination. Termination shall not be deemed an election of remedies, and the non-defaulting party shall have all rights and remedies available under applicable law in connection with and following such termination.

14. Indemnification.

(a) Except to the extent permitted by this Agreement, no Party to this Agreement will be obligated to indemnify any other Party from any losses, damages, liabilities, deficiencies, actions, judgments, interest, awards, penalties, fines, costs or expenses, including reasonable legal fees ("Losses") to the extent arising out of or due to the negligence or willful misconduct of such other Party or for the acts of a Customer. For purposes of this Agreement and each Builder Framework, "Indemnified Parties" means for each Party, (i) the Party and any person providing financing to the Party with respect to the System, (ii) any affiliate of the persons set forth in clause (i), and (iii) any director, officer, partner, member, manager, agent or employee of a person described in clause (i) or (ii); and, "Indemnifying Party" means each other Party, as the context requires.

(b) Tesla's Indemnities. Tesla will indemnify, defend and hold harmless each other Party's Indemnified Parties from any Losses arising out of any claim, action, suit, proceeding, investigation made or brought by any third party ("Claims"):

i. alleging that Tesla Products (or any component or software thereof) or Tesla's Work pursuant to any Accepted Order infringes the intellectual property rights of a third party, other than a Claim for which such Party is responsible under Section 11(c). In addition, if such Party is enjoined from the use, operation or enjoyment of Tesla Products or any part thereof as a result of any Claim alleging that Tesla Products or Tesla's Work infringes the intellectual property rights of a third party, Tesla will at no cost to such Party, at Tesla's option: (1) have such injunction removed, (2) substitute non-infringing goods or processes, or (3) modify the infringing goods or processes so they become non-infringing and provide the same or better functionality and performance relative to the affected item's then-current functionality and performance; and

ii. in connection with the design, construction, installation, warranty service, workmanship, materials or functionality of any materials, equipment and work furnished by Tesla, except with respect to any modification by any party other than Tesla (directly or indirectly) or use or reuse of Tesla Products that are the subject of an Accepted Order other than as permitted under this Agreement or their warranties.

(c) Program Fund Intellectual Property Indemnity. Program Fund will indemnify and hold harmless Tesla and Tesla's Indemnified Parties from any Losses arising out of Claims alleging infringement to the extent involving actions of the Program Fund and:

i. a particular design, process or product required or specified pursuant to any Accepted Order or where the copyright violations are contained in drawings, specifications or other documents prepared or provided by Program Fund or others for whom Program Fund is responsible, except to the extent that such documents were provided by Tesla for distribution to Customers under this Agreement,

ii. any modification by Program Fund (directly or indirectly), use or reuse of Tesla Products other than as permitted under this Agreement or their warranties,

iii. use of Tesla Products by Program Fund (directly or indirectly) in combination with any

other products, materials or equipment not expressly authorized in writing by Tesla in circumstances where the infringement would have been avoided by the use of Tesla Products not so combined, unless such other products, materials or equipment are provided, required or approved by Tesla (as indicated by reasonable evidence) for, or are intrinsic to, use of Tesla Products, or

iv. any modifications or changes made to Tesla Products by Program Fund (directly or indirectly) other than at the direction (as indicated by reasonable evidence) of Tesla in circumstances where the infringement would have been avoided without such modifications or changes.

(d) Member Intellectual Property Indemnity. Member will indemnify and hold harmless Tesla and Tesla's Indemnified Parties from any Losses arising out of Claims alleging infringement to the extent involving actions of the Member and:

i. a particular design, process or product required or specified pursuant to any Accepted Order or where the copyright violations are contained in drawings, specifications or other documents prepared or provided by Member or others for whom Member is responsible, except to the extent that such documents were provided by Tesla for distribution to Customers under this Agreement,

ii. any modification by Member (directly or indirectly), use or reuse of Tesla Products other than as permitted under this Agreement or their warranties,

iii. use of Tesla Products by Member (directly or indirectly) in combination with any other products, materials or equipment not expressly authorized in writing by Tesla in circumstances where the infringement would have been avoided by the use of Tesla Products not so combined, unless such other products, materials or equipment are provided, required or approved by Tesla (as indicated by reasonable evidence) for, or are intrinsic to, use of Tesla Products, or

iv. any modifications or changes made to Tesla Products by Member (directly or indirectly) other than at the direction (as indicated by reasonable evidence) of Tesla in circumstances where the infringement would have been avoided without such modifications or changes.

15. Limitation of Liability. Except for indemnification obligations (Section 14), breach of confidentiality (Section 17), or any gross negligence or willful misconduct, the Program Fund's and Tesla's total liability for all damages of any kind arising out this Agreement will not exceed $1,000,000.00 or the limits of required insurance, whichever is greater, and Member shall not bear any liability for any damages of any kind arising out this Agreement. Also, no party will have to pay any other party for any indirect, special or consequential damages.

16. Force Majeure. Each Party shall be excused from performance and shall not be considered to be in breach with respect to any obligation hereunder other than any obligation to pay money due and owing, if and to the extent that such Party's failure of, or delay in, performance is caused by or results from acts or circumstances beyond the reasonable control of such Party (a "Force Majeure Event"); provided:

(a) such Party gives the other Parties notice describing the particulars of the Force Majeure Event as soon as is reasonably practicable and in any event within ten (10) Business Days after the discovery of the Force Majeure Event and its impact on such Party's performance;

(b) the suspension of performance is of no greater scope and of no longer duration than is reasonably required by the Force Majeure Event;

(c) the Party uses reasonable endeavors to:

(i) overcome or mitigate the effects of such occurrence, and

(ii) minimize costs and expenses attendant to or arising from such occurrence;

(d) when the Party is able to resume performance of the affected obligations, such Party shall so notify the other Party and promptly resume performance.

17. Confidentiality; Publicity.

(a) Except for communications exchanged between each Party, each Party will keep any disclosures, as well as the terms of this Agreement, confidential in accordance with the non-disclosure agreements between them (the "NDAs") and agree that this Agreement is confidential information of each of them for purposes of the NDAs. (Even though the NDAs are separate documents, they are considered part of this Agreement).

(b) Neither Party will advertise or issue any public announcement about this Agreement, or use the other Party's mark, name or logo in any marketing literature, web sites, articles, press releases (including interviews with representatives of media organizations of any form), or any other document or electronic communication, without the other Party's written consent. Each Party's written approval of a marketing plan shall be deemed written consent in compliance with the foregoing to publication or use of trademarks as expressly provided in such approved marketing plan.

(c) Nothing in this Agreement, the NDAs, or any other agreement between the Parties limits or prohibits any announcement, disclosure, or other act that is required by law, including under the California Public Records Act or Ralph M. Brown Act.

18. Governing Law; Disputes.

(a) The Parties agree to comply with all applicable laws and regulations in connection with this Agreement. This Agreement is governed by the laws of the State of California. Any dispute arising out of or relating to this Agreement shall be brought in the Superior Court of California, County of San Diego, or the United States District Court for the Southern District of California.

(b) The Parties are not bound by any terms relating to Tesla Products or other matters covered by this Agreement or any Order that are not contained in this Agreement or the affected Order.

(c) Each of the Parties also agree to promptly notify the other's senior level management if there is any dispute relating to this Agreement or any Orders and to try to resolve the dispute in good faith. If the Parties are unable to resolve a dispute within 20 days after that notice is given, then any of them can request to take the dispute to mediation or arbitration through Judicial Arbitration and Mediation Services ("JAMS") according to JAMS Streamlined Arbitration Rules or proceed with legal action. The existence, content and result of any mediation or arbitration will be confidential except to the extent that applicable law requires otherwise. Any arbitration will be conducted by a single arbitrator in English and in San Diego, California, unless otherwise agreed by the Parties. Each Party will each bear its own expenses in any mediation or arbitration and will share equally the costs of any mediation arbitration unless the arbitrator assigns costs to one of them. Judgment upon the award rendered in the arbitration may be entered in any court of competent jurisdiction.

19. Miscellaneous.

(a) Representations. Each Party represents and warrants to the other Parties that (i) it is a legal entity, duly organized, validly existing and in good standing under the laws of jurisdiction of incorporation and registered and authorized to do business in the State of California; (ii) this Agreement constitutes a legal, valid and binding obligation of such Party enforceable in accordance with its terms; and (iii) the execution, delivery and performance of this Agreement (A) is within its powers, (B) has been duly authorized by all requisite action and (C) will not violate any agreement, commitment, certificate or other document to which it is a party or by which any of its assets may be bound or affected.

(b) Compliance with Law. Each Party will comply with all applicable laws and regulations in connection with its performance under Agreement.

(c) Notices. All notices under this Agreement must be in writing and must be sent via email, or express and/or certified mail, to the contacts identified in the Key Terms. Email notice shall not be effective unless the other Party acknowledges receipt or notice is also sent by another method.

(d) Assignment. Tesla or the Program Fund can assign this Agreement and each Accepted Order (i) to an affiliate of Tesla or the Program Fund, respectively, and (ii) as collateral in connection with its financing activities, in either case without the need for consent from any other Party.

(e) Insurance. Each Party shall carry and maintain in force, with reputable insurance companies authorized to do business in the jurisdictions where the portion of the Member Territory is located. Each of the Parties shall each maintain all insurance that such Party is required by law to maintain. In connection with the Work pursuant to each Builder Framework and Accepted Order, Tesla shall be required to maintain insurance as set forth in Exhibit 6 to the Builder Framework.

(f) Cumulative and Certain Exclusive Remedies. Except as otherwise specifically set forth in this agreement, all rights and remedies provided under this Agreement are cumulative and not exclusive, and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently be available at law, in equity, by statute, in any other agreement between the Parties or otherwise.

(g) Entire Agreement; Severability. This Agreement constitutes the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements, representations and understandings, oral or written, between the Parties regarding the subject matter hereof. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, such term shall be severable from the remainder of this Agreement and the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by the law.

(h) Amendment and Modification. No amendment or modification of this Agreement is effective unless it is in writing and signed by each Party.

(i) Waiver. No waiver by either Party of any provision of this Agreement is effective unless explicitly set forth in writing and signed by such Party. No failure to exercise, or delay in exercising, any right or remedy arising from this Agreement operates or may be construed as a waiver thereof. No single or partial exercise of any right or remedy hereunder precludes any other or further exercise thereof or the exercise of any other right or remedy.

(j) Relationship of the Parties. The relationship between the Parties is that of independent contractors. Nothing contained in this Agreement shall be construed as creating any agency, partnership, joint venture or other form of joint enterprise, employment or fiduciary relationship between the Parties, and neither Party shall have authority to contract for or bind the other Party in any manner whatsoever.

(k) No Third-Party Beneficiaries. This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

(l) Survival. Provisions of this Agreement which by their nature contemplate or govern performance or observance subsequent to the termination or expiration of this Agreement shall survive such termination or expiration.

Schedule 2
Pricing

The following terms set forth in this table listed below (the "Pricing") shall apply to each Accepted Order as of the date the Accepted Order is received by Tesla in accordance with the terms and conditions of this Agreement. The Parties agree that Tesla may, in its reasonable discretion, based upon community-specific factors, including installation complexity, as well as recent market factors and product availability, update the Pricing applicable to each Community pursuant to each New Home Builder Framework so long as the Pricing is at or below the Pricing set forth on the Program website. Pricing shall not exceed the Pricing on the Program website absent written Notice to the Parties (including email) and written acceptance by each applicable Party or any other method as may reasonably be agreed upon by the Parties.

Solar PV (Rooftop) < 8kW	
Solar PV (Rooftop) >= 8kW	
1st Powerwall	
2nd Powerwall	
3rd Powerwall	
4th Powerwall	
5th Powerwall	
6th Powerwall	
7th Powerwall	
8th Powerwall	
9th Powerwall	
10th Powerwall	
Tesla Pre-Construction Services Examples: Remove copper from roof; upgrade structure; remove existing solar PV; remove/relocate AC unit; remove/fix existing generator; remove existing battery backup; remove/relocate existing solar thermal; remove/relocate rooftop vents; remove/trim tree; clean roof surface; fix electrical code violation; remove/relocate shelving; master-panel upgrade (MPU) (situational)	**PPA**: $0 - $750 in pre-construction services **PPA:** $751 - $2,500 in pre-construction services **PPA:** $2,500 - $5,000 in pre-construction services **Project Ineligible:** > $5,000 in pre-construction services
By way of example, for a typical System (7.6 kW Solar PV + 1 Powerwall)	
7.6 kW Solar PV	
1st Powerwall	
Tesla Pre-Construction Services	
TOTAL:	(corresponds to a Customer PPA)

Attachment A

Form of Customer Agreement

[Insert]

Attachment B
Form of New Homes Builder Framework Agreement

[Insert]

Attachment C
Form of Customer Order – Program Terms

[Insert]

CLEAN ENERGY ALLIANCE

PUBLIC HEARING NOTICE
CLEAN ENERGY ALLIANCE

The Board of Directors of Clean Energy Alliance will conduct a public hearing to consider adopting a resolution adding new Clean Energy Alliance's rate for its Solar Plus Program, effective November 1, 2023. Proposed rates are:

$0.145 per kWh with $750 or less Pre-Construction Costs
$0.15 per kWh with $751 - $2,500 Pre-Construction Costs
$0.155 per kWh with $2,501 - $5,000 Pre-Construction Costs;

DATE OF HEARING:	Thursday, October 26, 2023
TIME OF HEARING:	2:00 p.m. or as soon thereafter as the matter may be heard
PLACE OF HEARING:	Oceanside City Hall – City Council Chambers 300 North Coast Highway Oceanside, CA

All interested persons are invited to attend the meeting and comment on adopting a Resolution Adding Rates for Clean Energy Alliance Solar Plus Program. Members of the public unable to attend the public hearing may submit their comments and recommendations in writing to Clean Energy Alliance, via email to secretary@thecleanenergyalliance.org, which must be received no later than 12:00p.m. on Thursday, October 26, 2023 to ensure consideration by the Board.

DATED: October 9, 2023

Susan Caputo, MMC, Interim Board Secretary
Clean Energy Alliance

Published: Friday October 13, 2023
Friday October 20, 2023
Published: Coast News

Posted: Friday October 13, 2023
City of Oceanside, City Hall

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 7: Receive Annual Audited Financial Report for the Fiscal Year Ended June 30, 2023

RECOMMENDATION

Receive and File Clean Energy Alliance's (CEA) Annual Audited Financial Report (Attachment A) for the Fiscal Year Ended June 30, 2023.

BACKGROUND AND DISCUSSION

The Clean Energy Alliance's (CEA) annual audit, and preparation of the Annual Audited Financial Report, for the period July 1, 2022, through June 30, 2023, has been completed.

CEA engaged a new audit firm, Pisenti & Brinker LLP, to complete the audit. The goal of the independent audit is to provide reasonable assurance that the financial statements of CEA for the fiscal year are free of material misstatement. As part of CEA's annual audit, reviews are made to determine the adequacy of the internal control structure as well as to determine that CEA has complied with applicable laws and regulations. The Statement of Auditing Standards (SAS) No. 115, Communication of Internal Control Related Matters Identified in an Audit (Attachment B), received from the auditor's states that there were no material instances of noncompliance, no material weaknesses in internal controls, and no reportable conditions. The Report to the Board of Directors, SAS No. 114 (Attachment C), indicates there were no items of concern to report.

The independent auditor concluded there was a basis for rendering an unmodified opinion and CEA's financial statements are fairly presented in conformity with Generally Accepted Accounting Principles (GAAP). The independent auditor's report is presented as the first component of the financial section of this Report.

Net Position as of June 30, 2023

	June 30, 2023	June 30, 2022
Total Assets	$ 33,905,138	$ 16,701,862
Total Liabilities	40,357,422	20,475,857
Net Position	$ (6,452,284)	$ (3,773,995)

CEA's assets increased 103% primarily due to increases in cash, accounts receivable and accrued revenues. The expansion into Escondido and San Marcos increased CEA's customer base by over 150% resulting in the increases.

Liabilities increased by 97% due to increases in accrued cost of electricity and borrowings from JPMorgan Chase Bank. With the service expansion, purchases of electricity through the year also increased, resulting in higher accrued cost of electricity at year end.

CEA incurred costs related to the service expansion into Escondido and San Marcos beginning in January 2023, however, revenue associated with the expansion did not begin until April 2023. This resulted in a need to draw down on the revolving line of credit with JPMorgan Chase. An additional $9,430,000 was borrowed during the fiscal year, bringing the total amount due on the line of credit to $22,950,000 as of June 30, 2023. In September 2023, CEA repaid $15,000,000 on the line of credit and has a remaining balance due of $8,950,000 (taking into account drawdowns during FY 23/24). The line of credit is due to be fully repaid and closed in February 2026.

Results of Operations June 30, 2023

	June 30, 2023	June 30, 2022
Total Revenues	$87,197,175	$61,083,504
Total Expenses	89,875,464	62,150,085
Net Results	$(2,678,289)	$(1,066,581)

CEA's revenues increased 43% compared to the fiscal year ending June 30, 2022. The increase is due to a rate increase effective February 1, 2023, and the expansion to Escondido and San Marcos in April 2023. Expenses increased 45% compared to 2022, due to higher power supply costs in FY 2022/23 compared to the prior year and costs related to the expansion. CEA's net result was a net loss of $2,678,289. The adopted fiscal year 2023/24 budget projects a net positive result of operations of $17,553,795, eliminating the deficit net position.

FISCAL IMPACT

There is no fiscal impact associated with these items.

ATTACHMENTS:

Attachment A - Clean Energy Alliance Annual Audited Financial Report for the Fiscal Year ended June 30, 2023
Attachment B - Statement of Auditing Standards No. 115, Communication of Internal Control Related Matters Identified in an Audit
Attachment C – Statement of Auditing Standards No. 114, Report to the Board of Directors

ITEM 7 ATTACHMENT A PLACEHOLDER

IS ADDED TO THE AGENDA PACKET AS SEPARATE DOCUMENT LISTED UNDER ADDITIONAL INFORMATION
@https://thecleanenergyalliance.org/agendas-minutes/
October 26, 2023, Regular Meeting Agenda Packet

PISENTI & BRINKER LLP
Certified Public Accountants & Advisors

3562 Round Barn Circle, Suite 200
Santa Rosa, CA 95403
(707) 542-3343 • Office
(707) 527-5608 • Fax
pbllp.com

October 18, 2023

To the Board of Directors
Clean Energy Alliance
Carlsbad, California

In planning and performing our audit of the financial statements of Clean Energy Alliance (CEA) as of and for the year ended June 30, 2023 in accordance with auditing standards generally accepted in the United States of America, we considered CEA's internal control over financial reporting (internal control) as a basis for designing audit procedures that are appropriate in the circumstances for the purpose of expressing our opinion on the financial statements, but not for the purpose of expressing an opinion on the effectiveness of CEA's internal control. Accordingly, we do not express an opinion on the effectiveness of CEA's internal control.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, to prevent, or detect and correct, misstatements on a timely basis.

A material weakness is a deficiency, or a combination of deficiencies, in internal control, such that there is a reasonable possibility that a material misstatement of the entity's financial statements will not be prevented, or detected and corrected, on a timely basis.

Our consideration of internal control was for the limited purpose described in the first paragraph and was not designed to identify all deficiencies in internal control that might be material weaknesses. Given these limitations, we did not identify any deficiencies in internal control during our audit that we consider to be material weaknesses. However, material weaknesses may exist that have not been identified.

This communication is intended solely for the information and use of management, the Board of Directors, and others within the organization, and is not intended to be, and should not be, used by anyone other than these specified parties.

Pisenti & Brinker LLP

Santa Rosa, California
October 18, 2023

Clean Energy Alliance

Report to the Board of Directors

For the Year Ended June 30, 2023

PISENTI & BRINKER LLP
Certified Public Accountants & Advisors

3562 Round Barn Circle, Suite 200
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To the Board of Directors
Clean Energy Alliance
5857 Owens Ave, 3rd Floor
Carlsbad, CA

We are pleased to present this report related to our audit of the financial statements of Clean Energy Alliance ("CEA") as of and for the year ended June 30, 2023. This report summarizes certain matters required by professional standards to be communicated to you in your oversight responsibility for CEA's financial reporting process.

This report is intended solely for the information and use of the Audit Committee, Board of Directors and management of CEA and is not intended to be and should not be used by anyone other than these specified parties. It will be our pleasure to respond to any questions you have regarding this report. We appreciate the opportunity to continue to be of service to Clean Energy Alliance.

Pisenti & Brinker LLP

Santa Rosa, California
October 18, 2023

cc: Andy Stern, CFO

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REQUIRED COMMUNICATIONS

Generally accepted auditing standards (AU-C 260, *The Auditor's Communication With Those Charged With Governance*) require the auditor to promote effective two-way communication between the auditor and those charged with governance. Consistent with this requirement, the following summarizes our responsibilities regarding the financial statement audit as well as observations arising from our audit that are significant and relevant to your responsibility to oversee the financial reporting process.

Our Responsibilities With Regard to the Financial Statement Audit

Our responsibilities under auditing standards generally accepted in the United States of America have been described to you in our arrangement letter dated July 20, 2023. Our audit of the financial statements does not relieve management or those charged with governance of their responsibilities, which are also described in that letter.

Overview of the Planned Scope and Timing of the Financial Statement Audit

We have issued a separate communication dated September 15, 2023 regarding the planned scope and timing of our audit and identified significant risks, if any.

Accounting Policies and Practices

Preferability of Accounting Policies and Practices
Under generally accepted accounting principles, in certain circumstances, management may select among alternative accounting practices. In our view, in such circumstances, management has selected the preferable accounting practice.

Adoption of, or Change in, Accounting Policies
Management has the ultimate responsibility for the appropriateness of the accounting policies used by CEA. CEA did not adopt any significant new accounting policies, nor have there been any changes in existing significant accounting policies during the current period.

Significant or Unusual Transactions
We did not identify any significant or unusual transactions or significant accounting policies in controversial or emerging areas for which there is a lack of authoritative guidance or consensus.

Management's Judgments and Accounting Estimates
Summary information about the process used by management in formulating particularly sensitive accounting estimates and about our conclusions regarding the reasonableness of those estimates is in the attached Summary of Significant Accounting Estimates.

Audit Adjustments and Uncorrected Misstatements

There were no audit adjustments made to the original trial balance presented to us to begin our audit.

We are not aware of any uncorrected misstatements other than misstatements that are clearly trivial.

Departure From the Auditor's Standard Report

Reporting – Expected Other-Matter Paragraph
Accounting principles generally accepted in the United States of America and the Governmental Accounting Standards Board require that the management's discussion and analysis be presented to supplement the financial statements. We do not express an opinion or provide any assurance on the information. In light of this matter, we will include an other-matter paragraph in the auditor's report. This matter will not modify the opinion. Below is the paragraph included in the auditor's report:

> **Required Supplementary Information**
> Accounting principles generally accepted in the United States of America require that management's discussion and analysis be presented to supplement the basic financial statements. Such information is the responsibility of management and, although not a part of the basic financial statements, is required by the Governmental Accounting Standards Board who considers it to be an essential part of financial reporting for placing the basic financial statements in an appropriate operational, economic, or historical context. We have applied certain limited procedures to the required supplementary information in accordance with auditing standards generally accepted in the United States of America, which consisted of inquiries of management about the methods of preparing the information and comparing the information for consistency with management's responses to our inquiries, the basic financial statements, and other knowledge we obtained during our audit of the basic financial statements. We do not express an opinion or provide any assurance on the information because the limited procedures do not provide us with sufficient evidence to express an opinion or provide any assurance.

Other Information in Documents Containing Audited Financial Statements

Our responsibility for other information in documents containing CEA's audited financial statements is to read the information and consider whether its content or manner of its presentation is materially inconsistent with the financial information covered by our auditor's report or whether it contains a material misstatement of fact. We read CEA's Board of Directors meeting packet materials. We did not identify material inconsistencies with the audited financial statements.

Observations About the Audit Process

Disagreements With Management
We encountered no disagreements with management over the application of significant accounting principles, the basis for management's judgments on any significant matters, the scope of the audit or significant disclosures to be included in the financial statements

Consultations With Other Accountants
We are not aware of any consultations management had with other accountants about accounting or auditing matters.

Observations About the Audit Process (continued)

Significant Issues Discussed With Management
No significant issues arising from the audit were discussed or the subject of correspondence with management.

Significant Difficulties Encountered in Performing the Audit
We did not encounter any significant difficulties in dealing with management during the audit.

Significant Written Communications Between Management and Our Firm

Copies of significant written communications between our firm and the management of CEA, are attached as Exhibit A.

SIGNIFICANT ACCOUNTING ESTIMATES

Accounting estimates are an integral part of the preparation of financial statements and are based upon management's current judgment. The process used by management encompasses their knowledge and experience about past and current events, and certain assumptions about future events. You may wish to monitor throughout the year the process used to determine and record these accounting estimates. The following summarizes the significant accounting estimates reflected in CEA's June 30, 2023 financial statements.

Significant Accounting Estimates	
Accrued Revenue	
Accounting policy/ Management's estimation process	Management's estimate of accrued revenue includes historical trends and anticipated energy usage.
Basis for our conclusion on the reasonableness of the estimate	We tested management's estimate analytically and determined management's estimate to be reasonable in relation to the financial statements taken as a whole.
Cost of Electricity	
Accounting policy/ Management's estimation process	Management's estimate of accrued cost of electricity includes historical trends and anticipated energy usage.
Basis for our conclusion on the reasonableness of the estimate	We tested management's estimate through subsequent disbursements and analytical procedures and determined management's estimate to be reasonable in relation to the financial statements taken as a whole.
Allowance for Uncollectible Accounts	
Accounting policy/ Management's estimation process	Management's estimate of the allowance for uncollectible accounts includes historical collection trends and anticipated future collections.
Basis for our conclusion on the reasonableness of the estimate	We evaluated the key factors and assumptions used to develop the estimate in determining that the allowance is reasonable in relation to the financial statements taken as a whole.

EXHIBIT A

Significant Written Communications Between Management and Our Firm

CLEAN ENERGY ALLIANCE

October 18, 2023

Pisenti & Brinker LLP
3562 Round Barn Circle, Suite 200
Santa Rosa, CA 95403

This representation letter is provided in connection with your audit of the basic financial statements of Clean Energy Alliance (CEA) as of and for the years ended June 30, 2023 and 2022 for the purpose of expressing an opinion on whether the financial statements are presented fairly, in all material respects, in accordance with accounting principles generally accepted in the United States of America (U.S. GAAP).

Certain representations in this letter are described as being limited to matters that are material. Items are considered material, regardless of size, if they involve an omission or misstatement of accounting information that, in light of surrounding circumstances, makes it probable that the judgment of a reasonable person relying on the information would be changed or influenced by the omission or misstatement.

We confirm, to the best of our knowledge and belief, that as of October 18, 2023:

Financial Statements

1. We have fulfilled our responsibilities, as set out in the terms of the audit arrangement letter dated July 25, 2023 for the preparation and fair presentation of the financial statements referred to above in accordance with U.S. GAAP.

2. We acknowledge our responsibility for the design, implementation and maintenance of internal control relevant to the preparation and fair presentation of financial statements that are free from material misstatement, whether due to fraud or error.

3. We acknowledge our responsibility for the design, implementation and maintenance of internal control to prevent and detect fraud.

4. Significant assumptions used by us in making accounting estimates, including those measured at fair value, are reasonable and reflect our judgment based on our knowledge and experience about past and current events, and our assumptions about conditions we expect to exist and courses of action we expect to take.

5. Related-party transactions have been recorded in accordance with the economic substance of the transaction and appropriately accounted for and disclosed in accordance with the requirements of U.S. GAAP.

6. All events subsequent to the date of the financial statements, and for which U.S. GAAP requires adjustment or disclosure, have been adjusted or disclosed.

7. The effects of all known actual or possible litigation and claims have been accounted for and disclosed in accordance with U.S. GAAP.

8. We have no direct or indirect legal or moral obligation for any debt of any organization, public or private, that is not disclosed in the financial statements.

9. We have reviewed, approved, and taken responsibility for the financial statements and related notes.

10. Deposit risk has been properly and fully disclosed.

11. The government has properly separated information in debt disclosures related to direct borrowings and direct placements of debt from other debt and disclosed any unused lines of credit, collateral pledged to secure debt, terms in the debt agreements related to significant default or termination events with finance-related consequences and significant subjective acceleration clauses in accordance with GASB Statement No. 88.

12. Components of net position (net investment in capital assets, restricted, and unrestricted) are properly classified and, if applicable, approved.

13. We have complied with all aspects of laws, regulations and provisions of contracts and agreements that would have a material effect on the financial statements in the event of noncompliance.

14. We have no knowledge of any uncorrected misstatements in the financial statements.

Information Provided

15. We have provided you with:

    a. Access to all information of which we are aware that is relevant to the preparation and fair presentation of the basic financial statements such as records, documentation and other matters.

    b. Additional information that you have requested from us for the purpose of the audit.

    c. Unrestricted access to persons within CEA from whom you determined it necessary to obtain audit evidence.

    d. Minutes of the meetings of the governing board and committees, or summaries of actions of recent meetings for which minutes have not yet been prepared.

16. All transactions have been recorded in the accounting records and are reflected in the basic financial statements.

17. We have disclosed to you the results of our assessment of risk that the basic financial statements may be materially misstated as a result of fraud.

18. It is our responsibility to establish and maintain internal control over financial reporting. One of the components of internal control is risk assessment. We hereby represent that our risk assessment process includes identification and assessment of risks of material misstatement due to fraud.

19. We have no knowledge of allegations of fraud or suspected fraud affecting CEA's basic financial statements involving:

    a. Management.

    b. Employees who have significant roles in internal control.

    c. Others where the fraud could have a material effect on the basic financial statements.

20. We have no knowledge of any allegations of fraud or suspected fraud affecting CEA's basic financial statements received in communications from employees, former employees, analysts, regulators, short sellers or others.

21. We have no knowledge of noncompliance or suspected noncompliance with laws and regulations.

22. We are not aware of any pending or threatened litigation and claims whose effects should be considered when preparing the financial statements. We have not consulted legal counsel concerning litigation or claims.

23. We have disclosed to you the identity of all of CEA's related parties and all the related-party relationships and transactions of which we are aware.

24. We are aware of no significant deficiencies, including material weaknesses, in the design or operation of internal controls that could adversely affect CEA's ability to record, process, summarize and report financial data.

25. There have been no communications from regulatory agencies concerning noncompliance with, or deficiencies in, financial reporting practices.

26. During the course of your audit, you may have accumulated records containing data that should be reflected in our books and records. All such data have been so reflected. Accordingly, copies of such records in your possession are no longer needed by us.

27. We have identified and disclosed to you the laws, regulations, and provisions of contracts and grant agreements that could have a direct and material effect on financial statement amounts.

28. We have complied with all aspects of grant agreements and other contractual agreements that would have a material effect on the financial statements in the event of noncompliance.

29. There are no:

    a. Violations or possible violations of laws or regulations, or provisions of contracts or grant agreements whose effects should be considered for disclosure in the financial statements or as a basis for recording a loss contingency, including applicable budget laws and regulations.

    b. Unasserted claims or assessments that our lawyer has advised are probable of assertion and must be disclosed in accordance with GASB-62.

    c. Other liabilities or gain or loss contingencies that are required to be accrued or disclosed by GASB-62.

Required Supplementary Information

30. With respect to the Management's Discussion and Analysis presented as required by GAAP and the Governmental Accounting Standards Board to supplement the basic financial statements:

    a. We acknowledge our responsibility for the presentation of such required supplementary information.

    b. We believe such required supplementary information is measured and presented in accordance with guidelines prescribed by U.S. GAAP.

c. The methods of measurement or presentation have not changed from those used in the prior period.

Barbara Boswell

Barbara Boswell, Chief Executive Officer
Clean Energy Alliance

Michael Maher

Mike Maher, Accountant

EXHIBIT B

Recent Accounting Pronouncements

RECENT ACCOUNTING PRONOUNCEMENTS

The following accounting pronouncements have been issued as of October 13, 2023 but are not yet effective and may affect the future financial reporting by CEA.

Pronouncement	Summary
GASB Statement No. 101, *Compensated Absences*	GASB Statement No. 101, Compensated Absences, is effective for fiscal years beginning July 1, 2023. The objective of this Statement is to better meet the information needs of financial statement users by updating the recognition and measurement guidance for compensated absences. That objective is achieved by aligning the recognition and measurement guidance under a unified model and by amending certain previously required disclosures.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 8: Consider Approval of the Wholesale Market Access Tariff Terms and Conditions, Wholesale Market Access Agreement and Positive Enrollment Agreement with San Diego County Water Authority and Poseidon Resources (Channelside), LP for Enrollment of the Channelside Account at Carlsbad Desalination Plant

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RECOMMENDATION

1) Approve the Wholesale Market Access Tariff Terms and Conditions;
2) Approve Channelside Wholesale Market Access Agreement and Positive Enrollment Agreement with San Diego County Water Authority and Poseidon Resources (Channelside) LP for enrollment of the Channelside account at the Carlsbad Desalination Plant. Authorize the Chief Executive Officer to sign all documents, subject to General Counsel approval.

BACKGROUND AND DISCUSSION

At its July 27, 2023 regular meeting, the Clean Energy Alliance (CEA) Board approved entering into a Memorandum of Understanding with San Diego County Water Authority (SDCWA) and Poseidon Resources, LP (Channelside) for development of a Wholesale Market Access Tariff (WMAT), Wholesale Market Access Agreement and Positive Enrollment Agreement for Board consideration related to the enrollment of the Channelside account serving the Carlsbad Desalination Plant.

Since that time, CEA staff, its legal team and technical consultants have worked to develop the proposed WMAT Terms and Conditions. The team has also worked with SDCWA in developing the proposed Channelside WMAT Agreement and Positive Enrollment Agreement that are before the Board for consideration.

Wholesale Market Access Tariff Terms and Conditions

The purpose of the WMAT is to create a rate tariff that provides the ability for CEA to offer service to customers with an unusually large load, that mitigates the risks regarding the normal opt-out provision and protects CEA's other customers from cost exposure.

The proposed WMAT Terms and Conditions establishes the WMAT purpose, eligibility, and specific program details.

If approved, the WMAT would be open to all customers that meet the following proposed eligibility requirements:

- Non-residential Account within CEA's service territory
- Annual load in CEA's territory greater than 150GWh
- Execution of the Wholesale Market Access Tariff Agreement (Exhibit A)
- Concurrent execution of the Positive Enrollment Agreement (Exhibit B)
- Not available for accounts enrolled in Net Energy Metering

Key to minimizing the risks to CEA and protecting its customers related to servicing a customer that meets WMAT eligibility, is addressing the opt-out risk. Under normal CCA opt-out rules, a CEA customer can opt-out anytime, with certain conditions. If this risk isn't addressed CEA and the remaining customers may be left with excess contracted energy and costs.

To address the opt-out risk, the WMAT Terms and Condition provide a minimum 3-year or length of longest term of energy contract entered into on behalf of that customer, whichever is longer.

CEA creates a portfolio and establishes a Scheduling Coordinator ID that is specific to the WMAT customer, to ensure their costs can be tracked. The WMAT customer bears the market risk of energy costs since the WMAT rate is based on the costs specific to their load.

The WMAT rate is calculated based on the actual costs of energy procured for the energy needs. The rate also includes an administrative overhead and reserve component. The rate calculation is as follows:

Administrative Cost Component: (CEA budgeted non-power supply expenses + reserves)/CEA forecasted load (excluding WMAT load) = per kWh Administrative Cost Component

Energy Rate = Total WMAT Conventional Energy hedge contracts + (current forward price curve * open position) + Resource Adequacy Costs + Short-term energy costs + Long-Term Renewable Energy Costs = Total Energy Costs. Total Energy costs/WMAT forecasted load = per kWh Energy rate

Per kWh Administrative Cost Component + Per kWh Energy Rate = Total WMAT Rate

This rate calculation methodology is consistent with the methodology used for calculating rates for other CEA customers and ensures that the WMAT customer contributes their proportionate share of administrative costs and reserve contributions.

Revenue and Expenses will be tracked throughout the year, and if at any time there is a 10% or greater variance which is not expected to correct by year-end, the rate is subject to update.

Due to the load profile of the WMAT account, the resulting WMAT rate may be higher or lower than the rates paid by other CEA customers. The potential benefit of a lower rate is offset by the customers higher standard with regards to more stringent opt-out requirements as well as the customer bearing the risk of potential higher costs.

Revenue and costs will be trued-up annually, and the variances identified in the true-up will be included in the following years rate calculation.

A Public Hearing will be held to adopt the rate, as is done with other CEA rates.

Channelside Wholesale Market Access Tariff Agreement and Positive Enrollment Agreement

The Carlsbad Desalination Plant (Plant) is owned by Poseidon Resources (Channelside) LP and located within CEA's service territory in the City of Carlsbad. It is the largest desalination plant in the United

States, delivering nearly 10% of the regions water supply. SDCWA and Channelside have executed a Water Purchase Agreement related to the Plant that, among other things, gives SDCWA decision making authority regarding electric provider for Channelside.

During early 2021, as part of CEA's customer outreach, CEA staff held several meetings with SDCWA regarding consideration of CEA serving the Channelside account. Channelside is the single largest consumer of electricity in the City of Carlsbad with a load more than 10 times the next largest customer. At the time CEA was launching in 2021, the Plant load represented 40% of CEA's load. After careful consideration by both SDCWA and CEA, SDCWA decided to opt-out prior to CEA commencing service in the City of Carlsbad.

CEA and SDCWA have continued to meet to discuss opportunities for CEA to serve the electric needs of Channelside, and through those meetings, the concept of CEA serving Channelside under the WMAT emerged.

Serving the Channelside Account is in alignment with CEA's goals and priorities because it will result in reducing greenhouse gas emissions in the City of Carlsbad through CEA's higher renewable energy content. At minimum, the account will be required to enroll in CEA's Clean Impact, providing 50% renewable energy and increasing to 100% by 2035. CEA is encouraging SDCWA to consider opting up to Clean Impact Plus or Green Impact.

Channelside and SDCWA will execute the WMAT Agreement that includes the following terms:

- The Channelside account will be enrolled with CEA in January 2025.
- Based on the enrollment date, the account will be assigned the 2024 Power Charge Indifference Adjustment vintage by San Diego Gas & Electric.
- An opt-out effective date is the later of (a) 3 years, or (b) the date upon which all outstanding transactions have been settled and paid for, whether through delivery or through early termination and payment of any termination payments to suppliers and all amounts owed to CEA.
- CEA and SDCWA will work cooperatively to develop a Procurement Plan that details the strategy for procurement of conventional energy hedges, Resource Adequacy, short-term renewable energy, and long-term renewable energy.
- The Channelside WMAT Portfolio will be compliant with CEA's Energy Risk Management Policy and all other CEA compliance requirements.
- Channelside will be responsible for all CAISO related costs for the Channelside load.
- Channelside will be responsible for all direct and indirect costs related to the management and energy costs for the WMAT account.
- SDCWA will provide credit support for the WMAT portfolio energy supply contracts.
- Channelside will post a cash deposit equivalent to the forecasted three highest months of invoices to address cash flow needs.

SDCWA owns and operates a small hydro-electric generation facility, the Rancho Peñasquitos Pressure Control and Hydroelectric Facility, that qualifies as renewable under the state's renewable portfolio standards program. CEA and SDCWA are negotiating a potential power purchase agreement that will be brought to the CEA Board at a future date.

FISCAL IMPACT

The Channelside WMAT Rate will be set pursuant to the Rate Setting terms in the Channelside WMAT Agreement. The rate will be considered by the Board at a future Public Hearing.

ATTACHMENTS

Attachment A – Draft Wholesale Market Access Tariff Terms and Conditions
Attachment B – Channelside Wholesale Market Access Tariff Agreement and Positive Enrollment Agreement

WHOLESALE MARKET ACCESS TARIFF (WMAT)
TERMS AND CONDITIONS

A. PURPOSE

The purpose of the Clean Energy Alliance (CEA) Wholesale Market Access Tariff (WMAT) Terms & Conditions (T&C) is to provide details of the WMAT including customer eligibility and CEA and customer requirements and commitments.

B. ELIGIBILITY

The WMAT program is available to active non-residential CEA customers that meet the following requirements:

- Annual load in CEA's territory greater than 150GWh
- Execution of the Wholesale Market Access Tariff Agreement (Exhibit A)
- Concurrent execution of the Positive Enrollment Agreement (Exhibit B)
- Not available for accounts enrolled in Net Energy Metering

C. TERRITORY

Applicable in the CEA service area.

D. PROGRAM

The WMAT program is available to eligible non-residential customers that desire active participation in the procurement of energy products to serve their energy needs. Power supply products included in the customers WMAT Portfolio include conventional energy hedges, CAISO Charges, Resource Adequacy (RA), Carbon Free Energy, Long-Term Renewable Energy and Short-Term Renewable Energy.

Management of the WMAT Portfolio requires active participation by the customer and will be structured to ensure that CEA's other customers will not be adversely affected by the offering of the WMAT program to eligible customers, including mitigation of impacts of cash flow and energy supply credit and collateral requirements.

The WMAT portfolio will be managed to meet the following priorities:

1. CEA's regulatory procurement requirements for:

    a. Resource Adequacy (RA)
    b. Renewable Portfolio Standards (RPS), both Short-Term and Long-Term
    c. Any other requirements as established by the California Public Utilities Commission or other regulatory agency

2. Utilize best practices for conventional energy hedging strategy to minimize, to the extent reasonable, market cost exposure to the customer;
3. Meeting CEA's minimum renewable energy power supply, with consideration for opting up to a higher renewable content power supply.

Enrollment in the WMAT is contingent on the customer executing a WMAT Agreement and Positive Enrollment Agreement. The WMAT Agreement addresses the terms related to procurement of the various power supply products and rate calculation. The Positive Enrollment Agreement establishes the enrollment date, required noticing period of opting out of the WMAT program or CEA service and the Power Charge Indifference Adjustment Vintage with San Diego Gas & Electric. The minimum opt-out notice period shall take into account the resource adequacy process and the longest term of contract entered into to serve the customer account.

WMAT program rates will be based on the actual cost of the WMAT portfolio plus an administrative fee that includes a proportionate share of CEA's administrative and overhead costs, including reserves, plus any incremental costs unique to or arising from CEA's service of the accounts enrolled in the WMAT program.

EXHIBIT A

CLEAN ENERGY ALLIANCE
WHOLESALE MARKET ACCESS TARIFF AGREEMENT

THIS AGREEMENT, is entered into this Click here to enter DAY. of ENTER MONTH. ENTER YEAR., by and between CLEAN ENERGY ALLIANCE ("CEA"), an independent joint powers authority at 5857 Owens Ave, 3rd Floor, Carlsbad, CA 92008, and NAME OF CUSTOMER at ADDRESS (collectively "Parties", individually a "Party").

RECITALS:

A. CEA is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Sections 6500 *et seq.*) ("Act") with the power to conduct its business and enter into agreements.

B. CEA is the default energy provider for the City of CITY.

C. CUSTOMER has an active service account with San Diego Gas & Electric and has/has not been enrolled with CEA.

D. CEA, CUSTOMER and CUSTOMER desire to enroll the CUSTOMER Account in CEA pursuant to this WMAT Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this WMAT Agreement shall be established in the Positive Enrollment Agreement (Attachment B), which is fully incorporated herein.

2. **WHOLESALE MARKET ACCESS TARIFF ENROLLMENT**

Upon enrollment with CEA, CEA shall concurrently enroll the following CUSTOMER Account in the Wholesale Market Access Tariff program:

Account Name:
Account Address:
SDG&E Account Service Number:

CEA will provide electric generation procurement pursuant to the Wholesale Market Access Tariff Portfolio Management Terms of Service (Attachment A), which are fully incorporated herein.

3. **KEY CONTACTS**

The WMAT requires close participation among the Parties. Key contacts related to the WMAT Portfolio Management are as follows:

Clean Energy Alliance
Chief Executive Officer
5857 Owens Ave, Suite 2023
Carlsbad, CA 92008
ceo@thecleanenergyalliance.org
(760) 209-6177

CUSTOMER
NAME
ADDRESS
EMAIL
PHONE #

4. **LIMITATION OF LIABILITY**

Except to the extent otherwise expressly set forth in this Agreement, no Party shall be liable to any other for any special, indirect, incidental or consequential damages, losses or expenses, including, without limitation, loss of use, business, good will or revenue or loss of profits, or damages from work stoppage or failure to deliver power, incurred by one another or any of their affiliates, subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of any of them.

5. **CUSTOMER LIABILITY**

CUSTOMER is jointly and severally responsible for the payment of all costs, expenses, reimbursements, penalties, termination costs and all other payments under this Agreement and as set forth in Attachment A, including, without limitation, direct and indirect conventional energy hedge costs, CAISO charges, including Congestion Revenue Rights charges, direct and indirect Resource Adequacy (RA) costs, including penalties for non-compliance with RA contracting requirements and costs associated with any assignment of RA agreements, direct and indirect short-term renewable energy costs, direct and indirect costs associated with long-term renewable energy requirements, including any assignment of long-term renewable energy agreement, administrative costs, legal costs and technical consulting costs, and direct and indirect costs associated with opting-out or terminating this Agreement.

6. **DRAFTING AMBIGUITIES**

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

7. **ENTIRE CONTRACT; MODIFICATION**

This Agreement, including its Exhibits, contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements. This Agreement may only be modified by a writing signed by all Parties.

8. **COUNTERPARTS/ELECTRONIC SIGNATURE**

This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement may be executed electronically with the same force and effect as an original ink signature.

9. **SIGNATORIES**

Each signatory and Party hereto hereby warrants and represents to each of the other Parties that he/she/it has legal authority and capacity and direction from its principal to enter into this Agreement, that all resolutions or other actions have been taken so as to enable he/she/it to enter into this Agreement and that he/she/it will indemnify and defend the other Parties should any such representations and warranties prove false.

IN WITNESS WHEREOF, the Parties to this WMAT Agreement through their duly authorized representatives have executed this WMAT Agreement as of the Effective Date.

CUSTOMER

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

CLEAN ENERGY ALLIANCE,

a Joint Powers Authority

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: _____

Title: _____

By: _____

Name: _____

Title: General Counsel

ATTEST:

By: _____

Name: _____

Title: _____

ATTACHMENT A
WHOLESALE MARKET ACCESS TARIFF
PORTFOLIO MANAGEMENT TERMS OF SERVICE

Effective Date of WMAT Portfolio Establishment: DATE

WMAT Portfolio Name: CUSTOMER Account WMAT Portfolio

1. DEFINITION OF TERMS

    a. CUSTOMER WMAT Rate: The per kWh rate that will be billed through the San Diego Gas & Electric bill that will be calculated pursuant to Section G of this agreement.

    b. Credit Support: May take the form of cash or letters of credit to fulfill collateral or other credit requirements as determined by energy suppliers.

    c. Direct Costs: Direct Costs are defined as costs incurred that are directly related to the administration and management of the CUSTOMER Wholesale Market Access Tariff Portfolio. Examples of these costs include, but are not limited to, contracted cost of energy, proportional cost of energy, legal costs, technical advisors and scheduling coordinator services.

    d. Indirect Costs: Indirect Costs are defined as costs incurred by Clean Energy Alliance, that are not directly related to the administration and management of the CUSTOMER Wholesale Market Access Tariff Portfolio, but which CUSTOMER may receive a benefit from. Examples of these costs include, but are not limited to, administrative overhead.

    e. Lockbox: Clean Energy Alliance's Secured Account Managed by River City Bank that provides credit support for secured creditors.

    f. Long-Term Renewable Energy: As defined in Senate Bill 350 (de León 2015) Long-Term Renewable Energy is renewable energy derived from long-term contracts of 10 or more years.

    g. Procurement Plan: Plan that details the mutually agreed upon actions to be taken by Clean Energy Alliance (CEA) and CUSTOMER to procure the power supply products including Conventional Energy Hedge, Resource Adequacy, Short-Term and Long-Term Renewable Energy. The initial Procurement Plan will

be finalized between the Parties by INSERT DATE and will be reviewed and updated at least annually.

h. Short-Term Renewable Energy: Renewable energy derived from contracts of less than 10 years.

A. TERMS RELATED TO CONVENTIONAL ENERGY HEDGE TRANSACTIONS

CEA and CUSTOMER will work cooperatively to develop a conventional energy hedge strategy that will be used in developing a Procurement Plan for the CUSTOMER Account WMAT Portfolio. The hedge strategy will be consistent with CEA's adopted Energy Risk Management Policy (Exhibit 1), and other CEA compliance requirements, and minimize, to the extent commercially reasonable, market cost exposure to CUSTOMER and CUSTOMER.

CEA will procure conventional energy hedges for the CUSTOMER Account WMAT portfolio in accordance with the Procurement Plan. CEA will confer with CUSTOMER regarding planned energy hedge solicitations, offers and recommendations for transactions, and periodically report energy hedge positions relative to projected energy requirements.

If requested by CUSTOMER, CEA will use reasonable efforts to negotiate an assignment provision for Conventional Energy Hedge Agreements whereby such agreement(s) may be assigned to CUSTOMER should there be a desire to opt-out of CEA service prior to the end of said agreement(s). Such assignment provisions are subject to the consent of the energy supplier.

Direct and indirect conventional energy hedge costs will be reimbursed to CEA through the CUSTOMER WMAT Rate, subject to an annual true-up, pursuant to Section G (CUSTOMER WMAT RATE SETTING) below.

B. TERMS RELATED TO CAISO CHARGES & CONGESTION REVENUE RIGHTS

The CUSTOMER Account WMAT Portfolio will include weekly California Independent System Operator ("CAISO") charges attributable to the CUSTOMER Account load, including weekly Congestion Revenue Rights ("CRR") activity, which can be either a net charge or credit, and monthly CRR receipts. In order to distinguish and segregate out these transactions from CEA's other customer activity, a separate Scheduling Coordinator Identification ("SCID") will be established for the CUSTOMER Account load. CEA will invoice CUSTOMER monthly, by the 10th of each month for the prior month's CAISO activity. The invoices will be due within 30 days. In the event there is a net credit, the credit will carry forward to offset charges invoiced the following month.

C. TERMS RELATED TO RESOURCE ADEQUACY TRANSACTIONS

The CUSTOMER Account WMAT Portfolio will include Resource Adequacy ("RA") costs attributable to the CUSTOMER Account load. The California Public Utilities Commission (CPUC) adopted the RA policy Framework (Public Utilities Code section 380) in 2004 in order to ensure the reliability of electric service in California. CEA's annual RA requirements are determined by the CPUC and includes three types: System, Local and Flexible. The local obligation is a three-year forward local obligation and CEA must meet 100% of its local obligation in the immediately following two years and 50% of the third year by October of each year. The obligation is based on a Year-Ahead Resource Adequacy (YARA) filing, submitted in April of each year. Beginning in April 2024, CEA will include the forecasted 2025 load for the CUSTOMER account in its YARA. CUSTOMER agrees to work with CEA to develop the load forecast upon which the RA obligation will be based. The RA requirements that will be attributed to the CUSTOMER Account will be calculated as follows: (CUSTOMER Account Forecasted Load included in YARA/Total Forecasted CEA Load) X total CEA RA Requirements. CEA will work with CUSTOMER to develop a RA procurement strategy which will inform the development of the Resource Adequacy section of the Procurement Plan. CEA will make its best efforts to acquire the necessary RA to meet the RA requirements pursuant to the Procurement Plan and will confer with CUSTOMER with regards to RA status throughout the procurement processes. To the extent the CUSTOMER Account WMAT Portfolio RA requirements are included in contracts for CEA's other RA requirements, the CUSTOMER Account WMAT Portfolio's proportionate share percentage will be determined by dividing the CUSTOMER Account Forecasted Load included in YARA by the Total Forecasted CEA Load in YARA.

To the extent that CEA has used reasonable efforts to meet its RA contracting requirements that includes the CUSTOMER Account RA Requirements and is unable to meet the full obligation, and CEA is assessed a penalty for non-compliance, the CUSTOMER Account WMAT Portfolio will be responsible for its proportionate share of the RA penalty, based on the same proportional share calculation detailed above.

CEA will work with CUSTOMER to develop the RA procurement strategy, however, CUSTOMER acknowledges that CEA is the entity with the RA compliance obligation and, therefore, has final decision-making authority over RA procurement.

If requested by CUSTOMER, CEA will use reasonable efforts to negotiate an assignment provision for Resource Adequacy Agreements whereby such agreement(s) may be assigned to CUSTOMER should there be a desire to opt-out of CEA service prior to the end of said agreement(s). Such assignment provisions are subject to the consent of the energy supplier.

Direct and indirect RA costs will be reimbursed to CEA through the CUSTOMER WMAT Rate, subject to an annual true-up, pursuant to Section G (CUSTOMER WMAT RATE SETTING) below.

D. TERMS RELATED TO SHORT-TERM RENEWABLE ENERGY TRANSACTIONS

CEA must comply with the California Renewable Portfolio Standard ("RPS") that is implemented, administered and enforced by the California Public Utilities Commission ("CPUC"). The RPS program requires CEA, as an electric load serving entity, to procure 60% of its electricity portfolio from eligible renewable energy resources by 2030. The CUSTOMER Account WMAT Portfolio will include short-term renewable energy supply products. The short-term renewable energy supply requirements will be determined by subtracting the long-term renewable energy requirements described in Section E from the total renewable energy requirements as determined by the CEA power supply selection on the Positive Enrollment Agreement. CEA and CUSTOMER will develop a Short-Term Renewable Energy procurement strategy that will be used to develop the Short-Term Renewable Energy section of the Procurement Plan. CEA will procure Short-Term Renewable Energy pursuant to the Procurement Plan.

In the event the CUSTOMER Account WMAT short-term renewable energy requirements are included in a contract for CEA's other short-term renewable energy requirements, the CUSTOMER Account WMAT Portfolio's proportionate share percentage will be determined by dividing the CUSTOMER short-term renewable energy requirements (less short-term renewable energy contracts dedicated to the CUSTOMER Account WMAT Portfolio) by the total CEA short-term energy requirements, with both the CUSTOMER and CEA requirements being measured in kilowatt-hours ("kWh"). This calculated proportionate share will be included in the rate setting process pursuant to Section G (CUSTOMER WMAT RATE SETTING) below.

CEA will acquire the necessary short-term renewable energy supply through any combination of open solicitation, bilateral negotiations or sources provided through agreements with CUSTOMER.

CEA will work with CUSTOMER to develop the short-term renewable energy procurement strategy, however, CUSTOMER acknowledges that CEA is the entity with the short-term renewable energy compliance obligation and, therefore, has final decision-making authority over short-term renewable energy procurement.

California State Renewable Portfolio Standards Requirements are broken down into Compliance Periods, with determination of compliance determined after the end of the Compliance Period. These Compliance Periods are:

Compliance Period 5 – 2025 – 2027
Compliance Period 6 – 2028 – 2030

Compliance with the California Renewable Portfolio Standards Requirements will not be determined by the California Public Utilities Commission until after the end of the Compliance Period. In the event that CEA is found non-compliant with the Renewable Portfolio Standards

Requirements for short-term renewable energy in a Compliance Period during which CEA was providing service to the CUSTOMER Account under this WMAT Agreement, CUSTOMER acknowledges that it will be responsible for its proportionate share of any penalty related to non-compliance irrespective of whether the CUSTOMER Account is being served by CEA at the time the penalty is assessed.

If requested by CUSTOMER, CEA will use reasonable efforts to negotiate an assignment provision for Short-Term Renewable Energy Agreements whereby such agreement(s) may be assigned to CUSTOMER should there be a desire to opt-out of CEA service prior to the end of said agreement(s). Such assignment provisions are subject to the consent of the energy supplier.

Direct and indirect short-term renewable energy costs will be reimbursed to CEA through the CUSTOMER WMAT Rate, subject to a true-up, pursuant to Section G (CUSTOMER WMAT RATE SETTING) below.

E. TERMS RELATED TO LONG-TERM RENEWABLE ENERGY TRANSACTIONS

CEA must comply with the CPUC's requirement for long-term renewable energy supply procurement, currently set at 65% of the state-mandated RPS requirement for each compliance period. As defined by the CPUC, long-term renewable energy contracts are for terms of 10-years or more, including ownership interests. The CUSTOMER WMAT Portfolio will incorporate the long-term procurement requirement based on its proportionate share of CEA's total retail sales during each compliance period, with both the requirement and the retail sales being measured in kWh. CEA will acquire the necessary long-term renewable energy supply, through any combination of open solicitation, bilateral negotiations, participation in San Diego Gas & Electric Voluntary Allocation or Market offer processes or sources provided through agreements with CUSTOMER.

Should the CUSTOMER Account WMAT long-term renewable energy requirements be included in a contract for CEA's other long-term renewable energy requirements, the CUSTOMER Account WMAT Portfolio's proportionate share percentage will be determined by dividing the CUSTOMER long-term renewable energy requirements (net of long-term renewable energy contracts dedicated to the CUSTOMER Account WMAT Portfolio) by the total CEA long-term renewable energy requirements for the period. CEA will track progress towards the long-term renewable energy requirements and report the results to CUSTOMER on an agreed upon periodic basis.

CEA will work with CUSTOMER to develop the long-term renewable energy procurement strategy, however, CUSTOMER acknowledges that CEA is the entity with the long-term

renewable energy compliance obligation and, therefore, has final decision-making authority over long-term renewable energy procurement.

California State Renewable Portfolio Standards Requirements are broken down into Compliance Periods, with determination of compliance determined after the end of the Compliance Period. These Compliance Periods are:

Compliance Period 5 – 2025 – 2027
Compliance Period 6 – 2028 – 2030

Compliance with the California Renewable Portfolio Standards Requirements will not be determined by the California Public Utilities Commission until after the end of the Compliance Period. In the event that CEA is found non-compliant with the Renewable Portfolio Standards Requirements for long-term renewable energy in a Compliance Period during which CEA was providing service to the CUSTOMER Account under this WMAT Agreement, CUSTOMER acknowledges that it will be responsible for its proportionate share of any penalty related to non-compliance irrespective of whether the CUSTOMER Account is being served by CEA at the time the penalty is assessed.

If requested by CUSTOMER, CEA will use reasonable efforts to negotiate an assignment provision for Long-Term Renewable Energy Agreements whereby such agreement(s) may be assigned to CUSTOMER should there be a desire to opt-out of CEA service prior to the end of said agreement(s). Such assignment provisions are subject to the consent of the energy supplier.

Direct and indirect costs related to the long-term renewable energy contracts will be reimbursed to CEA through the CUSTOMER WMAT Rate, subject to a true-up, pursuant to Section G (CUSTOMER WMAT RATE SETTING) below.

F. TERMS RELATED TO ADMINISTRATIVE OVERHEAD FEE AND DIRECT ADMINISTRATIVE COSTS

The CUSTOMER Account will be responsible for its per kWh proportionate share of CEA's Administrative costs, including reserve contributions, in addition to any direct costs of managing the CUSTOMER Account WMAT portfolio. The proportionate share of CEA's Administrative costs will be calculated as follows: (CEA total annual adopted budget + reserve contribution – power supply budget)/total load for the covered year = per kWh Administrative Cost Component. The resulting per kWh rate will be included in the CUSTOMER WMAT Rate as part of the rate setting in Section G below.

CUSTOMER will also be responsible for any direct costs of managing the CUSTOMER Account WMAT Portfolio, including but not limited to legal costs and technical consulting costs, which will be billed to CUSTOMER as direct costs are incurred on a monthly basis and due within 30 days of invoice receipt.

G. CUSTOMER WMAT RATE SETTING

The CUSTOMER WMAT per kWh rate will be calculated annually in November of each year, to be effective the following January. The annual per kWh rate will be calculated with the following formula:

> Total Conventional Energy Hedge contracts + (current price curve * open position) + Resource Adequacy Costs + Short-Term Renewable Energy Costs + Long-Term Renewable Energy Costs = Total Energy Costs.
>
> Total Energy Costs/Projected annual energy usage = per kWh energy component
>
> Per kWh Energy Component + per kWh Administrative Cost Component = Total per kWh rate.

CEA will track and report actual revenue and expenses as compared to anticipated revenue and expenses on a monthly basis and provide the report to CUSTOMER by the end of the following month. The per kWh rate will be re-evaluated if the year-to-date variance of actual revenues vs expenditures compared to anticipated revenues vs expenditures exceeds 10%. CEA reserves the right to revise the rate, which will be effective the first day of the next calendar month.

H. OPT-OUT PROVISIONS

CUSTOMER must provide a written opt-out notice to CEA pursuant to the Positive Enrollment Agreement, which establishes a minimum opt-out notice period as the term of the longest energy contract, excluding those to be assigned to CUSTOMER, or three years, whichever is longer. The opt-out effective date is the later of (a) 3 years, or (b) the date upon which all outstanding transactions have been settled and paid for, whether through delivery or through early termination and payment of any termination payments to suppliers and all amounts owed to CEA.

In the event that there are outstanding energy supply agreements with terms beyond the minimum 3-year opt-out notice period, and CUSTOMER desires to opt-out within the 3-year minimum period, CEA will work with CUSTOMER to terminate, liquidate or assign the energy supply contracts. CUSTOMER will be responsible to cover any losses incurred in such termination, liquidation or assignment, including termination payments to suppliers and

reasonable costs and expenses incurred by CEA, including consulting and legal fees, arising from the termination, liquidation or assignment of such contracts.

CUSTOMER will be responsible for all CAISO charges that are assessed to the CUSTOMER Account WMAT Portfolio SCID after opt-out, which may continue for several years in accordance with the CAISO tariff.

I. CUSTOMER CREDIT SUPPORT OBLIGATIONS

1. CUSTOMER will be required to post and maintain with CEA a cash deposit equal to the amount of the three highest months' invoices for the CUSTOMER Account based on a cash flow projection for the coming year.
2. Energy, RA and related contractual obligations require credit support. Credit support is determined by the seller and can take the form of cash collateral or letter of credit. Alternatively, it may also take the form of a guarantee from CUSTOMER for payment. CEA will use reasonable efforts to minimize collateral requirements for the CUSTOMER Account WMAT Portfolio through the use of CEA's Lockbox. However, to the extent that credit support is required for the CUSTOMER Account WMAT Portfolio beyond the Lockbox, CUSTOMER shall be responsible for providing any required credit support for such transactions and ensuring that CEA's other customers are not adversely affected by any additional credit requirements arising from transactions involving the CUSTOMER Account WMAT Portfolio.

ATTACHMENT B
CLEAN ENERGY ALLIANCE
POSITIVE ENROLLMENT AGREEMENT

DATE: _____

SDG&E SERVICE ACCOUNT NAME: _____

SDG&E SERVICE ACCOUNT NUMBER: _____

ENROLLMENT MONTH/YEAR: _____

CEA POWER SUPPLY: ____ Clean Impact _____ Clean Impact Plus _____ Green Impact

MINIMUM OPT-OUT NOTICE PERIOD: _____

The Minimum Opt-Out Notice Period will take into account the longest-term energy contract, but no less than three years to ensure accommodation with the Year-Ahead Resource Adequacy process.

SDG&E POWER CHARGE INDIFFERENCE ADJUSTMENT (PCIA) VINTAGE: _____

PCIA Vintage is based on the enrollment date per SDG&E Rate Schedule CCA-CRS.

The undersigned is an authorized representative of the account listed above and agrees to enroll the account with Clean Energy Alliance effective on the account meter read date in the month of the Enrollment Date above.

_____
NAME
TITLE
DATE SIGNED

Acceptance by Clean Energy Alliance

_____
NAME
Chief Executive Officer
DATE SIGNED

CLEAN ENERGY ALLIANCE
WHOLESALE MARKET ACCESS TARIFF AGREEMENT

THIS AGREEMENT, is entered into this Click here to enter DAY. of ENTER MONTH. ENTER YEAR., by and between CLEAN ENERGY ALLIANCE ("CEA"), an independent joint powers authority at 5857 Owens Ave, 3rd Floor, Carlsbad, CA 92008, POSEIDON RESOURCES ("Channelside") LP, a Delaware limited partnership, at 5780 Fleet Street, Suite 140, Carlsbad, CA 92008 and SAN DIEGO COUNTY WATER AUTHORITY ("SDCWA"), a County Water Authority at 4677 Overland Ave, San Diego, CA 92123 (collectively "Parties", individually a "Party").

RECITALS:

A. CEA is an independent public agency duly organized under the provisions of the Joint Exercise of Powers Act of the State of California (Government Code Sections 6500 *et seq.*) ("Act") with the power to conduct its business and enter into agreements.

B. CEA is the default energy provider for the City of Carlsbad.

C. Channelside has an active service account with San Diego Gas & Electric and has never been enrolled with CEA.

D. Pursuant to that certain Water Purchase Agreement dated December 20, 2012 ("WPA") between Channelside and SDCWA, SDCWA has the sole authority and discretion to make decisions with respect to the Carlsbad Desalination Plant's electricity supplier ("Channelside Account") until the expiration of that WPA on December 20, 2045, at which time the Channelside Desalination Plant transfers to SDCWA.

E. The Parties agree that should this Wholesale Market Access Tariff Agreement ("WMAT Agreement") create any obligations for Channelside that conflict with, or contravene contractual obligations set forth in the WPA between Channelside and SDCWA, the WPA will prevail and Channelside's obligations will be limited thereto.

C. CEA, Channelside and SDCWA desire to enroll the Channelside Account in CEA pursuant to this WMAT Agreement.

NOW, THEREFORE, the Parties mutually agree as follows:

1. **TERM**

The term of this WMAT Agreement shall be established in the Positive Enrollment Agreement (Attachment B), which is fully incorporated herein.

2. **WHOLESALE MARKET ACCESS TARIFF ENROLLMENT**

Upon enrollment with CEA, CEA shall concurrently enroll the following Channelside Account in the Wholesale Market Access Tariff program:

Account Name:
Account Address:
SDG&E Account Service Number:

CEA will provide electric generation procurement pursuant to the Wholesale Market Access Tariff Portfolio Management Terms of Service (Attachment A), which are fully incorporated herein.

3. **KEY CONTACTS**

The WMAT requires close participation among the Parties. Key contacts related to the WMAT Portfolio Management are as follows:

Clean Energy Alliance
Chief Executive Officer
5857 Owens Ave, Suite 2023
Carlsbad, CA 92008
ceo@thecleanenergyalliance.org
(760) 209-6177

Poseidon Resources (Channelside)
NAME
ADDRESS
EMAIL
PHONE #

San Diego County Water Authority
NAME
ADDRESS
EMAIL
PHONE #

4. **LIMITATION OF LIABILITY**

Except to the extent otherwise expressly set forth in this Agreement, no Party shall be liable to any other for any special, indirect, incidental or consequential damages, losses or expenses, including, without limitation, loss of use, business, good will or revenue or loss of

profits, or damages from work stoppage or failure to deliver power, incurred by one another or any of their affiliates, subsidiaries or successors, regardless of whether such damages are caused by breach of contract, willful misconduct, negligent act or omission, or other wrongful act of any of them.

5. **CHANNELSIDE AND SDCWA LIABILITY**

Channelside and SDCWA are jointly and severally responsible for the payment of all costs, expenses, reimbursements, penalties, termination costs and all other payments under this Agreement and as set forth in Attachment A, including, without limitation, direct and indirect conventional energy hedge costs, CAISO charges, including Congestion Revenue Rights charges, direct and indirect Resource Adequacy (RA) costs, including penalties for non-compliance with RA contracting requirements and costs associated with any assignment of RA agreements, direct and indirect short-term renewable energy costs, direct and indirect costs associated with long-term renewable energy requirements, including any assignment of long-term renewable energy agreement, administrative costs, legal costs and technical consulting costs, and direct and indirect costs associated with opting-out or terminating this Agreement.

6. **DRAFTING AMBIGUITIES**

The Parties agree that they are aware that they have the right to be advised by counsel with respect to the negotiations, terms and conditions of this Agreement, and the decision of whether or not to seek advice of counsel with respect to this Agreement is a decision which is the sole responsibility of each Party. This Agreement shall not be construed in favor of or against either Party by reason of the extent to which each Party participated in the drafting of the Agreement.

7. **ENTIRE CONTRACT; MODIFICATION**

This Agreement, including its Exhibits, contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings, or agreements. This Agreement may only be modified by a writing signed by all Parties.

8. **COUNTERPARTS/ELECTRONIC SIGNATURE**

This Agreement may be executed in counterparts, each of which shall constitute an original. This Agreement may be executed electronically with the same force and effect as an original ink signature.

9. **SIGNATORIES**

Each signatory and Party hereto hereby warrants and represents to each of the other Parties that he/she/it has legal authority and capacity and direction from its principal to enter into this Agreement, that all resolutions or other actions have been taken so as to enable he/she/it to enter into this Agreement and that he/she/it will indemnify and defend the other Parties should any such representations and warranties prove false.

IN WITNESS WHEREOF, the Parties to this WMAT Agreement through their duly authorized representatives have executed this WMAT Agreement as of the Effective Date.

SAN DIEGO COUNTY WATER AUTHORITY

By: _____

Name: _____

Title: _____

APPROVED AS TO FORM:

By: _____

Name: Michael McDonnell

Title: Assistant General Counsel

Channelside/Poseidon Resources

By: _____

Name: _____

Title: _____

CLEAN ENERGY ALLIANCE,

a Joint Powers Authority

By: _____

Name: Barbara Boswell

Title: Chief Executive Officer

APPROVED AS TO FORM:

By: _____

Name: Johanna N. Canlas

Title: General Counsel

ATTEST:

By: _____

Name: Susan Caputo, MMC

Title: Interim Board Secretary

ATTACHMENT A
WHOLESALE MARKET ACCESS TARIFF
PORTFOLIO MANAGEMENT TERMS OF SERVICE

Effective Date of WMAT Portfolio Establishment: January 1, 2024

WMAT Portfolio Name: Channelside Account WMAT Portfolio

1. DEFINITION OF TERMS

   a. Channelside WMAT Rate: The per kWh rate that will be billed through the San Diego Gas & Electric bill that will be calculated pursuant to Section G of this agreement.

   b. Credit Support: May take the form of cash or letters of credit to fulfill collateral or other credit requirements as determined by energy suppliers.

   c. Direct Costs: Direct Costs are defined as costs incurred that are directly related to the administration and management of the Channelside Wholesale Market Access Tariff Portfolio. Examples of these costs include, but are not limited to, contracted cost of energy, proportional cost of energy, legal costs, technical advisors, and scheduling coordinator services.

   d. Indirect Costs: Indirect Costs are defined as costs incurred by Clean Energy Alliance ("CEA"), that are not directly related to the administration and management of the Channelside Wholesale Market Access Tariff Portfolio, but which Channelside and San Diego County Water Authority ("SDCWA") may receive a benefit from. Examples of these costs include, but are not limited to, administrative overhead.

   e. Lockbox: CEA's Secured Account Managed by River City Bank that provides credit support for secured creditors.

   f. Long-Term Renewable Energy: Long-Term Renewable Energy is renewable energy procured through contracts of 10 years or more in duration or through ownership interests or ownership agreements for eligible renewable energy resources.

   g. Procurement Plan: Plan that details the mutually agreed upon actions to be taken by CEA and SDCWA to procure the power supply products including

Conventional Energy Hedge, Resource Adequacy, Short-Term and Long-Term Renewable Energy. The initial Procurement Plan will be finalized between the Parties by January 31, 2024, and will be reviewed and updated at least annually.

h. Short-Term Renewable Energy: Renewable energy procured through contracts of less than 10 years.

A. TERMS RELATED TO CONVENTIONAL ENERGY HEDGE TRANSACTIONS

CEA and SDCWA will work cooperatively to develop a conventional energy hedge strategy that will be used in developing a Procurement Plan for the Channelside Account WMAT Portfolio. The hedge strategy will be consistent with CEA's adopted Energy Risk Management Policy (Exhibit 1), and other CEA compliance requirements, and minimize, to the extent commercially reasonable, market cost exposure to SDCWA and Channelside.

CEA will procure conventional energy hedges for the Channelside Account WMAT portfolio in accordance with the Procurement Plan. CEA will confer with SDCWA regarding planned energy hedge solicitations, offers and recommendations for transactions, and periodically report energy hedge positions relative to projected energy requirements.

If requested by SDCWA, CEA will use reasonable efforts to negotiate an assignment provision for Conventional Energy Hedge Agreements whereby such agreement(s) may be assigned to SDCWA should there be a desire to opt-out of CEA service prior to the end of said agreement(s). Such assignment provisions are subject to the consent of the energy supplier.

Direct and indirect conventional energy hedge costs will be reimbursed to CEA through the Channelside WMAT Rate, subject to an annual true-up, pursuant to Section G (CHANNELSIDE WMAT RATE SETTING) below.

B. TERMS RELATED TO CAISO CHARGES & CONGESTION REVENUE RIGHTS

The Channelside Account WMAT Portfolio will include weekly California Independent System Operator ("CAISO") charges attributable to the Channelside Account load, including weekly Congestion Revenue Rights ("CRR") activity, which can be either a net charge or credit, and monthly CRR receipts. In order to distinguish and segregate out these transactions from CEA's other customer activity, a separate Scheduling Coordinator Identification ("SCID") will be established for the Channelside Account load. CEA will invoice Channelside monthly, by the 10th of each month for the prior month's CAISO activity. The invoices will be due within 30 days. In the event there is a net credit, the credit will carry forward to offset charges invoiced the following month.

C. TERMS RELATED TO RESOURCE ADEQUACY TRANSACTIONS

The Channelside Account WMAT Portfolio will include Resource Adequacy ("RA") costs attributable to the Channelside Account load. The California Public Utilities Commission ("CPUC") adopted the RA policy Framework (Public Utilities Code section 380) in 2004 in order to ensure the reliability of electric service in California. CEA's annual RA requirements are determined by the CPUC and includes three types: System, Local and Flexible. The local obligation is a three-year forward local obligation and CEA must meet 100% of its local obligation in the immediately following two years and 50% of the third year by October of each year. The obligation is based on a Year-Ahead Resource Adequacy ("YARA") filing, submitted in April of each year. Beginning in April 2024, CEA will include the forecasted 2025 load for the Channelside account in its YARA. SDCWA agrees to work with CEA to develop the load forecast upon which the RA obligation will be based. The RA requirements attributed to the Channelside Account will be calculated as follows: ((Channelside Account Forecasted Load included in YARA/Total Forecasted CEA Load) X total CEA RA Requirements) minus RA contracts dedicated to the Channelside Account WMAT Portfolio. CEA will work with SDCWA to develop a RA procurement strategy which will inform the development of the Resource Adequacy section of the Procurement Plan. CEA will make its best efforts to acquire the necessary RA to meet the RA requirements pursuant to the Procurement Plan and will confer with SDCWA with regards to RA status throughout the procurement processes. To the extent the Channelside Account WMAT Portfolio RA requirements are included in contracts for CEA's other RA requirements, the Channelside Account WMAT Portfolio's proportionate share percentage will be determined by dividing the Channelside Account Forecasted Load included in YARA by the Total Forecasted CEA Load in YARA.

To the extent that CEA has used reasonable efforts to meet its RA contracting requirements that includes the Channelside Account RA Requirements and is unable to meet the full obligation, and CEA is assessed a penalty for non-compliance, the Channelside Account WMAT Portfolio will be responsible for its proportionate share of the RA penalty, based on the same proportional share calculation detailed above.

CEA will work with SDCWA to develop the RA procurement strategy, however, SDCWA acknowledges that CEA is the entity with the RA compliance obligation and, therefore, has final decision-making authority over RA procurement.

If requested by SDCWA, CEA will use reasonable efforts to negotiate an assignment provision for Resource Adequacy Agreements whereby such agreement(s) may be assigned to SDCWA should there be a desire to opt-out of CEA service prior to the end of said agreement(s). Such assignment provisions are subject to the consent of the energy supplier.

Direct and indirect RA costs will be reimbursed to CEA through the Channelside WMAT Rate, subject to an annual true-up, pursuant to Section G (CHANNELSIDE WMAT RATE SETTING) below.

D. TERMS RELATED TO SHORT-TERM RENEWABLE ENERGY TRANSACTIONS

CEA must comply with the California Renewable Portfolio Standard ("RPS") that is implemented, administered, and enforced by the CPUC. The RPS program requires CEA, as an electric load serving entity, to procure 60% of its electricity portfolio from eligible renewable energy resources by 2030. The Channelside Account WMAT Portfolio will include short-term renewable energy supply products. The short-term renewable energy supply requirements will be determined by subtracting the long-term renewable energy requirements described in Section E from the total renewable energy requirements as determined by the CEA power supply selection on the Positive Enrollment Agreement. CEA and SDCWA will develop a Short-Term Renewable Energy procurement strategy that will be used to develop the Short-Term Renewable Energy section of the Procurement Plan. CEA will procure Short-Term Renewable Energy pursuant to the Procurement Plan.

In the event the Channelside Account WMAT short-term renewable energy requirements are included in a contract for CEA's other short-term renewable energy requirements, the Channelside Account WMAT Portfolio's proportionate share percentage will be determined by dividing the Channelside short-term renewable energy requirements (less short-term renewable energy contracts dedicated to the Channelside Account WMAT Portfolio) by the total CEA short-term energy requirements, with both the Channelside and CEA requirements being measured in kilowatt-hours ("kWh"). This calculated proportionate share will be included in the rate setting process pursuant to Section G (CHANNELSIDE WMAT RATE SETTING) below.

CEA will acquire the necessary short-term renewable energy supply through any combination of open solicitation, bilateral negotiations or sources provided through agreements with SDCWA.

CEA will work with SDCWA to develop the short-term renewable energy procurement strategy, however, SDCWA acknowledges that CEA is the entity with the short-term renewable energy compliance obligation and, therefore, has final decision-making authority over short-term renewable energy procurement.

The RPS requirements are broken down into Compliance Periods, with CEA's compliance being determined after the end of each Compliance Period. These Compliance Periods are:

Compliance Period 5 – 2025 – 2027
Compliance Period 6 – 2028 – 2030

Compliance with the RPS requirements will not be determined by the CPUC until after the end of each Compliance Period. In the event that CEA is found non-compliant with the RPS requirements for short-term renewable energy in a Compliance Period during which CEA was providing service to the Channelside Account under this WMAT Agreement, SDCWA acknowledges that it will be responsible for its proportionate share of any penalty related to

non-compliance irrespective of whether the Channelside Account is being served by CEA at the time the penalty is assessed.

If requested by SDCWA, CEA will use reasonable efforts to negotiate an assignment provision for Short-Term Renewable Energy Agreements whereby such agreement(s) may be assigned to SDCWA should there be a desire to opt-out of CEA service prior to the end of said agreement(s). Such assignment provisions are subject to the consent of the energy supplier.

Direct and indirect short-term renewable energy costs will be reimbursed to CEA through the Channelside WMAT Rate, subject to a true-up, pursuant to Section G (CHANNELSIDE WMAT RATE SETTING) below.

E. TERMS RELATED TO LONG-TERM RENEWABLE ENERGY TRANSACTIONS

CEA must comply with the CPUC's requirement for long-term renewable energy supply procurement, currently set at 65% of the state-mandated RPS requirement for each compliance period. As defined by the CPUC, long-term renewable energy contracts are for terms of 10-years or more, including ownership interests. The Channelside WMAT Portfolio will incorporate the long-term procurement requirement based on its proportionate share of CEA's total retail sales during each compliance period, with both the requirement and the retail sales being measured in kWh. CEA will acquire the necessary long-term renewable energy supply, through any combination of open solicitation, bilateral negotiations, participation in San Diego Gas & Electric Voluntary Allocation or Market offer processes or sources provided through agreements with SDCWA.

Should the Channelside Account WMAT long-term renewable energy requirements be included in a contract for CEA's other long-term renewable energy requirements, the Channelside Account WMAT Portfolio's proportionate share percentage will be determined by dividing the Channelside long-term renewable energy requirements (less long-term renewable energy contracts dedicated to the Channelside Account WMAT Portfolio) by the total CEA long-term renewable energy requirements for the period. CEA will track progress towards the long-term renewable energy requirements and report the results to SDCWA on an agreed upon periodic basis.

CEA will work with SDCWA to develop the long-term renewable energy procurement strategy, however, SDCWA acknowledges that CEA is the entity with the long-term renewable energy compliance obligation and, therefore, has final decision-making authority over long-term renewable energy procurement.

Compliance with the RPS requirements will not be determined by the CPUC until after the end of each Compliance Period, as described above in Section D. In the event that CEA is found non-

compliant with the RPS requirements for long-term renewable energy in a Compliance Period during which CEA was providing service to the Channelside Account under this WMAT Agreement, SDCWA acknowledges that it will be responsible for its proportionate share of any penalty related to non-compliance irrespective of whether the Channelside Account is being served by CEA at the time the penalty is assessed.

If requested by SDCWA, CEA will use reasonable efforts to negotiate an assignment provision for Long-Term Renewable Energy Agreements whereby such agreement(s) may be assigned to SDCWA should there be a desire to opt-out of CEA service prior to the end of said agreement(s). Such assignment provisions are subject to the consent of the energy supplier.

Direct and indirect costs related to the long-term renewable energy contracts will be reimbursed to CEA through the Channelside WMAT Rate, subject to a true-up, pursuant to Section G (CHANNELSIDE WMAT RATE SETTING) below.

F. TERMS RELATED TO ADMINISTRATIVE OVERHEAD FEE AND DIRECT ADMINISTRATIVE COSTS

The Channelside Account will be responsible for its per kWh proportionate share of CEA's Administrative costs, including reserve contributions, in addition to any direct costs of managing the Channelside Account WMAT portfolio. The proportionate share of CEA's Administrative costs will be calculated as follows: (CEA total annual adopted budget + reserve contribution – power supply budget)/total load for the covered year = per kWh Administrative Cost Component. The resulting per kWh rate will be included in the Channelside WMAT Rate as part of the rate setting in Section G below.

Channelside will also be responsible for any direct costs of managing the Channelside Account WMAT Portfolio, including but not limited to legal costs and technical consulting costs, which will be billed to Channelside as direct costs are incurred on a monthly basis and due within 30 days of invoice receipt.

G. CHANNELSIDE WMAT RATE SETTING

The Channelside WMAT per kWh rate will be calculated annually in November of each year, to be effective the following January. The annual per kWh rate will be calculated with the following formula:

> Total Conventional Energy Hedge contracts + (current price curve * open position) + Resource Adequacy Costs + Short-Term Renewable Energy Costs + Long-Term Renewable Energy Costs = Total Energy Costs.

Total Energy Costs/Projected annual energy usage = per kWh energy component

Per kWh Energy Component + per kWh Administrative Cost Component = Total per kWh rate.

CEA will track and report actual revenue and expenses as compared to anticipated revenue and expenses on a monthly basis and provide the report to SDCWA by the end of the following month. The per kWh rate will be re-evaluated if the year-to-date variance of actual revenues vs expenditures compared to anticipated revenues vs expenditures exceeds 10%. CEA reserves the right to revise the rate, which will be effective the first day of the next calendar month.

H. OPT-OUT PROVISIONS

SDCWA and Channelside must provide a written opt-out notice to CEA pursuant to the Positive Enrollment Agreement, which establishes a minimum opt-out notice period as the term of the longest energy contract, excluding those to be assigned to SDCWA, or three years, whichever is longer. The opt-out effective date is the later of (a) 3 years, or (b) the date upon which all outstanding transactions have been settled and paid for, whether through delivery or through early termination and payment of any termination payments to suppliers and all amounts owed to CEA.

In the event that there are outstanding energy supply agreements with terms beyond the minimum 3-year opt-out notice period, and SDCWA and Channelside desire to opt-out within the 3-year minimum period, CEA will work with SDCWA to terminate, liquidate, or assign the energy supply contracts. SDCWA will be responsible to cover any losses incurred in such termination, liquidation, or assignment, including termination payments to suppliers and reasonable costs and expenses incurred by CEA, including consulting and legal fees, arising from the termination, liquidation, or assignment of such contracts.

SDCWA will be responsible for all CAISO charges that are assessed to the Channelside Account WMAT Portfolio SCID after opt-out, which may continue for several years in accordance with the CAISO tariff.

I. CUSTOMER CREDIT SUPPORT OBLIGATIONS

1. Channelside will be required to post and maintain with CEA a cash deposit equal to the amount of the three highest months' invoices for the Channelside Account based on a cash flow projection for the coming year.
2. Energy, RA, and related contractual obligations require credit support. Credit support is determined by the seller and can take the form of cash collateral or letter

of credit. Alternatively, it may also take the form of a guarantee from Channelside for payment. CEA will use reasonable efforts to minimize collateral requirements for the Channelside Account WMAT Portfolio through the use of CEA's Lockbox. However, to the extent that credit support is required for the Channelside Account WMAT Portfolio beyond the Lockbox, Channelside shall be responsible for providing any required credit support for such transactions and ensuring that CEA's other customers are not adversely affected by any additional credit requirements arising from transactions involving the Channelside Account WMAT Portfolio.

ATTACHMENT B
CLEAN ENERGY ALLIANCE
POSITIVE ENROLLMENT AGREEMENT

DATE: _____

SDG&E SERVICE ACCOUNT NAME: _____

SDG&E SERVICE ACCOUNT NUMBER: _____

ENROLLMENT MONTH/YEAR: _____

CEA POWER SUPPLY: ____ Clean Impact _____ Clean Impact Plus _____ Green Impact

MINIMUM OPT-OUT NOTICE PERIOD: _____

The Minimum Opt-Out Notice Period will take into account the longest-term energy contract, but no less than three years to ensure accommodation with the Year-Ahead Resource Adequacy process.

SDG&E POWER CHARGE INDIFFERENCE ADJUSTMENT (PCIA) VINTAGE: _____

PCIA Vintage is based on the enrollment date per SDG&E Rate Schedule CCA-CRS.

The undersigned is an authorized representative of the account listed above and agrees to enroll the account with Clean Energy Alliance effective on the account meter read date in the month of the Enrollment Date above.

_____
NAME
TITLE
DATE SIGNED

Acceptance by Clean Energy Alliance

_____
NAME
Chief Executive Officer
DATE SIGNED

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 9: Consider Approval of Clean Energy Alliance Solar Billing Plan (NEM 3.0)

RECOMMENDATION

CEA Board direct staff to:

- Implement Solar Billing Plan to mirror San Diego Gas & Electric's Solar Billing Plan and maintain CEA's current Net Surplus Compensation methodology effective December 15, 2023; or
- Implement a modified Solar Billing Plan to mirror San Diego Gas & Electric's Solar Billing Plan which provides a $.01 per kWh premium to the Avoided Cost Component and maintain CEA's current Net Surplus Compensation methodology effective December 15, 2023, for 5 years; or
- Do not implement Solar Billing Plan.

BACKGROUND AND DISCUSSION

In December 2020, the Clean Energy Alliance (CEA) Board approved CEA's Net Energy Metering Personal Impact Program (Attachment A) for customers who generate their own solar or wind power and want to offset their energy costs by selling excess energy produced to CEA. The goal for CEA's Personal Impact Program was to provide a process for how Net Energy Metering customers are enrolled with Clean Energy Alliance (CEA) and how the program is administered. Customers enrolled in San Diego Gas & Electric's (SDG&E) Net Energy Metering Program (SDG&E NEM) are automatically enrolled in CEA's Personal Impact Program. The Program is applicable for all NEM customers who have Renewable Generation Facilities such as rooftop solar. The facility must be eligible under SDG&E's Schedule NEM – Net Energy Metering or similar tariff option(s) focused on NEM, which may be amended or replaced by SDG&E from time to time. Personal Impact customers whose system has generated more electricity than the customer used, on a kilowatt-hour basis, during the 12-month relevant period are eligible to receive Net Surplus Compensation, currently set at $.06 per kilowatt-hour for Net Excess Generation. CEA's Personal Impact program nets system generated energy against customer used energy based on kWh during each time-of-use period to determine whether the customer is a net generator or consumer during the period. If the customer is a net generator, a credit is calculated by multiplying the net kWh generation times the applicable retail rate in effect for the period. If the customer is a net consumer, a charge is calculated by multiplying the net kWh used times the applicable retail rate in effect for the period. This methodology is similar to SDG&E's NEM 1.0 and 2.0.

In December 2022, the California Public Utility Commission (CPUC) issued Decision 22- 12-056 adopting a successor to NEM 1.0 and 2.0, commonly referred to as NEM 3.0, which has been renamed Solar Billing Plan (SBP). The decision requires investor-owned utilities (IOUs) such as SDG&E to implement an updated "net billing" tariff structure designed to optimize grid use by the affected customers and incentivize adoption of combined solar and storage systems in order to help meet California's climate goals, increase grid reliability, and promote affordability across all income levels. It directs IOUs to compensate customers with new behind-the-meter renewable generation (e.g., rooftop solar panels, with or without paired battery storage) for their exported energy – energy generated in excess of on-site consumption – based on hourly Avoided Cost Calculator (ACC) values rather than at retail rates as is done under existing NEM tariffs, including CEA's. The ACC values are intended to incentivize adoption of solar paired with battery storage by providing price signals to customers to export energy to the grid when it is most valuable and needed to relieve grid stress and not exporting when export rates are low.

Per the CPUC decision, SBP affects customers that submit Interconnection Applications after April 15, 2023, and the new rate is to be in place effective December 15, 2023. New SBP customers were placed on NEM 2.0 on a temporary basis between April 15, 2023 – December 15, 2023, at which time the customer account will be true-up and then placed on the new SBP rate.

The CPUC estimates that SBP lengthens the expected payback period for rooftop solar to 9 years as compared to an estimated 5 years under NEM 2.0. Most of the reduction in customer value – and the commensurate longer payback time – happens as a result of the new ACC values on the delivery side of customer bills, which is not controlled by CEA.

CEA customers that applied with SDG&E for NEM after April 15, 2023, will be placed on SBP by SDG&E for the Transmission & Delivery (T&D) side of the bill regardless of whether CEA adopts SBP for generation. CEA customers who are currently on NEM 1.0 or NEM 2.0 tariffs are not affected by the decision until the end of their legacy period, at which time SDG&E will place them on SBP by SDG&E for T&D side of the bill.

In addition to changing the methodology for calculating credits and charges, SBP also places customers on the TOUEV5 rate instead of the TOUDR1, which is the current default rate for NEM customers.

SBP changes the methodology for assessing customer bills from being netted on a kWh basis to be netted on a rate basis, with the credit based on the ACC instead of the retail rate.

The charts below demonstrate the difference in how the charges and credits will be calculated. These figures do not represent total customer expected results, they are only to demonstrate how the bill calculations will change.

NEM 2.0 Calculation Methodology:

	Summer	Winter
System Generation	-512 kWh	-227kWh
Customer usage	109 kWh	143kWh
Net Generation (credit)	-403kWh	-84kWh
TOUDR1 Off Peak Rate	$.20463	$.06081

Net Credit Earned	**-$82.47**	**-$5.11**

SBP Calculation methodology:

	Summer	Winter
System Generation	-512 kWh	-227kWh
Export Credit Rate (using average ACC during off-peak)	$0.02671	$.04742
Export Credit Earned	**-$13.68**	**-$10.76**
Customer usage	109kWh	143kWh
EVTOU5 Summer Off Peak Rate	$.14523	$.11273
Customer usage charge	**$15.83**	**$16.12**
Net Charge	**$2.15**	**$5.36**

NOTE: SBP will perform the usage charge and export credit on an hourly basis. For ease in presentation, this calculation was performed on the off-peak time of use period and not at the granular hourly level.

Using the SBP methodology, the customer incurs a net charge of $2.15 in the summer month off-peak period and $5.36 in the winter off-peak period. The net charge would be billed and due under the new monthly true-up requirement.

SBP incentivizes partnering battery storage with solar in that customers can fill their battery during the off peak periods when the value of putting the energy on the grid is low, and then using the energy from the battery during high on-peak periods. Customers avoid both T&D and generation costs when using the energy from the battery.

Other changes being implemented as part of SBP is monthly account true-up with no option of an annual true-up and how SDG&E will calculate Net Surplus Compensation. Customers whose solar system generates more energy on a kWh basis than they use in a 12-month relevant period are eligible for Net Surplus Compensation (NSC). Under NEM 1.0 and 2.0, NSC is calculated by SDG&E by multiplying the excess generation by the wholesale value of the energy, which is updated monthly. For CEA customers, the NSC is calculated by multiplying the excess generation by $.06 per kWh.

Under SBP, SDG&E will calculate NSC under the current methodology then deduct the export value the customer has already received for the energy. The reasoning is that the customer was being "double compensated" for the energy, during the monthly calculation and then at the end of the year with NSC.

CEA Current NEM Customers

CEA has approximately 22,500 NEM customers, broken down as follows:

Residential – 22,200
Commercial – 300

NEM 1.0 – 6,500
NEM 2.0 – 16,000

An analysis of CEA's current NEM customer base, over a one year period, showed that the average monthly generation cost (CEA's service) for a customer on NEM 2.0 is $25. Under SBP the average generation cost for would be $67, an increase of $42 per month. Actual results will vary depending on a customers usage habits (use during peak vs off-peak times). This $40 would be new revenue to CEA if SBP is implemented.

NEM 1.0 and 2.0 customers will remain on the current NEM program until the end of their legacy period, at which time they will transition to SBP. Since April 15, 2023, approximately 100 customers have installed new solar or solar/battery systems and will be placed on SBP after December 15, 2023, by SDG&E.

It is projected, based on historical new NEM enrollments, and CEA's current customer base, that CEA could have 100 – 200 new NEM enrollments and transitions from legacy NEM 1.0 & 2.0 annually. Over time the legacy transitions will increase as the legacy periods end.

NEM Policy Options

CEA is not required to adopt SBP for the generation side of customer bills. However, there is a financial impact to CEA, with not realizing the new revenue, for not implementing SBP and should consider its options.

As CEA's rate-setting body, the CEA Board has the following options:

1. Maintain its existing NEM program (Personal Impact Program adopted December 2020) for new solar and NEM 1.0 and 2.0 legacy customers.
    a. Keeping new solar customers on NEM 2.0 will not offset NEM 3.0's reduced compensation which occurs primarily on the delivery side of the bill;
    b. NEM customers would see this as a benefit compared to SDG&E bundled service;
    c. CEA would not realize the new revenue generated by SBP;
    d. The SDG&E T & D side of bill would be calculated on a different methodology then the CEA Generation side, which could cause customer confusion;
    e. It would be difficult to calculate rate comparisons between SDG&E and CEA.

2. Default to SDG&E's new SBP using SDG&E's ACC to determine the energy generation export credit.
    a. Affected customers would be on parity with SDG&E;
    b. Potential for new revenue for CEA;
    c. T & D and Generation services would be calculated on same basis on customer bill, reducing possibility of confusion;
    d. Simplifies rate comparison between SDG&E and CEA.

3. Adopt SDG&E's new SBP with an additional premium added to the export credit (modified SBP).
    a. Provides a higher export rate to affected customers, resulting in a lower cost compared to SDG&E;
    b. Potential for new revenue for CEA, decreased by the premium adder;
    c. T & D and Generation services would be calculated on same basis on customer bill, reducing possibility of confusion;
    d. Simplifies rate comparison between SDG&E and CEA.

Under option 2 & 3 the Board has the option to keep the NSC calculation as it is today or adopt the new NSC calculation being implemented by SDG&E. Keeping NSC as it is today would be seen as a benefit to affected customers.

CEA's Community Advisory Committee heard a presentation on SBP at its October 5, 2023, meeting and had a discussion regarding the impacts and options. The consensus was to support implementation of a modified SBP that provided a premium adder to the export credit rate.

Staff recommends implementing SBP with a premium adder of $.01 per kWh to be in place for 5 years and maintaining the current NSC calculation methodology. After 5 years the Board should evaluate its NEM program and rates. Implementing the recommendation would support the CPUC's goal of incentivizing battery storage for grid reliability, provide benefits to CEA's customers compared to SDG&E and generate additional revenue to CEA.

It is estimated the additional adder would result in an average monthly SBP generation cost of $63 vs $67, a $4 per month reduction. This would not be a new cost for CEA, rather it would decrease the new revenue that is generated by implementing SBP. Using an assumption of 200 new solar customers per year, the estimated annual new revenue to CEA under SBP is $160,800 and under modified SBP is $151,200. After 5 years the annual new revenue to CEA is estimated at $756,000.

Should the CEA Board desire to implement SBP or modified SBP, it should direct staff to develop updated terms and conditions for the new program and return to the Board for approval.

FISCAL IMPACT

It is estimated that the annual new revenue to CEA generated by 200 solar customers on the recommended modified SBP to be $151,200 and after 5 years of the same growth estimated new revenue is projected to be $756,000.

ATTACHMENTS

Clean Energy Alliance Personal Impact Terms and Conditions

CLEAN ENERGY ALLIANCE

NET ENERGY METERING
TERMS AND CONDITIONS OF SERVICE

A. PURPOSE

The Purpose of the Net Energy Metering (NEM) Program terms & conditions (T&C) is to provide a process for how Net Energy Metering (commonly referred to as rooftop solar) customers are enrolled with Clean Energy Alliance (CEA) and how the program is administered.

B. APPLICABILITY

Customers enrolled in San Diego Gas & Electric's (SDG&E) Net Energy Metering Program (SDG&E NEM) are automatically enrolled in CEA's NEM Program. The Program is applicable for all NEM customers who have Renewable Generation Facilities such as rooftop solar. The facility must be eligible under SDG&E's Schedule NEM – Net Energy Metering or similar tariff option(s) focused on NEM, which may be amended or replaced by SDG&E from time to time. Each customer's eligible Renewable Generating Facility must fall within the capacity limits described in SDG&E's Schedule NEM and must be located on the customer's owned, leased, or rented premises, must be interconnected and operated in parallel with SDG&E's transmission and distribution systems, and must be intended primarily to offset part or all of the customer's own electrical requirements.

This rate schedule will be available to customers that provide SDG&E with a completed SDG&E NEM Application and comply with all SDG&E NEM requirements as described in SDG&E's Schedule NEM. This includes, but not limited to, customers served by NEM-V (Virtual Net Energy Metering), VNM-A (Virtual Net Energy Metering for Multifamily Affordable Housing), VNEM-SOMAH (Virtual Net Energy Metering - Solar on Multifamily Affordable Housing) and Multiple Tariff facilities as described by SDG&E's Schedule NEM.

C. TERRITORY

Applicable in the CEA service area.

D. RATES

All rates charged under this schedule will be in accordance with the customer's otherwise applicable CEA rate schedule (OAS). A customer served under this schedule is responsible for all charges from its OAS including monthly minimum charges, customer charges, meter charges, facilities charges, demand charges and surcharges, and all other charges owed to CEA or SDG&E. Charges for energy (kWh) supplied by CEA will be based on the net metered usage in accordance with this tariff.

E. BILLING

1. <u>For a customer with Non-Time of Use (TOU) Rates.</u> If the customer is a "Net Consumer," having overall positive usage during a specific billing cycle, the customer will be billed in accordance with the customer's OAS. If the customer is a "Net Generator," having

overall negative usage during a specific billing cycle, any net energy production shall be valued in consideration of the customer's OAS. The calculated value of any net energy production shall be credited to the customer according to the OAS.

2. For a customer with TOU Rates. If the customer is a Net Consumer during any discrete TOU period reflected within a specific billing cycle, the net kWh consumed during such TOU period shall be billed in accordance with applicable TOU period-specific rates / charges, as described in the customer's OAS. If the customer is a Net Generator during any discrete TOU period reflected within a specific billing cycle, any net energy production shall be valued in consideration of the customer's OAS. The calculated value of such net energy production shall be credited to the customer according to the OAS.

3. CEA True-Up & Cash-Out Processes.

   a. *True-Up*. At the end of each NEM customer's 12-month relevant period, CEA will determine whether or not each customer has produced net surplus energy, as measured in kWh, over the most recent 12 billing cycles, or the period of time extending from the customer's commencement of participation in CEA's NEM program through the end of their relevant period, whichever is shorter (the "True-Up Period"). If the customer has not produced net surplus NEM energy, as measured in kWh, during the True-Up Period, all NEM credits, if any, generated through participation in CEA's NEM program in excess of currently applicable CEA charges shall be set to zero and any remaining balance will be due and payable. However, if a customer has produced net surplus NEM energy, as measured in kWh, resulting in a credit balance in excess of currently applicable CEA charges, then CEA shall credit such customer a Net Surplus Compensation (NSC) amount equal to the CEA NSC Rate per kWh, as defined in the CEA Rate Schedule, multiplied by the quantity of net surplus NEM energy produced by the customer during the True-Up Period, consistent with CEA's Cash-Out practice. All NEM accounts will be reset to zero kWh upon True-up.

   b. *Cash-Out*. At the end of each customer's relevant period, any current customer with a NSC Payment equal to or greater than $100, as determined during the applicable True-Up process, will be sent a direct payment by check. NSC payments less than $100 will be rolled over into the next relevant period and used to offset future charges.

   c. *Aggregated NEM.* Pursuant to California Public Utilities Commission Section 2827(h)(4)(B), aggregated NEM customers are "permanently ineligible to receive net surplus electricity compensation." Therefore, any excess accrued credits over the course of a year under an aggregated NEM account are ineligible for CEA's Cash-Out as described in Section 5. All other NEM rules apply to aggregated NEM accounts.

F. ACCOUNT CLOSURES

Customers who close their electric account through SDG&E or move outside of the CEA service area prior to the end of their relevant period and have produced net surplus NEM energy, as measured in kWh, resulting in a credit balance in excess of currently applicable CEA charges, shall receive a direct payment equal to the rate per kWh, as defined in the CEA Rate Schedule, multiplied by the net surplus NEM energy.

CEA reserves the right to work with customers on a case-by-case basis to transfer NEM credits.

G. SDG&E NEM SERVICES

Customers are subject to the conditions and billing procedures of SDG&E for their non-generation services, as described in SDG&E's applicable NEM tariffs and options addressing NEM service. Customers should be advised that while CEA may settle out balances for generation on a monthly basis, SDG&E will continue to assess charges for delivery, transmission and other services. Customers are encouraged to review SDG&E's most up-to-date NEM tariffs, which are available at www.sdge.com.

H. RETURN TO SDG&E BUNDLED SERVICE

Customers with NEM service may opt-out and return to SDG&E bundled service at any time, pursuant to SDG&E's Rule 27. CEA will perform a true-up of their account (as described above), at the time of return to SDG&E bundled service, and customers will be subject to SDG&E's then current rates, terms and conditions of service. For details, please visit www.sdge.com.

CLEAN ENERGY ALLIANCE

Staff Report

DATE: October 26, 2023

TO: Clean Energy Alliance Board of Directors

FROM: Barbara Boswell, Chief Executive Officer

ITEM 10: Consider Approval of Establishment of a Feed-In Tariff (Community Solar) Program and Direct Staff to Return with Marketing Campaign, Program Guidelines and Related Documents

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RECOMMENDATION

Approve establishment of a Feed-In Tariff (Community Solar) Program with the criteria recommended by staff and direct staff to return to the Board with a marketing campaign, program guideline, application, and power purchase agreement.

BACKGROUND AND DISCUSSION

The Board has previously identified development of a Feed-in-Tariff (FIT), also known as Community Solar, as a high priority. A FIT is a standard offer power purchase program, which is typically implemented to incentivize locally situated, small-scale renewable energy projects that is priced to recognize the value of the locally generated renewable energy. As a "standard offer" program, key requirements are non-negotiable, including the energy price offered, delivery term (which is typically ten years or longer), project size limitations, and the power purchase agreement itself. Any supply arranged through a FIT program will complement other wholesale renewable energy purchases in Clean Energy Alliance's energy portfolio.

Staff has reviewed similar programs offered by Community Choice Aggregators throughout the state, and conferred with its portfolio manager to develop the following recommended terms for CEA's initial Feed-in-Tariff offering:

- Projects must be within CEA's service territory
- Projects must be 500kW – 1MW in size
- Base FIT offer price of $85/MWh
- Bonus offer price for co-located battery storage of $15/MWh
- A non-refundable deposit of $500 must be paid with the submission of an application
- Purchase agreements will be for a 20-year term
- Projects must be new-build
- Renewable energy certificated produced by the projects must be transferred to and owned by CEA

CEA's FIT program guidelines will be developed to reflect CEA's Inclusive and Sustainable Workforce Policy, which states:

CEA will encourage construction contractors or subcontractors performing work on any CEA Feed-In-Tariff project utilize local businesses and local apprenticeship programs and fair compensation practices including proper assignment of work to crafts that traditionally perform that work.

CEA encourages contractors and subcontractors performing work on any CEA Feed-In-Tariff project to pay at least prevailing rate of wages, as defined in Article 2 (commending with Section 1770) of Chapter 1 of Part of Division 2 of the California Labor code and encouraged to use a skilled and trained workforce, as defined in Chapter 2.9 (commencing with Section 2600) of Part 1 of Division 2 of the California Public Contract Code.

CEA's Community Advisory Committee (CAC) received an overview of the draft Feed-in-Tariff and supports the Board consideration of implementing a FIT.

FISCAL IMPACT

Costs of the FIT program are within the Fiscal Year 2022/23 adopted power supply budget.

ATTACHMENTS

None