

POWER PURCHASE AGREEMENT

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POWER PURCHASE AGREEMENT

This Power Purchase Agreement (“Agreement”) is dated as of January 1, 2026 (the “Effective Date”), and is between the CONTRA COSTA COUNTY FIRE PROTECTION DISTRICT, a fire protection district existing under the laws of the State of California (the “Buyer”) and MFP CO II, LLC (“Seller”).

RECITALS

- A. Seller and Contra Costa County (the “County”) are parties to a Power Purchase Agreement, dated as of October 1, 2010 (as amended from time to time, but prior to being amended and restated, the “Original Agreement”) for the purchase and sale of electricity generated by solar photovoltaic generating systems owned by Seller (each system, a “Project”), including a Project located at a site identified in the Original Agreement as the “Byron Boys Ranch,” a parcel of land located at 4491 Bixler Road in Byron, California (the “Byron Boys Ranch”). The Project located at the Byron Boys Ranch is the “Byron Boys Ranch Project.”
- B. On or about the Effective Date of this Agreement, the County is conveying ownership of the Byron Boys Ranch to the Buyer.
- C. As a consequence of the conveyance of the Byron Boys Ranch to the Buyer, the County and Seller are entering into an Amended and Restated Power Purchase Agreement, having the same effective date as the Effective Date of this Agreement (the “County PPA”), in order to, among other things, exclude the Byron Boys Ranch Project from the power purchase agreement between the County and Seller.
- D. The Buyer and Seller desire this Agreement to govern their respective rights and obligations with respect to the Byron Boys Ranch Project.

NOW THEREFORE, in consideration of the mutual promises contained herein and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

ARTICLE 1: DEFINITIONS

References in the Agreement to the terms or phrases below have the meanings set forth in this Article. In the event of a conflict between the information in this Article and any more specific provision of the Agreement, the more specific provision controls.

- 1.1 “AC” means alternating current.
- 1.2 Reserved.
- 1.3 Reserved.
- 1.4 “Business Day” means a normal working day excluding weekends and holidays.

- 1.5** Reserved.
- 1.6** Reserved.
- 1.7** Reserved.
- 1.8** “CAISO” means the California Independent System Operator Corporation or any successor entity performing similar functions.
- 1.9** “CAISO Tariff” means the California Independent System Operator Corporation Agreement and Tariff, Business Practice Manuals (BPMs), and Operating Procedures (as such term is defined in Appendix A to the CAISO Tariff), including the rules, protocols, procedures and standards attached thereto, as the same may be amended or modified from time-to-time and approved by FERC.
- 1.10** “California Solar Initiative” or “CSI” means the program providing ratepayer funded incentives for eligible solar energy systems adopted by the California Public Utilities Commission and implemented through chapter 8.8 (commencing with Section 25780) to Division 15 of the California Public Utilities Code.
- 1.11** “Contract Capacity” means the “nameplate capacity” of the Generating Facility in kilowatts.
- 1.12** “Contract Price” means the price in U.S. dollars per kWh to be paid by Buyer to Seller for the purchase of Delivered Energy and the rights to the Contract Capacity, as specified in Article 4 and Exhibit 1 [Contract Price].
- 1.13** “Contract Year” means the 12-month period (and each subsequent 12-month period) that begins on the first day of the first calendar month following the Project Site Commercial Operation Date.
- 1.14** “Credit Worthy” means having assets and creditworthiness equal to or higher than those of the assigning or affiliated Party as of the date the assigning or affiliated Party entered into this Agreement.
- 1.15** Reserved.
- 1.16** “DC” means direct current.
- 1.17** “Degradation” means forecasted deterioration calculated on an annual basis of the Generating Facility due to normal wear and tear and decreasing efficiency causing reductions in power output.
- 1.18** “Delivered Energy” means the amount of Energy delivered to the Delivery Point.
- 1.19** “Delivery Point” means the metering point at the Project Site.

- 1.20** “Distribution Provider” means PG&E or any successor entity or entities responsible for (i) distributing or transmitting Energy on behalf of Seller from the Generating Facility to the Delivery Point, and (ii) distributing or transmitting Energy on behalf of the Buyer from the Delivery Point.
- 1.21** “Distribution Provider Tariffs” means the duly authorized tariff, rules, schedules, protocols and other requirements of the Distribution Provider, as these may be amended from time to time, on the transmission of Energy from the Delivery Point.
- 1.22** “Distribution System” means the facilities used for the distribution of Energy, including any modifications or upgrades made to such facilities, owned or operated by the Distribution Provider.
- 1.23** Reserved.
- 1.24** “Energy” means the electricity generated by the Generating Facility pursuant to this Agreement, as expressed in units of kWh.
- 1.25** “Environmental Attributes” means any and all credits, benefits, emissions reductions, offsets, rebates, subsidies, allowances, and other incentives howsoever entitled (excluding Financial Incentives), attributable to the generation of Energy and its displacement of conventional energy generation, which includes but is not limited to: (i) 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; (ii) any avoided emissions of carbon dioxide (CO₂), methane (CH₄) and other greenhouse gases that have been determined by the United Nations Intergovernmental Panel on Climate Change to contribute to the actual or potential threat of altering the Earth’s climate by trapping heat in the atmosphere; and (iii) the reporting rights to these avoided emissions, including Environmental Attributes Reporting Rights and Green Tag Reporting Rights.
- 1.26** “Environmental Attributes Reporting Rights” means all rights to report ownership of the Environmental Attributes to any Person, including under the Energy Policy Act of 1992, and any regulations promulgated therefrom.
- 1.27** “Environmental Laws” means and includes all federal, state and local laws, statutes, ordinances, regulations, resolutions, decrees and or rules now or hereinafter in effect, as may be amended from time to time, and all implementing regulations, directives, orders, guidelines, and federal or state court decisions, interpreting, relating to, regulating or imposing liability (including, but not limited to, response, removal, remediation and damage costs) or standards of conduct or performance relating to industrial hygiene, occupational health, and/or safety conditions, environmental conditions, or exposure to, contamination by, or clean-up of, any and all Hazardous Materials, including without limitation, all federal or state superlien or environmental clean-up statutes.
- 1.28** “Expected Annual Contract Quantity” means the amount of Delivered Energy that Seller expects to deliver to Buyer hereunder in each Contract Year during the Term as set forth in Exhibit 6 [Expected Contract Quantity Form].

- 1.29** Reserved.
- 1.30** “Financial Incentives” means (i) the ITC (or cash grant or similar payment in lieu thereof, including pursuant to Section 1603 of the American Recovery and Reinvestment Tax Act of 2009) and any tax deductions or other benefits under the Internal Revenue Code or applicable state law available as a result of the ownership and operation of the Generating Facility or the Energy (including without limitation tax credits, accelerated depreciation, or bonus depreciation) and (ii) any other financial incentives that result from the ownership and operation of the Generating Facility or the Energy, but excluding any economic value or rights associated with the Environmental Attributes.
- 1.31** Reserved.
- 1.32** Reserved.
- 1.33** “Generating Facility” means Seller’s electricity generating facility as more particularly described in Exhibit 2 [Description of Generating Facility], excluding the Project Site, land rights, and interests in land.
- 1.34** “Governmental Authority” means any federal or state government, or political subdivision thereof, including, any municipality, township or county, or any entity or authority exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government, including, any corporation or other entity owned or controlled by any of the foregoing.
- 1.35** “Green Tag Reporting Rights” means the rights 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, including those 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, all of which are accumulated on a MWh basis with one green tag representing the Environmental Attributes associated with one MWh of energy.
- 1.36** Reserved.
- 1.37** “Hazardous Materials” means any and all (i) substances, products, by-products, waste, or other materials of any nature or kind whatsoever which is or becomes listed, regulated or addressed under any Environmental Laws, and (ii) any materials, substances, products, by-products, waste, or other materials of any nature or kind whatsoever whose presence in and of itself or in combination with other materials, substances, products, by-products, or waste may give rise to liability under any Environmental Laws or any statutory or common law theory based on negligence, trespass, intentional tort, nuisance, strict or absolute liability or under any reported decisions of any state or federal court, and (iii) any substance, product, by-product, waste or any other material that may be hazardous or harmful to the air, water, soil, environment or affect industrial hygiene, occupational health, safety and/or general welfare conditions, including without limitation, petroleum and/or asbestos materials, products, by-products, or waste.

- 1.38** “Insolation” means the Generating Facility’s access to sunlight at the Project Site.
- 1.39** “Interconnection” means the interconnection of the Generating Facility on the Project Site with the Distribution System, including construction, installation, operation, and maintenance of all Interconnection Facilities.
- 1.40** “Interconnection Agreement” means the agreement between the County and the Distribution Provider, which sets forth the terms and conditions for Interconnection of the Generating Facility to the Distribution System, as amended from time to time.
- 1.41** “Interconnection Facilities” means all of the facilities installed for the purpose of interconnecting the Generating Facility to the Distribution System, including transformers and associated equipment, relay and switching equipment and safety equipment.
- 1.42** Reserved.
- 1.43** “Investment Tax Credit” or “ITC” means the energy credit under Section 48 of the Internal Revenue Code of 1986, as amended.
- 1.44** “kWh” means one kilowatt of electricity supplied for one hour.
- 1.45** “Lender” means any Person extending credit to Seller, directly or indirectly, to finance the construction of the Generating Facility.
- 1.46** Reserved.
- 1.47** “Meter” or “Meters” means the physical metering devices, data processing equipment and apparatus associated with the meters owned by Seller or Distribution Provider or its designee, that are used to determine the quantities of Energy generated by the Generating Facility and to record other related parameters required for reporting data to Seller.
- 1.48** “Metered Energy” means the amount of Energy measured at the Meter for the Generating Facility.
- 1.49** “Monitoring System” means physical devices, data processing equipment and apparatus associated with real-time monitoring of the quantities and quality of Energy that comply with the requirements of Article 4 and meet or exceed PG&E monitoring and reporting standards.
- 1.50** “MW” means one megawatt of electric energy.
- 1.51** “MWh” means one megawatt of electricity supplied for one hour.
- 1.52** “Operating Company” means a Qualified Assignee that is also an affiliate of Seller.
- 1.53** “Outage” means a physical state in which all or a portion of the Generating Facility is unavailable to provide Energy to the Delivery Point, including any reduction in the capacity

of the Generating Facility, including as a result of tilting the PV panels away from the configuration set forth in the as-built drawings, whether planned or unplanned.

- 1.54** Reserved.
- 1.55** “Parties” means Buyer and Seller, and each such Party’s respective successors and permitted assignees.
- 1.56** “Party” means Buyer or Seller, and each such Party’s respective successors and permitted assignees.
- 1.57** “Permits” means, collectively, all federal, state or local authorizations, certificates, permits, licenses, and approvals required by any Governmental Authority for the construction, ownership, operation and maintenance of the Generating Facility.
- 1.58** “Person” means an individual, a corporation, a partnership, a joint venture or any other form of business association.
- 1.59** “PG&E” means the Pacific Gas and Electric Company.
- 1.60** “Preliminary Requirements” has the meaning set forth in Article 3.
- 1.61** “Project Site” means the parcel of real property identified on Exhibit 3 [Project Site Description], on which the Generating Facility is built and located.
- 1.62** “Project Site Commercial Operation” means that the Generating Facility (i) has been constructed in accordance with Prudent Industry Practice, all Permits, Requirements of Law, and the specifications set forth in Exhibit 2 [Description of Generating Facility], Exhibit 4 [Technical and Warranty Requirements], and Exhibit 5 [Operations Forecasts, Scheduling Protocols, & Monitoring], (ii) has successfully completed the commissioning tests, and (iii) is able to deliver Energy through the Meter(s) associated with the Project Site through the Delivery Point to the Project Site’s electrical system under an approved and executed Interconnection Agreement; provided, however, the testing of the Generating Facility following construction and installation but prior to satisfaction of the foregoing conditions is not “Project Site Commercial Operation.”
- 1.63** “Project Site Commercial Operation Date” means January 31, 2012.
- 1.64** “Prudent Industry Practice” means the practices, methods and equipment selections, as changed from time to time, which (i) are commonly used in the State of California in prudent electrical engineering and operations to operate electrical equipment lawfully in a safe, reliable, efficient and expeditious manner, or (ii) in the exercise of reasonable judgment considering the facts known, could be expected to achieve the desired result consistent with applicable laws in a safe, reliable, efficient and expeditious manner; provided, however, Prudent Industry Practice is not limited to optimum practices, methods, or equipment selections, but rather consist of a range of customary practices, methods, and equipment selections.

- 1.65** Reserved.
- 1.66** Reserved.
- 1.67** Reserved.
- 1.68** “Qualified Assignee” means a proposed assignee or transferee of Seller that: (i) has at least comparable successful experience in operating and maintaining photovoltaic solar systems comparable to the Generating Facility and at least comparable successful experience providing electrical energy in the manner required of Seller hereunder, (ii) is Credit Worthy, and (iii) agrees in writing to assume the due performance of all of Seller’s obligations under this Agreement, including any accrued obligations existing as of the date of the assignment or transfer and which are capable of being cured by a third party at the time of the assignment or transfer.
- 1.69** “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 applicable law.
- 1.70** “Renewal Term” has the meaning set forth in Section 2.2.
- 1.71** “Requirements of Law” means, collectively, any federal or state law, treaty, franchise, rule, regulation, order, writ, judgment, injunction, decree, award or determination of any arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon Seller or Buyer or any of their property or to which Seller or Buyer or any of their respective properties covered by this Agreement are subject.
- 1.72** Reserved.
- 1.73** Reserved.
- 1.74** Reserved.
- 1.75** Reserved.
- 1.76** “Seller’s Project Management Team” means those individuals responsible for Seller’s oversight and contract management of all phases of the Generating Facility’s design/build, operations, maintenance, verification and billing account management, as determined by Seller from time to time.
- 1.77** “Taxes” means any federal, state, local or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, customs duties, capital stock, franchise, profits, withholding, social security (or similar), unemployment, disability, real property (including assessments, fees or other charges based on the use or ownership of real property), personal property, transactional, sales, use, transfer, registration, value added, alternative or add on minimum, estimated tax, or other tax of any kind whatsoever, or any liability for unclaimed property or escheatment under common law principles, including any interest, penalty or addition

thereto, whether disputed or not, including any item for which liability arises as a transferee or successor-in-interest.

- 1.78 “Term” has the meaning set forth in Section 2.2.
- 1.79 “Termination Option” means Buyer’s option, pursuant to Section 2.3, to (i) terminate this Agreement with respect to the Project Site, and (ii) purchase the Generating Facility.
- 1.80 “Termination Payment” means the amount determined in the manner set forth in Section 2.3(b).
- 1.81 Reserved.

ARTICLE 2: EFFECTIVE DATE, TERM

- 2.1 Effective Date. This Agreement is effective on the Effective Date.
- 2.2 Term. Unless earlier terminated pursuant to an express provision of this Agreement, this Agreement shall continue to be effective until 11:59 PM the day before the 20th anniversary of the Project Site Commercial Operation Date (“Term”). Buyer has five options to renew this Agreement for a term of one year (each, a “Renewal Term”) for each option. Upon the commencement of a renewal term, all references to the Term of this Agreement will be deemed to mean the Term as extended pursuant to this Section. Each such option is exercisable by written notice from the Buyer, which may be delivered not earlier than six months prior to the expiration of the Term.
- 2.3 Termination Option.
- (a) Exercise: Beginning on the fifth anniversary of the Project Site Commercial Operation Date, Buyer may, in its sole discretion, upon payment of the Termination Payment and all previously-accrued obligations, terminate Seller’s rights under this Agreement and acquire Seller’s interest in the Generating Facility at the Project Site, whereupon this Agreement shall terminate without liability of any kind. Buyer may exercise this right (i) on a tri-annual basis (i.e., once every third year) during the original 20-year term, and (ii) upon the conclusion of any Renewal Term. Buyer may exercise its Termination Option by giving Seller written notice at least 180 days prior to the applicable termination date.
- (b) Termination Payment: The Termination Payment for the Project Site shall be the greater of (A) the amount derived by the formula set forth on Exhibit 1-A [Termination Price], and (B) fair market value of the rights being terminated and the Generating Facility being acquired, as determined by agreement between the parties or, if no agreement can be reached, by use of an independent appraiser as described below:
- (i) Within 45 days after the Buyer’s delivery of notice provided under Section 2.3(a) above, if Buyer and Seller have not agreed on the fair market value of the Generating Facility, Buyer and Seller shall

confer and agree on an independent appraiser with experience and expertise in the renewable energy sector.

- (ii) If Seller and Buyer do not agree upon the appointment of an independent appraiser within such 45 days, then at the end of such period, Seller and Buyer shall notify each other in writing of their respective designation of three proposed independent appraisers. Seller and Buyer shall each within five Business Days of receipt of such notice strike two of the proposed independent appraisers designated by the other Party and shall provide notice of the same to the other Party. The remaining two proposed independent appraisers shall prepare an appraisal of the Generating Facility. If the two appraisals show fair market values within ten percent (10%) of one another, the fair market values shall be deemed to be the average of the values shown in the two appraisals. If the two appraisals show fair market values greater than ten percent (10%) apart, a third appraisal shall be obtained by one of the two appraisers shown on Seller's previous submission, as chosen by Buyer. The fair market value shall be deemed to be the average of the value set forth in the third appraisal and the one of the other two to which it is closest.
 - (iii) Seller and Buyer shall each be responsible for payment of one-half of the costs and expenses of the independent appraisers.
- (c) Transfer Closing: The consummation of the transfer of the Generating Facility (the "Transfer Closing") shall occur no later than 90 days following the determination of the Termination Payment (whether by agreement or by appraisal). At the consummation, (i) the Parties shall execute all documents reasonably necessary to cause title to the Generating Facility to pass to Buyer, free and clear of any liens; (ii) Seller shall assign all vendor warranties for the Generating Facility to Buyer; and (iii) Buyer shall pay the Termination Payment to Seller in full, together with any liquidated amounts due as of such date under this Agreement, in immediately available funds. Seller shall provide Buyer with an operation and maintenance manual for any item purchased by Buyer.
- (d) Transfer of the Generating Facility: On the Transfer Closing, Seller shall transfer to Buyer ownership of the Generating Facility and shall cooperate with the Buyer to give prompt effect to such transfer. Thereafter, all Energy and Environmental Attributes of the Generating Facility shall be the property of the Buyer, and the Buyer shall not be liable for any further payments to Seller for Delivered Energy from the Generating Facility following such date. On the Transfer Closing, all personal property of the Seller other than the Generating Facility and the other personal property required to be maintained on the Project Site by Seller pursuant to this Agreement shall be removed from the Project Site in accordance with the requirements set forth in Section 9.4(a). On the Transfer Closing, the access rights

set forth in Section 12.35 with respect to the Project Site(s) shall automatically terminate.

(e) Reserved.

(f) AS IS: The Generating Facility transferred on the Transfer Closing will be transferred in its WHERE IS, AS IS condition as of such date, without warranty of any kind whatsoever, provided that if there is any damage to the Generating Facility that occurs after the date on which the Termination Payment is determined but prior to the Transfer Closing, which damage is the result of the negligence or willful misconduct of Seller, such damage shall be promptly repaired by Seller, at its sole cost and expense. Buyer acknowledges and agrees that (i) at the time that it makes its election acquiring the Generating Facility pursuant to this Section 2.3, pursuant to the Monitoring System described in Section 4.2 below, it will have been provided access to detailed information regarding the performance of such Generating Facility, including its ability to produce Energy, and (ii) the ability of the Generating Facility to produce Energy will degrade over time, and therefore it is not anticipated that the Energy output of the Generating Facility during any period following the Transfer Closing will equal or exceed the Energy output of the Generating Facility before the Transfer Closing.

ARTICLE 3: ENGINEERING AND CONSTRUCTION REQUIREMENTS

3.1 Seller's Responsibility. All elements of engineering and construction of the Generating Facility are Seller's responsibility.

3.2 Reserved.

3.3 Meeting Summaries. Seller will create, maintain and provide to Buyer, a written summary of each formal meeting between Buyer's representatives and Seller's Project Management Team.

3.4 CEQA Compliance. Buyer represents and warrants that prior to the Effective Date, the Buyer made a determination pursuant to the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 *et seq.* that the construction of the Generating Facility in accordance with this Agreement is categorically exempt under CEQA, pursuant to Pub. Res. Code §15301(e).

3.5 Reserved.

3.6 Construction Phase.

(a) Reserved.

(b) Reserved.

(c) Reserved.

- (d) Seller shall cause the Generating Facility to be designed, installed and constructed in accordance with the California Building Code, with the laws and regulations of all governmental authorities with jurisdiction, with all requirements of the Agreement and pursuant to the Final Plans, and at Seller's sole cost. Upon completion of construction of the Generating Facility, Seller shall be responsible for verifying Generating Facility performance on an ongoing basis.
- (e) Reserved.
- (f) Reserved.
- (g) Reserved.

ARTICLE 4: DELIVERY OF POWER, METERING & MONITORING

4.1 Purchase & Sale.

- (a) Commencing on the Project Site Commercial Operation Date and continuing throughout the Term, Seller shall sell and deliver to the Delivery Point, and Buyer shall purchase and accept from Seller at the Delivery Point, and pay for Delivered Energy as follows:

Delivered Energy multiplied by Contract Price for the applicable period in accordance with Exhibit 1 [Contract Price].

Seller shall only schedule and deliver Energy from the Generating Facility.

- (b) Pricing and adjustments. The Contract Price shall be adjusted as set forth in Exhibit 1 [Contract Price].
- (c) Meters.
 - (i) The transfer of Energy from Seller to Buyer shall be measured by Meters at the Delivery Point, which are selected, provided, installed, owned, maintained, programmed and operated, at the Seller's sole cost and expense, by Seller or its designee. Meters and all metering activities shall comply with all applicable requirements of electric utility tariffs and the Interconnection Agreement. Seller shall exercise reasonable care in the maintenance and operation of the Meters and shall test and verify the accuracy of each Meter at least annually. Seller shall inform Buyer in advance of the time and date of these tests and shall permit Buyer to be present at such tests and to receive the results of such tests. Metering must have an equivalent accuracy of +/- 2% or better and a performance monitoring and reporting service ("PMRS") that is accessible by Buyer at all reasonable times. Eligible meters and PMRS providers must be listed as approved on the Go Solar California website.

- (ii) Meter Reading and Communications Equipment. After initial connection to the utility grid, Seller shall, at its sole cost and expense, read, or cause to be read, the Meters at least as frequently as is needed and at least at the end of each calendar month during the Term. Seller shall apply verification, editing and estimation techniques in accordance with Prudent Industry Practices to ensure that the meter data accurately represent actual Delivered Energy and comply with all applicable requirements of the Interconnection Agreement.
 - (iii) If the Meters fail to meet the accuracy level set forth in clause (i) above, and cannot be repaired to such level of accuracy, Seller shall at its sole cost and expense, install any updates or upgrades to the Meters, and all associated measuring equipment necessary to permit an accurate determination of the quantities of Energy delivered under this Agreement. Seller shall permit the Buyer or Buyer's representative access to its Generating Facility for the purpose of verifying accuracy of the Meters.
 - (iv) Distribution Provider Requirements. If and to the extent requested to do so by Buyer, Seller shall submit to Distribution Provider, or allow Distribution Provider to retrieve, any meter data requested by Distribution Provider associated with a Generating Facility subject to the Interconnection Agreement
- (d) Delivery Obligations.
 - (i) At the end of each Contract Year, if the Delivered Energy from the Project Site of the Generating Facility is less than eighty percent (80%) of the Expected Annual Contract Quantity for the Project Site under this Agreement (after weather adjustment in the manner described in Exhibit 9 [Methodology for Weather Adjustment] and after accounting for Force Majeure Events), then: (a) Seller shall promptly provide a report to Buyer on the reasons for the shortfall and shall take immediate steps to restore Energy delivery levels; and (b) Seller shall pay to Buyer the product of (A) the positive difference between the Replacement Price and the Contract Price, and (B) the difference between the Expected Annual Contract Quantity for the Project Site and the actual energy delivered to the Project Site.
 - (ii) For each Contract Year following the fifth (5th) anniversary of the Project Site Commercial Operation Date, if the total Delivered Energy from the Generating Facility is less than sixty percent (60%) of the Expected Annual Contract Quantity for such Contract Year (after weather adjustment in the manner described in Exhibit 9 [Methodology for Weather Adjustment] and after accounting for

Force Majeure Events), Seller's failure to meet this standard shall constitute an Event of Default under Section 9.1.

- (iii) The "Replacement Price" is the daily average price at which Buyer, acting in a commercially reasonable manner, purchased or purchases a replacement for any Energy required to be, but is not, delivered by Seller under this Agreement, plus (i) additional third-party costs reasonably incurred by Buyer in purchasing the substitute Energy, and (ii) additional distribution charges, if any, reasonably incurred by Buyer to the Delivery Point.
- (iv) If Seller is prevented from generating or delivering Energy due to a Force Majeure Event, Seller's obligation under this Section shall be reduced to the extent of such impact.
- (v) The Parties recognize and agree that (A) the actual damages to Buyer for a failure by Seller to deliver the Expected Annual Contract Quantity are difficult or inconvenient to determine, (B) payment of amounts by Seller to Buyer pursuant to this Section is an appropriate remedy, and (C) any such payment does not constitute a forfeiture or penalty of any kind, but rather constitutes anticipated costs to Buyer under the terms of this Agreement.
- (vi) To the extent that (1) Buyer's actions or failure to honor its obligations under this Agreement result in a reduction of the Insolation available to the Generating Facility at the Project Site, and (2) this reduction in turn causes the actual Delivered Energy from the Generating Facility to be less than the above thresholds, then Seller's obligation under this Section 4.1 shall be reduced to the extent of such impact.

(e) Reserved.

4.2 Monitoring System and Web Interface.

- (a) Seller shall make available to Buyer a web-based Monitoring System for the Generating Facility that will include the ability to monitor Energy production data. The Monitoring System shall also include a pyranometer at the Project Site. The web-based tool or interface that will allow Buyer to view, collect and store data, in real time, including the energy delivered, greenhouse gas emissions reduced, peak AC efficiency and peak DC efficiency. In connection therewith and for the purposes of providing such interface, Seller shall have the right to connect to such facility and utilize the same at no cost.
- (b) Additional requirements and specifications for monitoring are described in Exhibit 5 [Operations Forecasts, Scheduling Protocols, & Monitoring].

4.3 Delivery Point.

- (a) Allocation of Costs and Risks. Except as expressly set forth in this Agreement, Seller shall be responsible for any costs or charges imposed on or associated with the Energy or the delivery of the Energy hereunder up to and at the Delivery Point. Except as expressly set forth in this Agreement, the Buyer shall be responsible for any costs or charges imposed on or associated with the Delivered Energy, or its receipt, after the Delivery Point.

4.4 Environmental Attributes.

- (a) Buyer's purchase of electricity generated by the Generating Facility does not include Environmental Attributes (including subsidies, other incentives related to the Generating Facility, or Environmental Attribute Reporting Rights and Green Tag Reporting Rights), all of which shall be retained and owned by Seller. At Seller's request, Buyer shall execute all documents and instruments reasonably necessary or desirable to effect or evidence Seller's right, title and interest in and to the Environmental Attributes. If the standards used to qualify the Environmental Attributes to which Seller is entitled under this Agreement are changed or modified, Buyer shall, at Seller's request, use all reasonable efforts to cause the Environmental Attributes to comply with new standards as changed or modified.
- (b) Notwithstanding Seller's ownership of the Environmental Attributes, Seller shall pay to Buyer an amount (the "Buyer's Share Amount") equal to twenty-five percent (25%) of the amount of Environmental Attributes Revenues received by Seller. During each Contract Year in the Term, Seller shall pay the Buyer's Share Amount to Buyer within 30 days after completion of audited annual financial statements for the Generating Facility, but in no event later than 120 days after the end of each Contract Year. "Environmental Attributes Revenues" means the proceeds received by Seller, less the actual costs incurred by Seller in connection therewith, from the sale of renewable energy credits or otherwise in respect of the Environmental Attributes in a Contract Year, as shown in the audited annual financial statements of Seller for the operation of the Generating Facility. Buyer acknowledges that Seller has made no statements, representations or warranties regarding the availability of Environmental Attributes or of any Environmental Attributes Revenues to be derived therefrom and Buyer is not relying on any statement, representation or warranty by Seller with respect thereto in entering into this Agreement. Nothing in this Agreement is intended to nor shall it create any obligation on Seller to sell or otherwise attempt to realize economic value from the Environmental Attributes.

4.5 Tax Credits and Financial Incentives.

- (a) Buyer agrees and acknowledges that the Financial Incentives and the Generating Facility shall be owned by Seller or its affiliate and the Seller or its affiliate shall be entitled to the ITC with respect to the Generating Facility.
- (b) In connection with Seller's or its affiliate's rights and interests in performance-based incentive payments to be made under the California Solar Initiative after the

Commercial Operation Date, Buyer agrees to cooperate with Seller, including signing authorizations needed by Seller, to obtain or transfer any such performance based incentives under the California Solar Initiative.

- (c) Seller acknowledges that Buyer has made no statements, representations or warranties regarding the eligibility of the Generating Facility for the ITC or the CSI and Seller is not relying on any statement, representation or warranty by Buyer with respect to the ITC or CSI in entering into this Agreement.

ARTICLE 5: BILLING AND PAYMENT

5.1 Billing and Payment.

- (a) Generally. During the Term, on a monthly basis. Seller shall invoice Buyer and Buyer shall make payment for Energy delivered to Buyer during the prior month, in accordance with Article 4. Such payment shall be full compensation to Seller for the Delivered Energy received under this Agreement. Invoices furnished by Seller under this Agreement must be in a form reasonably acceptable to the Buyer and must include a unique invoice number. All invoices paid by Buyer to Seller shall be subject to audit by the Buyer.
- (b) Payment. All payments shall be made on or before 30 days after receipt of an undisputed invoice. Each Party shall make payments by electronic funds transfer or by other mutually agreeable method(s), to the account designated by the other Party.

5.2 Allocation of Taxes and Possessory Interest Tax.

- (a) Seller Responsibility. Seller shall pay or cause to be paid all Taxes due under or by virtue of this Agreement, its ownership of the Generating Facility, or the sale and delivery of Energy sold hereunder. Notwithstanding the foregoing, Seller shall not be responsible, and Buyer shall promptly reimburse Seller, for any Taxes imposed by the County under laws adopted by the County after the Effective Date of this Agreement.
- (b) Buyer Credit for Payment of Taxes. If the Buyer is required by law or regulation to remit or pay Taxes which are Seller's responsibility hereunder, the Buyer may deduct the amount of any such Taxes from the sums due to Seller under this Agreement.

ARTICLE 6: SELLER'S ADDITIONAL OBLIGATIONS

- 6.1** As Builds. Seller provided the County with an as-built plan set for the Generating Facility after the Generating Facility was completed.
- 6.2** Compliance with Terms of Agreement. Seller shall develop, finance, own or control, maintain and operate the Generating Facility in compliance with this Agreement including the Technical Requirements appended as Exhibit 4 [Technical and Warranty

Requirements], all Requirements of Law, all Permits, the Distribution Provider Tariffs and Prudent Industry Practice. Additionally, Seller shall obtain the warranties described in Exhibit 4 [Technical and Warranty Requirements] for the equipment detailed in that Exhibit.

6.3 Reserved.

6.4 Compliance.

- (a) Seller shall, or shall cause an affiliate to, in its own name or the name of such affiliate and at such entity's own expense, seek, obtain, maintain, comply with, and, as necessary, renew and modify from time to time all Permits and other authorizations that are required by any Requirements of Law, the Distribution Provider Tariffs, or any Government Authority as is necessary for Seller to engage in the activities and obligations required by the Agreement.
- (b) Reserved.
- (c) Reserved.
- (d) Reserved.
- (e) Reserved.
- (f) Reserved.

6.5 Maintenance, Audit and Inspection of Records.

- (a) Maintenance of Records. Seller, or Seller's affiliates, shall maintain any and all documents and records which demonstrate performance under this Agreement, and all ledgers, books of account, invoices, vouchers, cancelled checks, and other documents evidencing or relating to charges for services, or expenditures and disbursements charged to Buyer for a minimum period of five years, or for any longer period required by law, from the date of final payment to Seller pursuant to this Agreement.
- (b) Inspection. Any documents required to be maintained pursuant to this Agreement shall be made available for inspection or audit at no cost to Buyer, at any time during regular business hours, upon five days written request by a designated representative of the Buyer. Seller shall provide copies of such documents to Buyer for inspection at a time and place that is convenient to Buyer.
- (c) Custody of Records. Where Buyer has reason to believe that any of Seller's documents relating to this Agreement may be lost or discarded due to dissolution, disbandment or termination of Seller's business, Buyer may, by written request by any of the above-named officers, require that custody of the Seller's documents be given to Buyer. Seller shall comply with Buyer's reasonable written request.

- 6.6** Insurance. Seller shall, or shall cause an affiliate to, in its own name or the name of such affiliate, obtain and maintain the policies of insurance in amounts and with coverage as set forth in Exhibit 7 [Insurance and Bonding Requirements].
- 6.7** Reserved.
- 6.8** Obligation to Interconnect. Seller shall be solely responsible for Interconnection of the Generating Facility to the Distribution System. Buyer shall provide such cooperation as may be reasonably requested. Seller shall be responsible for all costs under the Interconnection Agreement and any other agreements with the Distribution Provider, including but not limited to the costs of any upgrades to the Distribution System associated with the Interconnection of the Generating Facility. Seller shall, at its own cost and expense, maintain the Interconnection Facilities, including metering facilities.
- 6.9** Seller's Personnel. All Seller's operating and maintenance personnel for the Generating Facility shall be adequately qualified and trained throughout the term of the Agreement.
- 6.10** Facility Conformance to Host Specifications. During the Term, including when maintenance is performed or when modifications are implemented, Seller shall assure that the Generating Facility remains in conformance in all material respects with the as-built drawings; as well as all specifications and requirements of this Agreement. For purposes of the foregoing requirement, any deviation from the approved Final Plans or any specification set forth in Exhibit 4 [Technical and Warranty Requirements] with respect to the components, materials, equipment and parts comprising the Generating Facility shall be deemed not "material" if the substituted component, material, equipment or part is of equal or higher quality and utility as the original identified in the as built drawings. Buyer may, at any time, prepare and provide to Seller a letter or notice of any observed defects, deficiencies or deviations between the Generating Facility and the as-built drawings, or any specification or requirement of this Agreement. Within 20 days of Buyer's notification, Seller shall correct or address the issue(s) or propose to Buyer a reasonable schedule for correcting or addressing the issue(s). The schedule shall be subject to the written consent of the Buyer which consent shall not be unreasonably withheld or delayed. For the purposes of this Agreement, "Final Plans" means the final one hundred percent (100%) detailed engineering drawings and specifications for the Generating Facility that were approved by the County.
- 6.11** Coordination with the Distribution Provider.
- (a) Each Party shall undertake its obligations under this Agreement in compliance with all applicable (i) operating policies, criteria, rules, guidelines, tariffs and protocols of the Distribution Provider and (ii) Prudent Industry Practices.
 - (b) Start-ups and Shut-downs. Seller shall coordinate all Generating Facility start- ups and shut-downs, whether whole or partial, with Buyer.

- 6.12** Minimize Outages. Seller shall use commercially reasonable efforts to minimize the number and duration of Outages during periods when the Generating Facility otherwise would be able to produce Energy.
- 6.13** Transmission and Distribution Maintenance Information. If either Party receives information through the Distribution Provider regarding maintenance that will directly affect the Generating Facility, it will provide this information promptly to the other Party.
- 6.14** Modifications to the Generating Facility. Upon approval by Buyer of the design of the Generating Facility, Seller shall have no right to change, replace or alter the Generating Facility nor attach fixtures or erect additions or structures in or upon the Facility (collectively “Alterations”) without receiving prior written approval of Buyer prior to undertaking any such Alterations. Seller shall submit to Buyer detailed and complete plans and specifications for the proposed Alterations. Buyer may, in its sole discretion, waive the requirement for detailed plans upon Seller’s demonstration that the proposed Alteration consists solely of modification or replacement of like-kind equipment. Buyer shall not unreasonably delay or withhold written approval of Seller’s proposed Alteration, so long as such Alteration imposes no additional burdens or obligations on Buyer. As a condition to its consent to the Alterations, Buyer may impose reasonable requirements, including the reimbursement of any costs incurred by Buyer in responding to Seller’s request or inspecting such Alterations. Any Alterations performed by Seller shall be performed in accordance with all Requirements of Law, including any and all necessary permits and approvals to be obtained from the County in its capacity as a regulatory agency. Seller agrees to provide Buyer with sufficient advance notice of any proposed Alterations to allow the coordination and consideration by Buyer of the construction schedule for the Alterations. Notwithstanding the foregoing, Seller’s routine repair, replacement, or maintenance of the equipment components of the Generating Facility shall not require Buyer’s consent.
- 6.15** Reserved.

ARTICLE 7: FORCE MAJEURE

7.1 Force Majeure Events.

- (a) Excuse. Subject to Section 7.2 below, and except as expressly set forth herein, neither Party shall be considered in default under this Agreement for any delay or failure in its performance under this Agreement (including any obligation to deliver or accept Energy) if such delay or failure is due to a Force Majeure Event, subject to the provisions below in this Article 7.
- (b) “Force Majeure Event” means an event or circumstance that prevents one Party (the “Claiming Party”) from performing its obligations hereunder, which event or circumstance meets the following conditions: (1) it was not anticipated as of the Effective Date, (2) it is due to factors beyond the reasonable control of the Claiming Party, (3) it is not the result of the negligent action or inaction of the Claiming Party, and (4) the Claiming Party has been unable to overcome by the exercise of all

reasonable technical and commercial precautions and measures the consequences of such event or circumstance. The term “Force Majeure Event” includes, without limitation, the following events:

- (i) Acts of nature such as storms, floods, lightning and earthquakes.
- (ii) Sabotage or destruction by a third party of facilities and equipment relating to the performance by the affected Party of its obligations under this Agreement.
- (iii) Distribution System outage or failure not caused by Seller or Seller’s activities.
- (iv) War, riot, acts of a public enemy or other civil disturbance.
- (v) Strike, walkout, lockout or other significant labor dispute.
- (vi) Theft, vandalism, accidents, or construction-related power interruptions and mechanical moves.
- (vii) Failure or delay of any Governmental Authority to issue applicable permits, notwithstanding a Party’s timely and complete application therefore and diligent prosecution of such application.
- (viii) Curtailment by the CAISO, or its successor, but only to the extent that the CAISO declares a “Force Majeure” under the CAISO Tariff.
- (ix) With respect to post-completion work only, the unavailability of project components in the marketplace, or where available but delayed, not available without the payment of premium fabrication charges materially in excess of generally published rates for fabrication of such components.

(c) Exclusion. “Force Majeure Event” does not include the following:

- (i) Economic hardship of either Party.
- (ii) An Outage, except if caused directly by an event or circumstance that would otherwise qualify as a Force Majeure Event.
- (iii) Failures or delays by the Distribution Provider or the CAISO in entering into, or performing under, all agreements with Seller contemplated by this Agreement.
- (iv) Curtailment or interruption of distribution services, other than by the CAISO where the CAISO declares a “Force Majeure” under the CAISO Tariff.

- (v) Insufficiency, unavailability, failure, or diminishment of solar resource (or Insolation), except as a result of an event that would otherwise qualify as a Force Majeure Event or a reduction in solar resource or insolation resulting from Buyer's actions or failure to honor its obligations under this Agreement.

7.2 Conditions.

- (a) In addition to the conditions set forth in Section 7.1(b) above, a Party may rely on a claim of a Force Majeure Event to excuse its performance only to the extent that such Party does all of the following:
 - (i) Provides prompt notice of such Force Majeure Event to the other Party, giving an estimate of its expected duration and the probable impact on the performance of its obligations under this Agreement.
 - (ii) Exercises all reasonable efforts to continue to perform its obligations under this Agreement.
 - (iii) Expeditiously takes action to correct or cure the event or condition excusing performance so that the suspension of performance is no greater in scope and no longer in duration than is dictated by the problem.
 - (iv) Exercises all reasonable efforts to mitigate or limit damages to the other Party.
 - (v) Provides prompt notice to the other Party of the cessation of the event or condition giving rise to its excuse from performance.

PROVIDED; HOWEVER, that failure to give timely notice required under clauses (i) or (v) above will not result in the loss of excused performance to such Party as a result of such Force Majeure Event unless such failure or delay in giving notice has a materially detrimental effect on the other Party, including, without limitation, on the other Party's ability to mitigate the impact of the Force Majeure Event.

- ## 7.3 Failure to Perform Due To Force Majeure Event.
- Notwithstanding any other provision contained herein, if a Party's failure to perform its obligations under this Agreement is due to a Force Majeure Event, then such failure shall not be deemed a default under this Agreement to the extent such failure to perform is attributable to the occurrence of a Force Majeure Event. Until such Force Majeure Event is remedied, the non-claiming Party shall not be required to perform or resume performance of its obligations to the claiming Party corresponding to those obligations excused by the Force Majeure Event. If a Force Majeure Event shall have occurred that has affected a Party's performance of its obligations hereunder and that has continued for a period of 180 consecutive days or 240 days in the aggregate during a four-year period, then either Party shall be entitled to terminate this Agreement upon 30 days' prior written notice to the other Party; provided that such Force

Majeure Event is continuing at the end of such 30-day period. Upon such termination for a Force Majeure Event, neither Party shall have any liability to the other, except that Buyer shall not be excused from making any payments and paying any unpaid amounts due for Delivered Energy or other services delivered prior to the termination of this Agreement.

ARTICLE 8: DISPUTE RESOLUTION

- 8.1** Negotiation. Buyer and Seller shall negotiate in good faith in the event of any dispute during the performance of this Agreement. If the dispute cannot be resolved between the Buyer's project manager and the Seller's project manager after two days of negotiations, at either the Buyer's or Seller's option, the matter may be promptly escalated to the next level of command within each Party's organization. If the dispute or problem cannot be resolved within five additional Business Days, the matter shall be promptly escalated to the Deputy Fire Chief of Buyer and the Chief Executive Officer of Seller, who shall attempt to resolve the dispute within five Business Days.
- 8.2** No Limit on Remedies. Notwithstanding anything to this contrary, this Article is not intended to limit or restrict the rights of either Party to seek any judicial remedy.

ARTICLE 9: DEFAULT & REMEDIES

- 9.1** Events of Default Generally. An Event of Default shall occur under this Agreement upon the occurrence of any of the following events (each, an "Event of Default," and, collectively, "Events of Default"):
- (a) Seller schedules and/or delivers to Buyer, without Buyer's consent, energy or other product from a resource other than the Generating Facility.
 - (b) Seller sells or transfers Energy to any Person other than Buyer.
 - (c) Any material representation or warranty made by either Party hereunder is false or misleading in any material respect.
 - (d) Either Party makes a general assignment of its assets for the benefit of its creditors without prior written approval by the other Party.
 - (e) Either Party purports to assign or otherwise transfer its interest in this Agreement in violation of the provisions contained in this Agreement whether voluntarily or by operation of law.
 - (f) A court makes or enters any decree or order: (i) adjudging either Party to be bankrupt or insolvent; (ii) approving as properly filed a petition seeking reorganization of either Party or an arrangement under the bankruptcy laws or any other applicable debtor's relief law or statute of the United States or any state thereof; (iii) appointing a receiver, trustee or assignee of either Party in bankruptcy or insolvency or for its property; (iv) directing the winding up or liquidation of either Party and such decree or order under clauses (i) through (iv) continues for a

period of 60 days; or (v) either Party voluntarily submits to or files a petition seeking any such decree or order.

- (g) The occurrence of any act or omission on the part of Seller which operates to suspend, revoke or terminate for more than 30 days any certificate, permit, franchise, approval, authorization or power necessary for Seller to lawfully conduct the operations which Seller is required or permitted to conduct on the Project Site.
- (h) Any lien is filed against Buyer's property because of any act or omission of Seller that is not discharged or contested by Seller in good faith by proper legal proceedings within 20 days after receipt of notice thereof by Buyer.
- (i) Either Party fails to perform any term, covenant, or condition of this Agreement to be performed by such Party, except those referred to in the immediately preceding subparagraphs, and such non-performing Party fails to cure the same within 30 days after written notice from the other Party, or if such default is not reasonably susceptible to cure within the 30-day period, such longer period of time as is reasonably necessary to effectuate such cure, provided that such Party commences the cure within the 30-day period and thereafter diligently prosecutes the completion of the cure. Buyer and Seller shall attempt to resolve all such disputes pursuant to the dispute resolution procedure in Article 8, but nothing shall prejudice either Party's rights and remedies in the event that the other Party fails to cure within the 30-day period or within any other period granted.
- (j) Seller fails to meet the Delivery threshold set forth in Section 4.1(d)(ii).

9.2 Termination for Default and Other Remedies.

- (a) Termination for Default. Upon the occurrence of an Event of Default, the non-defaulting Party may terminate this Agreement by notifying the defaulting Party in writing of the decision to terminate and the effective date of the termination.
- (b) Remedies. For all claims, causes of action and damages with respect to an Event of Default, in addition to the right to terminate under Section 9.2(a), the non-defaulting Party shall be entitled to recover actual damages allowed by law, and to seek equitable remedies, including specific performance of all or any part of this Agreement, unless otherwise limited by this Agreement. Neither the enumeration of Events of Default nor the termination of this Agreement by a non-defaulting Party shall limit the right of a non-defaulting Party to rights and remedies available at law or in equity. Except as otherwise specifically and expressly provided herein, all remedies provided for in this Agreement may be exercised individually or in combination with any other remedy available hereunder or under applicable laws, rules and regulations. The exercise of any remedy shall not preclude or in any way be deemed to waive any other remedy.

9.3 Limitations. Notwithstanding anything to the contrary in this Agreement, including Section 9.2 above:

- (a) If an Event of Default under Sections 9.1(g) or 9.1(i) results in a decline in the amount of Delivered Energy to a level below the threshold set forth in Section 4.1(d)(ii) above, then Buyer's remedy shall be limited to the remedy of termination of this Agreement.
- (b) Neither Party shall be liable to the other Party under this Agreement for any indirect, special, consequential or speculative damages, including, without limitation, loss of use, loss of energy cost or other savings, loss of revenues, loss of profit, interest charges, cost of capital or claims of its customers or members to which service is made. The foregoing is not intended to nor shall it limit any right or remedy of Seller to obtain payment of the full Contract Price for Delivered Energy.
- (c) Under no circumstances shall the non-defaulting Party be required to make a termination payment or any other payment to the defaulting Party (except for payments due under this Agreement for performance prior to termination).
- (d) Under no circumstances shall Buyer have the right to obtain specific performance of any obligation of Seller under this Agreement to install or replace the Generating Facility or any component or portion thereof.
- (e) Reserved.

9.4 Effect of Termination - Survival of Obligations.

- (a) Abandonment. If Seller fails to complete its removal and restoration obligations under Section 12.35(c) within 120 days of a termination, then, in addition to Buyer's other remedies under this Agreement, at law or in equity for such failure, any part of the Generating Facility and all personal property of Seller not removed from the Project Site within 120 days after such termination of this Agreement shall be deemed abandoned by Seller and become the property of Buyer, and Buyer may, at its option, remove and warehouse or otherwise dispose of such property or retain ownership thereof indefinitely, as it determines in its sole discretion.
- (b) Survival of Obligations. The following rights, obligations or provisions shall survive termination or expiration of this Agreement:
 - (i) Obligations by one Party to the other for payment of any amounts, or for performance of any duties, that have accrued or arose prior to, or have directly resulted from, the expiration or termination of this Agreement.
 - (ii) Indemnity provisions pursuant to the Agreement.
 - (iii) Limitation of liability provisions pursuant to the Agreement;
 - (iv) For a period of one year after the expiration or termination date, the right to dispute an invoice.

9.5 Indemnification, Assumption of Risk & Waiver.

- (a) Seller shall defend, indemnify, save, and hold harmless Buyer, its governing body, officers, employees, and agents from and against any and all claims, demands, losses, costs, expenses, and liabilities for any damages, sickness, death, or injury to persons or property, including any fines or penalties, arising out of or in any way connected with Seller's performance of this Agreement or the design, construction, use, operation, maintenance, or removal of the Generating Facility, except as may arise solely from the active negligence or solely from the willful misconduct of Buyer, its officers, employees or agents. If requested by any of the indemnitees, Seller shall defend any such suits at its cost and expense. In an action or claim against Buyer in which Seller is required to defend Buyer, Buyer shall have the right to approve legal counsel retained by Seller to provide Buyer's defense, which approval shall not be unreasonably withheld, conditioned or delayed. If Seller refuses or fails to undertake or diligently prosecute such defense on behalf of Buyer, Buyer will have the right to provide its own defense, and Seller will reimburse Buyer for such expenditures, including reasonable attorneys' fees and costs. Seller's obligations under this section shall exist regardless of concurrent negligence or willful misconduct on the part of Buyer or any other person, except as may arise solely from the active negligence or solely from the willful misconduct of Buyer, its officers, employees or agents, and shall apply without limitation to claims and litigation arising under the Americans with Disabilities Act of 1990, inverse condemnation, or any other statutory or legal theory. All of Seller's obligations under this section are intended to apply to the fullest extent permitted by law and shall survive the expiration or sooner termination of this Agreement.
- (b) To the extent that a portion of Seller's services under this Agreement are design professional services subject to California Civil Code Section 2782.8 and to the extent that a particular claim or litigation arises from such design professional services, Seller's obligations under this Section shall be subject to any applicable limitations mandated by California Civil Code Section 2782.2.
- (c) Seller shall, at its own expense, indemnify, defend, settle, and hold harmless the Buyer and its agencies against any claim or potential claim that any service, technology or good provided by Seller to Buyer under this Agreement, or Buyer's use thereof, infringes any patent, trademark, copyright or other intellectual property rights, including trade secret rights. Seller shall pay all costs, damages and attorneys' fees that a court awards as a result of any such claim.
- (d) Seller shall reimburse Buyer for all costs incurred in successfully enforcing indemnification provisions against Seller in this Agreement.

ARTICLE 10: REPRESENTATIONS, WARRANTIES & COVENANTS

- 10.1** Seller's Representations, Warranties and Covenants. Seller represents, warrants and covenants to the Buyer that as of the date of execution of this Agreement:

- (a) Seller is duly organized and validly existing as a limited liability company under the laws of Delaware, and has the lawful power to engage in the business it presently conducts and contemplates conducting in this Agreement and Seller is duly qualified in each jurisdiction wherein the nature of the business transacted by it makes such qualification necessary.
- (b) Seller has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder; all such actions have been duly authorized by all necessary proceedings on its part.
- (c) This Agreement has been duly and validly executed and delivered by Seller and, as of the Effective Date, constitutes a legal, valid and binding obligation of Seller, enforceable in accordance with its terms against Seller, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.
- (d) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Seller, threatened in writing against Seller, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to have a materially adverse effect on the business, properties or assets or the condition, financial or otherwise, of Seller, or to result in any impairment of Seller's ability to perform its obligations under this Agreement.
- (e) The execution, delivery and performance of this Agreement by Seller will not conflict with its governing documents, any applicable laws, or any covenant, agreement, understanding, decree or order to which Seller is a party or by which it is bound or affected.

10.2 Buyer Representations and Warranties. Buyer represents and warrants to Seller that as of the Effective Date of this Agreement:

- (a) Buyer has the legal power and authority to make and carry out this Agreement and to perform its obligations hereunder and all such actions have been duly authorized by all necessary proceedings on its part.
- (b) This Agreement has been duly and validly executed and delivered by Buyer and, as of the Effective Date, constitutes a legal, valid and binding obligation of Buyer, enforceable in accordance with its terms against Buyer, except to the extent that its enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally or by general principles of equity.
- (c) There are no actions, suits, proceedings or investigations pending or, to the knowledge of Buyer, threatened in writing against Buyer, at law or in equity before any Governmental Authority, which individually or in the aggregate are reasonably likely to result in any impairment of the Buyer's ability to perform its obligations

under this Agreement. Seller and Buyer further understand and agree that the Buyer is entering into this Agreement in its capacity as a purchaser of electric power. Nothing in this Agreement shall limit in any way Seller's obligation to obtain any required approvals from departments, boards, commissions or governmental entities having jurisdiction over this Agreement. By entering into this Agreement, Buyer is in no way modifying Seller's obligation to cause the Generating Facility to be installed and operated in accordance with all Requirements of Law.

- (d) The execution, delivery and performance of this Agreement by Buyer will not conflict with its governing documents, including its charter, any other applicable laws, or any covenant, agreement, understanding, decree or order to which Buyer is a party or by which it is bound or affected.
- (e) To the actual knowledge of the Buyer, at the time the County and Seller entered into the Original Agreement, (a) the Project Site was not in violation of any Environmental Laws, and (b) no Hazardous Materials were present on the Project Site, except for Hazardous Materials of types and amounts not in violation of Environmental Laws relating to the normal or customary operations of the improvements then in existence or previously located on the Project Site.

ARTICLE 11: ASSIGNMENT AND FINANCING

11.1 Assignment. Except as provided in Sections 11.2, 11.3, and 12.35(h), neither Party may assign, sublease, convey, sell, pledge, hypothecate, encumber (by deed of trust, mortgage or any other instrument), or otherwise transfer this Agreement, the Generating Facility or any part of it, or any rights under this Agreement, whether voluntarily or by operation of law, without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Notwithstanding the foregoing, either Party may transfer the Agreement without consent: (a) to a Credit Worthy affiliate; (b) to any Credit Worthy person or entity succeeding to all or substantially all of the assets of the transferor or (c) as a collateral assignment in connection with any financing or other financial arrangements or (d) to a Credit Worthy affiliate, including specifically a Qualified Active Low-Income Business, as such term is defined in the New Markets Tax Credit program, or its lessee, as applicable, for the purpose of enabling the affiliate to receive the benefit of Financial Incentives, Environmental Attributes, or any other federal, state or local tax credits, incentives or benefits. Seller shall use its reasonable efforts to provide Buyer with reasonable advance written notice of any such transaction together with reasonably detailed information on same, but failure to actually deliver such notice in advance of such transaction shall not constitute a default hereunder. If any assignment permitted under this Agreement is from Seller to a Qualified Assignee, then the originally named (or then) Seller will be released upon written assumption by such Qualified Assignee. If any assignment permitted under this Agreement is not to a Qualified Assignee, then the originally named (or then) Seller will not be released, but shall remain liable, jointly and severally, with the permitted assignee for all Seller's obligations hereunder.

11.2 Lender Accommodations. Buyer acknowledges that Seller, or Seller's Credit Worthy affiliate, may finance the development, installation, acquisition, operation and/or

maintenance of the Generating Facility with debt, equity, leaseback financing and/or other accommodations from an affiliated entity, and/or from one or more other entities (each, a “Lender”), and that the obligations of Seller or such Credit Worthy affiliate to such Lender may be secured by, among other things, a pledge or collateral assignment of this Agreement and a first security interest in the Generating Facility, and/or ownership (with a leaseback) of the Generating Facility (any such security device or ownership interest, a “Lender’s Security Interest”). In order to facilitate the necessary financing, the Parties agree as follows:

- (a) Consent to Lender’s Security Interest. Buyer consents to Seller providing to each Lender a Lender’s Security Interest. Buyer acknowledges and agrees that: (i) Seller and all of Seller’s rights under this Agreement are and shall be in all respects subject and subordinate to the Lender’s Security Interest, including all renewals, modifications, supplements, amendments, consolidations, replacements, substitutions, additions and extensions of the Lender’s Security Interest; and (ii) no amendments or modifications of this Agreement are permitted without Lender’s prior written consent.
- (b) Lender’s Performance of Seller’s Obligations. At any time, Lender shall have the right, but not the obligation, to pay all sums due from Seller to Buyer under this Agreement and to perform any other act, duty or obligation required of Seller under this Agreement or cause to be cured any default of Seller under this Agreement in the time and manner provided by the terms of this Agreement. Under no circumstances will Lender be required to cure any default of Seller or to perform any act, duty or obligation of Seller under this Agreement prior to such time as it has exercised or enforced Lender’s Security Interest and as a result thereof or otherwise succeeded to Seller’s interest under this Agreement.
- (c) Rights upon Event of Default under the Lender’s Security Instrument. Upon the occurrence of an event of default under the Lender’s Security Instrument or any other document evidencing or securing the indebtedness of Seller to Lender:
 - (i) Lender, as holder of Lender’s Security Interest shall be entitled to exercise all rights and remedies of secured parties generally with respect to this Agreement and the Generating Facility and shall be entitled to enforce lender’s Security Interest in the Generating Facility, including any sale of the Generating Facility to a Qualified Assignee pursuant to a power of sale or any in-lieu conveyance of the Generating Facility from Seller to Lender or from Seller to any Qualified Assignee designated by Lender. In either such case, Lender or its Qualified Assignee shall perform all of Seller’s obligations and promptly cure all defaults under this Agreement to the extent required by Section 11.2(e)(ii). In addition, Lender shall give notice to Buyer of any such transfer or assignment of this Agreement, together with a written instrument pursuant to which Lender or the Qualified Assignee assumes the Seller’s obligation under this Agreement. Any such enforcement of Lender’s Security

Interest and corresponding assignment or transfer shall not constitute a default under this Agreement, nor shall it require Buyer's consent so long as the successor to Seller's interest in this Agreement is either Lender or a Qualified Assignee.

- (ii) If Seller files for bankruptcy under the United States Bankruptcy Code and this Agreement is rejected in the bankruptcy proceedings or otherwise terminated, upon the request of Lender made within 90 days of such rejection or termination, Buyer shall enter into a new agreement with Lender or its designated Qualified Assignee on the same terms and conditions as this Agreement. In such case, Lender or its designated Qualified Assignee shall perform all of Seller's obligations and promptly cure all defaults under this Agreement to the extent required in Section 11.2(e)(ii) below.
- (d) Acknowledgment and Confirmation. Buyer shall deliver, or, if different than Buyer, shall cause the owner or lessor of the Project Site, to deliver to Lender and Seller a fully-executed acknowledgment and confirmation in form reasonably acceptable to Lender that ownership of the Generating Facility remains in Seller and/or Lender, as applicable, and that the Generating Facility is the personal property of Seller and/or Lender, as applicable. However, Buyer will not be required to execute or deliver an easement or any other document that would create a recorded interest against Buyer's real property.
- (e) Lender Right to Notice and Cure. Notwithstanding any contrary term of this Agreement:
 - (i) Buyer will not exercise any right to terminate or suspend this Agreement due to a default by Seller unless Buyer has first given each Lender prior, written notice of its intent to terminate or suspend this Agreement, specifying in the notice the default(s) by Seller giving rise to such right, and Lender fails to cure the default(s) or within 30 days after such notice is mailed or delivered or within such longer period as may be provided in this Agreement. If, within the foregoing notice period, Lender commences to cure the default(s) and continuously pursues such cure, the period for cure will be extended for a period of time reasonable under the circumstances, but in no event exceeding an additional 30 days. The Parties' respective obligations under this Agreement will otherwise remain in effect during any cure period. The Buyer's requirement to notify Lender shall only apply with respect to Lenders who have, prior to such time, provided written notice to Buyer setting forth its address for notice.
 - (ii) If Lender or a Qualified Assignee acquires the Generating Facility and either succeeds to Seller's interest in this Agreement as described in Subsection (c)(i) above or enters into a new agreement

with Buyer as provided in Subsection (c)(ii) above and, within the applicable cure period described in this Section 11.2, cures all defaults under this Agreement existing as of the date of such acquisition and which are capable of being cured by a third party, this Agreement shall continue in full force and effect.

- (f) Further Assurances. At the request of Lender or its Qualified Assignee, Buyer agrees to execute and deliver any document, instrument or statement required by law or otherwise reasonably requested by any Lender to create, perfect, continue or terminate Lender's Security interest in the Generating Facility and/or this Agreement. However, Buyer will not be required to execute or deliver an easement or any other document that would create a recorded interest against Buyer's real property.

- 11.3** Assignment Following Project Site Commercial Operation. Notwithstanding anything to the contrary in Section 11.1, upon completion of construction and installation of the Generating Facility on the Project Site, Seller shall have the right to assign its interest in this Agreement and its right, title and interest in the Generating Facility to the Operating Company, which Operating Company would thereafter own, operate, and maintain the Generating Facility and perform all of Seller's obligations hereunder with respect to the Project Site. There shall not be more than one Operating Company.

ARTICLE 12: OTHER TERMS & CONDITIONS

- 12.1** Notices. All deliveries, notices, requests, demands or other communications provided for or required by this Agreement shall be in writing and shall be deemed to have been given when sent by: (1) registered or certified mail, return receipt requested; (2) overnight carrier; or (3) email or facsimile confirmed by delivery or transmission receipt and followed by a mailed hard copy from sender. Notices shall be addressed to:

Buyer:

Name: Contra Costa Fire Protection District
Title: Fire Chief
Address 1: 4005 Port Chicago Highway, Suite 250
City: Concord
State: California
Zip: 94520

Seller:

Name: MFP Co II, LLC
Title: Asset Management
Address 1: 2180 S 1300 E
Address 2: Suite 500
City: Salt Lake City
State: Utah
Zip: 84106
Phone: 303-444-3020

Each Party may designate a different person and address by sending written notice to the other Party, to be effective no sooner than ten days after the date of the notice.

- 12.2** Compliance With All Laws. Seller shall at all times comply with all applicable laws, ordinances, codes, rules and regulations. Seller shall keep itself fully informed of the County's codes, ordinances and regulations and of all state and federal laws in any manner affecting the performance of this Agreement, and must at all times comply with all applicable local codes, ordinances, and regulations and all applicable laws as they may be amended from time to time. Seller shall procure and maintain all Permits necessary for performance of this Agreement, and shall pay its respective charges and fees in connection therewith. Examples of such laws include but are not limited to the California Occupational Safety and Health Act of 1973, Labor Code §6300 et seq., and the standards and regulations issued thereunder.
- 12.3** No Dedication. Any undertaking by one Party to the other under any provision of this Agreement shall not constitute the dedication of the Generating Facility or any portion thereof to the public or to any portion thereof.
- 12.4** Non-Waiver of Rights. Waivers of any rights hereunder must be in writing and shall not be implied from performance or usage of trade. The failure of either Party to this Agreement to enforce or insist upon compliance with or strict performance of any of the terms or conditions hereof, or to take advantage of any of its rights hereunder, shall not constitute a waiver or relinquishment of any such terms, conditions or rights, but the same shall be and remain at all times in full force and effect.
- 12.5** Headings. All titles, subject headings, section titles and similar items are provided for the purpose of reference and convenience and are not intended to be inclusive, definitive or to affect the meaning of the contents or scope of the Agreement.
- 12.6** No Third-Party Beneficiary. This Agreement shall not be construed to create rights in, or to grant remedies to, any third party (other than a permitted successor or assignee bound to this Agreement) as a beneficiary of this Agreement or any duty, obligation or undertaking established herein.
- 12.7** 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 United States Bankruptcy Code.
- 12.8** Governing Law. This Agreement is made in the State of California and shall be interpreted and governed by the laws of the State of California without regard to conflict of law principles.
- 12.9** Venue. In the event that suit shall be brought by either Party hereunder, the Parties agree that venue shall be exclusively vested in the state courts of California in the County of Contra Costa or if federal jurisdiction is appropriate, exclusively in the United States District Court in the Northern District of California, San Francisco, California.

12.10 Nature of Relationship.

- (a) The duties, obligations and liabilities of the Parties are intended to be several and not joint or collective. The Agreement shall not be interpreted or construed to create an association, joint venture, fiduciary relationship or partnership between Seller and the Buyer or to impose any partnership obligation or liability or any trust or agency obligation or relationship upon either Party. A Party shall not have any right, power or authority to enter into any agreement or undertaking for, or act on behalf of, or act as or be an agent or representative of or otherwise bind the other Party.
- (b) Seller shall perform pursuant to this Agreement as an independent contractor and not as an officer, agent, servant, or employee of Buyer. Seller shall be solely responsible for the acts and omissions of its officers, agents, employees, contractors, and subcontractors, if any. Nothing herein shall be considered as creating a partnership or joint venture between the Buyer and Seller. No person performing any services and/or supplying all goods shall be considered an officer, agent, servant, or employee of Buyer, nor shall any such person be entitled to any benefits available or granted to employees of the Buyer.
- (c) Seller shall be responsible for all obligations and payments, whether imposed by federal, state or local law, including, but not limited to, the Federal Insurance Contributions Act, income tax withholdings, unemployment compensation, insurance, and other similar responsibilities related to Seller's performing services and work, or any agent or employee of Seller providing same.
- (d) Any terms in this Agreement referring to direction from Buyer shall be construed as providing for direction as to policy and the result of Seller's work and not as to the means by which such a result is obtained.

12.11 Subcontracting by Seller. Seller is prohibited from subcontracting this Agreement or any part of it unless such subcontracting is first approved by the Buyer in writing, which approval will not be unreasonably withheld or delayed. Seller shall be responsible for directing the work of any approved subcontractors and for any compensation due to any approved subcontractors. Seller shall ensure that all Seller subcontractors comply with this Agreement and shall be responsible for such compliance. Seller shall require any or all subcontractors to sign an agreement requiring compliance with this Agreement. Buyer shall be the third party beneficiary of such Agreement(s). However, Buyer assumes no responsibility whatsoever concerning compensation or any other responsibility or liability to subcontractors.

12.12 Good Faith & Fair Dealing. The Parties agree to act reasonably and in accordance with the principles of good faith and fair dealing in the performance of this Agreement.

12.13 Severability. Should any provision of this Agreement be or become void, illegal or unenforceable, the validity or enforceability of the other provisions of this Agreement shall not be affected and shall continue in full force and effect. The Parties will, however, use their best endeavors to agree on the replacement of the void, illegal, or unenforceable

provision(s) with legally acceptable clauses that correspond as closely as possible to the sense and purpose of the affected provision.

- 12.14** Counterparts. This Agreement may be executed in two or more counterparts and by different Parties on separate counterparts, all of which shall be considered one and the same Agreement, and each of which shall be deemed an original.
- 12.15** Cooperation. The Parties agree to reasonably cooperate with each other in the implementation and performance of the Agreement. Such duty to cooperate shall not require either Party to act in a manner inconsistent with its rights under this Agreement.
- 12.16** Necessary Acts and Further Assurances. The Seller shall at its own cost and expense execute and deliver such further documents and instruments and shall take such other actions as may be reasonably required or appropriate to evidence or carry out the intent and purposes of this Agreement.
- 12.17** Time is of the Essence. Time is of the essence of this Agreement.
- 12.18** Construction. The Parties acknowledge that this Agreement was jointly prepared by them, by and through their respective legal counsel. and any uncertainty or ambiguity existing herein shall not be interpreted against either Party on the basis that the Party drafted the language but otherwise shall be interpreted according to the application of the rules on interpretation of contracts.
- 12.19** Entire Agreement, Integration/Merger Clause. This Agreement, together with all exhibits attached hereto, constitute the entire agreement between the Parties and supersede any and all prior oral or written understandings. No amendment, addition to or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it, unless such amendment, addition, modification or waiver is in writing and signed by a duly authorized officer or representative of the Parties.
- 12.20** Non-Discrimination. Seller shall comply with all applicable federal, state, and local laws and regulations including the Buyer's policies concerning nondiscrimination and equal opportunity in contracting. Such laws include but are not limited to the following: Title VII of the Civil Rights Act of 1964 as amended; Americans with Disabilities Act of 1990; The Rehabilitation Act of 1973 (Sections 503 and 504); California Fair Employment and Housing Act (Government Code Section 12900 et seq.); and California Labor Code Sections 1101 and 1102. Seller shall not discriminate against any subcontractor, employee, or applicant for employment because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status in the recruitment, selection for training, including apprenticeship, hiring, employment, utilization, promotion, layoff, rates of pay or other forms of compensation. Nor shall Seller discriminate in provision of services under this Agreement because of age, race, color, national origin, ancestry, religion, sex/gender, sexual orientation, mental disability, physical disability, medical condition, political beliefs, organizational affiliations, or marital status.

- 12.21 Non-Exclusive Contract.** This Agreement does not establish an exclusive contract between the Buyer and the Seller for the purchase of electricity or power or any services. The Buyer expressly reserves all its rights, including but not limited to, the following: the right to utilize others to provide Energy, products, support and services; the right to request proposals from others with or without requesting proposals from the Seller; and the unrestricted right to bid any such product, support or service.
- 12.22 Modification.** This Agreement may be supplemented, amended, or modified only by the mutual, written agreement of the Parties.
- 12.23 Hazardous Substances.** If any product being offered, delivered or supplied to the Buyer in connection with this Agreement is listed in the Hazardous Substances List of the Regulations of the Director of Industrial Relations with the California Occupational Safety and Health Standards Board, or if the product presents a physical or health hazard as defined in the California Code of Regulations, General Industry Safety Order, Section 5194 (T8CCR), Hazard Communication, the Buyer or subcontractor must include a material safety data sheet ("MSDS") with delivery, or shipment. Each MSDS must reference the contract/purchase order number and identify the "Ship To Address". All shipments and containers must comply with the labeling requirements of Title 49, Code of Federal Regulations by identifying the hazardous substance, name and address of manufacturer, and appropriate hazard warning regarding potential physical safety and health hazard.
- 12.24 Disentanglement.** Seller shall cooperate with Buyer to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Seller shall cooperate with Buyer's efforts to ensure that there is no interruption of electricity and no adverse impact on the provision of services or Buyer's activities. Seller shall return to Buyer all Buyer assets or information in Seller's possession. Seller shall deliver to Buyer or its designee, at Buyer's request, all documentation and data related to Buyer, including, but not limited to, the buyer data and client files, held by Seller, and Seller shall destroy all copies thereof not turned over to Buyer, all at no charge to Buyer.
- 12.25 Accountability.** Seller will be the primary point of contact and assume the responsibility of all matters relating to the Agreement, including those involving the manufacturer and/or supplier and/or any subcontractor, as well as payment issues. If issues arise, the Seller must take prompt action to correct or resolve the issues.
- 12.26 Conflict of Interest.** Seller warrants that it presently has no interest and shall not acquire any interest, direct or indirect, that would conflict in any manner or degree with the performance of services required under this Agreement.
- 12.27 Damage and Repair by Seller.** Any and all damages caused by Seller's negligence or operations (ordinary wear and tear excepted) shall be repaired, replaced or reimbursed by Seller at no charge to the Buyer. Repairs and replacements shall be completed within two hours of the incident unless the Buyer requests or agrees to an extension or another time frame. The cleanup of all damage related to accidental or intentional release of any/all nonhazardous or hazardous material (e.g. hydraulic fluid, fuel, grease, etc.) from Seller's vehicles or during performance shall be the responsibility of the Seller. All materials must

be cleaned up in a manner and at a time acceptable to Buyer (completely and immediately to prevent potential as well as actual environmental damage). Seller must immediately report each incident to the Buyer's Deputy Fire Chief. Damage observed by Seller, whether or not resulting from Seller's operations or negligence shall be promptly reported by Seller to Buyer. Buyer may, at its option, approve and/or dictate the actions that are in Buyer's best interests.

- 12.28** Access and Retention of Records and Provision of Reports. Seller shall maintain financial records adequate to show that Buyer funds paid were used for purposes consistent with the terms of the Agreement between Seller and Buyer. Records shall be maintained during the terms of the Agreement and for a period of three (3) years from its termination, or until all claims have been resolved, whichever period is longer, unless a longer period is required under any contract.
- 12.29** Cooperation with Review. Seller shall cooperate with Buyer's periodic review of Seller's performance. Such review may be conducted on a semi-annual or more frequent basis at the option of the Buyer. Seller shall make itself available on the Project Site to review the progress of the project and Agreement, as requested by the Buyer, upon reasonable advance notice. Seller agrees to extend to the Buyer or his/her designees and/or designated auditor of the Buyer, the right to monitor or otherwise evaluate all work performed and all records, including service records and procedures, to assure that the project is achieving its purpose, that all applicable local, state, and federal regulations are met, and that adequate internal fiscal controls are maintained. The Seller shall be responsible for receiving, replying to, and complying with any audit exceptions set forth in Buyer audits. The Seller shall pay to Buyer the full amount of any audit determined by any audit to be due to Buyer as a result of Buyer audit exceptions. This provision is in addition to other inspection and access rights specified in this Agreement.
- 12.30** Audit Rights Under State Law. Pursuant to California Government Code Section 8546.7, the parties acknowledge and agree that every contract involving the expenditure of public funds in excess of \$10,000 shall be subject to audit by the State Auditor.
- 12.31** Debarment. Seller represents and warrants that it, its employees, agents, or subcontractors are not suspended, debarred, or excluded from, or ineligible for, receiving federal or state funds. Seller must within 30 days advise the Buyer if, during the term of this Agreement, the Seller, its employees, agents, or subcontractors become suspended, debarred or excluded from, or ineligible for, receiving federal or state funds.
- 12.32** California Public Records Act. The Buyer is a public agency subject to the disclosure requirements of the California Public Records Act ("CPRA"). If Seller proprietary information is contained in documents or information submitted to Buyer, and Seller claims that such information falls within one or more CPRA exemptions, Seller must clearly mark such information "CONFIDENTIAL AND PROPRIETARY," and identify the specific lines containing the information. In the event of a request for such information, the Buyer will make best efforts to provide notice to Seller prior to such disclosure. If Seller contends that any documents are exempt from the CPRA and wishes to prevent disclosure, it is

required to obtain a protective order, injunctive relief or other appropriate remedy from a court of law in Contra Costa County before the Buyer's deadline for responding to the CPRA request. If Seller fails to obtain such remedy within Buyer's deadline for responding to the CPRA request, Buyer may disclose the requested information. Seller further agrees that it shall defend, indemnify and hold Buyer harmless against any claim, action or litigation (including but not limited to all judgments, costs, fees, and attorneys' fees) that may result from denial by Buyer of a CPRA request for information arising from any representation, or any action (or inaction), by the Seller.

12.33 Buyer's No-Smoking Policy. Seller and its employees, agents and subcontractors, shall comply with Buyer's No Smoking Policy, which prohibits smoking in all buildings and vehicles owned and operated by Buyer.

12.34 Use of Buyer's Name for Commercial Purposes. Seller may not use the name of the Buyer or reference any endorsement from the Buyer in any fashion for any purpose, without the prior express written consent of the Buyer as provided by the Deputy Fire Chief.

12.35 Access.

(a) Access to Premises. Buyer hereby grants to Seller, its employees, agents, contractors, subcontractors, invitees, advisors, a license, which includes the rights (i) to use and access each Project Site to perform the installation and construction work and maintain, operate, repair and replace the Generating Facility during the Term and for such period thereafter required to remove the Generating Facility, (ii) of reasonable ingress and egress to the Project Site, (iii) to access electrical panels and conduits to interconnect the Generating Facility with, or disconnect the Generating Facility from, the Project Site's electrical wiring, and (iv) to install reasonable security measures as contemplated in Section 12.35(d) below. Buyer and its authorized representatives shall at all times have access to and the right to observe the installation and construction work and efforts to maintain, operate, repair and replace the Generating Facility, but shall not interfere with or handle any Seller equipment or any component of the Generating Facility without written authorization from Seller. However, in the event of an emergency, Buyer shall be permitted to take actions reasonably necessary to prevent injury or property damage.

(b) Limitations. In using the license to install, construct, maintain, operate, repair, and/or replace the Generating Facility, Seller, its employees, agents, contractors, subcontractors, invitees, and advisors shall not interfere with or disrupt Buyer's operations at the Project Site and shall obtain advance, written approval from Buyer of work hours, noise levels, routes and methods of access, and other details of the installation and construction work or maintenance, operation, repair, or replacement activities.

(c) Removal and Restoration. At the end of the Term or upon other termination of this Agreement, Seller, at its sole expense, shall remove the Generating Facility and all parts of it from the Project Site, unless Buyer has exercised its option to acquire the

Generating Facility under Section 2.3. The removal work shall: (i) be completed within 90 days of the end of the Term or other termination; (ii) comply with Section 12.35(b); and (iii) include restoration of the Project Site, including without limitation the roofs, electrical wiring, and plumbing, to repair any damage caused by the installation or removal of the Generating Facility outside of normal wear and tear; and (iv) include removal, as directed by Buyer, of any or pads constructed to install the Generating Facility at ground or other non-roof locations. Seller shall be solely responsible for and shall indemnify Buyer against any damage to Buyer's property resulting from such removal.

- (d) Site Security Measures. Seller shall be responsible for undertaking reasonable security measures to ensure and maintain the security of the Generating Facility, including without limitation; (i) the protection and safety of the wiring and the inverters; and (ii) the installation of concertina wire, fences, and other security devices approved in writing by Buyer. As required by law, Seller and its employees, agents, contractors, subcontractors, invitees, and advisors shall comply with fingerprinting, identification, and other security procedures and shall not cause felons or other ineligible persons to be present at Buyer's Project Site.
- (e) Acknowledgment of Buyer's Title. It is understood and agreed that each of Seller, its Lender(s), and permitted Assignee(s), by acceptance of the license granted by this Section and by use or occupancy of the Project Site, has not acquired and shall not acquire hereafter any property rights or interest, including without limitation easement or fixture rights, in or to Buyer's Project Site or real property.
- (f) Temporary Storage Space During Installation or Removal. Subject to Subsection (b), Buyer shall provide Seller and its contractor and subcontractors with sufficient space on the Project Site for the temporary storage and staging of tools, materials, and equipment and for parking construction crew vehicles, temporary construction trailers, and facilities reasonably necessary during the installation, operation, and removal of the Generating Facility, and access for rigging and material handling. Buyer shall provide Seller a reasonable area for construction lay-down on the Project Site.
- (g) Solar License. For the Term, Buyer hereby grants Seller a solar license over the Project Site, which license shall include Buyer's obligation to reasonably prevent overshadowing of the Project Site and the Generating Facility on the Project Site by other buildings, structures, or flora.
- (h) Assignment of License. Prior to installation of the Generating Facility, Seller may assign the license granted by this Section to the Operating Company separately from this Agreement, provided that such assignment does not interfere with Seller's ability to construct and install the Generating Facility as contemplated herein.
- (i) Water. Seller shall have the right, at no charge, to use water from any taps or faucets now or hereafter located on the Project Site for the purpose of cleaning and maintaining the Generating Facility, provided such use does not interfere with fire

safety training conducted by Buyer. Seller's right includes the right to use hoses, nozzles and similar equipment of Buyer on the Project Site, but Buyer has no obligation to provide, repair, or replace such equipment. If Buyer's equipment is unavailable or inadequate for this purpose, Seller may provide and connect its own equipment to Buyer's available taps or faucets.

- 12.36** Account Manager. To facilitate the contractual relationship, Seller must assign an Account Manager to the Buyer, which Account Manager shall be fully responsible and accountable for fulfilling the Buyer's requirements. Seller represents and warrants that such person will ensure that the Buyer receives adequate support, problem resolution assistance and required information on a timely basis, and that such person, or his or her designee, will be authorized to issue all approvals under this Agreement.

[SIGNATURES ON FOLLOWING PAGE]

By signing below, each signatory warrants and represents that they have the authority to bind the entity for which they are signing.

“BUYER”:

**CONTRA COSTA COUNTY FIRE
PROTECTION DISTRICT**, a fire protection
district existing under the laws of the State of
California

By _____

Name: _____

Title: _____

APPROVED AS TO FORM:

THOMAS L. GEIGER, COUNTY COUNSEL

By _____

Name: _____

Title: _____

“SELLER”:

MFP CO II, LLC
a Delaware limited liability company

By _____

Name: _____

Title: _____

EXHIBITS INCORPORATED INTO AGREEMENT

- Exhibit 1 – Contract Price
- Exhibit 1A – Termination Price
- Exhibit 2 – Description of Generating Facility
- Exhibit 3 – Project Site Description
- Exhibit 4 – Technical and Warranty Requirements
- Exhibit 5 – Operations Forecasts, Scheduling Protocols, & Monitoring
- Exhibit 6 – Expected Contract Quantity Form
- Exhibit 7 – Insurance and Bonding Requirements
- Exhibit 8 – Reserved
- Exhibit 9 – Methodology for Weather Adjustment

EXHIBIT 1 – CONTRACT PRICE

Contract Price

Exhibit 1—Contract Price	
Site Name: Byron Boys Ranch	
Year	US \$/k Wh
1/13/12 – 1/12/13	\$0.1515
1/13/13 – 1/12/14	\$0.1576
1/13/14 – 1/12/15	\$0.1639
1/13/15 – 1/12/16	\$0.1704
1/13/16 – 1/12/17	\$0.1772
1/13/17 – 1/12/18	\$0.1843
1/13/18 – 1/12/19	\$0.1917
1/13/19 – 1/12/20	\$0.1994
1/13/19 – 1/12/21	\$0.2073
1/13/21 – 1/12/22	\$0.2156
1/13/22 – 1/12/23	\$0.2243
1/13/23 – 1/12/24	\$0.2332
1/13/24 – 1/12/25	\$0.2426
1/13/25 – 1/12/26	\$0.2523
1/13/26 – 1/12/27	\$0.2623
1/13/27 – 1/12/28	\$0.2728
1/13/28 – 1/12/29	\$0.2838
1/13/29 – 1/12/30	\$0.2951
1/13/30 – 1/12/31	\$0.3069
1/13/31 – 1/12/32	\$0.3192
1/13/32 – 1/12/33*	\$0.3320
1/13/33 – 1/12/34*	\$0.3452
1/13/34 – 1/12/35*	\$0.3590
1/13/35 – 1/12/36*	\$0.3734
1/13/36 – 1/12/37*	\$0.3883
*Optional Years	

EXHIBIT 1A – TERMINATION PRICE

Termination Price

The Termination Price will be determined by multiplying the Contract Capacity of the Generating Facility by 1,000 and by the price in the following chart:

Site Name: Byron Boys Ranch	
Anniv. No.	Purchase Price US\$/watt
1	N/A
2	N/A
3	N/A
4	N/A
5	\$3.74
6	N/A
7	N/A
8	\$3.44
9	N/A
10	N/A
11	\$3.14
12	N/A
13	N/A
14	\$2.54
15	N/A
16	N/A
17	\$1.79
18	N/A
19	N/A
20	\$1.10
21	N/A
22	N/A
23	\$0.30
24	N/A
25	N/A

EXHIBIT 2 – DESCRIPTION OF GENERATING FACILITY

Description of Generating Facility

Exhibit 2–Description of Generating Facility	
<u>Site Name</u>	Byron Boys Ranch
Project Site Commercial Operation Date: January 31, 2012	
System Information:	
PV Module Manufacturer and Model	Astronergy CHSM 6610
Count	858
Tilt	0
Tracking	Yes
Combined Generating Capacity (kW DC)	197.34
Inverter Make and Model	PVP100
Inverter Make and Model	PVP100
Number of Inverter(s)	2
Racking Manufacturer	Thompson Technology, Inc
Racking Equipment	Single Axis Ground Mount Tracking
S-5 Connectors	No
Ballasted (Yes/No)	No

EXHIBIT 3 – PROJECT SITE DESCRIPTION

Project Site Description

Exhibit 3 - Description of Project Sites	
<u>Site Information:</u>	
Name	Byron Boys Ranch
Street Address	4491 Bixler Road
City, State ZIP	Byron, CA 94514

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

Technical and Warranty Requirements

1. General Technical Requirements

In an effort to assure reliability, quality, and longevity of the systems, and to establish a minimum quality level whereby the Buyer would consider a buyout after seven (7) years, prior to the installation of the Generating Facility, Seller agreed to cause the Generating Facility to comply with the following general technical requirements and product specifications.

A. Structural Responsibility:

All structures, including array structures, shall be designed to resist dead, live, plus wind and seismic loads for the area. Thermal loads caused by expected fluctuations of component and ambient temperatures must be combined with all the above load combinations. Structural adequacy of buildings, roofs, or structures impacted by the addition of the Generating Facility, shall be the responsibility of the contractor. These calculations must be stamped and approved by a registered professional engineer with appropriate experience and submitted to the Buyer as part of the Preliminary Requirements.

All Generating Facility components must be built such that the structure complies with applicable California Building Code and wind uplift requirements per the American Society of Civil Engineers Standard for Minimum Design Loads for Buildings and Other Structures (ASCE 7). The structure must be able to withstand design wind speeds of at least 85 mph (3-second gusts). “Withstand” means no-damage and power output can continue at wind speeds less than 85 mph. The minimum no-damage, no power interruption design earthquake load and frequency shall be consistent with the applicable seismic standards for the Bay Area.

B. Corrosion Resistance:

All structural components, including array structures, shall be painted, coated, or otherwise protected in a manner commensurate with the minimum 25-year design life. Particular attention shall be given to the prevention of corrosion.

C. Codes and Standards:

All systems must be installed in accordance with all applicable requirements of local electrical codes and the current (or other appropriate) version of the National Electrical Code

(NEC) as used by the Buyer, including but not limited to Article 690, and other applicable codes and regulations as outlined in the National Fire Protection Association (NFPA).

All work should be performed in accordance with the requirements of the Buyers Department of Public Works.

In addition, all work shall be designed and installed in accordance with the latest edition of all applicable codes, standards, and recommendations of the following agencies:

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

ANSI - American National Standards Institute

ASHRAE - American Society Of Heating, Refrigeration, and Air Conditioning Engineers
- American Society of Civil Engineers

ASME - American Society of Mechanical Engineers

CAL OSHA - California / Occupational Safety and Health Administration

CBC - California Building Code

CEC - California Energy Commission

ETL - Electrical Testing Laboratories

IEEE - Institute of Electrical and Electronic Engineers

ICEA - Insulated Cable Engineer's Association

IAEI - International Association Of Electrical Inspectors

IPMVP - International Performance Measurement and Verification Protocol

NFPA-101 - National Fire Protection Association (Life Safety Code)

NEMA - National Electrical Manufacturers Association

NESC - National Electrical Safety Code

NETA - National Electrical Testing Association

NEC - National Electrical Code

UL - Underwriters Laboratories

Other codes that may apply to the overall installation include:

–IEEE 1547 - Standards for interconnections of Distributed Resources with Electric Power Systems.

–ANSI/IEEE Std 928-1986 IEEE recommended criteria for terrestrial photovoltaic power systems.

–ANSI /IEEE 519- 1992 recommended practices and requirements for harmonic control in electrical power systems

–IEEE 929-2000, “Recommended Practice for Utility Interface of PV Systems

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

- IEEE Std. 1374-1998, “Guide for Terrestrial Photovoltaic Power System Safety”.
- IEEE Std. 1526-2003 IEEE recommended practice for testing the performance of stand-alone photovoltaic systems.
- Rules For Construction of Underground Electric Supply and Communication Systems, General Order No. 128. Public Utilities Commission of the State of California, (G.O.128), July 1974 edition; and
- Acceptance Testing Specifications for Electrical Power Distribution Equipment and Systems, International Electrical Testing Association (NETA), 1995 edition.
- ASTM B3-74 (1980) Specifications for Soft or Annealed Copper Wire
- AEIC CS6-84 Specifications for Ethylene Propylene Rubber Insulated Shielded Power Cables Rated 5 through 69 kV
- IEEE 48-1975 Standard Test Procedures and Requirements for High-Voltage Alternating Current Cable Terminations
- NEMA WC 8 R 1982 Ethylene-Propylene-Rubber-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- NEMA WC 3 Rubber-Insulated Wire and Cable for the Transmission and Distribution of Electrical Energy
- NEMA W7 Cross-Linked-Thermosetting-Polyethylene-Insulated Wire and Cable for Transmission & Distribution of Electrical Energy
- The Pad-mounted transformer, disconnect switches and all components shall be designed, manufactured and tested in accordance with the latest applicable ANSI, IEEE, NEMA and UL standards including the following:
 - ANSI/IEEE C37 – Circuit Breakers, Switchgear, Relays, Substation and Fuses.
 - ANSI C57.12; 13 – Standard General Requirements for Distribution, Power and Regulating Transformers.
 - IEEE 48 – Test Procedures and Requirements for High voltage AC cable Termination.
 - ANSI C57.98 – Guide for Transformer Impulse Tests.
 - ANSI C57.109 – Guide for Transformer Through Fault Current Duration.
 - NEMA PB 2 – Dead Front Distribution Switchboards.

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

–NEMA SG-4 – Power Circuit Breakers & Power Switchgear Assemblies.

–NEMA TR 1 – Requirements for Liquid Filled Transformers.

–ANSI/IEEE C12.1 – Code for Electricity Metering.

–ANSI/ASTM D3487 - Standard Specification for Mineral Insulating Oil Used in Electrical

Apparatus. American Society for Testing and Materials (ASTM):

1. ASTM B 3: Soft or Annealed Copper Wire.

2. ASTM B 187: Copper Bus Bar, Rod, and Shapes.

Underwriters Laboratories, Inc. (UL) 467: Grounding and Bonding Equipment. -- Systems must be designed and installed using UL (or approved equivalent) listed components. In addition to the above, specific requirements for individual components of the Generating Facility include but are not limited to the following guidelines:

D. PV Modules:

The PV Modules shall be UL 1703 listed, and currently on the California Energy Commission list of Eligible Renewable Equipment. In addition, all modules must have a minimum 20-year warranty.

If PV modules using hazardous materials (e.g., Cadmium or other hazardous materials) are in use, the environmental impact of the hazardous material usage must be discussed and documented in writing, including any special maintenance requirements and proper disposal/recycling of the modules at the end of their useful life. Modules containing hazardous materials must comply with the EPA Landfill Disposal Requirements. Any additional costs related to PV modules containing hazardous materials and responsibility for those costs must be clearly identified.

The Contractor/Seller shall create a uniform appearance of the arrays and spacing between individual modules and panels should be uniform. As much as possible, all mechanical hardware, conduit, junction boxes, and other equipment should be concealed beneath and/or behind the array.

E. Inverters/Isolation Transformer Combination Equipment:

In addition to being listed to UL 1741, inverters must also be unused and of recent manufacture and listed on the California Energy Commission's (CEC) current Eligibility List. Inverters must be sized to properly accommodate the DC input from the PV panels under all expected electrical, thermal, and other operational conditions and be designed for normal unattended operation.

The inverter must contain all self-protection features as stated in IEEE 929 including over and under voltage and frequency safeguards. An integral, anti-islanding protection scheme shall

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

prevent the inverter from feeding power to the PG&E grid in the event of a utility outage.

Inverter efficiency shall be rated at greater than or equal to 94.5%.

The inverter shall include provisions for automatic operation including start up, shut down, self-diagnosis, and fault detection.

Inverter shut off and reset toggle switches shall be provided.

User definable power tracking that matches the inverter to the array, as well as adjustable delay periods to customize system shut down sequences must also be provided.

The inverters shall be interconnected to the customer's electrical panel by the use of a dry type, isolation transformer that provides both impedance and fault protection, and redundant protection against DC current injection to the PG&E Utility Grid. The isolation transformer must provide the appropriate AC output power and voltage at the meter as specified herein and be listed for outdoor use.

Isolation transformers must incorporate vibration isolation pads in their construction that are located between the transformer coil assembly and the case in order to minimize noise. External vibration isolation pads are not to be used. All connections to the transformer will be made by means of flexible metallic conduit.

Thermal and other operating parameters specific to the installation site must also be considered for this component of the system with the ambient temperature rated at between -4 degrees F and 122 degrees F.

The inverters shall be housed in an appropriately waterproof and dust proof enclosure, or in a building. The inverters shall have provisions to prevent moisture condensation and entrance of rodents into air intake or exhaust ports. The inverter enclosure shall take into consideration the effects of direct sunlight and extreme weather such that the inverters are appropriately shielded from the elements. The inverter enclosure should be well ventilated or be air conditioned so that the inverters operate safely at or near their maximum power point (MPP).

The following specific codes and standards shall apply to the inverter installation and operation:

- ANSI /IEEE 519 1981 Guide for Harmonic Control of Static Power Controllers.
- ANSI Test Code C57, 12.91 for Factory Tests of Dry Type Transformers.

In addition, the DC/AC inverter output will also provide standard AC metering functions, including amps, volts, KWD, and delivered KWH per interval period. These metering functions shall be integral to the inverter unit.

F. Balance of System (BOS) Components:

The system shall be comprised of UL (or approved equal) listed components where these

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

components are available.

Additional requirements include but are not limited to:

G. Combiner Boxes:

Combiner boxes will be UL listed as appropriate or built under UL508, Industrial Controls specification.

H. Circuit Disconnects Switches and Enclosures:

Enclosures shall be surface mounted type, unless otherwise noted, and of NEMA type 3R, waterproof.

Disconnect Switches shall be heavy duty, DC or AC rated, as appropriate, with appropriate ampere ratings as required. They shall be UL listed and of NEMA type 3R, waterproof, meet proper AIC requirements, be correctly rated for DC or AC operation, as appropriate, and be “load-break” capable.

Disconnects and enclosures must be properly supported and braced to Seismic zone requirements, where required.

When used for disconnecting, disconnects for branch circuit protection shall be located as near as is practical to the supply end of the conductors being protected.

Switchgear must be accessible. The location of the disconnect switch may be acceptable as long as it is accessible 24/7 and approved by PG&E.

I. Fuses:

All low voltage fuses for disconnects must be current limiting UL class J, RK1, or RK5 and of the appropriate voltage, delay or non delay characteristic, and current rating to provide both complete short circuit and overload protection per NEC sections regarding component protection.

Fuses in the combiner boxes protecting PV string branch circuits must be UL class CC midget type, be in “shock-safe” type fuse holders “touch safe”, providing load break disconnect capabilities when changing fuses. Midget fuses and fuse holders used in these circuits must be fully DC rated and adequate DC short circuits withstand capability must be provided for all power situations including “back-fed” conditions.

All fuses and other protective devices and holders must be engineered to safely protect system components under “worst case” expected field conditions including temperature extremes.

PV panel strings must be individually protected from short circuit conditions that may originate within the panels themselves.

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

J. Wiring and Connectors:

Wire shall be copper or aluminum and sizes referred to on the Seller's drawings must refer to copper and aluminum wire sizes. For medium voltage conductors, splices, and other related items, please refer to PG&E specifications.

Installation of copper wires, aluminum wires, cables, and connection devices shall be in accordance with the manufacturer's instructions and CEC-2001, Part 3. Cables must not be bent to a smaller radius than is recommended by the manufacturer.

Voltage drop must be limited to 2% on main AC circuit and 3% on DC circuits, including losses in conductors and through all fuses, blocking diodes, and termination points.

K. Raceways:

Steel Conduit System shall meet the following specifications:

1. UL Listed:

The galvanized rigid steel conduit must be UL Listed and must be used for all runs except as otherwise noted. All conduit, fittings, and accessories must be new, unused material. Applicable UL standards may include: UL 6 Standard for Safety, Rigid Metal Conduit, UL 514B Standard for Safety, Fittings for Conduit and Outlet Boxes.

L. Connections to Existing Circuit Breakers:

The appropriate Volt circuit breakers, with the required AIC rating shall be utilized and shall be noted on the one line diagram.

Where necessary, the Seller shall supply a step-up transformer to match the voltage of the local utility distribution system. The step-up transformer shall be compatible with utility standards for voltage, phasing and grounding. This transformer shall be housed in the dust-tight and rain-tight enclosure. It may be dry type or liquid-filled type. For oil filled transformers, the PV Contractor shall provide an adequate oil containment system. PCBs shall not be permitted.

The step-up transformer shall include an automatic positive load-breaking means of disconnect (e.g., switch, circuit breaker, etc.) on the high side. The disconnect means shall be provided to disconnect all phases simultaneously. This disconnect means shall be capable of remote operation. The utility shall connect to the disconnect and the Contractor will be responsible for all equipment including the disconnect.

M. Grounding:

Provide driven ground rod when specified and provide green equipment ground conductors sized in accordance with NEC on main AC power circuit and DC collector circuits. Ground rods shall be copper clad steel 3/4-inch x 10 feet unless otherwise indicated on one line diagram.

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

Appropriate tie in and grounding of the entire Generating Facility, including roof-mounted components, shall be per NEC-250 requirements.

N. Operational Identification and Warnings:

Project Sign:

Seller shall install engraved signs for instruction or warning identifying that a solar Generating Facility is operational on the premises at appropriate locations and that there are potentially multiple power sources on the premises.

O. Signage:

DC Power Circuits:

Seller shall also provide identification of all DC power circuits on switches and clearly identify individual module strings in DC combiner boxes. Appropriate wire color codes (i.e. Red & Black) for negative and positive circuits shall also be used.

Disconnect Sign:

If the Disconnect location is not near Point of Common Coupling, permanent signage must be installed providing a clear description of the location of the device.

If the revenue meter is inside a locked room, install one sign on the pad mount transformer and one sign on the door to the electrical room identifying the presence of a generator and describing with a map the location of the disconnect switch.

The disconnect signs are as follows (Letter size, etc. should be 1/2-inch engraved on plastic sign with a red background):

1. At the disconnect switch: “GENERATOR DISCONNECT SWITCH”
2. On the electric room door and at the transformer: “GENERATOR DISCONNECT SWITCH LOCATED _____ “The Disconnect Switch should only de-energize PV units. Disconnect should not be “main breaker” and de-energize applicant's resident load. A single disconnect should isolate all the PV units.

Install any additional signage as required by code or PG&E, such as:

1. “Data Acquisition System (DAS)” sign posted on the outside of the enclosure.
2. “Meter – High Voltage Inside” sign posted.

Signs shall be maintained in good condition for the duration of the Agreement. Signs shall be

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

promptly cleaned of graffiti and other defacements, cleaned semi-annually of dirt and grime, and replaced if damaged or stolen.

2. General Documentation Requirements

The Seller shall design and engineer its solar Generating Facility at the Project Site to maximize the solar energy resources at these facilities, taking into consideration Project Site electrical demands and load patterns, proposed installation sites, available solar resources, applicable land use restrictions, installation cost, and other relevant factors. The Seller shall identify an appropriate location for the solar PV inverter equipment and its related components and environmental control systems that will meet the following criteria:

- Ease of maintenance and monitoring
- Efficient operation
- Low operating losses
- Secured location and hardware
- Compatibility with existing facilities

The following documents generated by the Seller as part of this project shall also be provided to the Buyer for review and record purposes.

The documents should be provided at the 50%, 90%, and 100% various percentage design stages as mutually agreed or required by PG&E. The Buyer and PG&E (for work related to them) will need to approve the final detailed design as a part of the preliminary requirements of the PPA prior to start of construction.

The Buyer shall notify the Seller should it identify a non-conforming design, commissioning, or ongoing operation and maintenance item or issue.

Documents and information shall be sufficient to fully describe in detail the following and shall include but shall not be limited to:

1. Project schedule, updated monthly or sooner should significant changes occur
2. Visual simulation of proposed rooftop installation
3. Design basis
4. Equipment and system sizing computations
5. Design computations
6. System assembly and detail parts' drawings
7. Construction detail drawings

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

8. Construction plans and compliance documents, and project permits
9. All electrical drawings, single line, three lines, physical layout, wiring diagrams
10. Control logic and programs
11. All documents submitted to and provided by regulatory permitting and jurisdictional agencies and PG&E
12. Commissioning plans and reports and records
13. Operation and maintenance manuals, & warranty information
14. Operation and maintenance records and logs

All documents shall be prepared according to current industry standards.

All deliverables shall be submitted, depending on their type, separately in draft and final document format. Final documents shall be inclusive of all comments and/or issues raised during the review of draft documents.

All draft and final deliverables shall be submitted in 6 bound and 1 unbound hard copies and 2 digital copies supplied on a CD, unless otherwise specified. All digital deliverables shall be in the latest version of the applicable software. Formatting for 11 x 17 drawing print size is preferred.

Digital copies shall include required drawings in AutoCAD and Adobe Acrobat PDF format and required specifications and design reports in MS Word and Adobe Acrobat PDF formats. The following descriptions indicate the content of those interim design submittals to be presented to the Buyer.

3. Regulatory, Permit, and Licensing Requirements

All work undertaken per this RFP Agreement shall be in accordance with all Local, State and Federal (LORS) laws, ordinances, regulations and standards.

Prime and Sub contractors shall possess current valid California contracting licenses for the applicable classification of work performed; properly licensed or certified individuals shall carry out all professional work.

It will be the sole responsibility of the Seller herein to seek and obtain all permits including but not limited to those from the Buyer's Planning Department for final zoning compliance review, Public Works Department for building permits and inspections, Pacific Gas and Electric for Utility interconnection applications and final interconnection, and any other relevant permits. The Seller shall be responsible for and shall obtain all necessary permits for the project, wherein the Buyer will be the signatory only if required and appropriate. The Seller shall be responsible for all costs including all fees and taxes regardless of the signatory.

EXHIBIT 4 – TECHNICAL AND WARRANTY REQUIREMENTS

The Seller shall supply and install all equipment required to interconnect the solar Generating Facility to PG&E. The Seller shall fulfill all application, study, and testing procedures to complete the interconnection process. All costs associated with utility interconnection shall be borne by the Seller.

4. Construction, Operation and Maintenance General Obligations and Warranties

The Seller shall provide its own construction office or trailer on the site during construction and shall include temporary electricity if needed by the local electric utility. The Buyer shall not provide office or storage space for the Seller's use.

Throughout the term of the Agreement, the Seller shall keep the site free from accumulations of waste material, debris or rubbish. The Seller shall remove all waste, rubbish, tools, and surplus materials from the work site and keep the area clean. Clean up shall be performed in accordance with established safety and proper disposal procedures and in accordance with all applicable federal, state and local laws, rules, and ordinances.

The Seller will be responsible for all aspects of maintaining the PV array and BOS, including but not limited to cleaning the arrays, replacing broken or worn out system components, performing maintenance in accordance with equipment manufacturer recommendations, and ensuring that every part of the array is operating according to design, producing the maximum amount of power possible and free of power quality issues. To the maximum extent possible, the contractor shall schedule maintenance and repair of the solar array and BOS at times when output of the array is at its lowest point so that power output is maximized.

The Seller shall secure the following minimum warranties for the Generating Facility which shall be fully transferable if the Buyout option is exercised:

- Any warranty required to qualify a Generating Facility for available rebates or incentives
- 5 - year complete system warranty from General Contractor
- 20 - year PV panel manufacturer warranty (minimum)
- 15 - year inverter manufacturer warranty (minimum)

The PV plants shall be operated and maintained in accordance with current industry standards, to protect the longevity of the facility, to maximize energy production, to fully support the Buyer's goals, to safeguard the leased facilities, to not interfere with or cause a nuisance to ongoing facility operations, and to not disturb neighbors.

EXHIBIT 5 – OPERATIONS FORECASTS, SCHEDULING PROTOCOLS, & MONITORING

Operations Forecasts, Scheduling Protocols, & Monitoring

1 Annual Operations Forecast

1.1 If requested by Buyer, Seller will provide an Annual Operations Forecast detailing hourly expected generation and all proposed planned Outages for the next Contract Year. The Annual Operations Forecast for the first Contract Year shall be provided no later than ninety (90) days prior to the Project Site Commercial Operation Date.

1.2 Buyer may request modification to the Annual Operations Forecast at any time, and Seller shall use good faith efforts to accommodate Buyer's requested modifications.

1.3 Seller shall not conduct planned Outages at times other than as set forth in its Annual Operations Forecast, unless approved in advance by Buyer, which approval shall not be withheld or delayed unreasonably.

2 Short Term Operations Forecasts

2.1 Real Time Update

2.1.1 At any time Buyer can log in using the internet and retrieve generation data.

3 Outage Detail for Annual and Short Term Operations Forecasts

3.1 Outage information provided by Seller is to include, at a minimum, start and stop time of Outage, capacity out of service (kW), equipment out of service, and reason for the Outage.

4 Additional Outage Protocols

4.1 Seller is to notify Buyer of all planned or Forced Outages.

4.1.1 Outage information provided by Seller is to include at a minimum start and stop time of Outage, capacity out of service (kW), equipment out of service, and reason for Outage.

4.1.2 Planned Outages not included in the Annual Operations Forecast, or the Weekly Update, shall be provided by Seller to Buyer at least four (4) Business Days prior to the start of the requested Outage.

4.2 Forced Outages

4.2.1 "Forced Outages" are any unplanned reduction in the capability of the Generating Facility.

4.2.2 Forced Outages shall be reported by Seller to Buyer within ten (10) minutes of such Outages.

4.2.3 Notice by Seller to Buyer of a Forced Outage shall include the reason for the Outage (if known), expected duration of the Outage, and the capacity reduction.

EXHIBIT 5 – OPERATIONS FORECASTS, SCHEDULING PROTOCOLS, & MONITORING

4.2.4 Within forty-eight (48) hours of a Forced Outage, a detailed verbal report shall be provided by Seller to Buyer specifying the reason for the Outage, expected duration of such Outage, capacity reduction, and actions taken to mitigate such Outage.

4.2.5 Within forty-eight (48) hours after the Generating Facility returns to service, Seller shall submit to Buyer a detailed written report of the Forced Outage specifying the reason for the outage, the actual duration, capacity reduction, and actions taken to mitigate such Outage.

4.3 Return to Service – Seller shall notify Buyer immediately, and in no event later than within ten (10) minutes, whenever the Generating Facility is returned to service.

5 Notices

5.1 All Schedules, Schedule changes, Forced Outages, and planned outages are to be submitted to Buyer by phone, fax or email.

6 Meters, Communications, and Meteorological Station Requirements and Monitoring

6.1 Metering

Seller shall install utility-grade revenue, electronic, bi-directional meter, with a 0.5% (one half percent) or better accuracy. It should be capable of recording for each 15-minute interval demand (KW), energy (kWh), reactive power (KVAR), and other power quality metrics to measure the AC output of each inverter, and at the delivery point to the facility's electrical system.

The meter must be a CAISO-certified revenue grade utility meter type ABB-Alpha Plus or equivalent with full modem. The meter shall have dial up or Internet capability and shall provide a pulse output to the data acquisition system. Seller shall install the appropriate EUSERC meter socket and enclosure for this meter.

6.2 Data Acquisition System (DAS) Requirements and Monitoring:

The Seller shall provide a turnkey data acquisition and display system (DAS) that allows the Buyer to monitor, analyze and display historical and live solar electricity generation data on the Web. The DAS shall meet all of the requirements of the California Solar Initiative (CSI) program and include instrumentation that allows the measurement of:

- Instantaneous system output in kW
- Instantaneous irradiation in watts/square meter.
- Daily and year-to-date system output in kWh

Data shall be provided in a format that easily facilitates graphing and analysis in third party database or spreadsheet programs.

The DAS shall capture and store data at a minimum of 15-minute intervals and shall include a

EXHIBIT 5 – OPERATIONS FORECASTS, SCHEDULING PROTOCOLS, & MONITORING

data-logger, network interface device for data retrieval, National Electrical Manufacturers Association, NEMA 4 enclosure, a dry bulb temperature-measuring device with a radiation shield, thermocouples placed throughout the arrays that measure PV module temperature, anemometer, and solar sensor. All measurement equipment must be “revenue” grade, i.e., accurate enough to determine the revenue that would be paid based on the power generated.

Minimum Accuracy Ranges for the above are:

Energy & Power = Revenue Grade (0.5%)

Solar Irradiance =5% max, typically 3% in natural light

PV Panel Temp = +/- 1.0 deg. C

The DAS system shall allow the Buyer to view current and historical data over the Internet, in 15-minute intervals. Seller shall include web access to this data in 15-minute data format as well as provide hourly, monthly, and annual summaries for the duration of the PPA agreement. The Buyer should also have direct access to the DAS data logger to collect and review all data.

The Seller will download and archive monthly data files for backup purposes. Files are to be stored for a minimum of five years on a rolling basis following system acceptance. The Seller will ensure that automatic communication between the Generating Facility’s DAS and designated Buyer-owned data systems is established and that downloads of the raw DAS data takes place to archive data throughout the useful life of the Generating Facility on daily intervals.

For the life of the agreement, the actual kWh produced will be compared to the potential kWh given metered solar radiation and the expected degradation of the Generating Facility over time. This information will be monitored on a monthly basis.

EXHIBIT 6 – EXPECTED CONTRACT QUANTITY FORM

Expected Contract Quantity Form

System Name	System Size (DC Watts)	First Year Annual kWh	Year 2	Year 3	Year 4	Year 5	Year 6	Year 7	Year 8	Year 9	Year 10
Byron Boys Ranch	197,340	354,960	352,475	350,008	347,558	345,125	342,709	340,310	337,928	335,562	333,214

System Name	Year 11	Year 12	Year 13	Year 14	Year 15	Year 16	Year 17	Year 18	Year 19	Year 20
Byron Boys Ranch	330,881	328,565	326,265	323,981	321,713	319,461	317,225	315,004	312,799	310,610

EXHIBIT 7 – INSURANCE AND BONDING REQUIREMENTS

Insurance and Bonding Requirements

Seller's Insurance

During the entire Term of the Agreement, at its own expense, Seller shall obtain and maintain in force the following insurance:

1. Worker's Compensation Insurance pursuant to State Law, including broad form all-states coverage and Employer's Liability coverage for not less than one million dollars per occurrence.
2. Commercial General Liability Insurance, including coverage for blanket contractual (or contractual liability), owners' and contractors' protective, and broad form property damage, with a minimum combined single-limit coverage of one million dollars for all damages because of bodily injury, sickness, disease, or death to any person and damages to property, including the loss of use thereof, arising out of each accident or occurrence.
3. Comprehensive Motor Vehicle Liability Insurance, including coverage for motor vehicles, owned, non-owned, leased, or hired by or on behalf of Seller, with a minimum combined single limit of one million dollars for all damage because of bodily injury or death to any person and damages to property, including loss of use thereof, arising out of each accident or occurrence.

Subcontractors' Insurance

Before allowing any subcontractor to perform work pursuant to the Agreement, Seller shall require the subcontractor to provide the following insurance and to maintain it in force during all work by the subcontractor:

1. Worker's Compensation Insurance pursuant to State Law, including broad form all-states coverage and Employer's Liability coverage for not less than one million dollars per occurrence.
2. Commercial General Liability Insurance, including coverage for blanket contractual (or contractual liability), owners' and contractors' protective, and broad form property damage, with a minimum combined single-limit coverage of one million dollars for all damages because of bodily injury, sickness, disease, or death to any person and damages to property, including the loss of use thereof, arising out of each accident or occurrence.
3. Comprehensive Motor Vehicle Liability Insurance, including coverage for motor vehicles, owned, non-owned, leased, or hired by or on behalf of Seller, with a minimum combined single limit of one million dollars for all damage because of bodily injury or death to any person and damages to property, including loss of use thereof, arising out of each accident or occurrence.

EXHIBIT 7 – INSURANCE AND BONDING REQUIREMENTS

Consultants' Insurance

For all consultants performing design or other engineering work for Seller under this Agreement, Seller shall require each such consultant to provide the following insurance and to maintain it in force during all work by the consultant:

1. Worker's Compensation Insurance pursuant to State Law, including broad form all-states coverage and Employer's Liability coverage for not less than one million dollars per occurrence.
2. Commercial General Liability Insurance, including coverage for blanket contractual (or contractual liability), owners' and contractors' protective, and broad form property damage, with a minimum combined single-limit coverage of one million dollars for all damages because of bodily injury, sickness, disease, or death to any person and damages to property, including the loss of use thereof, arising out of each accident or occurrence.
3. Comprehensive Motor Vehicle Liability Insurance, including coverage for motor vehicles, owned, non-owned, leased, or hired by or on behalf of Seller, with a minimum combined single limit of one million dollars for all damage because of bodily injury or death to any person and damages to property, including loss of use thereof, arising out of each accident or occurrence.
4. Professional Liability Insurance with limits not less than two million dollars per occurrence/aggregate, with a deductible not greater than fifty thousand dollars, and tail coverage for two years following the Project Site Commercial Operation Date.

Additional Insurance Policy Requirements

The above requirements as to the types and limits of insurance coverage to be maintained by Seller and its subcontractors and consultants and any approval of the insurance by Buyer are not intended to and shall not in any manner limit or qualify the liabilities and obligations otherwise assumed by Seller pursuant to this Agreement, including but not limited to the provisions concerning indemnification.

Such insurance as is afforded by the policy for Commercial General Liability Insurance shall include coverage for property damage caused by blasting, collapse, structural injuries, or damage to underground utilities. The policy shall not contain the so-called "x" "c" "u" exclusions. The minimum limits of liability for this insurance are as follows:

Bodily Injury Liability	\$500,000 Each Person	\$1,000,000 Each Occurrence
Property Damage Liability	\$250,000 Each Occurrence	\$500,000 Aggregate

EXHIBIT 7 – INSURANCE AND BONDING REQUIREMENTS

Insurance coverage in the minimum amounts set forth herein shall not be construed to relieve Seller or the subcontractor for liability in excess of that coverage, nor shall it preclude Buyer from taking such other actions as is available to it under any other provision of this Agreement or otherwise in law.

Regarding Commercial General Liability and Motor Vehicle Liability Insurance, the policy or policies shall include the following endorsement:

“Contra Costa County Fire Protection District, a fire protection district existing under the laws of the State of California, its governing body, officers, agents, and employees, individually and collectively, as additional insureds.”

“Insurance afforded by the additional insured endorsement shall apply as primary insurance, and other insurance maintained by Buyer or the other additional insureds shall be excess only and not contributing with insurance provided under this policy.”

All insurance policies shall include a provision for 30 days’ written notice to Buyer of cancellation or material change.

The insurance specified above shall be in a form satisfactory to Buyer and shall be placed with an insurance company or companies authorized to transact business in the State of California, with a Best’s Insurance Rating of at least A-:VII, and satisfactory to Buyer.

Seller shall furnish, or cause to be furnished to Buyer, Certificates of Insurance certifying that the above coverages have been obtained, and Seller shall not proceed with work or allow work to be performed until Buyer has approved the evidence of insurance. Individual endorsements executed by the insurance carrier must accompany the Certificates. In addition, a certified copy of the policy or policies shall be provided by Seller upon request. The Buyer’s approval of insurance shall neither relieve nor decrease the liability of Seller.

EXHIBIT 8 – RESERVED

EXHIBIT 9 – METHODOLOGY FOR WEATHER ADJUSTMENT

Methodology for Weather Adjustment

In determining whether Delivered Energy in any Contract Year is sufficient to meet the thresholds set forth in Section 4.1(d)(i) and (ii) of the attached Agreement, the applicable amounts of Delivered Energy and Expected Annual Contract Quantity will be weather adjusted to compare actual solar radiation to predicted solar radiation as well as actual electricity generation to predicted electricity generation. The weather adjustment of Delivered Energy will be performed on a system level, and that adjustment ratio will be applied to the Generating Facility at each Project Site. The adjusted levels at each site will be used to determine whether Generating Facility performance is sufficient to meet the thresholds set forth in Section 4.1(d)(i) and (ii). This adjustment shall be determined as follows:

Step 1: Define a reference year energy output using the NREL (National Energy Renewable Lab) Solar Advisor Model (SAM). The Performance Model's first year output will be used as the reference. The reference year energy output, E_{ref} , in kWh/yr will be defined by the model's first year energy production output. E_{ref} must be revised each additional year beyond year 1 to account for the Generating Facility degradation value of .7 %.

$$(E_{ref\ year\ n+1}) = (E_{ref\ year\ n}) \cdot .993$$

Step 2: Determine the Yearly Solar Radiation Index, I_{srad} . The radiation index is a ratio of actual solar radiation to the reference year's radiation.

$$I_{srad} = \frac{\text{Total Actual Year Global Horz Radiation } (\frac{kWh}{yr})}{\text{Total Reference Year Global Horz Radiation } (\frac{kWh}{yr})}$$

The data for actual *GHR* (Global Horizon Radiation) will come from on-site pyranometers. These on-site pyranometers will collect insolation data every 15 minutes and a daily average will be calculated based on these readings. The daily calculations will be summed together to get the yearly Actual *GHR*. The reference year *GHR* will be the weather data that the SAM model uses for the prediction. The reference year *GHR* weather data is derived from a weather station located at the Hayward Airport. For our purposes the *Total Reference Year Global Horizontal Radiation* will be 1780.07 kWh/m²/yr.

Step 3: Adjust the estimated yearly electricity output for the actual weather. The Yearly Weather Adjusted Estimated Energy Output, E_{adj} , is defined as

$$E_{adj} = E_{ref} \cdot I_{srad} \text{ (kWh)}$$

Step 4: In order for Delivered Energy in any Contract Year to be sufficient to allow Seller to meet the 80 % weather adjusted threshold set forth in Section 4.1(d)(i) the below equation must be true at each site.

$$\frac{E_{act}}{E_{adj}} \geq .80$$

EXHIBIT 9 – METHODOLOGY FOR WEATHER ADJUSTMENT

where E_{act} = *Actual Annual electricity output for individual site (kWh)*

Based on the foregoing, in order for Delivered Energy in any Contract Year to be sufficient to allow Seller to meet the 60 % weather adjusted threshold set forth in Section 4.1(d)(ii) the below equation must be true.

$$\frac{E_{sys}}{E_{tot}} \geq .60$$

where $E_{tot} = \sum \text{all sites } E_{adj} \text{ (kWh)}$
and $E_{sys} = \sum \text{all sites Actual electricity output (kWh)}$