



2022 Mid-Term Reliability Procurement

Joint CCA Request for Proposals

For Incremental Net Qualifying Capacity

Issuance Date: January 5th, 2022

Response Deadline: January 31st, 2022

5:00 PM PPT

Contents

- 1. General Information..... 3
 - 1.1. Introduction & Purpose 3
 - 1.3. Joint RFP Documents 3
 - 1.4. Joint RFP Website..... 4
 - 1.5. Joint RFP Administrator..... 4
- 2. Joint RFP Overview 5
 - 2.1. Joint RFP Purpose..... 5
- 3. Joint RFP Schedule..... 7
- 4. Joint RFP Questions 8
- 5. Proposal Submission 8
- 6. Proposal Package Review and Evaluation..... 8
 - 6.1. Proposal Package Requirements 8
 - 6.3. Notification of Results and Commercial Negotiations 9
- 7. Miscellaneous Joint RFP Matters..... 10
- Appendix A Offer Form..... 10
- Appendix B Executive Summary 11
- Appendix C Expected Terms 11
- Appendix D Reservation of Rights, Waivers, and Acceptances 16

1. General Information

1.1. Introduction & Purpose

Three community choice aggregators (CCAs) Sonoma Clean Power Authority (SCPA), Central Coast Community Energy (CCCE) and Silicon Valley Clean Energy (combined “SCPA/CCCE/SVCE” or “Joint CCAs” through this 2022 Joint Request for Proposals for Clean Energy and Capacity (“Joint RFP”) intend to make progress towards meeting their respective goals related to meeting obligations under the Mid-term Reliability Procurement Order (D.21-06-035) in addition to each respective CCA’s Renewable Portfolio Standard (RPS), greenhouse gas emission reductions and reliability requirements by contracting for newly developed projects. The Joint CCAs are CCAs formed under the authority of a joint powers’ agency and subject to legislative and regulatory requirements imposed on a load serving entity within the state of California.

1.2. CCA Background Information

In May 2014, SCPA began providing their member communities in Sonoma County with clean power. In 2016, they added Mendocino County to their service territory, and they now service 11 cities and unincorporated communities in Sonoma and Mendocino counties. SCPA’s estimated 2021 retail sales are 2,260 GWh with a peak capacity of 495 MW, of which 47% are residential and 53% non-residential. SCPA has a S&P Global credit rating of A.

[SCPA IRP](#) and [Audited Financials](#)

In spring 2018, CCCE began providing their member communities throughout Monterey, San Benito, and Santa Cruz Counties with clean-sourced power. CCCE now serves 28 cities and unincorporated communities in Monterey, Santa Barbara, San Luis Obispo, San Benito, and Santa Cruz Counties. CCCE’s estimated 2021 retail sales are 5,200 GWh with a peak capacity of 900 MW distributed 65% non-residential and 35% residential. CCCE has a S&P Global credit rating of A.

[CCCE IRP](#) and [Audited Financials](#)

In April 2017, SVCE began providing their member communities in Santa Clara County with renewable and carbon-free electricity. SVCE serves 12 cities and unincorporated communities in Santa Clara County. SVCE’s estimated 2021 retail sales are 4,000 GWh with a peak capacity of 850 MW distributed 68% non-residential and 32% residential. SVCE has a S&P Global credit rating of A and a Moody’s credit rating of Baa2.

[SVCE IRP](#) and [Audited Financials](#)

1.3. Joint RFP Documents

This Joint RFP consists of this protocol and four appendices. Among other things, the protocol (i) offers general information pertaining to this RFP, (ii) describes the purpose and drivers of this Joint RFP and provides high-level considerations for respondents, (iii) includes a schedule for this Joint RFP, (iv) sets forth terms governing the preparation and submission of proposals and RFP-related communications with the Joint CCAs, and (v) provides a high-

level overview of the process for evaluating and selecting proposals submitted in response to this Joint RFP. The Appendices are as follows:

- **Appendix A** to this Joint RFP is the Offer Form
- **Appendix B** is the Executive Summary Template
- **Appendix C** contains Expected contract terms,
- **Appendix D** is an express reservation of the Joint CCA's rights in connection with this RFP; warranty, liability, and contract acceptance disclaimers; terms addressing the disclosure of Joint RFP- related information by the Joint CCA's and respondents in this Joint RFP, respondent's responsibility for Joint RFP-related costs, and Board approvals; and respondent's deemed acceptance of the rights and terms contained in Appendix D and the Joint CCA's reliance upon such acceptance.

Respondents are responsible for familiarizing themselves with and being fully aware of the terms of this Joint RFP, including the terms of each Appendix.

1.4. Joint RFP Website

This Joint RFP and related material and information are posted on SCPA's website and available for review. The website will be updated from time-to-time with additional information related to this Joint RFP. Interested persons are responsible for monitoring the website to ensure the timely receipt of information about this Joint RFP.

[Link to SCPA RFP page](#)

1.5. Joint RFP Administrator

The Joint RFP Administrator for this Joint RFP is SCPA. The contact information for the Joint RFP Administrator is: Hannah Rennie, SCPA Energy Market Analyst.

The Joint RFP Administrator's responsibilities include (i) acting as a liaison between the participants in this Joint RFP and the Joint CCA's on all Joint RFP-related matters, (ii) ensuring that respondent questions to the Joint CCA's are addressed in an appropriate manner, (iii) receiving, recording, and maintaining respondent proposals, (iv) and managing other administrative matters relating to this Joint RFP.

As detailed in Section 6.1 below, all questions, requests, and other inquiries or communications from or on behalf of respondents to the Joint CCA's about this Joint RFP must be directed in email to the Joint RFP Administrator.

Email: procurement@sonomacleanpower.org

2. Joint RFP Overview

2.1. Joint RFP Purpose

The Joint CCAs are seeking to procure resources to satisfy the requirements of the California Public Utility Commission (“CPUC”) order D.21-06-035¹. The decision requires the three LSEs to procure a combined total of more than 600 MW additional Net Qualifying Capacity (“NQC”) to come online before June 1, 2026. Proposals offered into this Joint RFP will be evaluated for their ability to meet the Joint CCAs portfolio targets in accordance with the terms of this Joint RFP as based on a best fit and value and at low cost considering, without limitation, reliability, risk mitigation, and other relevant factors including the ability to provide enhanced grid reliability by providing Resource Adequacy attributes as defined by the California Public Utilities Commission and the California Independent System Operator².

2.2. Eligible Resources, Products Sought and Preferred Terms

Eligible Resources	<p>The project must meet eligibility criteria for eligible resources as defined by the CPUC in D.21-06-035. The Joint CCAs are seeking resources which meet the following resource categories:</p> <p>Non-Fossil Fuel Resources: Resources in this category include, but are not limited to, solar, wind, RA only products, renewable plus storage hybrids, stand-alone storage, and demand response resources. Non-Fossil Fuel resources with an online date on or before June 1, 2024 and on or before August 1, 2023 may be preferred to meet LSEs annual compliance dates. Per the decision, resources cannot be counted if they have an online date after June 1, 2025.</p> <p>Zero-Emitting Resources: Resources in this category must:</p> <ul style="list-style-type: none">(a) Be from a generation resource, a generation resource paired with storage (physically or contractually), or a demand response resource(b) Be available every day from 5 p.m. to 10 p.m. (the beginning of hour ending 1800 through the end of hour ending 2200), Pacific Time, at a minimum; and(c) Be able to deliver at least 5 megawatt-hours of energy during each of these daily periods for every megawatt of incremental capacity claimed. Zero-Emitting resources with an online date on or before June 1, 2024 and on or before August 1, 2023 may be preferred to meet LSEs annual compliance dates. Per the decision, the latest resources can be online is June 1, 2025.
---------------------------	---

¹ The final decision and related documentation for the Mid-Term Reliability order can be found on the IRP Procurement Track page of the CPUC’s website:

<https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K603/389603637.PDF>

² Definitions and documentation regarding Resource Adequacy may be found at <http://www.caiso.com/planning/Pages/ReliabilityRequirements/Default.aspx> and <http://www.cpuc.ca.gov/ra/>.

	<p>Firm Generation Resources: Resources in this category must not be weather dependent or use limited, must have at least an 80 percent capacity factor, and produce no on-site emissions unless they are otherwise eligible to count under the RPS requirements. Resources must be a generating resource and not storage. Firm Generation Resources should be online no later than June 1, 2026.</p> <p>Long-Duration Storage: Resources in this category must be storage resources able to discharge at maximum capacity over at least an eight-hour period from a single resource. Long-Duration Storage Resources should be online no later than June 1, 2026.</p> <p>All resources must be incremental to the CPUC’s D.21-06-035 baseline list of resources.³</p>
Project Location	Regardless of the project’s location, it must comply with the eligibility and counting rules of the California resource adequacy program in place at the time of contract execution, and for applicable generation resources must be eligible to be counted as PCC1 RPS per CPUC decision D.11-12-052.
Project Attributes	Any purchase of capacity and energy made pursuant to this Joint RFP will also include all associated Capacity, Energy, Environmental Attributes/Renewable Energy Credits (RECs), and Ancillary Services associated.
Delivery Term	Minimum term of ten years.
Scheduling and Dispatch Flexibility	The Joint CCAs prefer to provide Schedule Coordinator (SC) services. If the respondent prefers to be the SC, then the Joint CCAs require the ability to make schedule changes at any time, applicable to CAISO market scheduling rules.
Price & Settlement	<p>Respondents must price their proposed project in the following forms:</p> <ul style="list-style-type: none"> • All-in energy <u>and</u> capacity price [\$/MWh] <ul style="list-style-type: none"> ○ May only be provided <u>without an escalator</u> ○ This price includes Delivered Energy, Environmental Attributes, Capacity Rights, and Ancillary Services <p style="text-align: center;">OR</p> <ul style="list-style-type: none"> • Energy pricing [\$/MWh] <ul style="list-style-type: none"> ○ May only be provided <u>without an escalator</u> ○ For generation resources • Capacity pricing [\$/kW-month] <ul style="list-style-type: none"> ○ Applies only for energy storage component, if applicable

³ See the “Baseline list of resources as required by D.21-06-035” posted 8/24/2021 can be found here: https://www.cpuc.ca.gov/-/media/cpuc-website/divisions/energy-division/documents/integrated-resource-plan-and-long-term-procurement-plan-irp-ltpp/d2106035_baseline_gen_list.xlsx

	<ul style="list-style-type: none"> ○ Respondent(s) are required to provide pricing for 4-, 5- or 8-hour duration battery, as applicable for resource category ○ Offered Price will be assumed to be for non-degrading energy storage capacity over the delivery term ○ Indicate if DC- or AC-coupling ○ Indicate if hybrid or co-located <p>Respondents are required to include the price at the Project P-node (i.e., the CAISO pricing node assigned to the generator).</p> <p>It is strongly encouraged for Respondents to provide pricing at least one of the following Trading Hubs:</p> <ul style="list-style-type: none"> • SP15 • NP15 <p>And the applicable DLAP;</p> <ul style="list-style-type: none"> • SCE DLAP • PG&E DLAP <p>Note this Joint RFP is not seeking outright ownership of capacity or energy resources. Only the above-mentioned pricing schemes will be considered.</p>
--	--

The foregoing is not intended, and should not be construed, as an exhaustive listing of important commercial terms for a Power Purchase Agreement (“PPA”) resulting from this Joint RFP. Please refer to Appendix C and the sections below for other relevant commercial provisions or considerations.

3. Joint RFP Schedule

The Joint RFP Schedule below sets out important dates for respondents interested in participating in this Joint RFP. Notice of any change to the Joint RFP Schedule will be posted on SCPA’s Website.

Activity	Scheduled Date
Issuance of Joint RFP	January 5th, 2022
Deadline to submit proposals	January 31st at 5:00 PM PDT
Notification of final shortlisted respondents (Tentative)	Early March, 2022
Execute Exclusivity Agreement	March, 2022
PPA negotiations	Beginning March, 2022
Target contract completion	Early summer, 2022

4. Joint RFP Questions

Respondents and other interested persons are encouraged to submit questions about this Joint RFP, to the Joint RFP Administrator (using the contact information provided above in 1.5). All questions regarding this Joint RFP must be submitted by email. Interested persons are requested to submit questions as promptly as possible to ensure the timely receipt of the Joint CCAs response.

Subject to the Joint CCA's consideration of the confidentiality concerns, the Joint CCAs intend to post all questions submitted by respondents, as well as the Joint CCA's responses to those questions, on SCPA's website. Questions will be posted anonymously, to shield the identity of respondents who posed the questions. The Joint CCA's objective in posting questions and answers is to afford respondents equal access to information potentially relevant to their proposals. Respondents are urged to submit Joint RFP questions to the CCAs as early as possible, in consideration of the proposal submission deadlines. The Joint CCAs expect to provide answers only to questions posed on or before the January 30th, 2022 and that are specific to an actual proposal submission issue. The Joint CCAs may fail to post or answer any questions in their sole discretion.

5. Proposal Submission

The Proposal submission process requires each respondent to submit to SCPA, using the contact information in section 1.5, responses to Appendix A and B (collectively referred to as the "Proposal Package"), to have its proposal(s) evaluated under this Joint RFP. Under the current schedule, respondents must submit a completed Proposal Package by 5:00 p.m. PPT on January 31st, 2022.

Respondent will each bear the risk of any failure of respondent to submit the completed Proposal Package by the required deadline as required by this Joint RFP. Proposals for which respondent does not submit all agreements, information, and material as required by this Joint RFP may be considered non-responsive and may be eliminated from consideration. Responsive proposals are those which are deemed conforming to all requirements listed in this Joint RFP document. The Joint CCAs may waive any irregularities or defects in their sole discretion.

All proposals must be submitted in email form with the appropriate attached documents to the following email address:

procurement@sonomacleanpower.org

6. Proposal Package Review and Evaluation

6.1. Proposal Package Requirements

The following is a list of requirements for Proposal Packages to be considered compliant and eligible in this Joint RFP process:

- Proposal Package must be received by 5 p.m. PPT on January 31st, 2022.
- All portions of Proposal Package must be received in the appropriate digital formats – pdf for narrative documents and Excel spreadsheets for the associated data templates.
- All associated data templates must be completed satisfactorily and provided with the Proposal Package. It is the duty of the proposer to contact the Joint CCAs for clarification regarding completion of data templates and Executive Summary. Incomplete templates are grounds for non-consideration of a Proposal Package.
- After receipt of Proposal Package, The Joint CCAs may contact respondents to request clarification about unclear portions of proposals. Respondents will have a maximum of 5 days to respond back to the Joint CCAs or the Proposal Package will be removed from consideration.

6.2. Review, Evaluation and Shortlisting Process

Proposal Package will be modeled to yield a final, in-depth understanding of expected performance. The resources that effectively meet the standards of the Joint CCAs will be shortlisted and contacted for negotiation of contracts. Proposal Packages will be reviewed and evaluated based on the following standards:

- **Value**
 - The value of the proposed resource(s) is a primary concern for ranking proposals. Proposal Packages will be evaluated based on the competitiveness of their total value relative to other projects of a similar type including pricing, pricing structure, and contract term.
- **Project Viability**
 - Proposal Packages will be evaluated based on a qualitative assessment of the risks inherent in the proposed project. Proposed commercial operation date (“COD”) and construction timeline will be evaluated for viability.
- **Portfolio Fit**
 - Resources that align with the Joint CCA’s Board of Director authorized portfolio characteristics.
- **Respondent Experience**
 - Respondents will be evaluated for experience as a firm and/or based on the experience of the members of the project team. Experience with the CAISO interconnection process and permitting will be critical.
- **Resource Adequacy**
 - The CCAs must meet CPUC Resource Adequacy (RA) requirements (system, local, and flexible). Projects that meet these requirements may be valued more highly.
- **Project full delivery date**
 - To meet the MTR procurement mandate, resources with an online date on or before August 1, 2023 and on or before June 1, 2024 may be preferred to meet LSEs annual compliance dates.

6.3. Notification of Results and Commercial Negotiations

After the completion of the review and evaluation of the Proposal Packages, the Joint RFP Administrator will communicate to each respondent the status of its proposal(s). As noted, the Joint CCAs expect to negotiate the final terms of a PPA with respondent(s) on the

Shortlist. Each member of the Joint CCA intends to individually execute a contract with developer(s) with terms of the contract mirrored for each Joint CCA.

Placement of a proposal on the shortlist, does not constitute or indicate acceptance by the Joint CCAs of any proposal, any term thereof, or any related contract term. Without limiting Appendix C, the Joint CCAs (i) have no obligation and make no commitment of any kind to enter into a transaction with any respondent, including a respondent with a proposal on the shortlist, or to be bound by any term proposed by respondent, and (ii) have no obligation or liability with respect to a transaction or arising out of this Joint RFP except as may be expressly set forth in a fully executed PPA.

Upon respondent(s) being shortlisted, seller will be required to execute an agreement of exclusivity (“Exclusivity Agreement”) for the project(s), provide a cash deposit or letter of credit in the amount of \$3/kW. The Shortlist deposit amount is determined by the generating capacity plus the storage capacity. The Joint CCAs will return cash deposit or letter of credit of respondent (i) following execution of the PPA and provision of the required security in accordance with the terms of such PPA, (ii) the Joint CCA’s rejection of respondent’s offer following shortlist selection, (iii) failure of both the Joint CCA’s and respondent to agree on the terms of a PPA, (iv) the Joint CCA’s termination of the RFO process, or (v) termination of exclusivity following occurrence of the exclusivity deadline as provided for in the Exclusivity Agreement. The Joint CCAs have the right to retain the cash deposit or letter of credit if the respondent(s) is negligent or provides falsified information during the PPA negotiation process.

7. Miscellaneous Joint RFP Matters

Without limiting the generality of Appendix D, Joint CCAs reserve the right to withdraw, suspend, cancel, or terminate this Joint RFP, or to modify any term of this Joint RFP, including, without limitation, any term concerning the Joint RFP schedule (including any date), at any time in its sole discretion. The Joint CCAs will endeavor to notify all participants of any such withdrawal, suspension, cancellation, termination, or modification made prior to the submittal deadline and to post notice of any such action on the each CCA’s Website.

Appendix A Offer Form

The Joint CCAs have posted the Joint RFP Offer Form on each SCPA’s Website. If the respondent(s) has any issues accessing the document or questions, please contact the Joint RFP Administrator.

[Offer Form](#)

Appendix B Executive Summary

As part of the Joint RFP, the Joint CCAs have posted this Appendix B, which contains a list of due diligence requests, composed as an Executive Summary. The completion of Appendix B is required.

Executive Summary Template

Appendix C Expected Terms

<p>Test Energy Rate</p>	<p>Prior to COD, Joint CCAs will purchase all Test Energy and any associated Product at fifty percent (50%) of the Contract Price for up to ninety (90) days.</p>
<p>Guaranteed Energy Production:</p>	<p>Seller shall deliver to Joint CCAs no less than the Guaranteed Energy Production in each Performance Measurement Period. The "Guaranteed Energy Production" means an amount of Energy, as measured in MWh, equal to the total Expected Energy for the applicable Performance Measurement Period multiplied by the applicable percentage, based on technology type:</p> <ul style="list-style-type: none"> • Wind: 75% • Solar: 85% • Geothermal: 90% • Small Hydro: 85% <p>The "Performance Measurement Period" shall be each two (2) consecutive Contract Year period during the Delivery Term, except for geothermal, which shall be each Contract Year, all calculated on a rolling basis.</p> <p>For purposes of determining whether Seller has achieved the Guaranteed Energy Production, Seller shall be deemed to have delivered to Joint CCAs (i) any Deemed Delivered Energy and (ii) Energy in the amount it could reasonably have delivered to Joint CCAs but was prevented from delivering to Joint CCAs by reason of Force Majeure Events, System Emergency, and Curtailment Periods (the "Adjusted Energy Production").</p> <p>If Seller fails to achieve the Guaranteed Energy Production amount in any Performance Measurement Period, Seller shall pay Joint CCAs liquidated damages equal to (a) the difference of the Guaranteed Energy Production less the Adjusted Energy Production, multiplied by (b) the replacement price for the energy and RECs less the Contract Price. No payment shall be due if the calculation yields a negative number.</p>

Performance Guarantee:	<p>The occurrence of any of the following shall constitute an Event of Default:</p> <ol style="list-style-type: none"> 1. if, beginning in the second Contract Year, the Adjusted Energy Production amount is not at least fifty percent (50%) of the Expected Energy amount in any Contract Year; and 2. if, in any two (2) consecutive Contract Years during the Delivery Term, the Adjusted Energy Production amount is not at least sixty-five percent (65%) of the Expected Energy amount in each Contract Year.
ITC Passthrough	<p>Should additional Investment Tax Credits (“ITC”) become available, and the offered energy storage project is eligible to receive it, Joint CCAs expect to receive the benefit of such tax credits.</p>
Excess Energy:	<p>If during any settlement interval, the Delivered Energy is greater than Joint CCAs’ Output Share of the Guaranteed Capacity (“Excess Energy”), then the price paid by Joint CCAs for the Excess Energy shall be zero dollars (\$0). If the real-time locational marginal price (as defined by the CAISO) at the Delivery Point is negative for a settlement interval with Excess Energy, Seller shall pay Joint CCAs an amount equal to the product of (i) the absolute value of the Delivery Point LMP, and (ii) Excess Energy.</p>
Annual Excess Energy:	<p>If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and five percent (105%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to the lesser of (a) the Delivery Point LMP for the Real Time Market for the applicable Settlement Interval or (b) fifty percent (50%) of the Contract Price, but not less than \$0.00/MWh. If, at any point in any Contract Year, the amount of Adjusted Facility Energy plus the amount of Deemed Delivered Energy above the Curtailment Cap exceeds one hundred and fifteen percent (115%) of the Expected Energy for such Contract Year, the price to be paid for additional Adjusted Facility Energy or Deemed Delivered Energy shall be equal to \$0.00/MWh.</p>
Curtailment:	<p>In the event the Facility is curtailed due to a System Emergency (to be defined in the PPA), Force Majeure, by the CAISO or the transmission owner, or for any reason other than Joint CCAs’ sole action or inaction, Seller shall not be liable for failure to deliver such curtailed energy and Joint CCAs shall not be obligated to pay for such curtailed energy. Joint CCAs shall have the right to order Seller to curtail deliveries of Facility Energy, provided that Joint CCAs shall pay Seller for all Deemed Delivered Energy associated with such Buyer-directed curtailments more than the Curtailment Cap at the Contract Price, subject to the Annual Excess Energy provisions.</p>

	<p>“Curtailment Cap” is the yearly quantity per Contract Year, in MWh, equal to fifty (50) hours multiplied by the Guaranteed Capacity.</p> <p>“Deemed Delivered Energy” means the amount of Energy expressed in MWh that the Facility would have produced and delivered to the Delivery Point, but that is not produced by the Facility due to a Joint CCA-directed curtailment, which amount shall be calculated using an industry-standard methodology agreed to by Joint CCAs and Seller that utilizes meteorological conditions on Site as input for the period of time during such Buyer-directed curtailments.</p>
<p>Resource Adequacy Failure:</p>	<p>For each RA Shortfall Month occurring after the RA Guarantee Date, Seller shall pay to Joint CCAs an amount (the “RA Deficiency Amount”) equal to the product of the difference, expressed in kW, of (i) the Qualifying Capacity of the Facility for such month, minus (ii) the Net Qualifying Capacity of the Facility for such month, including any adjustments for unforced capacity (UCAP) or similar adjustments, however described, minus (iii) the Net Qualifying Capacity of the Facility for such month, multiplied by the CPM Soft Offer Cap as listed in Section 43A.4.1.1 of the CAISO Tariff (or its successor); provided that Seller may, as an alternative to paying RA Deficiency Amounts, provide Replacement RA in the amount of (X) the Qualifying Capacity of the Facility with respect to such month, minus (Y) the Net Qualifying Capacity of the Facility with respect to such month, provided that any Replacement RA capacity is communicated by Seller to Joint CCAs with Replacement RA product information in a written notice to Joint CCAs at least seventy-five (75) days before the applicable CPUC operating month for the purpose of monthly RA reporting.</p>
<p>Station Use:</p>	<p>Joint CCAs will not be responsible for Station Use and Station Use will not be provided by the Facility.</p>
<p>Guaranteed Construction Start Date:</p>	<p>The “Guaranteed Construction Start Date” means the Expected Construction Start Date, subject to extensions on a day-for-day basis due to Force Majeure or delays caused by transmission provider (e.g., the CAISO) or transmission owner (e.g., PG&E) that are outside of the reasonable control of Seller. Such day-for-day extensions, including for Force Majeure, shall be no longer than one-hundred twenty (120) days on a cumulative basis; provided that only with respect to a Force Majeure Event related to COVID-19 (as defined below), the day-for-day extensions shall not exceed two-hundred forty (240) days. For clarity, these permitted extensions (the “Development Cure Period”) extend both the Guaranteed Construction Start Date and the Guaranteed COD simultaneously.</p> <p>Notwithstanding anything to the contrary, no extension shall be given if (i) the delay was the result of Seller’s failure to take all commercially reasonable actions to meet its requirements and deadlines, (ii) Seller failed to provide requested documentation as provided below, or (iii) Seller</p>

	<p>failed to provide written notice to Buyer as required in the next sentence. Seller shall provide prompt written notice to Buyer of a delay, but in no case more than thirty (30) days after Seller became aware of such delay, except that in the case of a delay occurring within sixty (60) days of the Expected Commercial Operation Date, or after such date, Seller must provide written notice within five (5) Business Days of Seller becoming aware of such delay. Upon request from Joint CCAs, Seller shall provide documentation demonstrating to Joint CCA's reasonable satisfaction that the delays described above did not result from Seller's actions or failure to take commercially reasonable actions.</p> <p>In the event that Seller fails to achieve the Guaranteed Construction Start Date, Seller shall pay delay damages to Joint CCAs, (the "Construction Delay Damages") for each day of delay, in the amount of the Development Security divided by 120. The Construction Delay Damages shall be refundable to Seller if, and only if, Seller achieves COD on or before the Guaranteed COD.</p> <p>Failure to achieve Guaranteed Construction Start within 180 days of the Guaranteed Construction Start Date shall constitute an Event of Default, and Joint CCAs shall have the right, in their sole discretion, to terminate the PPA and retain a damage payment in the amount of the Development Security.</p>
<p>Guaranteed Commercial Operation Date:</p>	<p>The "Guaranteed Commercial Operation Date" or "Guaranteed COD" means the Expected Commercial Operation Date, subject to extensions on a day-for-day basis under the Development Cure Period.</p> <p>If Seller does not achieve COD of the Facility by the Guaranteed COD, Seller shall pay COD Delay Damages to the Joint CCAs for each day of delay until Seller achieves COD. "COD Delay Damages" are equal to the Development Security divided by 60. COD Delay Damages shall be paid for each day of delay and shall be paid to Joint CCAs in advance on a monthly basis. A prorated amount will be returned to Seller if COD is achieved during the month for which COD Delay Damages were paid in advance.</p> <p>Failure to achieve COD within 60 days of the Guaranteed COD shall constitute an Event of Default, and Joint CCAs shall have the right, in its sole discretion, to terminate the PPA and retain the Development Security.</p>
<p>Credit Requirements:</p>	<p>Seller shall post security as follows: Development Security – \$90,000 per MW of Guaranteed Capacity Performance Security – \$105,000 per MW of Guaranteed Capacity</p> <p>To secure its obligations under this PPA, Seller shall deliver the Development Security to Joint CCAs within thirty (30) days of the Effective Date. Development Security shall be in the form of cash or a Letter of Credit.</p>

	<p>To secure its obligations under this PPA, Seller shall deliver Performance Security to Joint CCAs on or before the Commercial Operation Date.</p> <p>Within five (5) Business Days following any draw by Joint CCAs on the Development Security or the Performance Security, Seller shall replenish the amount drawn such that the security is restored to the applicable amount.</p>
Prevailing Wage:	Minimum required
Exclusivity:	Upon shortlisting, Seller shall execute an Exclusivity Agreement with Joint CCAs.
No Recourse to Members of Joint CCAs:	<p>Joint CCAs are organized as Joint Powers Authorities in accordance with the Joint Exercise of Powers Act of the State of California (Government Code Section 6500, et seq.) pursuant to their Joint Powers Agreement and are public entities separate from their constituent members. Joint CCAs shall solely be responsible for all debts, obligations and liabilities accruing and arising out of this Agreement. Seller shall have no rights and shall not make any claims, take any actions, or assert any remedies against any of Joint CCAs' constituent members in connection with this Agreement.</p>
Force Majeure:	<p><u>"Force Majeure Event"</u> means any act or event that delays or prevents a Party from timely performing all or a portion of its obligations under this Agreement or from complying with all or a portion of the conditions under this Agreement if such act or event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance.</p> <p>Notwithstanding the foregoing, the term <u>"Force Majeure Event"</u> does not include (i) economic conditions that render a Party's performance of this Agreement at the Contract Price unprofitable or otherwise uneconomic (including Joint CCAs' ability to buy the Product at a lower price, or Seller's ability to sell Product at a higher price, than the Contract Price); (ii) Seller's inability to obtain permits or approvals of any type for the construction, operation, or maintenance of the Facility; (iii) the inability of a Party to make payments when due under this Agreement, unless the cause of such inability is an event that would otherwise constitute a Force Majeure Event as described above that disables physical or electronic facilities necessary to transfer funds to the payee Party; (iv) a Curtailment Period, except to the extent such Curtailment Period is caused by a Force Majeure Event; (v) Seller's inability to obtain sufficient labor, equipment, materials, or other resources to build or operate the Facility except to the extent such inability is caused by a Force Majeure Event; (vi) a strike, work stoppage or labor dispute limited only to any one or more of Seller, Seller's Affiliates, Seller's contractors, their subcontractors thereof or any other third party employed by Seller to work on the Facility;</p>

	<p>(vii) any equipment failure except if such equipment failure is caused by a Force Majeure Event; or (viii) events otherwise constituting a Force Majeure Event that prevent Seller from achieving Construction Start or Commercial Operation of the Facility, except to the extent expressly permitted as an extension under the PPA.</p> <p>For the avoidance of doubt, so long as the event, despite the exercise of reasonable efforts, cannot be avoided by and is beyond the reasonable control (whether direct or indirect) of and without the fault or negligence of the Party relying thereon as justification for such delay, nonperformance, or noncompliance, Force Majeure Event may include an epidemic or pandemic but expressly excludes any epidemic or pandemic caused by the epidemic disease designated COVID-19 and the related virus designated SARS-CoV-2 and any mutations thereof ("COVID-19").</p>
--	---

Appendix D Reservation of Rights, Waivers, and Acceptances

1. Reservation of Rights

Notwithstanding anything to the contrary, the Joint CCAs may, and expressly reserve the right to, at any time and from time to time, without prior notice and without assigning or providing any reason therefor:

- cancel, suspend, withdraw, or terminate this Joint RFP (including, without limitation, after the selection under this Joint RFP of one or more respondents for a PPA) or cancel or suspend its participation in this Joint RFP;
- modify this Joint RFP, including, without limitation, any Appendix to this Joint RFP, or any of the dates, times or places set forth in the Joint RFP or related to the Joint RFP process;
- accept, refuse to accept, consider, not consider, favor, disfavor, recommend, not recommend, pursue or reject any proposal, in its sole and absolute discretion, for any reason;
- without limitation of the generality of any of the other terms herein, reject or eliminate any proposal submitted in response to this Joint RFP that is incomplete, is nonconforming, or contains irregularities (or waive any irregularity in any proposal), or that it determines was made with the intent to create artificial prices, terms, or conditions or would have that effect;
- carry out negotiations with any, some or all respondents or other persons related to this Joint RFP, and suspend or terminate negotiations with any respondent or other person at any time, including, without limitation, because of any change in resource needs of the Joint CCAs giving rise to this Joint RFP;
- discuss the terms of any proposal or any other material submitted by respondent with, and obtain clarification or additional information concerning such proposal or such other material from, respondent or its directors, officers, employees, agents, representatives, and advisors;
- request from respondent information not detailed in or required by this Joint RFP but that may be necessary or relevant to the evaluation of respondent's proposal(s) and utilize such information as the Joint CCAs deems appropriate in connection with such evaluation of this Joint RFP;

- receive, consider, pursue, or transact on (i) opportunities to acquire other assets or resources offered or that become available outside of the Joint RFP process as such opportunities arise or (ii) proposals offered in response to this Joint RFP that are nonconforming or eliminated from consideration in this Joint RFP;
- invite further proposals in or outside of this Joint RFP or supplemental submissions of proposals;
- determine which respondents or entities to allow, or continue to allow, to participate in the Joint RFP process;
- pursue or transact on proposals offered in response to this Joint RFP regardless of any rank order established in the Joint RFP evaluation process to promote diversity of supply in this Joint RFP, gain experience with different technologies, limit exposure to a counterparty, technology or resource or a particular set of risks, or achieve other commercial goals the Joint CCAs deem appropriate;
- sign or not sign PPA(s) with respondents or other persons relating to the Transactions solicited by this Joint RFP;
- subject to the terms of any applicable confidentiality agreement entered between the Joint CCAs and respondent, retain, archive, or destroy any information or material provided to or for the benefit of the Joint CCAs in the proposal submission process; and
- take any and all other actions it deems necessary or appropriate, in its sole and absolute discretion, in connection with this Joint RFP and the Joint RFP process.

Each of the foregoing rights (including any right listed in a series of rights) may be exercised individually by SCPA, CCCE & SVCE or any director, officer, employee, or authorized agent or representative of SCPA, CCCE & SVCE or their respective parent. The reservation of rights contained herein is in addition to all other rights reserved or granted to the Joint CCAs or any of its Affiliates elsewhere in this Joint RFP or otherwise held by or available to the Joint CCAs or any of its Affiliates.

2. No Warranties or Liabilities

BY PARTICIPATING IN THE JOINT RFP PROCESS, EACH RESPONDENT AGREES THAT, EXCEPT TO THE EXTENT CONTAINED IN A PPA WITH RESPONDENT:

- (A) ALL MATERIAL AND OTHER INFORMATION FURNISHED BY OR ON BEHALF OF THE JOINT CCAs OR ANY OTHER AFFILIATE OF SCPA, CCCE & SVCE IN CONNECTION WITH THIS JOINT RFP IS PROVIDED WITHOUT ANY REPRESENTATION OR WARRANTY OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY REPRESENTATION OR WARRANTY AS TO THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION, AND
- (B) THE JOINT CCAs, ITS AFFILIATES AND THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND ADVISORS SHALL HAVE NO LIABILITY TO ANY RESPONDENT, ANY OF ITS AFFILIATES, OR ANY OF THEIR RESPECTIVE DIRECTORS, OFFICERS, MEMBERS, PARTNERS, EMPLOYEES, AGENTS, REPRESENTATIVES, ADVISORS, LENDERS, OR INVESTORS RELATING TO OR ARISING FROM THE USE OF OR RELIANCE UPON ANY SUCH INFORMATION, ANY ERROR OR OMISSION THEREIN, OR OTHERWISE IN CONNECTION WITH THIS RFP.

3. Acceptance of Proposals

Without prejudice to the Joint CCA's rights at law or in equity, no proposal submitted by any Respondent shall be deemed accepted by, or otherwise binding upon, the Joint CCAs or any of their Affiliates and the Joint CCAs, their affiliates and their respective directors, officers, members, employees, agents and representatives shall have no obligation or liability of any kind with respect to any such proposal or otherwise in connection with this Joint RFP, unless and until a PPA has been mutually executed and delivered by the Joint

CCAs or any of their Affiliates and seller, and then such obligation or liability shall exist only if and to the extent expressly set forth or provided for therein or in another signed, binding written agreement entered into by the Joint CCAs or any of their affiliates and seller. Notwithstanding anything to the contrary in this Joint RFP, all proposals delivered to the Joint CCAs shall become the sole and exclusive property of the Joint CCAs upon receipt, and the Joint CCAs shall have all rights and privileges of ownership of such property, subject to any provision of this Joint RFP relating to confidentiality and any applicable confidentiality or other signed, binding written agreement between the Joint CCAs and respondent or seller executed in connection with this Joint RFP process.

4. Respondent Costs and Expenses

Each respondent is solely responsible for all costs and expenses it incurs in connection with this Joint RFP. Through its participation in this Joint RFP, each respondent agrees that under no circumstance, including, without limitation, the Joint CCAs withdrawal from or suspension, cancellation, or termination of the Joint RFP process, will the Joint CCAs, any of their affiliates or any of their respective directors, officers, members, partners, employees, agents, representatives or advisors have any responsibility or liability of any kind to respondent, its affiliates or any of their respective directors, officers, members, partners, trustees, employees, agents, representatives, advisors or lenders for any cost or expense directly or indirectly incurred by respondent (no matter how incurred) in connection with the Joint RFP process. Nothing in this Section 4 shall be construed to limit the generality of Section 2 above.

5. Respondent Disclosure of Joint RFP Information

No respondent may, without the prior consent of the Joint CCAs, disclose to any other person (except Joint CCA staff) its participation in the Joint RFP process (other than by attendance at any meeting to which more than one participant is invited by the Joint CCAs, which attendance in and of itself will not violate this provision of this Joint RFP). Further, no respondent may disclose, collaborate on or discuss with any other person (except Joint CCA staff) bidding strategies or the substance of proposals, including, without limitation, the price or any other terms or conditions of any contemplated, indicative or final proposal. Any such disclosure, collaboration or discussion would violate this Joint RFP and may result in the rejection of respondent's proposal or elimination of respondent from further participation in this Joint RFP.

6. Respondent Acceptance of this Appendix C

By participating in the Joint RFP process, each respondent agrees that it will be deemed to have accepted all the rights and terms included in this Appendix C and to have agreed that its participation in the Joint RFP is subject to such rights and terms. The Joint CCAs are conducting this Joint RFP and participating in the Joint RFP process in reliance upon the foregoing agreement.