



Memorandum

TO: HONORABLE MAYOR
AND CITY COUNCIL

FROM: Lori Mitchell
Director

SUBJECT: SEE BELOW

DATE: November 21, 2022

Approved

Date

12/2/22

SUBJECT: LONG TERM RENEWABLE ENERGY AND RESOURCE ADEQUACY CONTRACTS

RECOMMENDATION

- (a) Adopt a resolution authorizing the Director of the Community Energy Department or the Director's designee to negotiate and execute:
- i. An amendment to the power purchase agreement by and between the City of San José and RE Scarlet LLC, a subsidiary of EDP Renewables North America LLC, to buy renewable energy, resource adequacy, renewable energy credits, and attributes associated with a solar photovoltaic and battery storage facility for a term of 20 years beginning 2023 through 2043, in an amount not to exceed \$8,781,000 annually and \$175,620,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds;
 - ii. An agreement with EDPR Scarlet 2 BESS LLC, a subsidiary of EDP Renewables North America LLC, to buy resource adequacy associated with a solar photovoltaic and battery storage facility for a term of 10 years beginning 2024 through 2034, in an amount not to exceed \$6,075,000 annually and \$60,750,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds; and
- (b) Adopt a resolution authorizing the Director of the Community Energy Department or the Director's designee to negotiate and execute an agreement with BCE Seal Beach, LLC, a subsidiary of Bright Canyon Energy Corporation, to buy renewable energy, resource adequacy, renewable energy credits, and attributes associated with a solar photovoltaic and battery storage facility for a term of 10 years beginning 2024 through 2034, in an amount not to exceed \$3,300,000 annually and \$33,000,000 in the aggregate, to be paid solely from the San José Clean Energy Operating Fund and subject to the annual appropriation of funds.

OUTCOME

Approving the recommendation to negotiate and execute a second amendment to the existing power purchase agreement with RE Scarlet LLC (Scarlet) will defer the guaranteed commercial operation date from December 31, 2022 to October 31, 2023, adjust delay damages, and increase collateral requirements for Scarlet. Approving the amendment will also provide the basis for EDP Renewables North America LLC (EDPR) to enter into a second agreement with the City of San José for resource adequacy (RA) with the EDPR subsidiary, EDPR Scarlet 2 BESS LLC (Scarlet 2 BESS). The agreement with Scarlet 2 BESS project will increase the Community Energy Department's (Department) RA, that is needed by the Department to meet the California Public Utilities Commission's (CPUC) energy reliability requirements. Approving the recommendation to enter into an agreement with BCE Seal Beach, LLC (Seal Beach) to buy renewable energy, RA, and other products will contribute towards the Department achieving CPUC procurement requirements in years 2024 through 2034 for San José Clean Energy (SJCE).

BACKGROUND

On May 1, 2018, the City Council approved the Energy Risk Management Policy submitted by the Department director (Director) in accordance with Section 26.50.050 of the San José Municipal Code.

Pursuant to the Energy Risk Management Policy, the City Manager appoints members to the City Manager's Risk Oversight Committee (Risk Oversight Committee) to oversee SJCE's risk management programs and provide advice to the City Manager on risk management program matters. The Risk Oversight Committee approves and amends SJCE's Energy Risk Management Regulations. The current version was approved on February 28, 2022.

On March 19, 2019, the City Council authorized the Director or her designee to negotiate and execute power supply contracts for energy, renewable energy, renewable energy credits, RA, and low carbon power, and other attributes using the Edison Electric Institute form agreement.

On June 4, 2019, the City Council authorized the Director or her designee to negotiate and execute medium-term to long-term power purchase agreements using the Edison Electric Institute form agreement for a term of up to 20 years to procure RA.

On June 15, 2021, the City Council increased the authority of the Director or her designee to negotiate and execute contracts for power supply from \$2,373,700,000 to an amount not to exceed \$2,671,700,000 in aggregate in calendar years 2021 through 2043 and RA from \$488,000,000 to an amount not to exceed \$798,000,000 in the aggregate in calendar years 2021 through 2043, including contracts for dispatchable power products.

On June 6, 2021, CPUC released Decision 21-06-035 Requiring Procurement to Address Mid-term Reliability (2023-2026) due in part to the phased retirement of the Diablo Canyon Power Plant in 2024 and 2025. This decision requires all load serving entities to procure their proportional share of 11,500 megawatts (MW) of resource adequacy that can be available during the month of September, the highest energy use month in the State, via long-term agreements that come online over the period of calendar years 2023 through 2026. CPUC assigned SJCE 247 MW of this additional RA procurement requirement.

On September 1, 2022, State lawmakers voted to keep the Diablo Canyon Power Plant open. Department staff does not expect CPUC to adjust the requirements of Decision 21-06-035; staff is actively monitoring the situation.

On October 18, 2022, the City Council increased the authority granted to the Director or designee to negotiate and execute agreements five years and under for the procurement of power products by \$405,600,000 from \$1,536,900,000 to an amount not to exceed \$1,942,500,000 in aggregate in calendar years 2022 through 2027, to be paid solely from the San José Clean Energy Operating Fund, and subject to the Energy Risk Management Policy and Energy Risk Management Regulations, the appropriation of funds, and the following annual limits: \$380,200,000 in 2022; \$352,900,000 in 2023, \$337,300,000 in 2024, \$321,600,000 in 2025, \$280,700,000 in 2026, and \$269,800,000 in 2027.

In accordance with the City Council approvals on March 19, 2019 and June 4, 2019, and the Risk Oversight Committee's recommendation on July 9, 2019 and August 9, 2019, the City executed a power purchase agreement with EDPR for the EDPR CA Solar Park VI LLC solar photovoltaic and battery storage project with a commercial operation date of December 31, 2022. On March 18, 2022, subsequent to a Risk Oversight Committee's recommendation on December 2, 2021, the City signed an amendment and assignment of the EDPR agreement from the EDPR CA Solar Park VI LLC to Scarlet, an affiliate of EDPR. On February 25, 2022, EDPR informed the Department that the project would be deferred due to permitting delays experienced by EDPR at the county level.

On December 1, 2022, the Risk Oversight Committee recommended that the City Council authorize the Director or the Director's designee to negotiate and execute an amendment to the agreement with Scarlet, to defer the guaranteed commercial operation date, change the delay damages, and increase the collateral requirements. The Risk Oversight Committee also recommended that the City Council authorize the Director or the Director's designee to negotiate and execute an associated 10-year agreement for RA with Scarlet 2 BESS. Finally, the Risk Oversight Committee recommended that the Department seek authorization from the City Council to permit the Director or Director's designee to negotiate and execute a 10-year agreement for the Seal Beach solar photovoltaic and battery storage project, with a commercial operation date of June 1, 2024.

CPUC Procurement Mandate

In Decision 21-06-035, CPUC required all load serving entities (i.e., investor-owned utilities and community choice aggregators) to procure a significant amount of additional net qualifying capacity. Net qualifying capacity represents the amount of power a power plant or battery storage facility can generate during the month of September, the highest energy use month in the State. Load serving entities must meet this new requirement by building projects or executing long-term power purchase agreements with projects that come online during the period between 2023 and 2026.¹ This procurement requirement was intended to replace the capacity and greenhouse-gas-free energy the California electric system expected to lose from the phased retirement of the nuclear Diablo Canyon Power Plant. This procurement requirement is unlikely to be reduced or eliminated, even if Diablo Canyon Power Plant continues to operate.

In accordance with Decision 21-06-035, CPUC assigned to SJCE a 247 MW procurement requirement, as follows:

- 2023: 43 MW. SJCE expects to comply with its Clines Corners Wind Farm LLC agreement executed on August 31, 2020, pursuant to authority granted to the Director by City Council in 2019 and increased in 2020.
- 2024: 129 MW. SJCE seeks to comply with agreements currently under negotiation, the Scarlet and the Seal Beach agreements proposed in this memorandum, and additional solicitations.
- 2025: 32 MW. SJCE seeks to comply with additional agreements under negotiation and additional solicitations.
- 2026: 21.5 MW of long-duration storage (projects that can store energy for a period of eight hours or longer). SJCE expects to comply with the Tumbleweed Energy Storage, LLC (executed January 24, 2022) and Goal Line BESS 1, LLC (executed March 1, 2022) projects negotiated through the joint powers authority, California Community Power. These contracts have been previously approved by the City Council.
- 2026: 21.5 MW of firm, clean resources (projects that deliver firm power and have no on-site emissions). SJCE expects to comply with the ORGP LLC portfolio of projects (executed May 31, 2022), and the Fish Lake Geothermal LLC project (executed May 31, 2022) negotiated through the joint powers authority, California Community Power. These contracts have been previously approved by the City Council. Staff may identify additional resources through future solicitations.

RA

State and federal laws require load serving entities, such as community choice aggregators like SJCE, to contract with power plants to be available to meet load through the RA program. The CPUC requires SJCE to procure specified amounts of RA on annual and monthly bases, and CPUC imposes significant penalties for failing to meet such requirements.

¹CPUC Decision 21-06-035 <https://docs.cpuc.ca.gov/PublishedDocs/Published/G000/M389/K155/389155856.PDF>

Solicitations

In 2018, East Bay Community Energy issued a solicitation for long-term renewable resources and battery storage and indicated that other community choice aggregators might make use of the solicitation to also contract with shortlisted bidders. In 2019, the Department issued a solicitation for new renewable resources and battery storage. As a result of these two solicitations, SJCE contracted with EDPR CA Solar Park VI LLC (commonly referred to as the ‘Sonrisa’ project), an affiliate of EDPR, for 100 MW solar plus 10 MW of battery storage. SJCE subsequently agreed with EDPR to amend and assign the agreement to Scarlet, another subsidiary of EDPR, when the Sonrisa project experienced interconnection challenges that would have resulted in substantial delays in the commercial operation date.

On June 15, 2022, the Department issued a solicitation seeking proposals for dispatchable resources. The Department invited proposals from dispatchable facilities with an online date no later than December 31, 2024 that could provide a combination of RA and dispatchable energy. Three entities submitted five bids in response to the solicitation. The Department analyzed the offers, considering factors such as value, technology, location, project risk, emissions mitigation, and counterparty experience. Two entities submitted bids for natural gas plants with carbon reduction opportunities. One entity submitted three bids, two for new solar projects with battery storage, and one for standalone battery storage. The Department received approval from the City Council on October 4, 2022 to negotiate and execute agreements with two of the three bidders, Middle River Power and Sentinel Energy Center, and the City has since executed an agreement with Middle River Power.

The Department initially declined to move forward with the third bidder, Bright Canyon Energy Corporation (Bright Canyon), because its bids for solar plus dispatchable batteries were not initially competitive with the other bidders in the dispatchable resources solicitation or with bidders in a separate solicitation for renewable resources and battery storage. Since then, bidders in the renewable resources and battery storage solicitation delayed their expected in-service dates, increased their bid prices, and/or declined to reach agreement on reasonable terms. Hence, the Department has focused on identifying sufficient resources in both solicitations to ensure SJCE can meet its 2024 CPUC mid-term reliability procurement requirements. In contrast, Bright Canyon has reduced its bid offer prices.

On September 22, 2022, in accordance with the requirements of sections Section 7.4.1 and 7.4.2 of the Risk Management Regulations, the Risk Oversight Committee authorized the Department to identify and negotiate long term agreements that can meet SJCE’s 2024 mid-term reliability requirements without requiring a competitive solicitation. Accordingly, the Department now recommends moving forward with an agreement with Bright Canyon for the Seal Beach project, which is one of a very limited number of projects the Department has been able to identify, and reach agreement on reasonable terms that can be in-service in time to meet the Department’s CPUC 2024 mid-term reliability procurement requirements.

ANALYSIS

Scarlet Project

EDPR's affiliate, Scarlet, is developing a utility-scale solar photovoltaic facility with a four-hour electric battery storage project in Fresno County, California, with a current expected commercial operation date of October 31, 2023. As stated above, on March 18, 2022, the Department amended and assigned an initial August 6, 2019 agreement, by and between the City and an EDPR subsidiary, to build the Sonrisa project to replace Sonrisa with Scarlet. The Department recommends negotiating and executing a further amendment to the agreement to amend the guaranteed commercial operation date, the delay damages, and collateral requirements in exchange for an agreement for valuable RA as described below.

Alternatively, the City could decline to amend the agreement and either retain delay damages and keep the existing agreement, or retain delay damages and terminate the agreement. Either approach could be problematic. Moreover, EDPR might have a hard time obtaining financing for the project which could jeopardize the project irrespective of the respective rights or wishes of the City and/or EDPR.

Scarlet is a wholly owned subsidiary of EDPR. EDPR is a developer and operator of renewable energy, with wind farms, solar parks, and storage projects throughout the North America. EDPR is the fourth largest wind energy operator in the United States and has been operating since 2007 with over 8,800 MW of projects online. EDPR is not a publicly traded company, but its indirect corporate parent, EDP Renováveis, S.A. (LS: EDPR), is a publicly traded company.

Project Terms: Maximum annual cost: \$8,781,000; Maximum total contract cost: \$175,620,000; Term: 20 years; Online date: October 31, 2023. See Attachment A for a summary of material terms for this amendment.

Scarlet Permitting Delays and Negotiations for a Commercial Operation Date Delay

The initial guaranteed commercial operation date for the Scarlet project was December 31, 2022. On February 25, 2022, EDPR informed the City that the Scarlet project would be delayed due to permitting delays at the county level. At that time, EDPR indicated that its expected online date would be April 1, 2023 and sought a guaranteed commercial operation date extension pursuant to the appropriate section in the agreement, claiming it had exercised reasonable commercial efforts to avoid the delay. More recently, EDPR has indicated that supply chain challenges make the April 1, 2023 guaranteed commercial operation date infeasible and sought additional changes to the terms of the Scarlet agreement. The Department entered into negotiations with EDPR on changes to the guaranteed commercial operation date, delay damages, and collateral while insisting on obtaining replacement value for the costs to SJCE resulting from the delay. EDPR offered to contract with the City for RA from a later stage of the Scarlet project at a reduced price. This RA will contribute towards SJCE's required procurement of additional RA mandated by the CPUC.

EDPR Scarlet 2 BESS LLC Project

EDPR's affiliate Scarlet 2 BESS is developing a utility-scale solar photovoltaic facility with a four-hour electric battery storage project in Fresno County, California. SJCE is already an offtaker for one phase of this project. As consideration for adjusting the guaranteed commercial operation date, delay damages and the collateral requirements for Scarlet, EDPR offered the Department RA from the Scarlet 2 BESS at a discount of between 20 and 25 percent from the current market price. The volume in this agreement contributes towards meeting SJCE's 2024 mid-term reliability position. This offer is of significant value to SJCE, as there are extremely limited qualifying projects available to come online in 2024. Accordingly, staff has determined that the contract for RA with Scarlet 2 BESS adequately compensates SJCE ratepayers for the guaranteed commercial operation date delay by Scarlet.

The RA from Scarlet 2 BESS comes from a different solar plus storage phase of the larger Scarlet complex. Scarlet 2 BESS will sell the solar output to a corporate customer that does not require the RA from the project. The Department recommends negotiating and executing an agreement to procure RA from Scarlet 2 BESS in conjunction with the amendment to SJCE's existing Scarlet agreement.

Project Terms: Maximum annual cost: \$6,075,000; Maximum total contract cost: \$60,750,000; Term: 10 years; Online date: June 1, 2024. See Attachment B for a summary of material terms for this agreement.

Seal Beach Project

Bright Canyon's subsidiary Seal Beach is developing a utility-scale solar photovoltaic facility with a four-hour electric battery storage project in Orange County, California. If approved, the volume in this agreement would contribute towards meeting SJCE's 2024 mid-term reliability position.

Bright Canyon was founded in 2014 and focuses primarily on electrical transmission, microgrids, renewable energy, and energy storage developments that it owns and operates. BCE is not a publicly traded company but its indirect corporate parent, Pinnacle West Capital Corporation (NYSE: PNW), is a publicly traded company. If an agreement is reached with SJCE, Bright Canyon expects to develop Seal Beach jointly with a direct subsidiary of Ameresco, Inc., a publicly traded company (NYSE: AMRC).

Project Terms: Maximum annual cost: \$3,300,000; Maximum total contract cost: \$33,000,000; Term: 10 years; Online date: June 1, 2024. See Attachment C for a summary of material terms for this amendment.

Benefits of the Agreements

The Scarlet agreement provides clean renewable solar power that will contribute towards achieving the City's goal to be carbon neutral by 2030. In addition, the agreement provides RA and will contribute towards SJCE's mid-term reliability requirements.

The RA-only agreement with Scarlet 2 BESS will contribute towards SJCE's ability to meet the requirements of Decision 21-06-035 and provide RA. This new agreement is contingent on amending the existing Scarlet power purchase agreement to adjust the guaranteed commercial operation date, delay damages, and collateral requirements.

The solar plus storage agreement with Seal Beach will contribute towards SJCE's ability to meet the requirements of Decision 21-06-035 and provide SJCE renewable energy, RA, and dispatchable batteries.

CONCLUSION

The Department recommends the City Council adopt a resolution authorizing the Director or the Director's designee to negotiate and execute an amendment with Scarlet, an agreement with Scarlet 2 BESS, and an agreement with Seal Beach for the reasons stated above.

POLICY ALTERNATIVES

Alternative #1: Do not negotiate and execute an amendment to the existing power purchase agreement with Scarlet; do not negotiate and execute an RA-only agreement with Scarlet 2 BESS; and do not negotiate and execute a solar plus storage agreement with Seal Beach. Allow the Scarlet project to come online late and collect associated daily delay damages. Attempt to fill remaining unfilled resource additions for 2024 required by Decision 21-06-035 through solicitations and other authorized means.

Pros: If it can prevail on all available arguments, the Department could collect available delay damages under the Scarlet agreement and either accept a guaranteed commercial operation date delay without adjusting the agreement, or terminate the agreement. The Department would then keep delay damages but would have to solicit additional supply.

Cons: The Department is focused on securing adequate resources that meet a 2024 in-service date as well as resources that meet a 2025 in-service date. Accordingly, failure to approve the recommendation set forth in this memorandum may result in delays in the Department's attempt to obtain such resources, possibly making the Department's attempt to secure mid-term reliability resources more challenging.

Reason for not recommending: Deciding not to approve the recommendation set forth in this memorandum contradicts the Department's effort to ensure SJCE remains on track with its regulatory compliance mandates related to the mid-term reliability and the RA program. If SJCE fails to comply with such regulatory mandates, SJCE would be at risk for fines from the CPUC.

EVALUATION AND FOLLOW-UP

No additional follow-up is expected at this time.

CLIMATE SMART SAN JOSÉ

The recommendation in this memorandum aligns with one or more Climate Smart San José energy, water, or mobility goals.

PUBLIC OUTREACH

This memorandum will be posted on the City's website for the December 13, 2022 City Council meeting.

COORDINATION

This memorandum has been coordinated with the City Attorney's Office and the City Manager's Budget Office.

COMMISSION RECOMMENDATION/INPUT

These recommendations were not considered by the Clean Energy Community Advisory Commission.

FISCAL/POLICY ALIGNMENT

The recommended actions support Climate Smart San José (action 1.1 Transition to a Renewable Energy Future) and the Envision San José 2040 General Plan (Goal MS-2 and Appendix 8: GHG Reduction Strategy).

COST SUMMARY/IMPLICATIONS

Entering into the new agreement with Scarlet 2 BESS would cost up to \$6,075,000 annually, beginning in 2024 (fiscal year 2024-2025), and \$60,750,000 over the lifetime of the agreement. Entering into the new agreement with Seal Beach would cost up to \$3,300,000 annually, beginning in 2024 (fiscal year 2024-2025), and \$33,000,000 over the term of the agreement. The delay in the commercial operation date of the Scarlet agreement will result in a delay in City payments pursuant to that agreement, but also a need to buy replacement products from the beginning of 2023 until the project comes online. These delays will happen regardless of whether the City amends the agreement or not. The amendment will change the amount of delay damages and the increase amount of collateral held by the City.

The amendment and new agreements do not require a budget adjustment in 2022-2023 since funding needed for the procurement of energy products in 2022-2023 was approved in the 2022-2023 Adopted Budget. Funding needs for agreements in 2023-2024 and beyond will be brought forward as part of future budget processes and are subject to City Council-approved appropriation of funds.

CEQA

Not a Project, File No. PP17-003. Agreements/Contracts (New or Amended) resulting in no physical changes to the environment.

/s/

LORI MITCHELL

Director, Community Energy

For questions, please contact Lori Mitchell, Director of Community Energy Department, at (408) 535-4880.

ATTACHMENTS

- Attachment A - Summary of Material Terms to Amend the August 6, 2019 Agreement between RE Scarlet and the City of San José
- Attachment B - Summary of Material Terms for an Agreement between EDPR Scarlet 2 BESS LLC and the City of San José
- Attachment C - Summary of Material Terms for the BCE Seal Beach, LLC Project

Attachment A - Summary of Material Terms to the Second Amendment to Renewable Power Purchase Agreement between the City of San José and RE Scarlet I LLC, dated August 6, 2019, as amended

Overview of Existing Agreement

- **Buyer:** The City of San José.
- **Seller:** RE Scarlet I LLC, a Delaware limited liability company.
- **Product:** Seller will sell and Buyer will purchase the product (Product), which includes photovoltaic (PV) Energy, Discharging Energy, Green Attributes, Storage Capacity, Capacity Attributes, Ancillary Services (all as defined under the PPA), renewable energy and associated renewable energy credits (RECs), Resource Adequacy (RA), and certain rights to operate the battery storage facility.
- **Facility:** Seller will develop, design, permit, construct, own and operate the facility (Facility), which is a 100 MW solar photovoltaic electricity generating facility combined with a 10 MW/40 MWh lithium-ion battery storage facility located in Fresno County, California.
- **CAISO Scheduling Coordinator:** Buyer will be the California Independent System Operator scheduling coordinator (CAISO Scheduling Coordinator) for the Facility.
- **Delivery Term:** The delivery term is 20 years (Delivery Term).
- **Pricing:** \$8,781,000 Maximum Annual Cost, \$175,620,000 Maximum Total Cost.

Summary of Amendments to Existing Agreement

- The amendment extends the Expected Commercial Operation Date (ECOD) from December 31, 2022 to March 31, 2023.
- The amendment extends the Guaranteed Commercial Operation Date (GCOD) from December 31, 2022 to October 31, 2023.
- The amendment extends the Guaranteed Construction Start Date from February 28, 2022 to September 9, 2022.
- The amendment modifies how Seller is assessed delay damages.
- Seller must pay specified daily delay damages up to a maximum amount for every day beyond April 1, 2023 on which the Facility does not achieve the Commercial Operation Date (COD).
- Seller must pay escalating specified daily delay damages up to a maximum amount for every day beyond October 31, 2023 in which the Facility does not achieve COD.
- Buyer shall refund previously collected delay damages to Seller, and Seller shall post an equal amount to Buyer as Supplemental Development Security. The Supplemental Development Security shall be available to Buyer for the payment of delay damages.

Attachment B - Summary of Material Terms for a Proposed Agreement between the City of San José and EDPR Scarlet 2 BESS LLC to buy Resource Adequacy from a Solar Plus Battery Energy Storage System

Overview of Proposed Agreement

- **Buyer:** The City of San José.
- **Seller:** EDPR Scarlet 2 BESS LLC, a Delaware limited liability company.
- **Product:** Seller will sell and Buyer will purchase the Capacity Attributes (as defined under the agreement), which includes Resource Adequacy (RA).
- **Facility:** Seller will develop, design, permit, construct, own and operate the facility (Facility), which is a portion of the larger EDPR Scarlet 2 BESS LLC Facility battery energy storage system located in Fresno County, California.
- **CAISO Scheduling Coordinator:** Seller will be the CAISO Scheduling Coordinator for the Facility.
- **Delivery Term:** The delivery term is 10 years (Delivery Term).
- **Pricing:** \$6,075,000 Maximum Annual Cost, \$60,750,000 Maximum Total Cost.

Commercial Operation Date; Delay Damages

- The Guaranteed Commercial Operation Date under negotiation.
- Delay Damages under negotiation.

Development Security

- The amount of the security depends on the pricing, which is commercially sensitive information.

Performance Security

- The amount of the security depends on the pricing, which is commercially sensitive information.

Events of Default and Termination Rights

- Under negotiation, but expect to include customary events of default and termination.

Environmental Attributes

- No RECs provided since this is an RA only agreement.

Insurance

- To reflect the requirements approved by Risk Management.

Attachment C - Summary of Material Terms for the BCE Seal Beach, LLC Project

Overview of Proposed Agreement

- **Buyer:** The City of San José.
- **Seller:** BCE Seal Beach, a Delaware limited liability company (Seal Beach), a subsidiary of Bright Canyon Energy Corporation (Bright Canyon).
- **Product:** Seller will sell and Buyer will purchase the power produced by the PV project, including energy, RA, and Renewable Energy Credits (RECs) and will have the right to operate the battery.
- **Facility:** A solar PV project and an associated battery storage project in Orange County, known as the Seal Beach project.
- **CAISO Scheduling Coordinator:** Buyer will be the CAISO Scheduling Coordinator for the Facility.
- **Delivery Term:** The delivery term is 10 years (Delivery Term).
- **Pricing:** \$3,300,000; Maximum total contract cost: \$33,000,000.

Commercial Operation Date; Delay Damages; Termination Rights

- The Guaranteed Commercial Operation Date is under negotiation.
- Delay Damages is under negotiation.
- Termination Rights are under negotiation but expected to include customary events of termination.

Development Security

- The amount of the security depends on the pricing, which is commercially sensitive information.

Performance Security

- The amount of the security depends on the pricing, which is commercially sensitive information.

Environmental Attributes

- The customer is entitled to the RECs from the project.

Insurance

- To reflect requirements approved by Risk Management.