

CALIFORNIA PUBLIC UTILITIES COMMISSION

ADVICE LETTER FILING SUMMARY ENERGY UTILITY

MUST BE COMPLETED BY LSE (Attach additional pages as needed)

Company name/CPUC Utility No. **Liberty Utilities (CalPeco Electric) LLC (U 933-E)**

Utility type:

☒ ELC

☐ GAS

☐ PLC

☐ HEAT

☐ WATER

Contact Person for questions and approval letters: Ken Wittman

Phone #: 530-543-5267

E-mail: Ken.Wittman@libertyutilities.com

EXPLANATION OF UTILITY TYPE

ELC = Electric

GAS = Gas

PLC = Pipeline

HEAT = Heat

WATER = Water

(Date Filed/ Received Stamp by CPUC)

Advice Letter (AL) #: **51-E**

Subject of AL: Amended Version of the 2016 NV Energy Services Agreement

Tier Designation: ☒ 1 ☐ 2 ☐ 3

Keywords (choose from CPUC listing):

AL filing type: ☐ Monthly ☐ Quarterly ☐ Annual ☒ One-Time ☐ Other _____

If AL filed in compliance with a Commission order, indicate relevant Decision/Resolution: Decision 15-12-021

Does AL replace a withdrawn or rejected AL? If so, identify the prior AL _____

Summarize differences between the AL and the prior withdrawn or rejected AL¹: _____

Resolution Required? ☐ Yes ☒ No

Requested effective date: January 21, 2016

No. of tariff sheets: n/a

Estimated system annual revenue effect: (%):

Estimated system average rate effect (%):

When rates are affected by AL, include attachment in AL showing average rate effects on customer classes (residential, small commercial, large C/I, agricultural, lighting).

Tariff schedules affected:

Pending advice letters that revise the same tariff sheets: n/a

All other correspondence regarding this AL shall be sent to:

CPUC, Energy Division
Attention: Tariff Unit
505 Van Ness Ave.,
San Francisco, CA 94102
edtariffunit@cpuc.ca.gov

Utility Info (including e-mail)
Liberty Utilities (CalPeco Electric) LLC
Attention: Advice Letter Protests
933 Eloise Avenue
South Lake Tahoe, CA 96150
Email: ken.wittman@libertyutilities.com



Liberty Utilities (CalPeco Electric) LLC
933 Eloise Avenue
South Lake Tahoe, CA 96150
Tel: 800-782-2506
Fax: 530-544-4811

VIA EMAIL AND US MAIL

December 22, 2015

**Advice Letter 51-E
(U 933-E)**

Edward Randolph, Director, Energy Division
California Public Utilities Commission
Energy Division, Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298

Subject: Amended Version of the 2016 NV Energy Services Agreement

Pursuant to Ordering Paragraph 2 of Decision (“D.”) 15-12-021 and General Order 96-B, Liberty Utilities (CalPeco Electric) LLC (U 933-E) (“Liberty Utilities”) submits this **Tier 1** Advice Letter with an amended version of the First Amended Services Agreement between Sierra Pacific Power Company and Liberty Utilities (“2016 Services Agreement”).

Background

Ordering Paragraph 1 of D.15-12-021 approves Liberty Utilities entering into the 2016 Services Agreement with the following conditions:

- a. The term of the [2016 Services Agreement] shall be reduced to less than five years.
- b. The [2016 Services Agreement] shall be amended to include the text of the following non-modifiable standard terms and conditions (STCs) for Renewables Portfolio Standard procurement contracts: STCs 1, 6, 17, REC 1, and REC 2.

Amendments to the 2016 Services Agreement

Liberty Utilities and NV Energy have agreed to an amended version of the 2016 Services Agreement which satisfies all of the requirements set forth in D.15-12-021. Accordingly, and pursuant to Ordering Paragraph 2 of D.15-12-021, this advice letter includes the following attachments:

- Exhibit 1 - A version of the 2016 Services Agreement with the amendments described above;

- Exhibit 2 - A redline document that displays the changes made to the 2016 Services Agreement to satisfy the requirements set forth in D.15-12-021;
- Exhibit 3 - A table listing each amendment and its location in the amended 2016 Services Agreement; and
- Exhibit 4 - A signed and executed copy of the 2016 Services Agreement in final form.

Effective Date

Liberty Utilities requests that this **Tier 1** advice letter be effective as of January 21, 2016.

Protests

Anyone wishing to protest this submission may do so by letter sent via U.S. mail, by facsimile or by email, any of which must be received no later than January 11, 2016, which is 20 days after the date of this filing. The protest shall set forth the grounds upon which it is based and shall be submitted expeditiously. There is no restriction on who may file a protest. Protests should be mailed to:

California Public Utilities Commission
Energy Division, Tariff Unit
505 Van Ness Avenue, 4th Floor
San Francisco, CA 94102-3298
Facsimile: (415) 703-2200
Email: edtariffunit@cpuc.ca.gov

The protest also should be sent via email and U.S. Mail (and by facsimile, if possible) to Liberty Utilities at the addresses show below on the same date it is mailed or delivered to the Commission.

Liberty Utilities (CalPeco Electric) LLC
Attn.: Advice Letter Protests
933 Eloise Avenue
South Lake Tahoe, CA 96150
Fax: 530-544-4811
Email: ken.wittman@libertyutilities.com

With a copy to:
Steven F. Greenwald
Patrick J. Ferguson
Davis Wright Tremaine LLP
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Fax: 415-276-6599
Email: stevegreenwald@dwt.com
Email: patrickferguson@dwt.com

Notice

In accordance with Ordering Paragraph 10 of D.15-12-021 and General Order 96-B, Section 4.3, a copy of this advice letter is being sent electronically to parties shown on the attached lists.

If additional information is required, please do not hesitate to contact me.

Sincerely,



Ken Wittman
Senior Manager of Finance, Accounting and Regulatory - California
Liberty Utilities (CalPeco Electric) LLC

Attachments

cc: Liberty Utilities General Order 96-B Advice Letter Service List
A.15-04-019 Service List

Liberty Utilities (CalPeco Electric) LLC
Advice Letter Filing Service List
General Order 96-B, Section 4.3

VIA EMAIL

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ljt@cpuc.ca.gov
dlf@cpuc.ca.gov
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md2@cpuc.ca.gov
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emilysangi@dwt.com

Liberty Utilities (CalPeco Electric) LLC
A.15-04-019 Service List

VIA EMAIL

cc2@cpuc.ca.gov
SteveGreenwald@dwt.com
abb@eslawfirm.com
PatrickFerguson@dwt.com
VidhyaPrabhakaran@dwt.com
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mrl@cpuc.ca.gov
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tim@cpuc.ca.gov

EXHIBIT 1

SECOND AMENDED SERVICE AGREEMENT

BETWEEN

SIERRA PACIFIC POWER COMPANY

AND

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

Dated December 17, 2015

SECOND AMENDED SERVICE AGREEMENT

Between

SIERRA PACIFIC POWER COMPANY

and

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

This Second Amended Service Agreement, dated December 17, 2015 (“**Effective Date**”), is between Sierra Pacific Power Company, a Nevada corporation d/b/a NV Energy acting in its merchant function capacity (“**NV Energy**”) and Liberty Utilities (CalPeco Electric) LLC, a California limited liability company d/b/a Liberty Utilities (“**Liberty**”) (each of NV Energy and Liberty, a “**Party**” and, collectively, the “**Parties**”). This Second Amended Service Agreement replaces and supersedes the First Amended Service Agreement between the Parties, dated July 31, 2015 and the Service Agreement between the Parties, dated April 21, 2015. The Parties, in consideration of the mutual benefits from the covenants set forth herein, hereby agree to the sale, delivery, purchase and receipt of capacity and energy pursuant to the terms and conditions that follow:

1. **Buyer.** The buyer shall be Liberty.
2. **Seller.** The seller shall be NV Energy.
3. **Delivery Term.** The Delivery Term shall commence at 12:01 A.M. Pacific time on January 1, 2016 and shall continue through 12:01 A.M. Pacific time on December 30, 2020 (“**Delivery Term**”) unless terminated earlier in accordance with the provisions of this Agreement.
 - 3.1 This Agreement shall terminate automatically at the end of the Delivery Term.
 - 3.2 This Agreement may not be terminated except that:
 - (1) Either Party may terminate this Agreement effective 12:01 A.M. Pacific time on May 1, 2019 by providing written notice no later than February 1, 2018.
 - (2) NV Energy shall have the right to terminate this Agreement with one hundred eighty (180) days written notice to Liberty if the Federal Energy Regulatory Commission (“**FERC**”), the Public Utilities Commission of Nevada (“**PUCN**”) or another duly constituted regulatory, administrative or judicial body takes any action or fails to take any action relating to this Agreement that NV Energy, in its sole discretion, but always acting reasonably, determines to have a material

adverse impact on NV Energy, its shareholders or its customers.

- 3.3 NV Energy's obligation to deliver capacity and energy to Liberty and Liberty's obligation to receive and purchase capacity and energy from NV Energy shall cease upon termination. Liberty's obligation to pay NV Energy for capacity and energy delivered to Liberty prior to termination shall survive until such obligation is discharged in accordance with the provisions of this Agreement. NV Energy's obligations under (i) Section 11.3 to pay Liberty for Excess Supply generated prior to termination, (ii) Section 6.4 to transfer Renewable Energy Credits ("**RECs**") associated with the renewable energy delivered by NV Energy to Liberty prior to termination, (iii) Section 6.5 to provide supporting documentation for Liberty's California Renewable Portfolio Standard ("**RPS**") filings, and (iv) Section 4.5 to provide documentation for Liberty's use in demonstrating compliance with the CPUC's Resource Adequacy requirements, shall each survive until such obligation is discharged in accordance with the provisions of this Agreement.
4. **Type of Service.** Subject to the exemptions in Section 4.6 or as otherwise set forth herein, during the Delivery Term, NV Energy shall supply, and Liberty shall purchase, Liberty's full requirements for capacity and energy, including the renewable energy and RECs described in Section 6, and all necessary ancillary services (the "**Product**") for the service area as described in Exhibit A to this Agreement (the "**Territory**").
- 4.1 NV Energy will designate the requirements for capacity and energy for the Territory as Network Load; Network Load shall have the meaning ascribed to the term in the Nevada Power Company and Sierra Pacific Power Company Open Access Transmission Tariff (the "**OATT**").
- 4.2 NV Energy will use its Network Integrated Transmission Service Agreement to deliver capacity and energy under this Agreement.
- 4.3 NV Energy will self-provide or procure the ancillary services necessary for the delivery of capacity and energy under this Agreement and Liberty shall obtain the benefit of such ancillary services as part of its payment of the Monthly Charges.
- 4.4 NV Energy will make commercially reasonable efforts to maintain reserves, which shall be based upon the Contract Demand set forth in Exhibit C to this Agreement and the reserve criteria applicable to NV Energy's retail loads in the State of Nevada, for the capacity and energy supplied by NV Energy pursuant to this Agreement. The reserve criteria shall be consistent in all material respects with NV

Energy's then current Energy Supply Plan as approved by the PUCN.

- 4.5 NV Energy shall provide documentation to Liberty for Liberty's use in demonstrating to the CPUC its compliance with the CPUC's Resource Adequacy requirements. For the purposes of this Agreement, "**Resource Adequacy**" means the capacity procurement obligations of Liberty pursuant to decisions issued in CPUC Dockets R.04-04-003, R.05-12-013, R.08-01-02, R.11-10-023, R.14-10-010, and any successor proceedings.
- 4.6 During the Delivery Term, Liberty shall not procure any or all of the requirements for capacity and energy for the Territory from any source other than NV Energy; provided, that Liberty shall have the right to (i) produce capacity and energy at the Kings Beach Generation Facility; (ii) produce and deliver to NV Energy capacity and energy from the Liberty Renewable Projects as permitted under Section 7 of this Agreement; (iii) purchase capacity and energy up to 8,000 kW from renewable facilities located in Liberty's service territory and interconnected to Liberty's distribution system; (iv) purchase capacity and energy from any Qualifying Facility located in Liberty's service territory; (v) procure from sources other than NV Energy that portion of capacity or energy that NV Energy fails to deliver hereunder, whether or not such failure is excused under the terms of this Agreement; and (vi) after receiving notice from NV Energy that it will not be able to deliver (or, if applicable, that NV Energy anticipates being unable to deliver) capacity or energy hereunder, procure from sources other than NV Energy that portion of capacity or energy that NV Energy is unable (or, if applicable, anticipates being unable) to deliver hereunder, whether or not such anticipated failure is excused under the terms of this Agreement. If Liberty procures energy or capacity pursuant to clause (v) or clause (vi) above, Liberty shall provide prompt notice to NV Energy of all such arrangements and otherwise keep NV Energy informed of the current status of such arrangements, and terminate all such deliveries of capacity or energy as soon as commercially practicable after NV Energy notifies Liberty of NV Energy's ability to resume full deliveries of capacity or energy hereunder; provided that for purposes of any notice delivered to NV Energy pursuant to this sentence, such notice shall include the volume, delivery points, and term of all such arrangements, but exclude price and counterparty information applicable to such arrangements. Without limiting the foregoing, upon notification from NV Energy of its ability to resume fully delivering capacity or energy hereunder, the Parties shall cooperate to facilitate an orderly and prudent transition to the resumption of delivery of capacity and energy by NV Energy as soon as commercially practicable following such notification.

NV Energy and Liberty agree that damages may not be an adequate remedy in connection with the breach of the provisions of this Section 4.6. Accordingly, notwithstanding anything in this Agreement to the contrary, the Parties agree that injunction, specific performance or other equitable relief shall be available to NV Energy for any breach or anticipated breach of this Section 4.6.

For purposes of this Agreement, “**Qualifying Facility**” means an electric energy generating facility that: (a) complies with the “qualifying cogeneration facility” or “qualifying small power production facility” definition and other requirements established by the Public Utilities Regulatory Policies Act of 1978 (“**PURPA**”) and any FERC rules, as amended from time to time implementing PURPA; and (b) has filed with FERC (i) an application for FERC certification, pursuant to 18 CFR Part 292, Section 292.207(b)(1), which FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

5. **Delivery Points.**

- 5.1 The capacity and energy shall be delivered to Liberty at the Delivery Points set forth in Exhibit B to this Agreement (“**Delivery Points**”).
- 5.2 Pursuant to that certain Interconnection Agreement dated October 8, 2009, as may be amended from time to time (the “**Interconnection Agreement**”), each Delivery Point shall be equipped with metering equipment that records the real and reactive power flows at the Delivery Points in intervals of one hour or less and with communications equipment suitable for accessing the meter data at any time.

6. **Renewable Energy from NV Energy Resources.** NV Energy shall use commercially reasonable efforts both on a monthly and annual basis during the Delivery Term to deliver the Renewable Percentage (as defined below in Section 6.1) of the Product that will be renewable energy from the NVE Pool, as defined in Section 6.2.

- 6.1 The “**Renewable Percentage**” for each calendar year of the Delivery Term shall be the percentage of the Product to be provided from the NVE Pool. The Renewable Percentage will be the percentage stated in the table below for the total expected Receipt Point Capacity of the Liberty Renewable Projects that Liberty elects to pursue as identified in the Liberty Project Notice provided pursuant to Section 7.1, provided that the table below shall be revised using linear interpolation between the two nearest listed values in the table to provide the Renewable Percentage if the Liberty Project Notice designates a total expected Receipt Point

Capacity not presently included in the table; provided further, however, if Liberty does not provide the Liberty Project Notice by the date specified in Section 7.1, the Renewable Percentage shall be the values in the table below for the column “No Projects (0 MW)”. Once established by receipt of the Liberty Project Notice, the Renewable Percentage for each calendar year shall be fixed for the Delivery Term and may only be changed by mutual written agreement of the Parties.

Year	Liberty Project Notice (Total Expected Receipt Point Capacity)			
	No Projects (0 MW)	Project A only (20 MW)	Project B only (40 MW)	Project A & B (60 MW)
2016	23.0%	23.0%	23.0%	23.0%
2017	25.0%	18.0%	7.0%	0.0%
2018	27.0%	20.0%	9.5%	0.0%
2019	28.5%	22.0%	12.0%	2.0%
2020	30.5%	24.0%	14.5%	4.5%
2021	30.5%	24.0%	15.0%	5.0%
2022	30.5%	24.0%	15.0%	5.0%

- 6.2 NV Energy shall provide renewable energy from a pool of geothermal projects (“**NVE Pool**”) under contract to NV Energy which have been certified by the California Energy Commission (“**CEC**”) as eligible to meet the requirements for the California RPS program overseen by the CPUC (“**CEC Certification**”). Specifically, the NVE Pool includes the Steamboat 2, Steamboat 3, Galena 3, Beowawe, and Burdette projects (each a “**NVE Renewable Project**”). Exhibit H provides the definition of each of the NVE Pool contracts.
- 6.3 If, subsequent to the Effective Date, any NVE Renewable Project no longer meets the requirements for CEC Certification, such NVE Renewable Project shall be removed from the NVE Pool. In the event that NV Energy is unable to provide the Renewable Percentage from the NVE Pool in any calendar year, NV Energy’s obligation to provide renewable energy shall be reduced to the renewable energy delivered from the NVE Pool for that year and NV Energy shall have no liability for the failure to deliver the Renewable Percentage including no liability for any penalties, fines or assessments of any kind imposed by the CPUC on Liberty as a consequence thereof. If the renewable energy delivered from the NVE Pool is less than the Renewable Percentage in any calendar year, NV Energy shall, for the invoice for the final month of such calendar year, recalculate the monthly invoices for the calendar year using the actual renewable percentage delivered in each

month, and provide a credit to Liberty in an amount equal to the positive difference, if any, between the invoices previously paid by Liberty for the calendar year and the recalculated invoice amounts.

- 6.4 No later than 120 days after the end of each calendar year of the Delivery Term, NV Energy shall transfer to Liberty RECs for the quantity of renewable energy provided by NV Energy for the prior calendar year. The RECs transferred shall be of NV Energy's choice from RECs generated by the NVE Pool during such calendar year. NV Energy shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all Western Renewable Energy Generating Information System certificates associated with all RECs corresponding to all MWh of energy NV Energy delivers to Liberty under this Agreement are properly issued to Liberty.
- 6.5 NV Energy shall provide to Liberty, for its use in Liberty's RPS filings with the CPUC or the CEC, any supporting documentation the CPUC or CEC reasonably and consistent with applicable statutes requires Liberty to provide to demonstrate Liberty's compliance with its RPS requirements.
7. **Liberty Renewable Projects.** Liberty shall be permitted to obtain a maximum of sixty (60) MW of capacity and energy from solar photovoltaic arrays owned by Liberty, which may include, but shall not be limited to, Project A and Project B (as defined below), to be interconnected to NV Energy's transmission or distribution system (the "**Liberty Renewable Projects**").
- 7.1 No later than March 31, 2016, Liberty shall provide written notice of its intent to proceed with any Liberty Renewable Project, and Liberty shall designate the Receipt Point Capacity of such project(s) up to an aggregate maximum of sixty (60) MWs ("**Liberty Project Notice**"). If, in the Liberty Project Notice, Liberty states that it does not intend to proceed with at least one of the Liberty Renewable Projects, or if Liberty fails to provide the Liberty Project Notice by March 31, 2016, the provisions of this Section 7 related to Project A and Project B and any related provisions of this Agreement shall no longer be of any force or effect.
- 7.2 The interconnection point for each Liberty Renewable Project shall be a "**Receipt Point**". Liberty shall deliver energy from the Liberty Renewable Projects to NV Energy at each Receipt Point. NV Energy shall designate the Liberty Renewable Projects as Network Resources (as that term is defined in the OATT) and include the energy delivered at the Receipt Points from the Liberty Renewable Projects in serving Liberty's requirements.

- 7.3 “**Project A**” is a proposed solar photovoltaic array to be located in Douglas County, Nevada, and an expected commercial operation date as of December 31, 2016.
- 7.4 “**Project B**” is a proposed solar photovoltaic array to be located in Mineral County, Nevada, and an expected commercial operation date as of December 31, 2016.
- 7.5 “**Receipt Point Capacity**” for a Liberty Renewable Project means the maximum amount of energy that can be delivered at the Receipt Point from that project in one hour.
- 7.6 Exhibit I provides a detailed description of the Liberty Renewable Projects.
- 7.7 Within ten (10) Business Days of achieving commercial operation for each Liberty Renewable Project, Liberty shall provide to NV Energy certification from an Independent Engineer of the actual commercial operation date and the actual Receipt Point Capacity (“**Certified Receipt Point Capacity**”). “**Business Day**” means any day other than Saturday, Sunday and any day that is a holiday observed by NV Energy.
- 7.8 “**Independent Engineer**” means a person proposed by Liberty and acceptable to Liberty and NV Energy in their reasonable judgment who (a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Liberty and is not an employee of its members or Affiliates, other than with the prior written consent of NV Energy, for services previously or currently being rendered to Liberty or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Liberty Renewable Projects, or of a manufacturer or supplier of any equipment installed in the Liberty Renewable Projects.
- 7.9 Liberty shall be responsible for obtaining all interconnections with the Transmission Provider and making all applications necessary for the Liberty Renewable Projects to be able to deliver energy to the Receipt Point. Liberty shall ensure that the Liberty Renewable Projects comply with all applicable generator interconnection rules.

- 7.10 Standby service provided by NV Energy for the Liberty Renewable Projects will be provided under NV Energy's retail tariffs for standby service (currently Schedule LSR or SSR, as applicable).
8. **Contract Demand.** The "**Contract Demand**" for each calendar month of the Delivery Term shall be as set forth in Exhibit C to this Agreement. Unless otherwise set forth in Exhibit C, neither Party shall have the right to modify Exhibit C without the express written approval of the other Party.
9. **Billing Demand.** The "**Billing Demand**" for each calendar month shall be the greater of (a) the Coincident Demand for the calendar month less the Coincident Supply for the calendar month or (b) the Net Contract Demand for the calendar month.
- 9.1 The "**Coincident Demand**" for the calendar month shall be the Territory Demand for the hour and day of the calendar month that the Transmission Provider's Monthly Transmission System Peak occurs.
- 9.2 The "**Transmission Provider's Monthly Transmission System Peak**" shall be as defined in the OATT.
- 9.3 The "**Territory Demand**" for an hour shall be the sum of the Adjusted Energy for all Delivery Points for that hour. The "**Daily Territory Demand**" for a day shall be the sum of the Territory Demand for that day.
- 9.4 The "**Adjusted Energy**" for a Delivery Point for an hour shall be the energy delivered in that hour for that Delivery Point times the loss adjustment factor applicable to that Delivery Point set forth in Exhibit B.
- 9.5 The "**Coincident Supply**" for the calendar month shall be the Liberty Supply for the hour and day of the calendar month that the Transmission Provider's Monthly Transmission System Peak occurs.
- 9.6 The "**Liberty Supply**" for an hour shall be the sum of the energy delivered from the Liberty Renewable Projects at all Receipt Points for that hour, provided, however, that the Liberty Supply for an hour shall not exceed the sum of the Certified Receipt Point Capacity for each of the Liberty Renewable Projects. The "**Daily Liberty Supply**" for a day shall be the sum of the Liberty Supply for all hours of that day.
- 9.7 The "**Net Contract Demand**" shall be (1) for the calendar months of April through October, the Contract Demand for the calendar

month less the lower of (a) the Coincident Supply for the calendar month or (b) 38% of the sum of the Certified Receipt Point Capacity for each of the Liberty Renewable Projects and (2) for all other months, the Contract Demand for the calendar month. For purposes of calculating Net Contract Demand the Certified Receipt Point Capacity for a Liberty Renewable Project shall be zero until the first full month after the commercial operation date of the Liberty Renewable Project.

- 10. Rates.** The Demand Rate, the Transmission Rate, and the Energy Rate shall be as set forth in Exhibit D to this Agreement. These rates will be adjusted in accordance with the provisions of Section 12, Section 21, Section 23 and Exhibit D.

10.1 If the Billing Demand for any calendar month exceeds the Contract Demand for that calendar month, the difference shall be “**Excess Demand**.” NV Energy shall have the right to recover its incremental costs, if any, for the Excess Demand through the Energy Charge Adjustment as determined pursuant to Exhibit D.

10.2 Except as provided in Section 12, Section 21, Section 23 and Exhibit D, neither Party shall seek, nor shall they support any third person in seeking, to revise the rates, terms or conditions of service, or challenge the validity, of this Agreement, or whether it is just and reasonable, through any means, including without limitation to the FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, as such law may be amended or superseded, or any other provisions thereof, except with prior written agreement of the Parties. Except as set forth in Section 12, Section 21, Section 23, and Exhibit D, or except with the prior written agreement between the Parties, the standard of review for (a) any modification to this Agreement requested by a Party that is not agreed to by both Parties will be the “public interest” standard under the *Mobile Sierra* doctrine of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527, 128 S.Ct. 2733, 171 L.Ed.2d. 607 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010), and (b) any modification to this Agreement requested by any party (other than a Party to this Agreement) or initiated by the FERC will be the most stringent standard permissible under applicable law.

- 11. Monthly Charges.** The “**Monthly Charges**” under this Agreement shall be the sum of the Demand Charge, the Transmission Charge, the Energy Charge, the Energy Charge Adjustment and the Distribution Charge for each calendar month.

- 11.1 The “**Demand Charge**” shall be the Billing Demand (kW) times the Demand Rate.
- 11.2 The “**Transmission Charge**” shall be the Transmission Demand times the Transmission Rate. The “**Transmission Demand**” shall be the Coincident Demand plus the energy delivered to the Territory from the Kings Beach Generation Facility during the hour of the Coincident Demand.
- 11.3 The “**Energy Charge**” shall be the Monthly Energy (kWh) times the Energy Rate established and adjusted pursuant to Exhibit D hereof. The “**Monthly Energy**” shall be the sum of the Net Territory Demand for all days of the calendar month. The “**Net Territory Demand**” for a day shall be the Daily Territory Demand less the Daily Liberty Supply, provided, however, that for any day that the Daily Liberty Supply exceeds the Daily Territory Demand (“**Excess Supply**”), the Net Territory Demand shall equal zero. For any day in each month that there is Excess Supply, NV Energy shall provide Liberty with a credit to the Energy Charge for such month equal to the Average Avoided Cost for that day times the Excess Supply. The “**Average Avoided Cost**” for a day shall be the simple average of the Non-Firm Energy rate under NV Energy’s Rate Schedule No. CSPP for the hours of that day that the Liberty Supply exceeded the Territory Demand. No later than 120 days after the end of each calendar year of the Delivery Term, Liberty shall transfer to NV Energy the RECs associated with all Excess Supply for the prior calendar year.
- 11.4 The Energy Charge Adjustment (as defined in paragraph D.4 of Exhibit D) shall be determined pursuant to Exhibit D.
- 11.5 The “**Distribution Charge**” shall be \$ 19,240.00 per calendar month, plus, for any hour during the calendar month that NV Energy delivers energy at the Brockway 4202 or Brockway 5100 Delivery Points, an additional amount equal to \$0.01060 times the energy delivered (in kWh) by NV Energy at the Brockway 4202 and Brockway 5100 Delivery Points.
12. **Taxes.** Except as provided in Section 21, NV Energy shall be responsible for the payment of all taxes, fees, levies, penalties, licenses or charges imposed by any governmental authority on or with respect to the capacity and energy (“**Taxes**”) that arise prior to the Delivery Points. Liberty shall be responsible for and pay or cause to be paid all Taxes that arise at or after the Delivery Points. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes upon being presented evidence of such payment. All Taxes that are the

responsibility of NV Energy under this Section 12 shall be recoverable by NV Energy through the charges payable by Liberty under this Agreement and such Taxes shall be incorporated into such charges including without limitation by adjustment of the rates and charges payable by Liberty under this Agreement; provided, however, that any Taxes that did not exist on the Effective Date, but are subsequently imposed on NV Energy, shall be deemed a change in law and regulation and addressed pursuant to the provisions of Section 23. For the avoidance of doubt, changes, if any, in the rates and/or amounts of specific Taxes that existed on the Effective Date shall not constitute a change in law or regulation under this Agreement.

- 13. Uncontrollable Forces and Interruptions of Service.** No Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement is due to an Uncontrollable Force. “**Uncontrollable Force**” shall include any event or circumstance, which prevents a Party from performing its obligations, that (i) is not reasonably anticipated as of the date hereof, (ii) is not within the reasonable control of the claiming Party and (iii) cannot be avoided or overcome by the exercise of due diligence. Uncontrollable Force may include, but is not restricted to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or inaction (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action), or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority (as long as the affected Party has diligently pursued the authorizations or approvals).

13.1 No Party shall be relieved of liability for its failure to perform its obligations under this Agreement by reason of Uncontrollable Force to the extent that such failure is due to (i) causes arising from its own negligence or willful acts, (ii) its lack of sufficient monetary resources, or (iii) removable or remediable causes that it fails to remove or remedy within a commercially reasonable time period. Nothing contained in this Section 13.1 shall be construed to require a Party to settle a strike or labor dispute in which it is involved on terms that it considers, in its sole discretion, to be unreasonable. Nothing contained in this Section 13 is intended or shall be construed to abate, postpone or in any respect diminish Liberty's obligations to make any payments due NV Energy pursuant to this Agreement.

13.2 Any Party rendered unable to fulfill any of its obligations by reason of Uncontrollable Force shall give prompt notice of such fact to the other Party and shall exercise due diligence to remove such inability within a commercially reasonable period of time; provided,

however, that the failure to provide prompt notice shall not prevent a Party from being entitled to claim relief for failure to perform its obligations under this Agreement by reason of Uncontrollable Force. Each notice provided pursuant to this Section 13.2 shall include an estimate of the amount of time that will be required to remove the inability to perform its obligations under this Agreement.

13.3 NV Energy shall be excused from performance and shall have no liability under this Agreement for:

- (1) any failure to supply capacity, energy, or both under this Agreement and for any reduction or interruption of such capacity, energy, or both where any such failure, reduction or interruption arises as a result of outages to transmission or distribution facilities required to supply capacity and energy to Liberty at one or more Delivery Points including without limitation any outages for repair or maintenance of such transmission or distribution facilities ("**Interruption of Service**"); provided that such failure is not the result of the gross negligence or willful misconduct of NV Energy; or
- (2) any nondiscriminatory curtailment by NV Energy of capacity and energy deliveries to Liberty (i) resulting from the operation of automatic under-frequency load-shedding devices or (ii) resulting from a Stage 3 Energy Emergency Alert, as defined in NV Energy's System Electric Emergency Operating Plan ("**SEEOP**"). Curtailments of capacity and energy as a result of a Stage 3 Energy Emergency Alert shall be in accordance with NV Energy's then current and approved SEEOP; provided, however, that any such curtailment shall not be excused if it is the result of the gross negligence or willful misconduct of NV Energy.

14. Title and Risk of Loss.

- 14.1 Title and risk of loss to the capacity and energy delivered by NV Energy under this Agreement shall pass from NV Energy to Liberty at the Delivery Points. Subject to Section 14.2, NV Energy assumes all responsibility with respect to the capacity and energy prior to its delivery to Liberty at the Delivery Points. Liberty assumes all responsibility with respect to all capacity and energy delivered by NV Energy at and after its delivery to Liberty at the Delivery Points.
- 14.2 Liberty assumes all responsibility with respect to the capacity and energy supplied from the Liberty Renewable Projects prior to its

delivery to NV Energy at the Receipt Points. Title and risk of loss to the capacity and energy from the Liberty Renewable Projects shall pass from Liberty to NV Energy at the Receipt Points. NV Energy assumes all responsibility with respect to the capacity and energy supplied from the Liberty Renewable Projects from the Receipt Points and prior to its delivery to Liberty at the Delivery Points.

- 14.3 NV Energy agrees to indemnify Liberty and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("**Claims**"), from any and all persons, arising from or out of claims of personal injury (including death) or property damage from said capacity and energy which attach before risk of loss passes from NV Energy to Liberty. Liberty agrees to indemnify NV Energy and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding personal injury (including death) or property damage from said capacity and energy which attach before risk of loss passes from Liberty to NV Energy for the Liberty Renewable Projects and after risk of loss passes from NV Energy to Liberty.
- 15. Access to Metering Data.** Liberty hereby authorizes NV Energy's transmission function to release to NV Energy's merchant function any metering data reasonably required by NV Energy's merchant function for operating and billing pursuant to this Agreement.
- 16. Invoice and Payment.** The accounting and billing period for charges payable pursuant to this Agreement shall be one (1) calendar month. On or before the tenth (10th) day of each month, NV Energy shall submit an invoice to Liberty for charges payable during the immediately preceding calendar month. NV Energy's invoice shall be due and payable by Liberty no later than the twentieth (20th) day after Liberty's receipt of such invoice.
- 16.1 Liberty's payments shall be in U.S. dollars by wire transfer to the accounts set forth for that purpose on Exhibit E.
- 16.2 The amounts, if any, that have not been paid by Liberty on or before the due date shall be payable with interest calculated daily, at a rate equal to the applicable FERC approved interest rate, for the period beginning on the day after the due date and ending on the date of the payment.
- 17. Billing Disputes.** If (i) NV Energy fails to issue an invoice for some or all of the charges payable by Liberty during a month or (ii) NV Energy finds one or more errors in an invoice, NV Energy shall have the right to issue an invoice or a revised invoice for the charges; provided, however, the invoice or revised invoice must be issued within two (2) years of the date on which the original invoice should have been or was issued,

whichever is applicable. NV Energy's invoice or revised invoice shall include an explanation of the charges or the revised charges, whichever is applicable. An invoice or revised invoice shall be due and payable by Liberty on or before the twentieth (20th) day after Liberty's receipt of such invoice.

17.1 Liberty may dispute any of the charges on an invoice by providing written notice of the dispute to NV Energy within two (2) years of the latter of the date of the original invoice, or the date of the last revised invoice if one or more revised invoices were issued, for a billing period. Liberty's notice shall specify the amount in dispute and state the basis for the dispute. If Liberty disputes any of the charges on an invoice, the Parties shall promptly meet and endeavor to resolve the dispute. If the Parties cannot resolve the dispute in this manner within sixty (60) days (or such longer period of time mutually agreed upon by the Parties in writing) of Liberty's notice to NV Energy of a dispute, either Party may proceed under the provisions of Section 27.9 to resolve the dispute.

17.2 Liberty shall be obligated to pay the entire amount of an invoice when due even if Liberty disputes some or all of the charges. If a dispute is ultimately resolved in Liberty's favor, NV Energy shall promptly refund any amounts owed to Liberty with interest calculated daily, at a rate equal to the applicable FERC approved interest rate.

18. Credit Support. NV Energy shall not be obligated to provide any guarantees, post any collateral, or provide any credit assurance.

18.1 Notwithstanding anything in this Agreement to the contrary, the provisions of this Agreement except for Section 26, which became effective as of the Effective Date, shall only become effective if the Guarantee is executed, valid and in full force and effect as of the first day of the Delivery Term. For purposes of this Agreement, "**Guarantee**" means the Guarantee of Liberty Utilities Co. ("**Liberty Parent**"), pursuant to which Liberty Parent shall guarantee, subject to the terms thereof, the timely payment of the obligations of Liberty for Monthly Charges that may become due and owing by Liberty pursuant to this Agreement. The Guarantee shall be substantially in the form set forth to Exhibit F to this Agreement.

18.2 Should the creditworthiness, financial responsibility, or performance viability of Liberty Parent become unsatisfactory to NV Energy in its commercially reasonably exercised discretion, NV Energy may require Liberty to provide credit support as determined by NV Energy in its sole discretion, in the form of the posting of (i) a letter of credit, or (ii) other collateral or security acceptable to NV

Energy, in either instance in the amount of seven million five hundred thousand U.S. dollars (US\$7,500,000.00) (“Adequate Assurance”) to NV Energy within three (3) Business Days of NV Energy’s written demand for assurances; provided that upon Liberty timely posting of Adequate Assurance in the total amount of seven million five hundred thousand U.S. dollars (US\$7,500,000.00), the Liberty Parent Guarantee shall be terminated. If Liberty posts a letter of credit, the letter of credit shall be in the form set forth in Exhibit G to this Agreement.

19. Events of Default and Remedies.

19.1 For purposes of this Agreement, an “**Event of Default**” shall consist of any of the following:

- (1) The failure of NV Energy to deliver Product in accordance with the provisions of this Agreement if such failure is not cured within five (5) Business Days of NV Energy’s receipt of written notice thereof from Liberty unless such failure is due to Uncontrollable Force, Interruption of Service or other circumstances for which NV Energy is excused from performance under this Agreement;
- (2) The failure of NV Energy to provide clear and good title to the Product as required in Section 24.1 if such failure is not cured within five (5) Business Days of NV Energy’s receipt of written notice thereof from Liberty;
- (3) The failure of Liberty to provide clear and good title to the energy from the Liberty Renewable Projects as required in Section 24.2 if such failure is not cured within five (5) Business Days of Liberty’s receipt of written notice thereof from NV Energy;
- (4) Any representation or warranty of a Party made pursuant to Section 25 is false or misleading in any material respect when made or when deemed made or repeated and which misrepresentation can reasonably be expected to result in a material adverse effect on the ability of that Party to fulfill its obligations under this Agreement or the ability of the other Party to receive its benefits under this Agreement and further provided such failure is not cured within five (5) Business Days of its receipt of written notice thereof from the non-defaulting Party;
- (5) The failure of a Party to make payment when due if not remedied within five (5) Business Days of receipt of notice from the Party to which the money is owed;

- (6) Any involuntary case or other proceeding is commenced against a Party (i) seeking reorganization, readjustment, arrangement, composition or similar relief with respect to it or its debts under any bankruptcy or other similar law, (ii) seeking a decree or order of a court having jurisdiction for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the undertaking or property of such Party, or (iii) seeking the winding-up, dissolution or liquidation of its affairs, and such involuntary case has not been discharged or dismissed within sixty (60) days;
 - (7) The failure of Liberty to provide adequate financial assurances to NV Energy as may be required pursuant to Section 18 if such failure is not remedied within two (2) Business Days of receipt of written notice from NV Energy;
 - (8) A Party institutes proceedings for its winding-up, liquidation or dissolution, or takes any actions to become a voluntary bankrupt, or consents to the filing of any bankruptcy proceeding against it, or files any proposal, notice of intention to make a proposal, petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy or other similar law or consents to the filing of any such petition, or to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or any material property of such Party, or makes any assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due or commits any other act of bankruptcy, or any action is taken by such Party in furtherance of any of the foregoing; and
 - (9) If a receiver, manager, receiver and manager, trustee, custodian or other similar official is appointed in respect of any Party or any material part of its property and such appointment is not being contested diligently and in good faith by such Party or has not been discharged or dismissed within ten (10) Business Days.
- 19.2 If an Event of Default occurs, the non-defaulting Party shall have the right to terminate this Agreement by written notice, which shall include the date of the intended termination, to the defaulting Party. The non-defaulting Party may exercise any rights or remedies available to it at law or in equity, subject to the limitations

set out in this Agreement. If the termination is due to an Event of Default by Liberty, and Liberty has posted a letter of credit, NV Energy shall have the right to offset any outstanding amounts due from Liberty to NV Energy under this Agreement by drawing on the letter of credit.

- 19.3 With respect to any circumstances under this Agreement in which one Party is or may be liable to the other Party (a “**Harmed Party**”) for damages, it is agreed that the Harmed Party shall exercise commercially reasonable efforts, as determined in light of the facts and circumstances prevailing at the time such efforts are or should have been taken, to mitigate or reduce the amount of damages which such Harmed Party would sustain (and for which the other Party is or would be responsible) under the terms of this Agreement.
- 19.4 To the fullest extent permitted by law and notwithstanding any other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement whether or not such damages were reasonably anticipated as of the Effective Date. With respect to a Party, the limitation on damages under this Section 19.4 shall not apply with respect to claims brought by third persons for which such Party is entitled to indemnification under this Agreement.
- 20. No Resale.** Liberty shall not sell or otherwise transfer any of the capacity and/or energy provided pursuant to this Agreement to any party other than: (i) end-use customers located in the Territory; (ii) end-use customers located in the NV Energy service territory for the load served by Liberty pursuant to that certain Borderline Customer Agreement between Liberty and NV Energy dated October 8, 2009, as amended from time to time (“**Borderline Customer Agreement**”); (iii) Pacific Gas and Electric Company (“**PG&E**”) for the load served by Liberty pursuant to that certain Electric Service Agreement between Liberty and PG&E dated December 8, 2010, as amended from time to time (the “**PG&E Agreement**”); and (iv) Truckee-Donner Public Utility District (“**TDPUD**”) for the load served by Liberty pursuant to that certain Fringe Agreement for Electric Service Between Liberty and TDPUD, dated April 7, 2010, as amended from time to time (“**TDPUD Fringe Agreement**”). NV Energy and Liberty agree that damages may not be an adequate remedy in connection with the breach of the provisions of this Section 20. Accordingly, notwithstanding anything in this Agreement to the contrary, the Parties agree that injunction, specific performance or other equitable

relief shall be available to NV Energy for any breach or anticipated breach of this Section 20.

21. Cap-and-Trade.

21.1 Definitions. As used in this Section 21 the following terms have the meanings set forth below.

- (1) **“Allowance”** means a tradable compliance instrument representing one metric ton of CO₂ that may be used to satisfy a Compliance Obligation under the California Cap-and-Trade Regulation. Allowance does not include compliance instruments created through Offset Projects.
- (2) **“Auction Settlement Price”** means the price announced by the auction administrator at the conclusion of a quarterly auction conducted by CARB or its delegate (as defined in 17 Cal. Code Reg. § 95802(a)).
- (3) **“Cap-and-Trade Regulation”** means regulations promulgated by CARB to implement the carbon allowance cap-and-trade program mandated by the California Global Warming Solutions Act of 2006, specifically 17 Cal. Code Regs. §§ 95800- 96022.
- (4) **“CARB”** means the California Air Resources Board.
- (5) **“CITSS Account”** means a Compliance Instrument Tracking System Service Holding Account administered by the Western Climate Initiative.
- (6) **“Compliance Obligation”** means annual metric tons of CO₂ with a Compliance Obligation as filed annually by Liberty and in compliance with 17 Cal. Code Regs. § 95111(b)(5).
- (7) **“Compliance Year”** means a calendar year for which NV Energy has a Compliance Obligation under the California Cap-and-Trade Regulation.
- (8) **“Compliance Year Requirement”** means the quantity of Allowances NV Energy is obligated to retire to satisfy its Compliance Obligation following each Compliance Year.
- (9) **“Liberty Load”** means the energy supplied to Liberty from NV Energy resources pursuant to this Agreement.

- (10) **“Offset Project”** has the meaning ascribed to that term in 17 Cal. Code Reg. §. 95802(a).
- (11) **“Procurement”** means the purchase of Allowances from quarterly cap-and-trade auctions and the price containment reserve auctions held by CARB (or its delegate). Procurement may also include the purchase of Allowances from another entity registered in the Compliance Instrument Tracking System Service.
- (12) **“Third Party Verifier”** means the entity that verifies a greenhouse gas emissions report under the CARB Mandatory Reporting Regulation.
- (13) **“Verification Year”** means the calendar year immediately following a Compliance Year when entities subject to the CARB Mandatory Reporting Regulation must report and have their greenhouse gas emissions verified. For example, 2017 is the Verification Year for the 2016 Compliance Year.

21.2 Maintenance of Allowances to Cover NV Energy Cap and Trade Compliance Obligations.

- (1) NV Energy and Liberty shall each maintain a CITSS Account in their respective names.
- (2) By each June 15 of each calendar year during the Delivery Term, NV Energy shall notify Liberty of: (a) its forecast of Allowances required to meet the Compliance Obligation for the applicable Compliance Year; and (b) the quantity of Allowances, if any, that Liberty is to transfer into the NV Energy CITSS Account to satisfy the Compliance Year Requirement for the applicable Compliance Year.
- (3) By each September 15 of the Delivery Term, Liberty shall transfer into the NV Energy CITSS Account the quantity of Allowances that NV Energy has specified in its notice pursuant to Section 21.2(2)(b) for such Compliance Year.
- (4) Between June 15 and October 1 of each Verification Year, NV Energy may notify Liberty of any difference from the quantity of Allowances NV Energy specified in its notice to Liberty as provided for in Section 21.2(2)(b) and NV Energy's actual Compliance Year Requirement associated with the Liberty Load. In the event that NV Energy provides notice pursuant to this Section 21.2(4) that the Allowance Requirement is greater than the quantity of

Allowances NV Energy specified in its notice pursuant to Section 21.2(2)(b), Liberty shall, within thirty (30) days after receiving such a notice pursuant to this Section 21.2(4), transfer into the NV Energy CITSS Account the additional amount of Allowances NV Energy has specified in such Section 21.2(4) notice as necessary for it to satisfy the revised Compliance Year Requirement.

- (5) NV Energy shall not transfer any of those Allowances Liberty has transferred into the NV Energy CITSS Account for purposes of meeting the Compliance Year Requirement (and as such may be revised in accordance with Section 21.2(4)) out of the NV Energy CITSS Account except after reconciliation in accordance with Section 21.3(4).

21.3 Reconciliation of Allowances.

- (1) In the event that CARB or a Third Party Verifier subsequently determines the Compliance Year Requirement is larger than the amount of Allowances NV Energy forecast and provided Liberty notice of in accordance with Section 21.2(2), NV Energy will then within thirty (30) Business Days of it having knowledge of such a larger Compliance Year Requirement notify Liberty of: (a) the number of additional Allowances required to meet NV Energy's Compliance Year Requirement associated with the Liberty Load; and (b) the number of additional Allowances, if any, that Liberty shall transfer into the NV Energy CITSS Account in response to NV Energy's notice and request for additional Allowances as provided for in this Section 21.3(1).
- (2) In the event that NV Energy provides Liberty a notice in accordance with Section 21.3(1) requesting additional Allowances, Liberty shall transfer the additional amount of Allowances NV Energy specifies in such notice under Section 21.3(1) into the NV Energy CITSS Account. Liberty shall notify NV Energy of the transfer by the later of October 1 of that year or within thirty (30) Business Days after Liberty receives a notice in accordance with Section 21.3(1) requesting additional Allowances.
- (3) In the event that the Allowances Liberty transfers into the NV Energy CITSS Account exceed the total number of Allowances that NV Energy is obligated to retire to satisfy the Compliance Year Requirement, NV Energy shall timely inform Liberty of the quantity of such excessive

Allowances. At Liberty's option, NV Energy shall either transfer within fifteen (15) Business Days any unused Allowances into the Liberty CITSS Account or retain the Allowances within the NV Energy CITSS Account, to the extent allowed by CARB. NV Energy shall use any such retained excessive Allowances for purposes of satisfying a subsequent Compliance Year Requirement.

- (4) Nothing in this Section 21.3 shall be interpreted to preclude the fair exchange of Allowances between the Parties or allow either Party to exert control over Allowances in the other entity's CITSS Account in accordance with 17 Cal. Code Reg. § 95921(±).
- (5) Nothing in this Section 21.3 shall permit the Parties to engage in communications concerning auction participation prohibited by 17 Cal. Code Reg. §. 95912(g).

21.4 Default of Allowances.

- (1) Should Liberty fail to transfer into the NV Energy CITSS Account the number of Allowances required by a deadline specified under this Section 21, NV Energy may take all actions as it may deem necessary, consistent with Good Utility Practice, in order to avoid any violation of the Cap-and-Trade Regulation, including Procurement of Allowances and use of other Allowances already in its possession to satisfy NV Energy's Compliance Obligation associated with serving the Liberty Load; provided that NV Energy shall first provide Liberty notice of its failure to transfer Allowances by the required deadline and Liberty shall have a cure period of fifteen (15) Business Days to transfer the required amount of Allowances into the NV Energy CITSS Account.
- (2) If NV Energy secures Allowances pursuant to Section 21.4(1) for purposes of meeting its Compliance Obligation, Liberty shall reimburse NV Energy, within ten (10) days after receiving an invoice from NV Energy, all of the following: (1) NV Energy's actual cost to purchase the necessary Allowances; and (2) the actual transaction costs, if any, incurred by NV Energy to procure the necessary Allowances. If in accordance with Section 21.4(1), NV Energy has used other Allowances that are already in its possession and which had not been transferred by Liberty to make up any shortfall caused by Liberty's failure to timely transfer Allowances as required by this Section 21, Liberty shall reimburse NV Energy for

these Allowances in an amount based on the Auction Settlement Price at the most recent quarterly Allowance auction.

21.5 Change of Law.

(1) It is the Parties' intent that Liberty should bear all compliance, filing, administrative and other costs related to the certification, transfer and assignment of allowances associated with the emission of CO₂ and other greenhouse gases associated with the generation of energy delivered by NV Energy pursuant to this Agreement and compliance with governmentally imposed requirements to limit or otherwise to control those emissions.

(2) The United States Environmental Protection Agency ("EPA") has proposed regulations under section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), that will, if adopted and final, require Nevada and other states to develop and implement a program to control and to limit the emissions of CO₂ from NV Energy's fossil-fuel-fired electricity generation units ("EGUs") or result in the imposition of a federal program if Nevada or any other jurisdiction fails to develop a program consistent with the EPA regulation. *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014). The Parties shall follow the procedures established under Section 23 upon the adoption of regulations or the submission of a State Implementation Plan ("SIP") by Nevada or any other jurisdiction with authority over the NV EGUs supplying energy under this agreement and any action by EPA with respect to said program to assure that the provisions and procedures of this Section 21 are modified to implement the Parties' intent, as expressed in Section 21.5(1).

22. No Dedication of Facilities. Nothing in this Agreement shall be construed as constituting the dedication of NV Energy's electric system or any portion thereof to the public, to Liberty, or to customers of Liberty, or the dedication of Liberty's electric system, any Liberty Renewable Project, or any portion thereof to the public, to NV Energy, to customers of NV Energy, or to any customers in the Territory.

23. Change in Law or Regulation. If a Party becomes aware that any regulatory authority or other duly constituted authorities having jurisdiction over the Parties promulgated a change in law or applicable

regulation that materially affects the performance of either Party's obligations under this Agreement (a "**Change in Law**"), such Party shall promptly provide written notice to the other Party of the change. Upon receipt of notice, the Parties shall make commercially reasonable efforts to amend this Agreement to preserve the benefits and bargains initially struck in this Agreement. If the Parties cannot reach agreement on an amendment prior to the later of (i) the effective date of the change in law or applicable regulation or (ii) the date that is thirty (30) days after the date of notice from one Party to the other as contemplated above, either Party may terminate this Agreement after thirty (30) day's notice to the other Party without liability to the other Party except for any liability that has accrued prior to the date of termination. Without prejudice to the foregoing, if, in order to comply with its obligations under this Agreement, NV Energy incurs any costs or expects to incur any costs due to a change in law or regulation, such costs shall be recoverable by NV Energy through the charges payable by Liberty under this Agreement and such costs shall be incorporated into such charges including without limitation by adjustment of the rates and charges payable by Liberty under this Agreement.

- 23.1 A change in the regulations of the FERC or the PUCN that has the effect of causing NV Energy to be unable to recover all of its costs, including but not limited to any incremental costs that NV Energy may obtain the right to recover pursuant to this Section 23, for the capacity and energy delivered or expected to be delivered to Liberty pursuant to this Agreement shall constitute a change in law or applicable regulation.
- 23.2 A change in the regulations of the CPUC that has the effect of causing Liberty to be unable to recover all of its costs, including but not limited to any incremental costs that NV Energy may obtain the right to recover pursuant to this Section 23, for capacity and energy delivered or expected to be delivered by NV Energy pursuant to this Agreement shall constitute a change in law or applicable regulation.
- 23.3 The promulgation of new legislation or regulations, or changes to existing legislation or regulations, that result in any incremental costs, for the Product delivered or expected to be delivered to Liberty pursuant to this Agreement, attributable to carbon, greenhouse gases, or climate changes shall constitute a change in law or applicable regulation, as provided under Section 21.5.

24. Warranties.

24.1 NV Energy Warranties.

- (1) NV Energy warrants that it will transfer to Liberty good title to the capacity and energy and RECs delivered to

Liberty under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Points. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 24, NV ENERGY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CAPACITY AND ENERGY SUPPLIED OR TO BE MADE AVAILABLE UNDER THIS AGREEMENT.

- (2) NV Energy warrants that it will make commercially reasonable efforts consistent with Good Utility Practice to provide a continuous supply of capacity and energy to Liberty consistent with the provisions of this Agreement and at a level of service substantially similar to the level of service that it provides to its customers in Nevada.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry in the United States during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decisions were made, could reasonably have been expected to accomplish the desired result at a commercially reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others.

- (3) NV Energy further warrants that it will make commercially reasonable efforts consistent with Good Utility Practice and its then current approved Energy Supply Plan to acquire the fuel, if any, required for its generating facilities and to purchase the energy and capacity, if any, required to supplement its generation.

- (4) With respect to each renewable resource identified in the NVE Pool, which are referred to collectively as a “Project” for the purposes of this Section 24.1(4), NV Energy, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or

Section 399.16; and (ii) the Project's output delivered to Liberty qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if NV Energy has used commercially reasonable efforts to comply with such change in law. [STC 6].

- (5) Transfer of Renewable Energy Credits ("RECs"). NV Energy and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Liberty conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if NV Energy has used commercially reasonable efforts to comply with such change in law. [STC REC-1].
- (6) Tracking of RECs in WREGIS. NV Energy warrants that all necessary steps to allow the renewable energy credits transferred to Liberty to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

24.2 Liberty Warranties.

- (1) Liberty warrants that it will transfer to NV Energy good title to the capacity and energy and RECs delivered to NV Energy under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Receipt Points. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 24, LIBERTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CAPACITY AND ENERGY SUPPLIED OR TO BE MADE AVAILABLE UNDER THIS AGREEMENT.

25. Additional Representations and Warranties.

25.1 Each Party represents and warrants to the other Party that:

- (1) it possesses the necessary corporate (or, if applicable, limited liability company), governmental and legal authority, right and power to enter into and agree to this Agreement and to perform each and every duty imposed, and that the Parties' agreement to buy and sell capacity and energy under this Agreement represents a contract;
- (2) each of its representatives executing this Agreement is authorized to act on its behalf;
- (3) entering into this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, or any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with the terms of this Agreement;
- (4) in the case of Liberty, it is solvent; and
- (5) in the case of NV Energy, it is solvent.

25.2 On each delivery of capacity and energy and RECs under this Agreement the representation and warranty set out in Section 25.1(4) shall be deemed repeated unless written notice to the contrary is given by Liberty to NV Energy before delivery.

26. Regulatory Approval. Except for this Section 26, which became effective as of the Effective Date, the effectiveness of all of the other provisions of this Agreement is conditioned upon and shall be subject to the timely receipt of the following regulatory approvals:

26.1 FERC. NV Energy shall submit this Agreement to the FERC no later than September 1, 2015. If the FERC does not accept this Agreement for filing without modification or conditions that are materially adverse to either Party ("FERC Approval") by December 15, 2015, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015, after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.1 shall be deemed to have been waived. In addition, either Party may terminate this Agreement with written notice to the other Party if the FERC issues an order modifying this Agreement in a manner

materially adverse to the terminating-Party, approving this Agreement with conditions which are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the FERC order.

- 26.2 California Public Utilities Commission. Liberty shall submit this Agreement for the approval of the CPUC within thirty (30) days of the Effective Date. If Liberty does not obtain CPUC Approval by December 23, 2015, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015; provided after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.2 shall be deemed to have been waived. In addition, either Party may terminate this Agreement with written notice to the other Party if the CPUC issues an order approving, but modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions that are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the CPUC order.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms: (a) approves this Agreement in its entirety, including payments to be made by the Liberty, subject to CPUC review of the Liberty’s administration of the Agreement; and (b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Liberty’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law. [STC 1]

- 26.3 Public Utilities Commission of Nevada. NV Energy may, in its sole discretion, submit this Agreement for an order granting final approval by the PUCN (**“PUCN Approval”**). If NV Energy does not seek PUCN Approval by August 15, 2015, this Section 26.3 shall be of no force and effect and the requirement under this Agreement to obtain PUCN Approval shall be deemed waived. If PUCN Approval is timely sought by NV Energy and not received by December 15, 2015, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015, after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.3 shall be deemed to have been waived. In addition, if NV Energy timely seeks PUCN Approval, either Party may terminate this Agreement

with written notice to the other Party if the PUCN issues an order approving, but modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions that are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the PUCN order; provided the failure timely to provide such notice shall constitute a waiver of the right set forth in the preceding sentence to terminate the Agreement.

- 26.4 If either Party terminates this Agreement pursuant to this Section 26, the Parties shall execute, before December 31, 2015, an amendment to their current Services Agreement, dated April 22, 2009, as amended (“**Existing PPA**”), which shall extend the term of the Existing PPA by an additional four (4) months but not modify any of the Existing PPA’s other substantive terms or conditions.

The provisions of this Agreement other than this Section 26 will not become effective until FERC Approval, CPUC Approval, and PUCN Approval have been obtained or waived and/or until each of the deadlines for issuing a written notice of termination set forth in this Section 26 has expired without the issuance of such notice.

27. Miscellaneous.

- 27.1 Survival. Upon termination of this Agreement, any charges or other amounts due and owing under this Agreement shall be paid (including without limitation as provided in Section 3.3) and any corrections, or adjustments to payments shall be determined as soon as practicable. All indemnity obligations shall survive termination of this Agreement in accordance with their respective terms. Upon the effective date of termination of this Agreement, each Party’s obligations provided for in this Agreement will survive termination and remain in effect solely for the purpose of complying with the provisions of this Section 27.
- 27.2 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.
- 27.3 Third Party Beneficiaries. Nothing in this Agreement shall be construed to create rights in or grant remedies to any third party as a beneficiary to this Agreement.
- 27.4 Notices. All formal notices, demands or requests provided pursuant to this Agreement shall be in writing and shall be delivered in person or sent to the address shown on Exhibit E by

either facsimile or overnight delivery (with record of receipt), or to those other persons or addresses as may be designated in writing by the Party to receive a notice, demand or request as described above. Operating communications and other communications of a routine nature shall be delivered by email or by telephone with email confirmation to the address shown on Exhibit E, as such information may be updated from time to time by the Parties.

- 27.5 Compliance with Law. The obligations of the Parties under this Agreement shall be subject to and the parties shall comply with laws, rules and regulations of duly constituted authorities having jurisdiction over the Parties.
- 27.6 Waivers. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law.
- 27.7 Assignment. This Agreement may be assigned by either Party only with the written consent of the other Party; provided, that either Party may assign this Agreement without the consent of the other Party to any affiliate with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement or to a party that acquires substantially all of the assets of such Party.

Any attempted assignment that violates this Section 27.7 is void and ineffective. No assignment of a Party's rights or obligations under this Agreement, nor any consent thereto, shall relieve such Party of its obligations and liabilities under this Agreement (except in the case of an assignment to a party acquiring substantially all of the assets of the assigning Party), nor shall any such assignment expand any obligations of the non-assigning Party. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

- 27.8 Other Agreements. Nothing in the Agreement is intended to modify, supersede or otherwise alter any other agreements between the Parties. However, to the extent a conflict exists between the

provisions of this Agreement and any other agreement between the Parties the provisions of this Agreement shall prevail

27.9 Governing Law and Venue.

(1) Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]

(2) Venue. Each Party hereto irrevocably submits to the exclusive jurisdiction of the federal and state courts (subject to the following) located in the State of Nevada, waives any objection which it may have to the laying of venue of any proceedings brought in any such court, and waives any claim that such proceedings have been brought in an inconvenient forum; and agrees that any and all claims, controversies or disputes arising from or relating to this Agreement will be submitted in the federal courts of Nevada located in Reno for resolution; provided, however, that in the event jurisdiction may not be had in federal court, then the Parties agree to submit any and all such disputes, claims or controversies to state district courts of Nevada located in Reno, provided further, however, that if litigation is brought by a third party in another jurisdiction that requires that this Agreement be construed in that litigation, nothing herein shall require that a separate proceeding be brought in Nevada.

27.10 California Public Utilities Commission Renewable Portfolio Standard Required Terms and Conditions. The Parties agree that in the event there is a conflict between the terms of this Agreement and the CPUC's standard terms and conditions required to be in contracts to purchase energy eligible to satisfy a utility's renewable portfolio standard procurement requirements, which are identified throughout this Agreement as [STCs], the CPUC's standard renewable portfolio standard terms and conditions shall control.

27.11 Amendments. This Agreement may not be amended, modified or changed in any respect except by a writing executed by the Parties with the same formalities as this Agreement. .

- 27.12 Transmission Provider. The Parties acknowledge that as of the Effective Date, the NV Energy and the Transmission Provider are the same legal entity, and further acknowledge that in accordance with FERC regulations relating to open-access transmission, NV Energy's transmission function employees are required to function independently of NV Energy's marketing function employees. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its progeny, and the associated implementing regulations. Moreover, the Parties acknowledge that Transmission Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Liberty will enter into an interconnection agreement with the Transmission Provider for each of the Liberty Renewable Projects. References to the "Transmission Provider" relate to NV Energy in its capacity as the owner/operator of the transmission system, and references to "NV Energy" relate to Sierra Pacific Power Company outside of and separate from its capacity as the owner/operator of the transmission system. This Agreement is not binding upon the Transmission Provider. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement, any interconnection agreement for the Liberty Renewable Projects, nor any other agreement between Liberty on the one hand and the Transmission Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation under this Agreement. This Agreement shall not be construed to create any rights and/or obligations between Liberty and the Transmission Provider. Liberty acknowledges that NV Energy, is acting in its merchant capacity function, has no responsibility for or control over the Transmission Provider, and is not liable for any breach of agreement or duty by the Transmission Provider; provided that nothing in this Agreement waives any rights or remedies Liberty has against the Transmission Provider under any other agreement and nothing in this Agreement exempts or excuses from performance any obligations the Transmission Provider owes Liberty.
- 27.13 Forward Contracts. The Parties acknowledge and agree that this Agreement and all transactions under this Agreement are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code.
- 27.14 Severability. If any of the provisions of this Agreement, or the application of such provisions, are held invalid by any court, regulatory agency, or other regulatory body having jurisdiction, all

of the other provisions of this Agreement shall remain in force and effect unless a court, regulatory agency or other regulatory body having jurisdiction holds that the provisions are not separable from all of the other provisions of this Agreement.

- 27.15 Relationship of Parties. Nothing in this Agreement shall be construed to create an association, joint venture, trust, partnership, or agency relationship between the Parties or to impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.
- 27.16 Complete Agreement. This Agreement and the Exhibits attached hereto shall constitute the full and complete agreement between the Parties with respect to the transactions under this Agreement commencing as of the Effective Date and continuing until the end of the Delivery Term and supersedes all prior agreements and representations by the Parties with respect to such subject matter whether written or oral.
- 27.17 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have entered into this Second Amended Service Agreement as of the date first written above.

LIBERTY UTILITIES (CALPECO
ELECTRIC) LLC

SIERRA PACIFIC POWER CO.
d/b/a NV ENERGY

By: _____

By: _____

Name: Gregory S. Sorensen
Title: President

Name: Paul Caudill
Title: President

By: _____

Name: Richard Salgo
Title: Vice President - Operations

{Signature Page to Second Amended Service Agreement}

EXHIBIT 2

~~FIRST-SECOND~~ AMENDED SERVICE AGREEMENT

BETWEEN

SIERRA PACIFIC POWER COMPANY

AND

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

Dated ~~July~~ December __, 2015

~~FIRST-SECOND~~ AMENDED SERVICE AGREEMENT

Between

SIERRA PACIFIC POWER COMPANY

and

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

This ~~First-Second~~ Amended Service Agreement, dated ~~July-December~~ 31, 2015 (“**Effective Date**”), is between Sierra Pacific Power Company, a Nevada corporation d/b/a NV Energy acting in its merchant function capacity (“**NV Energy**”) and Liberty Utilities (CalPeco Electric) LLC, a California limited liability company d/b/a Liberty Utilities (“**Liberty**”) (each of NV Energy and Liberty, a “**Party**” and, collectively, the “**Parties**”). This ~~First-Second~~ Amended Service Agreement replaces and supersedes the ~~First Service Agreement between the Parties, dated July 31, 2015 and the Service Agreement between the Parties, dated April 21, 2015~~. The Parties, in consideration of the mutual benefits from the covenants set forth herein, hereby agree to the sale, delivery, purchase and receipt of capacity and energy pursuant to the terms and conditions that follow:

1. **Buyer.** The buyer shall be Liberty.
2. **Seller.** The seller shall be NV Energy.
3. **Delivery Term.** The Delivery Term shall commence at 12:01 A.M. Pacific time on January 1, 2016 and shall continue through 12:01 A.M. Pacific time on ~~December 30, 2020~~ May 1, 2022 (“**Delivery Term**”) unless terminated earlier in accordance with the provisions of this Agreement.
 - 3.1 This Agreement shall terminate automatically at the end of the Delivery Term.
 - 3.2 This Agreement may not be terminated except that:
 - (1) Either Party may terminate this Agreement effective 12:01 A.M. Pacific time on May 1, 2019 by providing written notice no later than February 1, 2018.
 - (2) NV Energy shall have the right to terminate this Agreement with one hundred eighty (180) days written notice to Liberty if the Federal Energy Regulatory Commission (“**FERC**”), the Public Utilities Commission of Nevada (“**PUCN**”) or another duly constituted regulatory, administrative or judicial body takes any action or fails to take any action relating to this Agreement that NV Energy, in its sole discretion, but always

acting reasonably, determines to have a material adverse impact on NV Energy, its shareholders or its customers.

- 3.3 NV Energy's obligation to deliver capacity and energy to Liberty and Liberty's obligation to receive and purchase capacity and energy from NV Energy shall cease upon termination. Liberty's obligation to pay NV Energy for capacity and energy delivered to Liberty prior to termination shall survive until such obligation is discharged in accordance with the provisions of this Agreement. NV Energy's obligations under (i) Section 11.3 to pay Liberty for Excess Supply generated prior to termination, (ii) Section 6.4 to transfer Renewable Energy Credits ("**RECs**") associated with the renewable energy delivered by NV Energy to Liberty prior to termination, (iii) Section 6.5 to provide supporting documentation for Liberty's California Renewable Portfolio Standard ("**RPS**") filings, and (iv) Section 4.5 to provide documentation for Liberty's use in demonstrating compliance with the CPUC's Resource Adequacy requirements, shall each survive until such obligation is discharged in accordance with the provisions of this Agreement.

4. Type of Service. Subject to the exemptions in Section 4.6 or as otherwise set forth herein, during the Delivery Term, NV Energy shall supply, and Liberty shall purchase, Liberty's full requirements for capacity and energy, including the renewable energy and RECs described in Section 6, and all necessary ancillary services (the "**Product**") for the service area as described in Exhibit A to this Agreement (the "**Territory**").

- 4.1 NV Energy will designate the requirements for capacity and energy for the Territory as Network Load; Network Load shall have the meaning ascribed to the term in the Nevada Power Company and Sierra Pacific Power Company Open Access Transmission Tariff (the "**OATT**").
- 4.2 NV Energy will use its Network Integrated Transmission Service Agreement to deliver capacity and energy under this Agreement.
- 4.3 NV Energy will self-provide or procure the ancillary services necessary for the delivery of capacity and energy under this Agreement and Liberty shall obtain the benefit of such ancillary services as part of its payment of the Monthly Charges.
- 4.4 NV Energy will make commercially reasonable efforts to maintain reserves, which shall be based upon the Contract Demand set forth in Exhibit C to this Agreement and the reserve criteria applicable to NV Energy's retail loads in the State of Nevada, for the capacity and energy supplied by NV Energy pursuant to this Agreement. The reserve criteria shall be consistent in all material respects with NV Energy's then current Energy Supply Plan as approved by the PUCN.

- 4.5 NV Energy shall provide documentation to Liberty for Liberty's use in demonstrating to the CPUC its compliance with the CPUC's Resource Adequacy requirements. For the purposes of this Agreement, "**Resource Adequacy**" means the capacity procurement obligations of Liberty pursuant to decisions issued in CPUC Dockets R.04-04-003, R.05-12-013, R.08-01-02, R.11-10-023, R.14-10-010, and any successor proceedings.
- 4.6 During the Delivery Term, Liberty shall not procure any or all of the requirements for capacity and energy for the Territory from any source other than NV Energy; provided, that Liberty shall have the right to (i) produce capacity and energy at the Kings Beach Generation Facility; (ii) produce and deliver to NV Energy capacity and energy from the Liberty Renewable Projects as permitted under Section 7 of this Agreement; (iii) purchase capacity and energy up to 8,000 kW from renewable facilities located in Liberty's service territory and interconnected to Liberty's distribution system; (iv) purchase capacity and energy from any Qualifying Facility located in Liberty's service territory; (v) procure from sources other than NV Energy that portion of capacity or energy that NV Energy fails to deliver hereunder, whether or not such failure is excused under the terms of this Agreement; and (vi) after receiving notice from NV Energy that it will not be able to deliver (or, if applicable, that NV Energy anticipates being unable to deliver) capacity or energy hereunder, procure from sources other than NV Energy that portion of capacity or energy that NV Energy is unable (or, if applicable, anticipates being unable) to deliver hereunder, whether or not such anticipated failure is excused under the terms of this Agreement. If Liberty procures energy or capacity pursuant to clause (v) or clause (vi) above, Liberty shall provide prompt notice to NV Energy of all such arrangements and otherwise keep NV Energy informed of the current status of such arrangements, and terminate all such deliveries of capacity or energy as soon as commercially practicable after NV Energy notifies Liberty of NV Energy's ability to resume full deliveries of capacity or energy hereunder; provided that for purposes of any notice delivered to NV Energy pursuant to this sentence, such notice shall include the volume, delivery points, and term of all such arrangements, but exclude price and counterparty information applicable to such arrangements. Without limiting the foregoing, upon notification from NV Energy of its ability to resume fully delivering capacity or energy hereunder, the Parties shall cooperate to facilitate an orderly and prudent transition to the resumption of delivery of capacity and energy by NV Energy as soon as commercially practicable following such notification.

NV Energy and Liberty agree that damages may not be an adequate remedy in connection with the breach of the provisions of this Section 4.6. Accordingly, notwithstanding anything in this Agreement to the contrary, the Parties agree that injunction, specific performance or other equitable

relief shall be available to NV Energy for any breach or anticipated breach of this Section 4.6.

For purposes of this Agreement, “**Qualifying Facility**” means an electric energy generating facility that: (a) complies with the “qualifying cogeneration facility” or “qualifying small power production facility” definition and other requirements established by the Public Utilities Regulatory Policies Act of 1978 (“**PURPA**”) and any FERC rules, as amended from time to time implementing PURPA; and (b) has filed with FERC (i) an application for FERC certification, pursuant to 18 CFR Part 292, Section 292.207(b)(1), which FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

5. Delivery Points.

5.1 The capacity and energy shall be delivered to Liberty at the Delivery Points set forth in Exhibit B to this Agreement (“**Delivery Points**”).

5.2 Pursuant to that certain Interconnection Agreement dated October 8, 2009, as may be amended from time to time (the “**Interconnection Agreement**”), each Delivery Point shall be equipped with metering equipment that records the real and reactive power flows at the Delivery Points in intervals of one hour or less and with communications equipment suitable for accessing the meter data at any time.

6. Renewable Energy from NV Energy Resources. NV Energy shall use commercially reasonable efforts both on a monthly and annual basis during the Delivery Term to deliver the Renewable Percentage (as defined below in Section 6.1) of the Product that will be renewable energy from the NVE Pool, as defined in Section 6.2.

6.1 The “**Renewable Percentage**” for each calendar year of the Delivery Term shall be the percentage of the Product to be provided from the NVE Pool. The Renewable Percentage will be the percentage stated in the table below for the total expected Receipt Point Capacity of the Liberty Renewable Projects that Liberty elects to pursue as identified in the Liberty Project Notice provided pursuant to Section 7.1, provided that the table below shall be revised using linear interpolation between the two nearest listed values in the table to provide the Renewable Percentage if the Liberty Project Notice designates a total expected Receipt Point Capacity not presently included in the table; provided further, however, if Liberty does not provide the Liberty Project Notice by the date specified in Section 7.1, the Renewable Percentage shall be the values in the table below for the column “No Projects (0 MW)”. Once established by receipt of the Liberty Project Notice, the Renewable Percentage for each calendar year shall be fixed for the Delivery Term and may only be changed by mutual written agreement of the Parties.

Year	Liberty Project Notice (Total Expected Receipt Point Capacity)			
	No Projects (0 MW)	Project A only (20 MW)	Project B only (40 MW)	Project A & B (60 MW)
2016	23.0%	23.0%	23.0%	23.0%
2017	25.0%	18.0%	7.0%	0.0%
2018	27.0%	20.0%	9.5%	0.0%
2019	28.5%	22.0%	12.0%	2.0%
2020	30.5%	24.0%	14.5%	4.5%
2021	30.5%	24.0%	15.0%	5.0%
2022	30.5%	24.0%	15.0%	5.0%

- 6.2 NV Energy shall provide renewable energy from a pool of geothermal projects ("**NVE Pool**") under contract to NV Energy which have been certified by the California Energy Commission ("**CEC**") as eligible to meet the requirements for the California RPS program overseen by the CPUC ("**CEC Certification**"). Specifically, the NVE Pool includes the Steamboat 2, Steamboat 3, Galena 3, Beowawe, and Burdette projects (each a "**NVE Renewable Project**"). Exhibit H provides the definition of each of the NVE Pool contracts.
- 6.3 If, subsequent to the Effective Date, any NVE Renewable Project no longer meets the requirements for CEC Certification, such NVE Renewable Project shall be removed from the NVE Pool. In the event that NV Energy is unable to provide the Renewable Percentage from the NVE Pool in any calendar year, NV Energy's obligation to provide renewable energy shall be reduced to the renewable energy delivered from the NVE Pool for that year and NV Energy shall have no liability for the failure to deliver the Renewable Percentage including no liability for any penalties, fines or assessments of any kind imposed by the CPUC on Liberty as a consequence thereof. If the renewable energy delivered from the NVE Pool is less than the Renewable Percentage in any calendar year, NV Energy shall, for the invoice for the final month of such calendar year, recalculate the monthly invoices for the calendar year using the actual renewable percentage delivered in each month, and provide a credit to Liberty in an amount equal to the positive difference, if any, between the invoices previously paid by Liberty for the calendar year and the recalculated invoice amounts.
- 6.4 No later than 120 days after the end of each calendar year of the Delivery Term, NV Energy shall transfer to Liberty RECs for the quantity of renewable energy provided by NV Energy for the prior calendar year. The RECs transferred shall be of NV Energy's choice from RECs generated by the NVE Pool during such calendar year. NV Energy shall, at its sole expense, take all actions and execute all documents or instruments

necessary to ensure that all Western Renewable Energy Generating Information System certificates associated with all RECs corresponding to all MWh of energy NV Energy delivers to Liberty under this Agreement are properly issued to Liberty.

- 6.5 NV Energy shall provide to Liberty, for its use in Liberty's RPS filings with the CPUC or the CEC, any supporting documentation the CPUC or CEC reasonably and consistent with applicable statutes requires Liberty to provide to demonstrate Liberty's compliance with its RPS requirements.

7. Liberty Renewable Projects. Liberty shall be permitted to obtain a maximum of sixty (60) MW of capacity and energy from solar photovoltaic arrays owned by Liberty, which may include, but shall not be limited to, Project A and Project B (as defined below), to be interconnected to NV Energy's transmission or distribution system (the "**Liberty Renewable Projects**").

- 7.1 No later than March 31, 2016, Liberty shall provide written notice of its intent to proceed with any Liberty Renewable Project, and Liberty shall designate the Receipt Point Capacity of such project(s) up to an aggregate maximum of sixty (60) MWs ("**Liberty Project Notice**"). If, in the Liberty Project Notice, Liberty states that it does not intend to proceed with at least one of the Liberty Renewable Projects, or if Liberty fails to provide the Liberty Project Notice by March 31, 2016, the provisions of this Section 7 related to Project A and Project B and any related provisions of this Agreement shall no longer be of any force or effect.
- 7.2 The interconnection point for each Liberty Renewable Project shall be a "**Receipt Point**". Liberty shall deliver energy from the Liberty Renewable Projects to NV Energy at each Receipt Point. NV Energy shall designate the Liberty Renewable Projects as Network Resources (as that term is defined in the OATT) and include the energy delivered at the Receipt Points from the Liberty Renewable Projects in serving Liberty's requirements.
- 7.3 "**Project A**" is a proposed solar photovoltaic array to be located in Douglas County, Nevada, and an expected commercial operation date as of December 31, 2016.
- 7.4 "**Project B**" is a proposed solar photovoltaic array to be located in Mineral County, Nevada, and an expected commercial operation date as of December 31, 2016.
- 7.5 "**Receipt Point Capacity**" for a Liberty Renewable Project means the maximum amount of energy that can be delivered at the Receipt Point from that project in one hour.

- 7.6 Exhibit I provides a detailed description of the Liberty Renewable Projects.
- 7.7 Within ten (10) Business Days of achieving commercial operation for each Liberty Renewable Project, Liberty shall provide to NV Energy certification from an Independent Engineer of the actual commercial operation date and the actual Receipt Point Capacity (“**Certified Receipt Point Capacity**”). “**Business Day**” means any day other than Saturday, Sunday and any day that is a holiday observed by NV Energy.
- 7.8 “**Independent Engineer**” means a person proposed by Liberty and acceptable to Liberty and NV Energy in their reasonable judgment who (a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Liberty and is not an employee of its members or Affiliates, other than with the prior written consent of NV Energy, for services previously or currently being rendered to Liberty or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Liberty Renewable Projects, or of a manufacturer or supplier of any equipment installed in the Liberty Renewable Projects.
- 7.9 Liberty shall be responsible for obtaining all interconnections with the Transmission Provider and making all applications necessary for the Liberty Renewable Projects to be able to deliver energy to the Receipt Point. Liberty shall ensure that the Liberty Renewable Projects comply with all applicable generator interconnection rules.
- 7.10 Standby service provided by NV Energy for the Liberty Renewable Projects will be provided under NV Energy’s retail tariffs for standby service (currently Schedule LSR or SSR, as applicable).
8. **Contract Demand.** The “**Contract Demand**” for each calendar month of the Delivery Term shall be as set forth in Exhibit C to this Agreement. Unless otherwise set forth in Exhibit C, neither Party shall have the right to modify Exhibit C without the express written approval of the other Party.
9. **Billing Demand.** The “**Billing Demand**” for each calendar month shall be the greater of (a) the Coincident Demand for the calendar month less the Coincident Supply for the calendar month or (b) the Net Contract Demand for the calendar month.

- 9.1 The “**Coincident Demand**” for the calendar month shall be the Territory Demand for the hour and day of the calendar month that the Transmission Provider’s Monthly Transmission System Peak occurs.
- 9.2 The “**Transmission Provider’s Monthly Transmission System Peak**” shall be as defined in the OATT.
- 9.3 The “**Territory Demand**” for an hour shall be the sum of the Adjusted Energy for all Delivery Points for that hour. The “**Daily Territory Demand**” for a day shall be the sum of the Territory Demand for that day.
- 9.4 The “**Adjusted Energy**” for a Delivery Point for an hour shall be the energy delivered in that hour for that Delivery Point times the loss adjustment factor applicable to that Delivery Point set forth in Exhibit B.
- 9.5 The “**Coincident Supply**” for the calendar month shall be the Liberty Supply for the hour and day of the calendar month that the Transmission Provider’s Monthly Transmission System Peak occurs.
- 9.6 The “**Liberty Supply**” for an hour shall be the sum of the energy delivered from the Liberty Renewable Projects at all Receipt Points for that hour, provided, however, that the Liberty Supply for an hour shall not exceed the sum of the Certified Receipt Point Capacity for each of the Liberty Renewable Projects. The “**Daily Liberty Supply**” for a day shall be the sum of the Liberty Supply for all hours of that day.
- 9.7 The “**Net Contract Demand**” shall be (1) for the calendar months of April through October, the Contract Demand for the calendar month less the lower of (a) the Coincident Supply for the calendar month or (b) 38% of the sum of the Certified Receipt Point Capacity for each of the Liberty Renewable Projects and (2) for all other months, the Contract Demand for the calendar month. For purposes of calculating Net Contract Demand the Certified Receipt Point Capacity for a Liberty Renewable Project shall be zero until the first full month after the commercial operation date of the Liberty Renewable Project.
10. **Rates.** The Demand Rate, the Transmission Rate, and the Energy Rate shall be as set forth in Exhibit D to this Agreement. These rates will be adjusted in accordance with the provisions of Section 12, Section 21, Section 23 and Exhibit D.
- 10.1 If the Billing Demand for any calendar month exceeds the Contract Demand for that calendar month, the difference shall be “**Excess Demand**.” NV Energy shall have the right to recover its incremental costs, if any, for the Excess Demand through the Energy Charge Adjustment as determined pursuant to Exhibit D.

10.2 Except as provided in Section 12, Section 21, Section 23 and Exhibit D, neither Party shall seek, nor shall they support any third person in seeking, to revise the rates, terms or conditions of service, or challenge the validity, of this Agreement, or whether it is just and reasonable, through any means, including without limitation to the FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, as such law may be amended or superseded, or any other provisions thereof, except with prior written agreement of the Parties. Except as set forth in Section 12, Section 21, Section 23, and Exhibit D, or except with the prior written agreement between the Parties, the standard of review for (a) any modification to this Agreement requested by a Party that is not agreed to by both Parties will be the “public interest” standard under the *Mobile Sierra* doctrine of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527, 128 S.Ct. 2733, 171 L.Ed.2d. 607 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010), and (b) any modification to this Agreement requested by any party (other than a Party to this Agreement) or initiated by the FERC will be the most stringent standard permissible under applicable law.

11. Monthly Charges. The “**Monthly Charges**” under this Agreement shall be the sum of the Demand Charge, the Transmission Charge, the Energy Charge, the Energy Charge Adjustment and the Distribution Charge for each calendar month.

11.1 The “**Demand Charge**” shall be the Billing Demand (kW) times the Demand Rate.

11.2 The “**Transmission Charge**” shall be the Transmission Demand times the Transmission Rate. The “**Transmission Demand**” shall be the Coincident Demand plus the energy delivered to the Territory from the Kings Beach Generation Facility during the hour of the Coincident Demand.

11.3 The “**Energy Charge**” shall be the Monthly Energy (kWh) times the Energy Rate established and adjusted pursuant to Exhibit D hereof. The “**Monthly Energy**” shall be the sum of the Net Territory Demand for all days of the calendar month. The “**Net Territory Demand**” for a day shall be the Daily Territory Demand less the Daily Liberty Supply, provided, however, that for any day that the Daily Liberty Supply exceeds the Daily Territory Demand (“**Excess Supply**”), the Net Territory Demand shall equal zero. For any day in each month that there is Excess Supply, NV Energy shall provide Liberty with a credit to the Energy Charge for such month equal to the Average Avoided Cost for that day times the Excess Supply. The “**Average Avoided Cost**” for a day shall be the simple average of the Non-Firm Energy rate under NV Energy’s Rate Schedule

No. CSPP for the hours of that day that the Liberty Supply exceeded the Territory Demand. No later than 120 days after the end of each calendar year of the Delivery Term, Liberty shall transfer to NV Energy the RECs associated with all Excess Supply for the prior calendar year.

11.4 The Energy Charge Adjustment (as defined in paragraph D.4 of Exhibit D) shall be determined pursuant to Exhibit D.

11.5 The “**Distribution Charge**” shall be \$ 19,240.00 per calendar month, plus, for any hour during the calendar month that NV Energy delivers energy at the Brockway 4202 or Brockway 5100 Delivery Points, an additional amount equal to \$0.01060 times the energy delivered (in kWh) by NV Energy at the Brockway 4202 and Brockway 5100 Delivery Points.

12. Taxes. Except as provided in Section 21, NV Energy shall be responsible for the payment of all taxes, fees, levies, penalties, licenses or charges imposed by any governmental authority on or with respect to the capacity and energy (“**Taxes**”) that arise prior to the Delivery Points. Liberty shall be responsible for and pay or cause to be paid all Taxes that arise at or after the Delivery Points. If a Party is required to remit or pay Taxes that are the other Party’s responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes upon being presented evidence of such payment. All Taxes that are the responsibility of NV Energy under this Section 12 shall be recoverable by NV Energy through the charges payable by Liberty under this Agreement and such Taxes shall be incorporated into such charges including without limitation by adjustment of the rates and charges payable by Liberty under this Agreement; provided, however, that any Taxes that did not exist on the Effective Date, but are subsequently imposed on NV Energy, shall be deemed a change in law and regulation and addressed pursuant to the provisions of Section 23. For the avoidance of doubt, changes, if any, in the rates and/or amounts of specific Taxes that existed on the Effective Date shall not constitute a change in law or regulation under this Agreement.

13. Uncontrollable Forces and Interruptions of Service. No Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement is due to an Uncontrollable Force. “**Uncontrollable Force**” shall include any event or circumstance, which prevents a Party from performing its obligations, that (i) is not is not reasonably anticipated as of the date hereof, (ii) is not within the reasonable control of the claiming Party and (iii) cannot be avoided or overcome by the exercise of due diligence. Uncontrollable Force may include, but is not restricted to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or inaction (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action), or failure to obtain the necessary authorizations or approvals from, any governmental agency

or authority (as long as the affected Party has diligently pursued the authorizations or approvals).

- 13.1 No Party shall be relieved of liability for its failure to perform its obligations under this Agreement by reason of Uncontrollable Force to the extent that such failure is due to (i) causes arising from its own negligence or willful acts, (ii) its lack of sufficient monetary resources, or (iii) removable or remediable causes that it fails to remove or remedy within a commercially reasonable time period. Nothing contained in this Section 13.1 shall be construed to require a Party to settle a strike or labor dispute in which it is involved on terms that it considers, in its sole discretion, to be unreasonable. Nothing contained in this Section 13 is intended or shall be construed to abate, postpone or in any respect diminish Liberty's obligations to make any payments due NV Energy pursuant to this Agreement.
- 13.2 Any Party rendered unable to fulfill any of its obligations by reason of Uncontrollable Force shall give prompt notice of such fact to the other Party and shall exercise due diligence to remove such inability within a commercially reasonable period of time; provided, however, that the failure to provide prompt notice shall not prevent a Party from being entitled to claim relief for failure to perform its obligations under this Agreement by reason of Uncontrollable Force. Each notice provided pursuant to this Section 13.2 shall include an estimate of the amount of time that will be required to remove the inability to perform its obligations under this Agreement.
- 13.3 NV Energy shall be excused from performance and shall have no liability under this Agreement for:
- (1) any failure to supply capacity, energy, or both under this Agreement and for any reduction or interruption of such capacity, energy, or both where any such failure, reduction or interruption arises as a result of outages to transmission or distribution facilities required to supply capacity and energy to Liberty at one or more Delivery Points including without limitation any outages for repair or maintenance of such transmission or distribution facilities ("**Interruption of Service**"); provided that such failure is not the result of the gross negligence or willful misconduct of NV Energy; or
 - (2) any nondiscriminatory curtailment by NV Energy of capacity and energy deliveries to Liberty (i) resulting from the operation of automatic under-frequency load-shedding devices or (ii) resulting from a Stage 3 Energy Emergency Alert, as defined in NV Energy's System Electric Emergency Operating Plan ("**SEEOP**"). Curtailments of capacity and energy as a result of

a Stage 3 Energy Emergency Alert shall be in accordance with NV Energy's then current and approved SEEOP; provided, however, that any such curtailment shall not be excused if it is the result of the gross negligence or willful misconduct of NV Energy.

14. Title and Risk of Loss.

14.1 Title and risk of loss to the capacity and energy delivered by NV Energy under this Agreement shall pass from NV Energy to Liberty at the Delivery Points. Subject to Section 14.2, NV Energy assumes all responsibility with respect to the capacity and energy prior to its delivery to Liberty at the Delivery Points. Liberty assumes all responsibility with respect to all capacity and energy delivered by NV Energy at and after its delivery to Liberty at the Delivery Points.

14.2 Liberty assumes all responsibility with respect to the capacity and energy supplied from the Liberty Renewable Projects prior to its delivery to NV Energy at the Receipt Points. Title and risk of loss to the capacity and energy from the Liberty Renewable Projects shall pass from Liberty to NV Energy at the Receipt Points. NV Energy assumes all responsibility with respect to the capacity and energy supplied from the Liberty Renewable Projects from the Receipt Points and prior to its delivery to Liberty at the Delivery Points.

14.3 NV Energy agrees to indemnify Liberty and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("**Claims**"), from any and all persons, arising from or out of claims of personal injury (including death) or property damage from said capacity and energy which attach before risk of loss passes from NV Energy to Liberty. Liberty agrees to indemnify NV Energy and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding personal injury (including death) or property damage from said capacity and energy which attach before risk of loss passes from Liberty to NV Energy for the Liberty Renewable Projects and after risk of loss passes from NV Energy to Liberty.

15. Access to Metering Data. Liberty hereby authorizes NV Energy's transmission function to release to NV Energy's merchant function any metering data reasonably required by NV Energy's merchant function for operating and billing pursuant to this Agreement.

16. Invoice and Payment. The accounting and billing period for charges payable pursuant to this Agreement shall be one (1) calendar month. On or before the tenth (10th) day of each month, NV Energy shall submit an invoice to Liberty for charges payable during the immediately preceding calendar month. NV Energy's

- invoice shall be due and payable by Liberty no later than the twentieth (20th) day after Liberty's receipt of such invoice.
- 16.1 Liberty's payments shall be in U.S. dollars by wire transfer to the accounts set forth for that purpose on Exhibit E.
- 16.2 The amounts, if any, that have not been paid by Liberty on or before the due date shall be payable with interest calculated daily, at a rate equal to the applicable FERC approved interest rate, for the period beginning on the day after the due date and ending on the date of the payment.
- 17. Billing Disputes.** If (i) NV Energy fails to issue an invoice for some or all of the charges payable by Liberty during a month or (ii) NV Energy finds one or more errors in an invoice, NV Energy shall have the right to issue an invoice or a revised invoice for the charges; provided, however, the invoice or revised invoice must be issued within two (2) years of the date on which the original invoice should have been or was issued, whichever is applicable. NV Energy's invoice or revised invoice shall include an explanation of the charges or the revised charges, whichever is applicable. An invoice or revised invoice shall be due and payable by Liberty on or before the twentieth (20th) day after Liberty's receipt of such invoice.
- 17.1 Liberty may dispute any of the charges on an invoice by providing written notice of the dispute to NV Energy within two (2) years of the latter of the date of the original invoice, or the date of the last revised invoice if one or more revised invoices were issued, for a billing period. Liberty's notice shall specify the amount in dispute and state the basis for the dispute. If Liberty disputes any of the charges on an invoice, the Parties shall promptly meet and endeavor to resolve the dispute. If the Parties cannot resolve the dispute in this manner within sixty (60) days (or such longer period of time mutually agreed upon by the Parties in writing) of Liberty's notice to NV Energy of a dispute, either Party may proceed under the provisions of Section 27.9 to resolve the dispute.
- 17.2 Liberty shall be obligated to pay the entire amount of an invoice when due even if Liberty disputes some or all of the charges. If a dispute is ultimately resolved in Liberty's favor, NV Energy shall promptly refund any amounts owed to Liberty with interest calculated daily, at a rate equal to the applicable FERC approved interest rate.
- 18. Credit Support.** NV Energy shall not be obligated to provide any guarantees, post any collateral, or provide any credit assurance.
- 18.1 Notwithstanding anything in this Agreement to the contrary, the provisions of this Agreement except for Section 26, which became effective as of the Effective Date, shall only become effective if the Guarantee is executed, valid and in full force and effect as of the first day

of the Delivery Term. For purposes of this Agreement, “**Guarantee**” means the Guarantee of Liberty Utilities Co. (“**Liberty Parent**”), pursuant to which Liberty Parent shall guarantee, subject to the terms thereof, the timely payment of the obligations of Liberty for Monthly Charges that may become due and owing by Liberty pursuant to this Agreement. The Guarantee shall be substantially in the form set forth to Exhibit F to this Agreement.

18.2 Should the creditworthiness, financial responsibility, or performance viability of Liberty Parent become unsatisfactory to NV Energy in its commercially reasonably exercised discretion, NV Energy may require Liberty to provide credit support as determined by NV Energy in its sole discretion, in the form of the posting of (i) a letter of credit, or (ii) other collateral or security acceptable to NV Energy, in either instance in the amount of seven million five hundred thousand U.S. dollars (US\$7,500,000.00) (“Adequate Assurance”) to NV Energy within three (3) Business Days of NV Energy’s written demand for assurances; provided that upon Liberty timely posting of Adequate Assurance in the total amount of seven million five hundred thousand U.S. dollars (US\$7,500,000.00), the Liberty Parent Guarantee shall be terminated. If Liberty posts a letter of credit, the letter of credit shall be in the form set forth in Exhibit G to this Agreement.

19. Events of Default and Remedies.

19.1 For purposes of this Agreement, an “**Event of Default**” shall consist of any of the following:

- (1) The failure of NV Energy to deliver Product in accordance with the provisions of this Agreement if such failure is not cured within five (5) Business Days of NV Energy’s receipt of written notice thereof from Liberty unless such failure is due to Uncontrollable Force, Interruption of Service or other circumstances for which NV Energy is excused from performance under this Agreement;
- (2) The failure of NV Energy to provide clear and good title to the Product as required in Section 24.1 if such failure is not cured within five (5) Business Days of NV Energy’s receipt of written notice thereof from Liberty;
- (3) The failure of Liberty to provide clear and good title to the energy from the Liberty Renewable Projects as required in Section 24.2 if such failure is not cured within five (5) Business Days of Liberty’s receipt of written notice thereof from NV Energy;

- (4) Any representation or warranty of a Party made pursuant to Section 25 is false or misleading in any material respect when made or when deemed made or repeated and which misrepresentation can reasonably be expected to result in a material adverse effect on the ability of that Party to fulfill its obligations under this Agreement or the ability of the other Party to receive its benefits under this Agreement and further provided such failure is not cured within five (5) Business Days of its receipt of written notice thereof from the non-defaulting Party;
- (5) The failure of a Party to make payment when due if not remedied within five (5) Business Days of receipt of notice from the Party to which the money is owed;
- (6) Any involuntary case or other proceeding is commenced against a Party (i) seeking reorganization, readjustment, arrangement, composition or similar relief with respect to it or its debts under any bankruptcy or other similar law, (ii) seeking a decree or order of a court having jurisdiction for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the undertaking or property of such Party, or (iii) seeking the winding-up, dissolution or liquidation of its affairs, and such involuntary case has not been discharged or dismissed within sixty (60) days;
- (7) The failure of Liberty to provide adequate financial assurances to NV Energy as may be required pursuant to Section 18 if such failure is not remedied within two (2) Business Days of receipt of written notice from NV Energy;
- (8) A Party institutes proceedings for its winding-up, liquidation or dissolution, or takes any actions to become a voluntary bankrupt, or consents to the filing of any bankruptcy proceeding against it, or files any proposal, notice of intention to make a proposal, petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy or other similar law or consents to the filing of any such petition, or to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or any material property of such Party, or makes any assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due or commits any other act of bankruptcy, or any action is taken by such Party in furtherance of any of the foregoing; and

- (9) If a receiver, manager, receiver and manager, trustee, custodian or other similar official is appointed in respect of any Party or any material part of its property and such appointment is not being contested diligently and in good faith by such Party or has not been discharged or dismissed within ten (10) Business Days.
- 19.2 If an Event of Default occurs, the non-defaulting Party shall have the right to terminate this Agreement by written notice, which shall include the date of the intended termination, to the defaulting Party. The non-defaulting Party may exercise any rights or remedies available to it at law or in equity, subject to the limitations set out in this Agreement. If the termination is due to an Event of Default by Liberty, and Liberty has posted a letter of credit, NV Energy shall have the right to offset any outstanding amounts due from Liberty to NV Energy under this Agreement by drawing on the letter of credit.
- 19.3 With respect to any circumstances under this Agreement in which one Party is or may be liable to the other Party (a “**Harmed Party**”) for damages, it is agreed that the Harmed Party shall exercise commercially reasonable efforts, as determined in light of the facts and circumstances prevailing at the time such efforts are or should have been taken, to mitigate or reduce the amount of damages which such Harmed Party would sustain (and for which the other Party is or would be responsible) under the terms of this Agreement.
- 19.4 To the fullest extent permitted by law and notwithstanding any other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement whether or not such damages were reasonably anticipated as of the Effective Date. With respect to a Party, the limitation on damages under this Section 19.4 shall not apply with respect to claims brought by third persons for which such Party is entitled to indemnification under this Agreement.
- 20. No Resale.** Liberty shall not sell or otherwise transfer any of the capacity and/or energy provided pursuant to this Agreement to any party other than: (i) end-use customers located in the Territory; (ii) end-use customers located in the NV Energy service territory for the load served by Liberty pursuant to that certain Borderline Customer Agreement between Liberty and NV Energy dated October 8, 2009, as amended from time to time (“**Borderline Customer Agreement**”); (iii) Pacific Gas and Electric Company (“**PG&E**”) for the load served by Liberty

pursuant to that certain Electric Service Agreement between Liberty and PG&E dated December 8, 2010, as amended from time to time (the “**PG&E Agreement**”); and (iv) Truckee-Donner Public Utility District (“**TDPUD**”) for the load served by Liberty pursuant to that certain Fringe Agreement for Electric Service Between Liberty and TDPUD, dated April 7, 2010, as amended from time to time (“**TDPUD Fringe Agreement**”). NV Energy and Liberty agree that damages may not be an adequate remedy in connection with the breach of the provisions of this Section 20. Accordingly, notwithstanding anything in this Agreement to the contrary, the Parties agree that injunction, specific performance or other equitable relief shall be available to NV Energy for any breach or anticipated breach of this Section 20.

21. Cap-and-Trade.

21.1 **Definitions.** As used in this Section 21 the following terms have the meanings set forth below.

- (1) “**Allowance**” means a tradable compliance instrument representing one metric ton of CO₂ that may be used to satisfy a Compliance Obligation under the California Cap-and-Trade Regulation. Allowance does not include compliance instruments created through Offset Projects.
- (2) “**Auction Settlement Price**” means the price announced by the auction administrator at the conclusion of a quarterly auction conducted by CARB or its delegate (as defined in 17 Cal. Code Reg. § 95802(a)).
- (3) “**Cap-and-Trade Regulation**” means regulations promulgated by CARB to implement the carbon allowance cap-and-trade program mandated by the California Global Warming Solutions Act of 2006, specifically 17 Cal. Code Regs. §§ 95800- 96022.
- (4) “**CARB**” means the California Air Resources Board.
- (5) “**CITSS Account**” means a Compliance Instrument Tracking System Service Holding Account administered by the Western Climate Initiative.
- (6) “**Compliance Obligation**” means annual metric tons of CO₂ with a Compliance Obligation as filed annually by Liberty and in compliance with 17 Cal. Code Regs. § 95111(b)(5).
- (7) “**Compliance Year**” means a calendar year for which NV Energy has a Compliance Obligation under the California Cap-and-Trade Regulation.

- (8) **“Compliance Year Requirement”** means the quantity of Allowances NV Energy is obligated to retire to satisfy its Compliance Obligation following each Compliance Year.
- (9) **“Liberty Load”** means the energy supplied to Liberty from NV Energy resources pursuant to this Agreement.
- (10) **“Offset Project”** has the meaning ascribed to that term in 17 Cal. Code Reg. §. 95802(a).
- (11) **“Procurement”** means the purchase of Allowances from quarterly cap-and-trade auctions and the price containment reserve auctions held by CARB (or its delegate). Procurement may also include the purchase of Allowances from another entity registered in the Compliance Instrument Tracking System Service.
- (12) **“Third Party Verifier”** means the entity that verifies a greenhouse gas emissions report under the CARB Mandatory Reporting Regulation.
- (13) **“Verification Year”** means the calendar year immediately following a Compliance Year when entities subject to the CARB Mandatory Reporting Regulation must report and have their greenhouse gas emissions verified. For example, 2017 is the Verification Year for the 2016 Compliance Year.

21.2 **Maintenance of Allowances to Cover NV Energy Cap and Trade Compliance Obligations.**

- (1) NV Energy and Liberty shall each maintain a CITSS Account in their respective names.
- (2) By each June 15 of each calendar year during the Delivery Term, NV Energy shall notify Liberty of: (a) its forecast of Allowances required to meet the Compliance Obligation for the applicable Compliance Year; and (b) the quantity of Allowances, if any, that Liberty is to transfer into the NV Energy CITSS Account to satisfy the Compliance Year Requirement for the applicable Compliance Year.
- (3) By each September 15 of the Delivery Term, Liberty shall transfer into the NV Energy CITSS Account the quantity of Allowances that NV Energy has specified in its notice pursuant to Section 21.2(2)(b) for such Compliance Year.

- (4) Between June 15 and October 1 of each Verification Year, NV Energy may notify Liberty of any difference from the quantity of Allowances NV Energy specified in its notice to Liberty as provided for in Section 21.2(2)(b) and NV Energy's actual Compliance Year Requirement associated with the Liberty Load. In the event that NV Energy provides notice pursuant to this Section 21.2(4) that the Allowance Requirement is greater than the quantity of Allowances NV Energy specified in its notice pursuant to Section 21.2(2)(b), Liberty shall, within thirty (30) days after receiving such a notice pursuant to this Section 21.2(4), transfer into the NV Energy CITSS Account the additional amount of Allowances NV Energy has specified in such Section 21.2(4) notice as necessary for it to satisfy the revised Compliance Year Requirement.
- (5) NV Energy shall not transfer any of those Allowances Liberty has transferred into the NV Energy CITSS Account for purposes of meeting the Compliance Year Requirement (and as such may be revised in accordance with Section 21.2(4)) out of the NV Energy CITSS Account except after reconciliation in accordance with Section 21.3(4).

21.3 Reconciliation of Allowances.

- (1) In the event that CARB or a Third Party Verifier subsequently determines the Compliance Year Requirement is larger than the amount of Allowances NV Energy forecast and provided Liberty notice of in accordance with Section 21.2(2), NV Energy will then within thirty (30) Business Days of it having knowledge of such a larger Compliance Year Requirement notify Liberty of: (a) the number of additional Allowances required to meet NV Energy's Compliance Year Requirement associated with the Liberty Load; and (b) the number of additional Allowances, if any, that Liberty shall transfer into the NV Energy CITSS Account in response to NV Energy's notice and request for additional Allowances as provided for in this Section 21.3(1).
- (2) In the event that NV Energy provides Liberty a notice in accordance with Section 21.3(1) requesting additional Allowances, Liberty shall transfer the additional amount of Allowances NV Energy specifies in such notice under Section 21.3(1) into the NV Energy CITSS Account. Liberty shall notify NV Energy of the transfer by the later of October 1 of that year or within thirty (30) Business Days after Liberty receives a notice in accordance with Section 21.3(1) requesting additional Allowances.

- (3) In the event that the Allowances Liberty transfers into the NV Energy CITSS Account exceed the total number of Allowances that NV Energy is obligated to retire to satisfy the Compliance Year Requirement, NV Energy shall timely inform Liberty of the quantity of such excessive Allowances. At Liberty's option, NV Energy shall either transfer within fifteen (15) Business Days any unused Allowances into the Liberty CITSS Account or retain the Allowances within the NV Energy CITSS Account, to the extent allowed by CARB. NV Energy shall use any such retained excessive Allowances for purposes of satisfying a subsequent Compliance Year Requirement.
- (4) Nothing in this Section 21.3 shall be interpreted to preclude the fair exchange of Allowances between the Parties or allow either Party to exert control over Allowances in the other entity's CITSS Account in accordance with 17 Cal. Code Reg. § 95921(±).
- (5) Nothing in this Section 21.3 shall permit the Parties to engage in communications concerning auction participation prohibited by 17 Cal. Code Reg. §. 95912(g).

21.4 Default of Allowances.

- (1) Should Liberty fail to transfer into the NV Energy CITSS Account the number of Allowances required by a deadline specified under this Section 21, NV Energy may take all actions as it may deem necessary, consistent with Good Utility Practice, in order to avoid any violation of the Cap-and-Trade Regulation, including Procurement of Allowances and use of other Allowances already in its possession to satisfy NV Energy's Compliance Obligation associated with serving the Liberty Load; provided that NV Energy shall first provide Liberty notice of its failure to transfer Allowances by the required deadline and Liberty shall have a cure period of fifteen (15) Business Days to transfer the required amount of Allowances into the NV Energy CITSS Account.
- (2) If NV Energy secures Allowances pursuant to Section 21.4(1) for purposes of meeting its Compliance Obligation, Liberty shall reimburse NV Energy, within ten (10) days after receiving an invoice from NV Energy, all of the following: (1) NV Energy's actual cost to purchase the necessary Allowances; and (2) the actual transaction costs, if any, incurred by NV Energy to procure the necessary Allowances. If in accordance with Section 21.4(1), NV Energy has used other Allowances

that are already in its possession and which had not been transferred by Liberty to make up any shortfall caused by Liberty's failure to timely transfer Allowances as required by this Section 21, Liberty shall reimburse NV Energy for these Allowances in an amount based on the Auction Settlement Price at the most recent quarterly Allowance auction.

21.5 Change of Law.

- (1) It is the Parties' intent that Liberty should bear all compliance, filing, administrative and other costs related to the certification, transfer and assignment of allowances associated with the emission of CO₂ and other greenhouse gases associated with the generation of energy delivered by NV Energy pursuant to this Agreement and compliance with governmentally imposed requirements to limit or otherwise to control those emissions.
- (2) The United States Environmental Protection Agency ("EPA") has proposed regulations under section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), that will, if adopted and final, require Nevada and other states to develop and implement a program to control and to limit the emissions of CO₂ from NV Energy's fossil-fuel-fired electricity generation units ("EGUs") or result in the imposition of a federal program if Nevada or any other jurisdiction fails to develop a program consistent with the EPA regulation. *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014). The Parties shall follow the procedures established under Section 23 upon the adoption of regulations or the submission of a State Implementation Plan ("SIP") by Nevada or any other jurisdiction with authority over the NV EGUs supplying energy under this agreement and any action by EPA with respect to said program to assure that the provisions and procedures of this Section 21 are modified to implement the Parties' intent, as expressed in Section 21.5(1).

22. **No Dedication of Facilities.** Nothing in this Agreement shall be construed as constituting the dedication of NV Energy's electric system or any portion thereof to the public, to Liberty, or to customers of Liberty, or the dedication of Liberty's electric system, any Liberty Renewable Project, or any portion thereof to the public, to NV Energy, to customers of NV Energy, or to any customers in the Territory.
23. **Change in Law or Regulation.** If a Party becomes aware that any regulatory authority or other duly constituted authorities having jurisdiction over the Parties promulgated a change in law or applicable regulation that materially affects the performance of either Party's obligations under this Agreement (a "**Change in**

Law”), such Party shall promptly provide written notice to the other Party of the change. Upon receipt of notice, the Parties shall make commercially reasonable efforts to amend this Agreement to preserve the benefits and bargains initially struck in this Agreement. If the Parties cannot reach agreement on an amendment prior to the later of (i) the effective date of the change in law or applicable regulation or (ii) the date that is thirty (30) days after the date of notice from one Party to the other as contemplated above, either Party may terminate this Agreement after thirty (30) day’s notice to the other Party without liability to the other Party except for any liability that has accrued prior to the date of termination. Without prejudice to the foregoing, if, in order to comply with its obligations under this Agreement, NV Energy incurs any costs or expects to incur any costs due to a change in law or regulation, such costs shall be recoverable by NV Energy through the charges payable by Liberty under this Agreement and such costs shall be incorporated into such charges including without limitation by adjustment of the rates and charges payable by Liberty under this Agreement.

- 23.1 A change in the regulations of the FERC or the PUCN that has the effect of causing NV Energy to be unable to recover all of its costs, including but not limited to any incremental costs that NV Energy may obtain the right to recover pursuant to this Section 23, for the capacity and energy delivered or expected to be delivered to Liberty pursuant to this Agreement shall constitute a change in law or applicable regulation.
- 23.2 A change in the regulations of the CPUC that has the effect of causing Liberty to be unable to recover all of its costs, including but not limited to any incremental costs that NV Energy may obtain the right to recover pursuant to this Section 23, for capacity and energy delivered or expected to be delivered by NV Energy pursuant to this Agreement shall constitute a change in law or applicable regulation.
- 23.3 The promulgation of new legislation or regulations, or changes to existing legislation or regulations, that result in any incremental costs, for the Product delivered or expected to be delivered to Liberty pursuant to this Agreement, attributable to carbon, greenhouse gases, or climate changes shall constitute a change in law or applicable regulation, as provided under Section 21.5.

24. Warranties.

24.1 NV Energy Warranties.

- (1) NV Energy warrants that it will transfer to Liberty good title to the capacity and energy and RECs delivered to Liberty under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Points. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 24, NV ENERGY HEREBY DISCLAIMS ALL OTHER

WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CAPACITY AND ENERGY SUPPLIED OR TO BE MADE AVAILABLE UNDER THIS AGREEMENT.

- (2) NV Energy warrants that it will make commercially reasonable efforts consistent with Good Utility Practice to provide a continuous supply of capacity and energy to Liberty consistent with the provisions of this Agreement and at a level of service substantially similar to the level of service that it provides to its customers in Nevada.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry in the United States during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decisions were made, could reasonably have been expected to accomplish the desired result at a commercially reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others.

- (3) NV Energy further warrants that it will make commercially reasonable efforts consistent with Good Utility Practice and its then current approved Energy Supply Plan to acquire the fuel, if any, required for its generating facilities and to purchase the energy and capacity, if any, required to supplement its generation.

- (4) With respect to each renewable resource identified in the NVE Pool, which are referred to collectively as a “Project” for the purposes of this Section 24.1(4), NV Energy, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Liberty qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if NV Energy

has used commercially reasonable efforts to comply with such change in law. [STC 6].

(5) Transfer of Renewable Energy Credits (“RECs”). NV Energy and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Liberty conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if NV Energy has used commercially reasonable efforts to comply with such change in law. [STC REC-1].

~~(3)~~(6) Tracking of RECs in WREGIS. NV Energy warrants that all necessary steps to allow the renewable energy credits transferred to Liberty to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

24.2 Liberty Warranties.

(1) Liberty warrants that it will transfer to NV Energy good title to the capacity and energy and RECs delivered to NV Energy under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Receipt Points. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 24, LIBERTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CAPACITY AND ENERGY SUPPLIED OR TO BE MADE AVAILABLE UNDER THIS AGREEMENT.

25. **Additional Representations and Warranties.**

25.1 Each Party represents and warrants to the other Party that:

(1) it possesses the necessary corporate (or, if applicable, limited liability company), governmental and legal authority, right and power to enter into and agree to this Agreement and to perform each and every duty imposed, and that the Parties’ agreement

to buy and sell capacity and energy under this Agreement represents a contract;

- (2) each of its representatives executing this Agreement is authorized to act on its behalf;
- (3) entering into this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, or any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with the terms of this Agreement;
- (4) in the case of Liberty, it is solvent; and
- (5) in the case of NV Energy, it is solvent.

25.2 On each delivery of capacity and energy and RECs under this Agreement the representation and warranty set out in Section 25.1(4) shall be deemed repeated unless written notice to the contrary is given by Liberty to NV Energy before delivery.

26. Regulatory Approval. Except for this Section 26, which became effective as of the Effective Date, the effectiveness of all of the other provisions of this Agreement is conditioned upon and shall be subject to the timely receipt of the following regulatory approvals:

26.1 FERC. NV Energy shall submit this Agreement to the FERC no later than September 1, 2015. If the FERC does not accept this Agreement for filing without modification or conditions that are materially adverse to either Party ("**FERC Approval**") by December 15, 2015, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015, after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.1 shall be deemed to have been waived. In addition, either Party may terminate this Agreement with written notice to the other Party if the FERC issues an order modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions which are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the FERC order.

26.2 California Public Utilities Commission. Liberty shall submit this Agreement for the approval of the CPUC within thirty (30) days of the Effective Date. If Liberty does not obtain CPUC Approval by December 23, 2015 ~~the CPUC does not issue a final order approving the Agreement~~

~~("CPUC Approval Order") by December 15, 2015~~, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015; provided after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.2 shall be deemed to have been waived. In addition, either Party may terminate this Agreement with written notice to the other Party if the CPUC issues an order approving, but modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions that are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the CPUC order.

~~26.2—"CPUC Approval" means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms: (a) approves this Agreement in its entirety, including payments to be made by the Liberty, subject to CPUC review of the Liberty's administration of the Agreement; and (b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Liberty's compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law. [STC 1]The CPUC Approval Order must contain the following findings:~~

~~(1) — that the costs to be incurred by Liberty under this Agreement and throughout the Delivery Term are prudent and fully recoverable by Liberty through the Energy Cost Adjustment Clause mechanism, subject only to Liberty's prudent administration of this Agreement;~~

~~(2) —~~

~~(3) — that this Agreement fully satisfies Liberty's Resource Adequacy obligations for the Delivery Term; and~~

~~(4) —~~

~~(5) that the supply of renewable energy that may be provided to Liberty by NV Energy under this Agreement may be used towards satisfying Liberty's RPS obligations during the Delivery Term.~~

26.3 Public Utilities Commission of Nevada. NV Energy may, in its sole discretion, submit this Agreement for an order granting final approval by the PUCN ("**PUCN Approval**"). If NV Energy does not seek PUCN Approval by August 15, 2015, this Section 26.3 shall be of no force and effect and the requirement under this Agreement to obtain PUCN Approval shall be deemed waived. If PUCN Approval is timely sought by NV Energy and not received by December 15, 2015, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015, after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.3

shall be deemed to have been waived. In addition, if NV Energy timely seeks PUCN Approval, either Party may terminate this Agreement with written notice to the other Party if the PUCN issues an order approving, but modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions that are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the PUCN order; provided the failure timely to provide such notice shall constitute a waiver of the right set forth in the preceding sentence to terminate the Agreement.

- 26.4 If either Party terminates this Agreement pursuant to this Section 26, the Parties shall execute, before December 31, 2015, an amendment to their current Services Agreement, dated April 22, 2009, as amended (“**Existing PPA**”), which shall extend the term of the Existing PPA by an additional four (4) months but not modify any of the Existing PPA’s other substantive terms or conditions.

The provisions of this Agreement other than this Section 26 will not become effective until FERC Approval, CPUC Approval, and PUCN Approval have been obtained or waived and/or until each of the deadlines for issuing a written notice of termination set forth in this Section 26 has expired without the issuance of such notice.

27. Miscellaneous.

- 27.1 **Survival.** Upon termination of this Agreement, any charges or other amounts due and owing under this Agreement shall be paid (including without limitation as provided in Section 3.3) and any corrections, or adjustments to payments shall be determined as soon as practicable. All indemnity obligations shall survive termination of this Agreement in accordance with their respective terms. Upon the effective date of termination of this Agreement, each Party’s obligations provided for in this Agreement will survive termination and remain in effect solely for the purpose of complying with the provisions of this Section 27.
- 27.2 **Interpretation.** In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.
- 27.3 **Third Party Beneficiaries.** Nothing in this Agreement shall be construed to create rights in or grant remedies to any third party as a beneficiary to this Agreement.

- 27.4 Notices. All formal notices, demands or requests provided pursuant to this Agreement shall be in writing and shall be delivered in person or sent to the address shown on Exhibit E by either facsimile or overnight delivery (with record of receipt), or to those other persons or addresses as may be designated in writing by the Party to receive a notice, demand or request as described above. Operating communications and other communications of a routine nature shall be delivered by email or by telephone with email confirmation to the address shown on Exhibit E, as such information may be updated from time to time by the Parties.
- 27.5 Compliance with Law. The obligations of the Parties under this Agreement shall be subject to and the parties shall comply with laws, rules and regulations of duly constituted authorities having jurisdiction over the Parties.
- 27.6 Waivers. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law.
- 27.7 Assignment. This Agreement may be assigned by either Party only with the written consent of the other Party; provided, that either Party may assign this Agreement without the consent of the other Party to any affiliate with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement or to a party that acquires substantially all of the assets of such Party.
- Any attempted assignment that violates this Section 27.7 is void and ineffective. No assignment of a Party's rights or obligations under this Agreement, nor any consent thereto, shall relieve such Party of its obligations and liabilities under this Agreement (except in the case of an assignment to a party acquiring substantially all of the assets of the assigning Party), nor shall any such assignment expand any obligations of the non-assigning Party. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.
- 27.8 Other Agreements. Nothing in the Agreement is intended to modify, supersede or otherwise alter any other agreements between the Parties. However, to the extent a conflict exists between the provisions of this

Agreement and any other agreement between the Parties the provisions of this Agreement shall prevail

27.9 Governing Law and Venue.

(1) Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17] ~~This Agreement (as well as any claim or controversy arising out of or relating to this Agreement) shall be governed by and construed in accordance with the laws of the State of California, but otherwise without regard to the conflicts of laws rules that would require the laws of another jurisdiction to apply.~~

27.9(2) Venue. -Each Party hereto irrevocably submits to the exclusive jurisdiction of the federal and state courts (subject to the following) located in the State of Nevada, waives any objection which it may have to the laying of venue of any proceedings brought in any such court, and waives any claim that such proceedings have been brought in an inconvenient forum; and agrees that any and all claims, controversies or disputes arising from or relating to this Agreement will be submitted in the federal courts of Nevada located in Reno for resolution; provided, however, that in the event jurisdiction may not be had in federal court, then the Parties agree to submit any and all such disputes, claims or controversies to state district courts of Nevada located in Reno, provided further, however, that if litigation is brought by a third party in another jurisdiction that requires that this Agreement be construed in that litigation, nothing herein shall require that a separate proceeding be brought in Nevada.

27.10 -California Public Utilities Commission Renewable Portfolio Standard Required Terms and Conditions. The Parties agree that in the event there is a conflict between the terms of this Agreement and the CPUC's standard terms and conditions required to be in contracts to purchase energy eligible to satisfy a utility's renewable portfolio standard procurement requirements, which are identified throughout this Agreement as [STCs], the CPUC's standard renewable portfolio standard terms and conditions shall control.

~~27.10 EACH PARTY IRREVOCABLY WAIVES ANY AND ALL OF ITS RESPECTIVE RIGHTS TO ANY JURY TRIAL WITH RESPECT TO ANY ACTION, LITIGATION OR JUDICIAL PROCEEDINGS ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION OR PROCEEDING IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED. In the event such litigation or judicial proceedings are instituted by either Party, the prevailing Party shall be entitled to award of its reasonable (i) costs and (ii) attorneys' fees, incurred in connection with such litigation or proceedings~~

27.11 Amendments. This Agreement may not be amended, modified or changed in any respect except by a writing executed by the Parties with the same formalities as this Agreement. .

27.12 Transmission Provider. The Parties acknowledge that as of the Effective Date, the NV Energy and the Transmission Provider are the same legal entity, and further acknowledge that in accordance with FERC regulations relating to open-access transmission, NV Energy's transmission function employees are required to function independently of NV Energy's marketing function employees. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its progeny, and the associated implementing regulations. Moreover, the Parties acknowledge that Transmission Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Liberty will enter into an interconnection agreement with the Transmission Provider for each of the Liberty Renewable Projects. References to the "Transmission Provider" relate to NV Energy in its capacity as the owner/operator of the transmission system, and references to "NV Energy" relate to Sierra Pacific Power Company outside of and separate from its capacity as the owner/operator of the transmission system. This Agreement is not binding upon the Transmission Provider. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement, any interconnection agreement for the Liberty Renewable Projects, nor any other agreement between Liberty on the one hand and the Transmission Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties' rights, duties, and obligation under this Agreement. This Agreement shall not be construed to create any rights and/or obligations between Liberty and the Transmission Provider. Liberty acknowledges that NV Energy, is acting in its merchant capacity function, has no responsibility for or control over the Transmission Provider, and is not liable for any breach of agreement or duty by the Transmission Provider; provided that nothing in this Agreement waives any rights or

remedies Liberty has against the Transmission Provider under any other agreement and nothing in this Agreement exempts or excuses from performance any obligations the Transmission Provider owes Liberty.

- 27.13 Forward Contracts. The Parties acknowledge and agree that this Agreement and all transactions under this Agreement are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code.
- 27.14 Severability. If any of the provisions of this Agreement, or the application of such provisions, are held invalid by any court, regulatory agency, or other regulatory body having jurisdiction, all of the other provisions of this Agreement shall remain in force and effect unless a court, regulatory agency or other regulatory body having jurisdiction holds that the provisions are not separable from all of the other provisions of this Agreement.
- 27.15 Relationship of Parties. Nothing in this Agreement shall be construed to create an association, joint venture, trust, partnership, or agency relationship between the Parties or to impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.
- 27.16 Complete Agreement. This Agreement and the Exhibits attached hereto shall constitute the full and complete agreement between the Parties with respect to the transactions under this Agreement commencing as of the Effective Date and continuing until the end of the Delivery Term and supersedes all prior agreements and representations by the Parties with respect to such subject matter whether written or oral.
- 27.17 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

[Signatures on following page.]

| **IN WITNESS WHEREOF**, the Parties have entered into this ~~First~~Second Amended Service Agreement as of the date first written above.

LIBERTY UTILITIES (CALPECO
ELECTRIC) LLC

SIERRA PACIFIC POWER CO.
d/b/a NV ENERGY

By: _____
Name: Gregory S. Sorensen
Title: President

By: _____
Name: Paul Caudill
Title: President

By: _____
Name: Richard Salgo
Title: Vice President - Operations

| *{Signature Page to ~~First~~Second Amended Service Agreement}*

EXHIBIT 3

Table of Amendments to 2016 Services Agreement Required by Decision 15-12-021

Page	Section	Description of Amendment
Cover	Title	Changed “First” to “Second” so text reads “SECOND AMENDED SERVICE AGREEMENT”.
Cover	Title	Changed date of agreement from “July 31” to “December 17”.
1	Title	Changed “First” to “Second” so text reads “SECOND AMENDED SERVICE AGREEMENT”.
1	Paragraph 1	Changed “First” to “Second” and “July” to “December” so text reads “This Second Amended Service Agreement, dated December 17, 2015
1	Paragraph 1	Changed “First” to “Second” so text reads “Second Amended Service Agreement” and added description of First Amended Service Agreement.
1	3. Delivery Term	Changed delivery term end date from “May 1, 2022” to “December 30, 2020”.
23	24. Warranties	Edited formatting by adding a paragraph number (3) and a period to the end of the sentence.
23-24	24. Warranties	Added paragraph number (4) and the language of the non-modifiable standard terms and condition (“STC”) 6 concerning Eligibility.
24	24. Warranties	Added paragraph number (5) and the language of STC REC-1 concerning the Transfer of Renewable Energy Credits (RECs).
24	24. Warranties	Added paragraph number (6) and the language of STC REC-2 concerning the Tracking of RECs in WREGIS.
25-26	26. Regulatory Approval	Revised text in Section 26.2 and added the language of STC 1 concerning CPUC Approval.
29	27.9 Governing Law and Venue	Revised text in Section 27.9 <u>Governing Law and Venue</u> and added the language of STC 17 concerning Applicable Law.
29-30	27. CPUC RPS Required Terms and Conditions	Added new Section 27.10 <u>California Public Utilities Commission Renewable Portfolio Standard Required Terms and Conditions</u> and deleted text of previous Section 27.10.
38	Signature page	Changed “First” to “Second” so text reads “Second Amended Service Agreement”.

EXHIBIT 4

SECOND AMENDED SERVICE AGREEMENT

BETWEEN

SIERRA PACIFIC POWER COMPANY

AND

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

Dated December 17, 2015

SECOND AMENDED SERVICE AGREEMENT

Between

SIERRA PACIFIC POWER COMPANY

and

LIBERTY UTILITIES (CALPECO ELECTRIC) LLC

This Second Amended Service Agreement, dated December 17, 2015 (“**Effective Date**”), is between Sierra Pacific Power Company, a Nevada corporation d/b/a NV Energy acting in its merchant function capacity (“**NV Energy**”) and Liberty Utilities (CalPeco Electric) LLC, a California limited liability company d/b/a Liberty Utilities (“**Liberty**”) (each of NV Energy and Liberty, a “**Party**” and, collectively, the “**Parties**”). This Second Amended Service Agreement replaces and supersedes the First Amended Service Agreement between the Parties, dated July 31, 2015 and the Service Agreement between the Parties, dated April 21, 2015. The Parties, in consideration of the mutual benefits from the covenants set forth herein, hereby agree to the sale, delivery, purchase and receipt of capacity and energy pursuant to the terms and conditions that follow:

1. **Buyer.** The buyer shall be Liberty.
2. **Seller.** The seller shall be NV Energy.
3. **Delivery Term.** The Delivery Term shall commence at 12:01 A.M. Pacific time on January 1, 2016 and shall continue through 12:01 A.M. Pacific time on December 30, 2020 (“**Delivery Term**”) unless terminated earlier in accordance with the provisions of this Agreement.
 - 3.1 This Agreement shall terminate automatically at the end of the Delivery Term.
 - 3.2 This Agreement may not be terminated except that:
 - (1) Either Party may terminate this Agreement effective 12:01 A.M. Pacific time on May 1, 2019 by providing written notice no later than February 1, 2018.
 - (2) NV Energy shall have the right to terminate this Agreement with one hundred eighty (180) days written notice to Liberty if the Federal Energy Regulatory Commission (“**FERC**”), the Public Utilities

Commission of Nevada (“**PUCN**”) or another duly constituted regulatory, administrative or judicial body takes any action or fails to take any action relating to this Agreement that NV Energy, in its sole discretion, but always acting reasonably, determines to have a material adverse impact on NV Energy, its shareholders or its customers.

3.3 NV Energy’s obligation to deliver capacity and energy to Liberty and Liberty’s obligation to receive and purchase capacity and energy from NV Energy shall cease upon termination. Liberty’s obligation to pay NV Energy for capacity and energy delivered to Liberty prior to termination shall survive until such obligation is discharged in accordance with the provisions of this Agreement. NV Energy’s obligations under (i) Section 11.3 to pay Liberty for Excess Supply generated prior to termination, (ii) Section 6.4 to transfer Renewable Energy Credits (“**RECs**”) associated with the renewable energy delivered by NV Energy to Liberty prior to termination, (iii) Section 6.5 to provide supporting documentation for Liberty’s California Renewable Portfolio Standard (“**RPS**”) filings, and (iv) Section 4.5 to provide documentation for Liberty’s use in demonstrating compliance with the CPUC’s Resource Adequacy requirements, shall each survive until such obligation is discharged in accordance with the provisions of this Agreement.

4. **Type of Service.** Subject to the exemptions in Section 4.6 or as otherwise set forth herein, during the Delivery Term, NV Energy shall supply, and Liberty shall purchase, Liberty’s full requirements for capacity and energy, including the renewable energy and RECs described in Section 6, and all necessary ancillary services (the “**Product**”) for the service area as described in Exhibit A to this Agreement (the “**Territory**”).

4.1 NV Energy will designate the requirements for capacity and energy for the Territory as Network Load; Network Load shall have the meaning ascribed to the term in the Nevada Power Company and Sierra Pacific Power Company Open Access Transmission Tariff (the “**OATT**”).

4.2 NV Energy will use its Network Integrated Transmission Service Agreement to deliver capacity and energy under this Agreement.

- 4.3 NV Energy will self-provide or procure the ancillary services necessary for the delivery of capacity and energy under this Agreement and Liberty shall obtain the benefit of such ancillary services as part of its payment of the Monthly Charges.
- 4.4 NV Energy will make commercially reasonable efforts to maintain reserves, which shall be based upon the Contract Demand set forth in Exhibit C to this Agreement and the reserve criteria applicable to NV Energy's retail loads in the State of Nevada, for the capacity and energy supplied by NV Energy pursuant to this Agreement. The reserve criteria shall be consistent in all material respects with NV Energy's then current Energy Supply Plan as approved by the PUCN.
- 4.5 NV Energy shall provide documentation to Liberty for Liberty's use in demonstrating to the CPUC its compliance with the CPUC's Resource Adequacy requirements. For the purposes of this Agreement, "**Resource Adequacy**" means the capacity procurement obligations of Liberty pursuant to decisions issued in CPUC Dockets R.04-04-003, R.05-12-013, R.08-01-02, R.11-10-023, R.14-10-010, and any successor proceedings.
- 4.6 During the Delivery Term, Liberty shall not procure any or all of the requirements for capacity and energy for the Territory from any source other than NV Energy; provided, that Liberty shall have the right to (i) produce capacity and energy at the Kings Beach Generation Facility; (ii) produce and deliver to NV Energy capacity and energy from the Liberty Renewable Projects as permitted under Section 7 of this Agreement; (iii) purchase capacity and energy up to 8,000 kW from renewable facilities located in Liberty's service territory and interconnected to Liberty's distribution system; (iv) purchase capacity and energy from any Qualifying Facility located in Liberty's service territory; (v) procure from sources other than NV Energy that portion of capacity or energy that NV Energy fails to deliver hereunder, whether or not such failure is excused under the terms of this Agreement; and (vi) after receiving notice from NV Energy that it will not be able to deliver (or, if applicable, that NV Energy anticipates being unable to deliver) capacity or energy hereunder, procure from sources other than NV Energy that portion of capacity or energy that NV Energy is unable (or, if applicable, anticipates being unable) to deliver hereunder, whether or not such anticipated failure is excused under the terms of this Agreement. If Liberty procures energy or capacity pursuant to clause (v) or clause (vi) above, Liberty shall provide

prompt notice to NV Energy of all such arrangements and otherwise keep NV Energy informed of the current status of such arrangements, and terminate all such deliveries of capacity or energy as soon as commercially practicable after NV Energy notifies Liberty of NV Energy's ability to resume full deliveries of capacity or energy hereunder; provided that for purposes of any notice delivered to NV Energy pursuant to this sentence, such notice shall include the volume, delivery points, and term of all such arrangements, but exclude price and counterparty information applicable to such arrangements. Without limiting the foregoing, upon notification from NV Energy of its ability to resume fully delivering capacity or energy hereunder, the Parties shall cooperate to facilitate an orderly and prudent transition to the resumption of delivery of capacity and energy by NV Energy as soon as commercially practicable following such notification.

NV Energy and Liberty agree that damages may not be an adequate remedy in connection with the breach of the provisions of this Section 4.6. Accordingly, notwithstanding anything in this Agreement to the contrary, the Parties agree that injunction, specific performance or other equitable relief shall be available to NV Energy for any breach or anticipated breach of this Section 4.6.

For purposes of this Agreement, "**Qualifying Facility**" means an electric energy generating facility that: (a) complies with the "qualifying cogeneration facility" or "qualifying small power production facility" definition and other requirements established by the Public Utilities Regulatory Policies Act of 1978 ("**PURPA**") and any FERC rules, as amended from time to time implementing PURPA; and (b) has filed with FERC (i) an application for FERC certification, pursuant to 18 CFR Part 292, Section 292.207(b)(1), which FERC has granted, or (ii) a notice of self-certification pursuant to 18 CFR Part 292, Section 292.207(a).

5. Delivery Points.

- 5.1 The capacity and energy shall be delivered to Liberty at the Delivery Points set forth in Exhibit B to this Agreement ("**Delivery Points**").
- 5.2 Pursuant to that certain Interconnection Agreement dated October 8, 2009, as may be amended from time to time (the

“Interconnection Agreement”), each Delivery Point shall be equipped with metering equipment that records the real and reactive power flows at the Delivery Points in intervals of one hour or less and with communications equipment suitable for accessing the meter data at any time.

- 6. Renewable Energy from NV Energy Resources.** NV Energy shall use commercially reasonable efforts both on a monthly and annual basis during the Delivery Term to deliver the Renewable Percentage (as defined below in Section 6.1) of the Product that will be renewable energy from the NVE Pool, as defined in Section 6.2.

- 6.1** The **“Renewable Percentage”** for each calendar year of the Delivery Term shall be the percentage of the Product to be provided from the NVE Pool. The Renewable Percentage will be the percentage stated in the table below for the total expected Receipt Point Capacity of the Liberty Renewable Projects that Liberty elects to pursue as identified in the Liberty Project Notice provided pursuant to Section 7.1, provided that the table below shall be revised using linear interpolation between the two nearest listed values in the table to provide the Renewable Percentage if the Liberty Project Notice designates a total expected Receipt Point Capacity not presently included in the table; provided further, however, if Liberty does not provide the Liberty Project Notice by the date specified in Section 7.1, the Renewable Percentage shall be the values in the table below for the column “No Projects (0 MW)”. Once established by receipt of the Liberty Project Notice, the Renewable Percentage for each calendar year shall be fixed for the Delivery Term and may only be changed by mutual written agreement of the Parties.

Year	Liberty Project Notice (Total Expected Receipt Point Capacity)			
	No Projects (0 MW)	Project A only (20 MW)	Project B only (40 MW)	Project A & B (60 MW)
2016	23.0%	23.0%	23.0%	23.0%
2017	25.0%	18.0%	7.0%	0.0%
2018	27.0%	20.0%	9.5%	0.0%
2019	28.5%	22.0%	12.0%	2.0%
2020	30.5%	24.0%	14.5%	4.5%
2021	30.5%	24.0%	15.0%	5.0%
2022	30.5%	24.0%	15.0%	5.0%

- 6.2 NV Energy shall provide renewable energy from a pool of geothermal projects ("**NVE Pool**") under contract to NV Energy which have been certified by the California Energy Commission ("**CEC**") as eligible to meet the requirements for the California RPS program overseen by the CPUC ("**CEC Certification**"). Specifically, the NVE Pool includes the Steamboat 2, Steamboat 3, Galena 3, Beowawe, and Burdette projects (each a "**NVE Renewable Project**"). Exhibit H provides the definition of each of the NVE Pool contracts.
- 6.3 If, subsequent to the Effective Date, any NVE Renewable Project no longer meets the requirements for CEC Certification, such NVE Renewable Project shall be removed from the NVE Pool. In the event that NV Energy is unable to provide the Renewable Percentage from the NVE Pool in any calendar year, NV Energy's obligation to provide renewable energy shall be reduced to the renewable energy delivered from the NVE Pool for that year and NV Energy shall have no liability for the failure to deliver the Renewable Percentage including no liability for any penalties, fines or assessments of any kind imposed by the CPUC on Liberty as a consequence thereof. If the renewable energy delivered from the NVE Pool is less than the Renewable Percentage in any calendar year, NV Energy shall, for the invoice for the final month of such calendar year, recalculate the monthly invoices for the calendar year using the actual renewable percentage delivered in each month, and provide a credit to Liberty in an amount equal to the positive difference, if any, between the invoices previously paid by Liberty for the calendar year and the recalculated invoice amounts.
- 6.4 No later than 120 days after the end of each calendar year of the Delivery Term, NV Energy shall transfer to Liberty RECs for the quantity of renewable energy provided by NV Energy for the prior calendar year. The RECs transferred shall be of NV Energy's choice from RECs generated by the NVE Pool during such calendar year. NV Energy shall, at its sole expense, take all actions and execute all documents or instruments necessary to ensure that all Western Renewable Energy Generating Information System certificates associated with all RECs corresponding to all MWh of energy NV Energy delivers to Liberty under this Agreement are properly issued to Liberty.
- 6.5 NV Energy shall provide to Liberty, for its use in Liberty's RPS filings with the CPUC or the CEC, any supporting

documentation the CPUC or CEC reasonably and consistent with applicable statutes requires Liberty to provide to demonstrate Liberty's compliance with its RPS requirements.

7. **Liberty Renewable Projects.** Liberty shall be permitted to obtain a maximum of sixty (60) MW of capacity and energy from solar photovoltaic arrays owned by Liberty, which may include, but shall not be limited to, Project A and Project B (as defined below), to be interconnected to NV Energy's transmission or distribution system (the "**Liberty Renewable Projects**").

7.1 No later than March 31, 2016, Liberty shall provide written notice of its intent to proceed with any Liberty Renewable Project, and Liberty shall designate the Receipt Point Capacity of such project(s) up to an aggregate maximum of sixty (60) MWs ("**Liberty Project Notice**"). If, in the Liberty Project Notice, Liberty states that it does not intend to proceed with at least one of the Liberty Renewable Projects, or if Liberty fails to provide the Liberty Project Notice by March 31, 2016, the provisions of this Section 7 related to Project A and Project B and any related provisions of this Agreement shall no longer be of any force or effect.

7.2 The interconnection point for each Liberty Renewable Project shall be a "**Receipt Point**". Liberty shall deliver energy from the Liberty Renewable Projects to NV Energy at each Receipt Point. NV Energy shall designate the Liberty Renewable Projects as Network Resources (as that term is defined in the OATT) and include the energy delivered at the Receipt Points from the Liberty Renewable Projects in serving Liberty's requirements.

7.3 "**Project A**" is a proposed solar photovoltaic array to be located in Douglas County, Nevada, and an expected commercial operation date as of December 31, 2016.

7.4 "**Project B**" is a proposed solar photovoltaic array to be located in Mineral County, Nevada, and an expected commercial operation date as of December 31, 2016.

7.5 "**Receipt Point Capacity**" for a Liberty Renewable Project means the maximum amount of energy that can be delivered at the Receipt Point from that project in one hour.

- 7.6 Exhibit I provides a detailed description of the Liberty Renewable Projects.
- 7.7 Within ten (10) Business Days of achieving commercial operation for each Liberty Renewable Project, Liberty shall provide to NV Energy certification from an Independent Engineer of the actual commercial operation date and the actual Receipt Point Capacity (“**Certified Receipt Point Capacity**”). “**Business Day**” means any day other than Saturday, Sunday and any day that is a holiday observed by NV Energy.
- 7.8 “**Independent Engineer**” means a person proposed by Liberty and acceptable to Liberty and NV Energy in their reasonable judgment who (a) is licensed to practice engineering in the appropriate engineering discipline for the required certification being made in Nevada, (b) has training and experience in the engineering disciplines relevant to the matters with respect to which such person is called upon to provide a certification, evaluation or opinion, (c) has no economic relationship, association, or nexus with Liberty and is not an employee of its members or Affiliates, other than with the prior written consent of NV Energy, for services previously or currently being rendered to Liberty or its members or Affiliates, and (d) is not a representative of a consulting engineer, contractor, designer or other individual involved in the development of the Liberty Renewable Projects, or of a manufacturer or supplier of any equipment installed in the Liberty Renewable Projects.
- 7.9 Liberty shall be responsible for obtaining all interconnections with the Transmission Provider and making all applications necessary for the Liberty Renewable Projects to be able to deliver energy to the Receipt Point. Liberty shall ensure that the Liberty Renewable Projects comply with all applicable generator interconnection rules.
- 7.10 Standby service provided by NV Energy for the Liberty Renewable Projects will be provided under NV Energy’s retail tariffs for standby service (currently Schedule LSR or SSR, as applicable).
8. **Contract Demand.** The “**Contract Demand**” for each calendar month of the Delivery Term shall be as set forth in Exhibit C to this Agreement. Unless otherwise set forth in Exhibit C, neither Party shall have the right to modify Exhibit C without the express written approval of the other Party.

9. **Billing Demand.** The “**Billing Demand**” for each calendar month shall be the greater of (a) the Coincident Demand for the calendar month less the Coincident Supply for the calendar month or (b) the Net Contract Demand for the calendar month.
- 9.1 The “**Coincident Demand**” for the calendar month shall be the Territory Demand for the hour and day of the calendar month that the Transmission Provider’s Monthly Transmission System Peak occurs.
- 9.2 The “**Transmission Provider’s Monthly Transmission System Peak**” shall be as defined in the OATT.
- 9.3 The “**Territory Demand**” for an hour shall be the sum of the Adjusted Energy for all Delivery Points for that hour. The “**Daily Territory Demand**” for a day shall be the sum of the Territory Demand for that day.
- 9.4 The “**Adjusted Energy**” for a Delivery Point for an hour shall be the energy delivered in that hour for that Delivery Point times the loss adjustment factor applicable to that Delivery Point set forth in Exhibit B.
- 9.5 The “**Coincident Supply**” for the calendar month shall be the Liberty Supply for the hour and day of the calendar month that the Transmission Provider’s Monthly Transmission System Peak occurs.
- 9.6 The “**Liberty Supply**” for an hour shall be the sum of the energy delivered from the Liberty Renewable Projects at all Receipt Points for that hour, provided, however, that the Liberty Supply for an hour shall not exceed the sum of the Certified Receipt Point Capacity for each of the Liberty Renewable Projects. The “**Daily Liberty Supply**” for a day shall be the sum of the Liberty Supply for all hours of that day.
- 9.7 The “**Net Contract Demand**” shall be (1) for the calendar months of April through October, the Contract Demand for the calendar month less the lower of (a) the Coincident Supply for the calendar month or (b) 38% of the sum of the Certified Receipt Point Capacity for each of the Liberty Renewable Projects and (2) for all other months, the Contract Demand for the calendar month. For purposes of calculating Net Contract Demand the Certified Receipt Point Capacity for a Liberty

Renewable Project shall be zero until the first full month after the commercial operation date of the Liberty Renewable Project.

- 10. Rates.** The Demand Rate, the Transmission Rate, and the Energy Rate shall be as set forth in Exhibit D to this Agreement. These rates will be adjusted in accordance with the provisions of Section 12, Section 21, Section 23 and Exhibit D.

10.1 If the Billing Demand for any calendar month exceeds the Contract Demand for that calendar month, the difference shall be “**Excess Demand**.” NV Energy shall have the right to recover its incremental costs, if any, for the Excess Demand through the Energy Charge Adjustment as determined pursuant to Exhibit D.

10.2 Except as provided in Section 12, Section 21, Section 23 and Exhibit D, neither Party shall seek, nor shall they support any third person in seeking, to revise the rates, terms or conditions of service, or challenge the validity, of this Agreement, or whether it is just and reasonable, through any means, including without limitation to the FERC pursuant to the provisions of Section 205, 206 or 306 of the Federal Power Act, as such law may be amended or superseded, or any other provisions thereof, except with prior written agreement of the Parties. Except as set forth in Section 12, Section 21, Section 23, and Exhibit D, or except with the prior written agreement between the Parties, the standard of review for (a) any modification to this Agreement requested by a Party that is not agreed to by both Parties will be the “public interest” standard under the *Mobile Sierra* doctrine of the “just and reasonable” standard of review set forth in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U.S. 332 (1956) and *Federal Power Commission v. Sierra Pacific Power Co.*, 350 U.S. 348 (1956) and clarified by *Morgan Stanley Capital Group, Inc. v. Public Util. Dist. No. 1 of Snohomish County*, 554 U.S. 527, 128 S.Ct. 2733, 171 L.Ed.2d. 607 (2008) and *NRG Power Marketing, LLC v. Maine Pub. Util. Comm’n*, 558 U.S. 165 (2010), and (b) any modification to this Agreement requested by any party (other than a Party to this Agreement) or initiated by the FERC will be the most stringent standard permissible under applicable law.

- 11. Monthly Charges.** The “**Monthly Charges**” under this Agreement shall be the sum of the Demand Charge, the Transmission Charge, the Energy Charge, the Energy Charge Adjustment and the Distribution Charge for each calendar month.

- 11.1 The “**Demand Charge**” shall be the Billing Demand (kW) times the Demand Rate.
- 11.2 The “**Transmission Charge**” shall be the Transmission Demand times the Transmission Rate. The “**Transmission Demand**” shall be the Coincident Demand plus the energy delivered to the Territory from the Kings Beach Generation Facility during the hour of the Coincident Demand.
- 11.3 The “**Energy Charge**” shall be the Monthly Energy (kWh) times the Energy Rate established and adjusted pursuant to Exhibit D hereof. The “**Monthly Energy**” shall be the sum of the Net Territory Demand for all days of the calendar month. The “**Net Territory Demand**” for a day shall be the Daily Territory Demand less the Daily Liberty Supply, provided, however, that for any day that the Daily Liberty Supply exceeds the Daily Territory Demand (“**Excess Supply**”), the Net Territory Demand shall equal zero. For any day in each month that there is Excess Supply, NV Energy shall provide Liberty with a credit to the Energy Charge for such month equal to the Average Avoided Cost for that day times the Excess Supply. The “**Average Avoided Cost**” for a day shall be the simple average of the Non-Firm Energy rate under NV Energy’s Rate Schedule No. CSPP for the hours of that day that the Liberty Supply exceeded the Territory Demand. No later than 120 days after the end of each calendar year of the Delivery Term, Liberty shall transfer to NV Energy the RECs associated with all Excess Supply for the prior calendar year.
- 11.4 The Energy Charge Adjustment (as defined in paragraph D.4 of Exhibit D) shall be determined pursuant to Exhibit D.
- 11.5 The “**Distribution Charge**” shall be \$ 19,240.00 per calendar month, plus, for any hour during the calendar month that NV Energy delivers energy at the Brockway 4202 or Brockway 5100 Delivery Points, an additional amount equal to \$0.01060 times the energy delivered (in kWh) by NV Energy at the Brockway 4202 and Brockway 5100 Delivery Points.
12. **Taxes.** Except as provided in Section 21, NV Energy shall be responsible for the payment of all taxes, fees, levies, penalties, licenses or charges imposed by any governmental authority on or with respect to the capacity and energy (“**Taxes**”) that arise prior to the Delivery Points. Liberty shall be responsible for and pay or cause to be paid all

Taxes that arise at or after the Delivery Points. If a Party is required to remit or pay Taxes that are the other Party's responsibility hereunder, the Party responsible for such Taxes shall promptly reimburse the other Party for such Taxes upon being presented evidence of such payment. All Taxes that are the responsibility of NV Energy under this Section 12 shall be recoverable by NV Energy through the charges payable by Liberty under this Agreement and such Taxes shall be incorporated into such charges including without limitation by adjustment of the rates and charges payable by Liberty under this Agreement; provided, however, that any Taxes that did not exist on the Effective Date, but are subsequently imposed on NV Energy, shall be deemed a change in law and regulation and addressed pursuant to the provisions of Section 23. For the avoidance of doubt, changes, if any, in the rates and/or amounts of specific Taxes that existed on the Effective Date shall not constitute a change in law or regulation under this Agreement.

- 13. Uncontrollable Forces and Interruptions of Service.** No Party shall be considered to be in breach of this Agreement to the extent that a failure to perform its obligations under this Agreement is due to an Uncontrollable Force. **"Uncontrollable Force"** shall include any event or circumstance, which prevents a Party from performing its obligations, that (i) is not reasonably anticipated as of the date hereof, (ii) is not within the reasonable control of the claiming Party and (iii) cannot be avoided or overcome by the exercise of due diligence. Uncontrollable Force may include, but is not restricted to, flood, drought, earthquake, storm, fire, lightning, epidemic, war, riot, act of terrorism, civil disturbance or disobedience, labor dispute, labor or material shortage, sabotage, restraint by court order or public authority, and action or inaction (as long as the affected Party has not applied for or assisted in the application for, and has opposed to the extent reasonable, such court or government action), or failure to obtain the necessary authorizations or approvals from, any governmental agency or authority (as long as the affected Party has diligently pursued the authorizations or approvals).

- 13.1 No Party shall be relieved of liability for its failure to perform its obligations under this Agreement by reason of Uncontrollable Force to the extent that such failure is due to (i) causes arising from its own negligence or willful acts, (ii) its lack of sufficient monetary resources, or (iii) removable or remediable causes that it fails to remove or remedy within a commercially reasonable time period. Nothing contained in this Section 13.1 shall be construed to require a Party to settle a strike or labor dispute in which it is involved on terms that it considers, in its sole

discretion, to be unreasonable. Nothing contained in this Section 13 is intended or shall be construed to abate, postpone or in any respect diminish Liberty's obligations to make any payments due NV Energy pursuant to this Agreement.

- 13.2 Any Party rendered unable to fulfill any of its obligations by reason of Uncontrollable Force shall give prompt notice of such fact to the other Party and shall exercise due diligence to remove such inability within a commercially reasonable period of time; provided, however, that the failure to provide prompt notice shall not prevent a Party from being entitled to claim relief for failure to perform its obligations under this Agreement by reason of Uncontrollable Force. Each notice provided pursuant to this Section 13.2 shall include an estimate of the amount of time that will be required to remove the inability to perform its obligations under this Agreement.
- 13.3 NV Energy shall be excused from performance and shall have no liability under this Agreement for:
- (1) any failure to supply capacity, energy, or both under this Agreement and for any reduction or interruption of such capacity, energy, or both where any such failure, reduction or interruption arises as a result of outages to transmission or distribution facilities required to supply capacity and energy to Liberty at one or more Delivery Points including without limitation any outages for repair or maintenance of such transmission or distribution facilities ("**Interruption of Service**"); provided that such failure is not the result of the gross negligence or willful misconduct of NV Energy; or
 - (2) any nondiscriminatory curtailment by NV Energy of capacity and energy deliveries to Liberty (i) resulting from the operation of automatic under-frequency load-shedding devices or (ii) resulting from a Stage 3 Energy Emergency Alert, as defined in NV Energy's System Electric Emergency Operating Plan ("**SEEO**"). Curtailments of capacity and energy as a result of a Stage 3 Energy Emergency Alert shall be in accordance with NV Energy's then current and approved SEEO; provided, however, that any such curtailment shall not be excused if it is the result of

the gross negligence or willful misconduct of NV Energy.

14. Title and Risk of Loss.

14.1 Title and risk of loss to the capacity and energy delivered by NV Energy under this Agreement shall pass from NV Energy to Liberty at the Delivery Points. Subject to Section 14.2, NV Energy assumes all responsibility with respect to the capacity and energy prior to its delivery to Liberty at the Delivery Points. Liberty assumes all responsibility with respect to all capacity and energy delivered by NV Energy at and after its delivery to Liberty at the Delivery Points.

14.2 Liberty assumes all responsibility with respect to the capacity and energy supplied from the Liberty Renewable Projects prior to its delivery to NV Energy at the Receipt Points. Title and risk of loss to the capacity and energy from the Liberty Renewable Projects shall pass from Liberty to NV Energy at the Receipt Points. NV Energy assumes all responsibility with respect to the capacity and energy supplied from the Liberty Renewable Projects from the Receipt Points and prior to its delivery to Liberty at the Delivery Points.

14.3 NV Energy agrees to indemnify Liberty and save it harmless from all losses, liabilities or claims including reasonable attorneys' fees and costs of court ("**Claims**"), from any and all persons, arising from or out of claims of personal injury (including death) or property damage from said capacity and energy which attach before risk of loss passes from NV Energy to Liberty. Liberty agrees to indemnify NV Energy and save it harmless from all Claims, from any and all persons, arising from or out of claims regarding personal injury (including death) or property damage from said capacity and energy which attach before risk of loss passes from Liberty to NV Energy for the Liberty Renewable Projects and after risk of loss passes from NV Energy to Liberty.

15. Access to Metering Data. Liberty hereby authorizes NV Energy's transmission function to release to NV Energy's merchant function any metering data reasonably required by NV Energy's merchant function for operating and billing pursuant to this Agreement.

16. Invoice and Payment. The accounting and billing period for charges payable pursuant to this Agreement shall be one (1) calendar month.

On or before the tenth (10th) day of each month, NV Energy shall submit an invoice to Liberty for charges payable during the immediately preceding calendar month. NV Energy's invoice shall be due and payable by Liberty no later than the twentieth (20th) day after Liberty's receipt of such invoice.

16.1 Liberty's payments shall be in U.S. dollars by wire transfer to the accounts set forth for that purpose on Exhibit E.

16.2 The amounts, if any, that have not been paid by Liberty on or before the due date shall be payable with interest calculated daily, at a rate equal to the applicable FERC approved interest rate, for the period beginning on the day after the due date and ending on the date of the payment.

17. Billing Disputes. If (i) NV Energy fails to issue an invoice for some or all of the charges payable by Liberty during a month or (ii) NV Energy finds one or more errors in an invoice, NV Energy shall have the right to issue an invoice or a revised invoice for the charges; provided, however, the invoice or revised invoice must be issued within two (2) years of the date on which the original invoice should have been or was issued, whichever is applicable. NV Energy's invoice or revised invoice shall include an explanation of the charges or the revised charges, whichever is applicable. An invoice or revised invoice shall be due and payable by Liberty on or before the twentieth (20th) day after Liberty's receipt of such invoice.

17.1 Liberty may dispute any of the charges on an invoice by providing written notice of the dispute to NV Energy within two (2) years of the latter of the date of the original invoice, or the date of the last revised invoice if one or more revised invoices were issued, for a billing period. Liberty's notice shall specify the amount in dispute and state the basis for the dispute. If Liberty disputes any of the charges on an invoice, the Parties shall promptly meet and endeavor to resolve the dispute. If the Parties cannot resolve the dispute in this manner within sixty (60) days (or such longer period of time mutually agreed upon by the Parties in writing) of Liberty's notice to NV Energy of a dispute, either Party may proceed under the provisions of Section 27.9 to resolve the dispute.

17.2 Liberty shall be obligated to pay the entire amount of an invoice when due even if Liberty disputes some or all of the charges. If a dispute is ultimately resolved in Liberty's favor, NV Energy shall promptly refund any amounts owed to Liberty with

interest calculated daily, at a rate equal to the applicable FERC approved interest rate.

18. Credit Support. NV Energy shall not be obligated to provide any guarantees, post any collateral, or provide any credit assurance.

18.1 Notwithstanding anything in this Agreement to the contrary, the provisions of this Agreement except for Section 26, which became effective as of the Effective Date, shall only become effective if the Guarantee is executed, valid and in full force and effect as of the first day of the Delivery Term. For purposes of this Agreement, “**Guarantee**” means the Guarantee of Liberty Utilities Co. (“**Liberty Parent**”), pursuant to which Liberty Parent shall guarantee, subject to the terms thereof, the timely payment of the obligations of Liberty for Monthly Charges that may become due and owing by Liberty pursuant to this Agreement. The Guarantee shall be substantially in the form set forth to Exhibit F to this Agreement.

18.2 Should the creditworthiness, financial responsibility, or performance viability of Liberty Parent become unsatisfactory to NV Energy in its commercially reasonably exercised discretion, NV Energy may require Liberty to provide credit support as determined by NV Energy in its sole discretion, in the form of the posting of (i) a letter of credit, or (ii) other collateral or security acceptable to NV Energy, in either instance in the amount of seven million five hundred thousand U.S. dollars (US\$7,500,000.00) (“Adequate Assurance”) to NV Energy within three (3) Business Days of NV Energy’s written demand for assurances; provided that upon Liberty timely posting of Adequate Assurance in the total amount of seven million five hundred thousand U.S. dollars (US\$7,500,000.00), the Liberty Parent Guarantee shall be terminated. If Liberty posts a letter of credit, the letter of credit shall be in the form set forth in Exhibit G to this Agreement.

19. Events of Default and Remedies.

19.1 For purposes of this Agreement, an “**Event of Default**” shall consist of any of the following:

- (1) The failure of NV Energy to deliver Product in accordance with the provisions of this Agreement if such failure is not cured within five (5) Business Days of NV Energy’s receipt of written notice thereof from

Liberty unless such failure is due to Uncontrollable Force, Interruption of Service or other circumstances for which NV Energy is excused from performance under this Agreement;

- (2) The failure of NV Energy to provide clear and good title to the Product as required in Section 24.1 if such failure is not cured within five (5) Business Days of NV Energy's receipt of written notice thereof from Liberty;
- (3) The failure of Liberty to provide clear and good title to the energy from the Liberty Renewable Projects as required in Section 24.2 if such failure is not cured within five (5) Business Days of Liberty's receipt of written notice thereof from NV Energy;
- (4) Any representation or warranty of a Party made pursuant to Section 25 is false or misleading in any material respect when made or when deemed made or repeated and which misrepresentation can reasonably be expected to result in a material adverse effect on the ability of that Party to fulfill its obligations under this Agreement or the ability of the other Party to receive its benefits under this Agreement and further provided such failure is not cured within five (5) Business Days of its receipt of written notice thereof from the non-defaulting Party;
- (5) The failure of a Party to make payment when due if not remedied within five (5) Business Days of receipt of notice from the Party to which the money is owed;
- (6) Any involuntary case or other proceeding is commenced against a Party (i) seeking reorganization, readjustment, arrangement, composition or similar relief with respect to it or its debts under any bankruptcy or other similar law, (ii) seeking a decree or order of a court having jurisdiction for the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or a substantial part of the undertaking or property of such Party, or (iii) seeking the winding-up, dissolution or liquidation of its affairs, and such involuntary case has not been discharged or dismissed within sixty (60) days;

- (7) The failure of Liberty to provide adequate financial assurances to NV Energy as may be required pursuant to Section 18 if such failure is not remedied within two (2) Business Days of receipt of written notice from NV Energy;
 - (8) A Party institutes proceedings for its winding-up, liquidation or dissolution, or takes any actions to become a voluntary bankrupt, or consents to the filing of any bankruptcy proceeding against it, or files any proposal, notice of intention to make a proposal, petition or answer or consent seeking reorganization, readjustment, arrangement, composition or similar relief under any bankruptcy or other similar law or consents to the filing of any such petition, or to the appointment of a receiver, liquidator, trustee or assignee in bankruptcy or insolvency of all or any material property of such Party, or makes any assignment for the benefit of creditors, or admits in writing its inability to pay its debts generally as they become due or commits any other act of bankruptcy, or any action is taken by such Party in furtherance of any of the foregoing; and
 - (9) If a receiver, manager, receiver and manager, trustee, custodian or other similar official is appointed in respect of any Party or any material part of its property and such appointment is not being contested diligently and in good faith by such Party or has not been discharged or dismissed within ten (10) Business Days.
- 19.2 If an Event of Default occurs, the non-defaulting Party shall have the right to terminate this Agreement by written notice, which shall include the date of the intended termination, to the defaulting Party. The non-defaulting Party may exercise any rights or remedies available to it at law or in equity, subject to the limitations set out in this Agreement. If the termination is due to an Event of Default by Liberty, and Liberty has posted a letter of credit, NV Energy shall have the right to offset any outstanding amounts due from Liberty to NV Energy under this Agreement by drawing on the letter of credit.

- 19.3 With respect to any circumstances under this Agreement in which one Party is or may be liable to the other Party (a "**Harmed Party**") for damages, it is agreed that the Harmed Party shall exercise commercially reasonable efforts, as determined in light of the facts and circumstances prevailing at the time such efforts are or should have been taken, to mitigate or reduce the amount of damages which such Harmed Party would sustain (and for which the other Party is or would be responsible) under the terms of this Agreement.
- 19.4 To the fullest extent permitted by law and notwithstanding any other provisions of this Agreement, in no event shall a Party be liable to the other Party, whether in contract, warranty, tort, negligence, strict liability, or otherwise, for special, indirect, incidental, multiple, consequential (including lost profits or revenues, business interruption damages and lost business opportunities), exemplary or punitive damages related to, arising out of, or resulting from performance or nonperformance of this Agreement whether or not such damages were reasonably anticipated as of the Effective Date. With respect to a Party, the limitation on damages under this Section 19.4 shall not apply with respect to claims brought by third persons for which such Party is entitled to indemnification under this Agreement.
20. **No Resale.** Liberty shall not sell or otherwise transfer any of the capacity and/or energy provided pursuant to this Agreement to any party other than: (i) end-use customers located in the Territory; (ii) end-use customers located in the NV Energy service territory for the load served by Liberty pursuant to that certain Borderline Customer Agreement between Liberty and NV Energy dated October 8, 2009, as amended from time to time ("**Borderline Customer Agreement**"); (iii) Pacific Gas and Electric Company ("**PG&E**") for the load served by Liberty pursuant to that certain Electric Service Agreement between Liberty and PG&E dated December 8, 2010, as amended from time to time (the "**PG&E Agreement**"); and (iv) Truckee-Donner Public Utility District ("**TDPUD**") for the load served by Liberty pursuant to that certain Fringe Agreement for Electric Service Between Liberty and TDPUD, dated April 7, 2010, as amended from time to time ("**TDPUD Fringe Agreement**"). NV Energy and Liberty agree that damages may not be an adequate remedy in connection with the breach of the provisions of this Section 20. Accordingly, notwithstanding anything in this Agreement to the contrary, the Parties agree that injunction, specific performance or other equitable relief shall be available to NV Energy for any breach or anticipated breach of this Section 20.

21. Cap-and-Trade.

21.1 Definitions. As used in this Section 21 the following terms have the meanings set forth below.

- (1) “**Allowance**” means a tradable compliance instrument representing one metric ton of CO₂ that may be used to satisfy a Compliance Obligation under the California Cap-and-Trade Regulation. Allowance does not include compliance instruments created through Offset Projects.
- (2) “**Auction Settlement Price**” means the price announced by the auction administrator at the conclusion of a quarterly auction conducted by CARB or its delegate (as defined in 17 Cal. Code Reg. § 95802(a)).
- (3) “**Cap-and-Trade Regulation**” means regulations promulgated by CARB to implement the carbon allowance cap-and-trade program mandated by the California Global Warming Solutions Act of 2006, specifically 17 Cal. Code Regs. §§ 95800- 96022.
- (4) “**CARB**” means the California Air Resources Board.
- (5) “**CITSS Account**” means a Compliance Instrument Tracking System Service Holding Account administered by the Western Climate Initiative.
- (6) “**Compliance Obligation**” means annual metric tons of CO₂ with a Compliance Obligation as filed annually by Liberty and in compliance with 17 Cal. Code Regs. § 95111(b)(5).
- (7) “**Compliance Year**” means a calendar year for which NV Energy has a Compliance Obligation under the California Cap-and-Trade Regulation.
- (8) “**Compliance Year Requirement**” means the quantity of Allowances NV Energy is obligated to retire to satisfy its Compliance Obligation following each Compliance Year.

- (9) “**Liberty Load**” means the energy supplied to Liberty from NV Energy resources pursuant to this Agreement.
- (10) “**Offset Project**” has the meaning ascribed to that term in 17 Cal. Code Reg. §. 95802(a).
- (11) “**Procurement**” means the purchase of Allowances from quarterly cap-and-trade auctions and the price containment reserve auctions held by CARB (or its delegate). Procurement may also include the purchase of Allowances from another entity registered in the Compliance Instrument Tracking System Service.
- (12) “**Third Party Verifier**” means the entity that verifies a greenhouse gas emissions report under the CARB Mandatory Reporting Regulation.
- (13) “**Verification Year**” means the calendar year immediately following a Compliance Year when entities subject to the CARB Mandatory Reporting Regulation must report and have their greenhouse gas emissions verified. For example, 2017 is the Verification Year for the 2016 Compliance Year.

21.2 Maintenance of Allowances to Cover NV Energy Cap and Trade Compliance Obligations.

- (1) NV Energy and Liberty shall each maintain a CITSS Account in their respective names.
- (2) By each June 15 of each calendar year during the Delivery Term, NV Energy shall notify Liberty of: (a) its forecast of Allowances required to meet the Compliance Obligation for the applicable Compliance Year; and (b) the quantity of Allowances, if any, that Liberty is to transfer into the NV Energy CITSS Account to satisfy the Compliance Year Requirement for the applicable Compliance Year.
- (3) By each September 15 of the Delivery Term, Liberty shall transfer into the NV Energy CITSS Account the quantity of Allowances that NV Energy has specified in its notice pursuant to Section 21.2(2)(b) for such Compliance Year.

- (4) Between June 15 and October 1 of each Verification Year, NV Energy may notify Liberty of any difference from the quantity of Allowances NV Energy specified in its notice to Liberty as provided for in Section 21.2(2)(b) and NV Energy's actual Compliance Year Requirement associated with the Liberty Load. In the event that NV Energy provides notice pursuant to this Section 21.2(4) that the Allowance Requirement is greater than the quantity of Allowances NV Energy specified in its notice pursuant to Section 21.2(2)(b), Liberty shall, within thirty (30) days after receiving such a notice pursuant to this Section 21.2(4), transfer into the NV Energy CITSS Account the additional amount of Allowances NV Energy has specified in such Section 21.2(4) notice as necessary for it to satisfy the revised Compliance Year Requirement.
- (5) NV Energy shall not transfer any of those Allowances Liberty has transferred into the NV Energy CITSS Account for purposes of meeting the Compliance Year Requirement (and as such may be revised in accordance with Section 21.2(4)) out of the NV Energy CITSS Account except after reconciliation in accordance with Section 21.3(4).

21.3 Reconciliation of Allowances.

- (1) In the event that CARB or a Third Party Verifier subsequently determines the Compliance Year Requirement is larger than the amount of Allowances NV Energy forecast and provided Liberty notice of in accordance with Section 21.2(2), NV Energy will then within thirty (30) Business Days of it having knowledge of such a larger Compliance Year Requirement notify Liberty of: (a) the number of additional Allowances required to meet NV Energy's Compliance Year Requirement associated with the Liberty Load; and (b) the number of additional Allowances, if any, that Liberty shall transfer into the NV Energy CITSS Account in response to NV Energy's notice and request for additional Allowances as provided for in this Section 21.3(1).

- (2) In the event that NV Energy provides Liberty a notice in accordance with Section 21.3(1) requesting additional Allowances, Liberty shall transfer the additional amount of Allowances NV Energy specifies in such notice under Section 21.3(1) into the NV Energy CITSS Account. Liberty shall notify NV Energy of the transfer by the later of October 1 of that year or within thirty (30) Business Days after Liberty receives a notice in accordance with Section 21.3(1) requesting additional Allowances.
- (3) In the event that the Allowances Liberty transfers into the NV Energy CITSS Account exceed the total number of Allowances that NV Energy is obligated to retire to satisfy the Compliance Year Requirement, NV Energy shall timely inform Liberty of the quantity of such excessive Allowances. At Liberty's option, NV Energy shall either transfer within fifteen (15) Business Days any unused Allowances into the Liberty CITSS Account or retain the Allowances within the NV Energy CITSS Account, to the extent allowed by CARB. NV Energy shall use any such retained excessive Allowances for purposes of satisfying a subsequent Compliance Year Requirement.
- (4) Nothing in this Section 21.3 shall be interpreted to preclude the fair exchange of Allowances between the Parties or allow either Party to exert control over Allowances in the other entity's CITSS Account in accordance with 17 Cal. Code Reg. § 95921(±).
- (5) Nothing in this Section 21.3 shall permit the Parties to engage in communications concerning auction participation prohibited by 17 Cal. Code Reg. §. 95912(g).

21.4 Default of Allowances.

- (1) Should Liberty fail to transfer into the NV Energy CITSS Account the number of Allowances required by a deadline specified under this Section 21, NV Energy may take all actions as it may deem necessary, consistent with Good Utility Practice, in order to avoid any violation of the Cap-and-Trade Regulation, including Procurement of Allowances and use of other

Allowances already in its possession to satisfy NV Energy's Compliance Obligation associated with serving the Liberty Load; provided that NV Energy shall first provide Liberty notice of its failure to transfer Allowances by the required deadline and Liberty shall have a cure period of fifteen (15) Business Days to transfer the required amount of Allowances into the NV Energy CITSS Account.

- (2) If NV Energy secures Allowances pursuant to Section 21.4(1) for purposes of meeting its Compliance Obligation, Liberty shall reimburse NV Energy, within ten (10) days after receiving an invoice from NV Energy, all of the following: (1) NV Energy's actual cost to purchase the necessary Allowances; and (2) the actual transaction costs, if any, incurred by NV Energy to procure the necessary Allowances. If in accordance with Section 21.4(1), NV Energy has used other Allowances that are already in its possession and which had not been transferred by Liberty to make up any shortfall caused by Liberty's failure to timely transfer Allowances as required by this Section 21, Liberty shall reimburse NV Energy for these Allowances in an amount based on the Auction Settlement Price at the most recent quarterly Allowance auction.

21.5 Change of Law.

- (1) It is the Parties' intent that Liberty should bear all compliance, filing, administrative and other costs related to the certification, transfer and assignment of allowances associated with the emission of CO₂ and other greenhouse gases associated with the generation of energy delivered by NV Energy pursuant to this Agreement and compliance with governmentally imposed requirements to limit or otherwise to control those emissions.
- (2) The United States Environmental Protection Agency ("EPA") has proposed regulations under section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), that will, if adopted and final, require Nevada and other states to develop and implement a program to control and to limit the emissions of CO₂ from NV Energy's fossil-

fuel-fired electricity generation units (“EGUs”) or result in the imposition of a federal program if Nevada or any other jurisdiction fails to develop a program consistent with the EPA regulation. *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014). The Parties shall follow the procedures established under Section 23 upon the adoption of regulations or the submission of a State Implementation Plan (“SIP”) by Nevada or any other jurisdiction with authority over the NV EGUs supplying energy under this agreement and any action by EPA with respect to said program to assure that the provisions and procedures of this Section 21 are modified to implement the Parties’ intent, as expressed in Section 21.5(1).

- 22. No Dedication of Facilities.** Nothing in this Agreement shall be construed as constituting the dedication of NV Energy’s electric system or any portion thereof to the public, to Liberty, or to customers of Liberty, or the dedication of Liberty’s electric system, any Liberty Renewable Project, or any portion thereof to the public, to NV Energy, to customers of NV Energy, or to any customers in the Territory.
- 23. Change in Law or Regulation.** If a Party becomes aware that any regulatory authority or other duly constituted authorities having jurisdiction over the Parties promulgated a change in law or applicable regulation that materially affects the performance of either Party’s obligations under this Agreement (a “**Change in Law**”), such Party shall promptly provide written notice to the other Party of the change. Upon receipt of notice, the Parties shall make commercially reasonable efforts to amend this Agreement to preserve the benefits and bargains initially struck in this Agreement. If the Parties cannot reach agreement on an amendment prior to the later of (i) the effective date of the change in law or applicable regulation or (ii) the date that is thirty (30) days after the date of notice from one Party to the other as contemplated above, either Party may terminate this Agreement after thirty (30) day’s notice to the other Party without liability to the other Party except for any liability that has accrued prior to the date of termination. Without prejudice to the foregoing, if, in order to comply with its obligations under this Agreement, NV Energy incurs any costs or expects to incur any costs due to a change in law or regulation, such costs shall be recoverable by NV Energy through the charges payable by Liberty under this Agreement and such costs shall be incorporated

into such charges including without limitation by adjustment of the rates and charges payable by Liberty under this Agreement.

23.1 A change in the regulations of the FERC or the PUCN that has the effect of causing NV Energy to be unable to recover all of its costs, including but not limited to any incremental costs that NV Energy may obtain the right to recover pursuant to this Section 23, for the capacity and energy delivered or expected to be delivered to Liberty pursuant to this Agreement shall constitute a change in law or applicable regulation.

23.2 A change in the regulations of the CPUC that has the effect of causing Liberty to be unable to recover all of its costs, including but not limited to any incremental costs that NV Energy may obtain the right to recover pursuant to this Section 23, for capacity and energy delivered or expected to be delivered by NV Energy pursuant to this Agreement shall constitute a change in law or applicable regulation.

23.3 The promulgation of new legislation or regulations, or changes to existing legislation or regulations, that result in any incremental costs, for the Product delivered or expected to be delivered to Liberty pursuant to this Agreement, attributable to carbon, greenhouse gases, or climate changes shall constitute a change in law or applicable regulation, as provided under Section 21.5.

24. Warranties.

24.1 NV Energy Warranties.

- (1) NV Energy warrants that it will transfer to Liberty good title to the capacity and energy and RECs delivered to Liberty under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Delivery Points. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 24, NV ENERGY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CAPACITY AND ENERGY SUPPLIED OR TO BE MADE AVAILABLE UNDER THIS AGREEMENT.

- (2) NV Energy warrants that it will make commercially reasonable efforts consistent with Good Utility Practice to provide a continuous supply of capacity and energy to Liberty consistent with the provisions of this Agreement and at a level of service substantially similar to the level of service that it provides to its customers in Nevada.

“Good Utility Practice” means any of the practices, methods and acts engaged in or approved by a significant portion of the electric generation industry in the United States during the relevant time period, or any of the practices, methods and acts which in the exercise of reasonable judgment in light of the facts known at the time the decisions were made, could reasonably have been expected to accomplish the desired result at a commercially reasonable cost consistent with good business practices, reliability, safety and expedition. Good Utility Practice is not intended to be limited to the optimum practice, method or act to the exclusion of all others.

- (3) NV Energy further warrants that it will make commercially reasonable efforts consistent with Good Utility Practice and its then current approved Energy Supply Plan to acquire the fuel, if any, required for its generating facilities and to purchase the energy and capacity, if any, required to supplement its generation.
- (4) With respect to each renewable resource identified in the NVE Pool, which are referred to collectively as a “Project” for the purposes of this Section 24.1(4), NV Energy, and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement that: (i) the Project qualifies and is certified by the CEC as an Eligible Renewable Energy Resource (“ERR”) as such term is defined in Public Utilities Code Section 399.12 or Section 399.16; and (ii) the Project’s output delivered to Liberty qualifies under the requirements of the California Renewables Portfolio Standard. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default

if NV Energy has used commercially reasonable efforts to comply with such change in law. [STC 6].

- (5) Transfer of Renewable Energy Credits (“RECs”). NV Energy and, if applicable, its successors, represents and warrants that throughout the Delivery Term of this Agreement the renewable energy credits transferred to Liberty conform to the definition and attributes required for compliance with the California Renewables Portfolio Standard, as set forth in California Public Utilities Commission Decision 08-08-028, and as may be modified by subsequent decision of the California Public Utilities Commission or by subsequent legislation. To the extent a change in law occurs after execution of this Agreement that causes this representation and warranty to be materially false or misleading, it shall not be an Event of Default if NV Energy has used commercially reasonable efforts to comply with such change in law. [STC REC-1].
- (6) Tracking of RECs in WREGIS. NV Energy warrants that all necessary steps to allow the renewable energy credits transferred to Liberty to be tracked in the Western Renewable Energy Generation Information System will be taken prior to the first delivery under the contract. [STC REC-2].

24.2 Liberty Warranties.

- (1) Liberty warrants that it will transfer to NV Energy good title to the capacity and energy and RECs delivered to NV Energy under this Agreement, free and clear of all liens, claims, and encumbrances arising or attaching prior to the Receipt Points. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION 24, LIBERTY HEREBY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE CAPACITY AND ENERGY SUPPLIED OR TO BE MADE AVAILABLE UNDER THIS AGREEMENT.

25. **Additional Representations and Warranties.**

25.1 Each Party represents and warrants to the other Party that:

- (1) it possesses the necessary corporate (or, if applicable, limited liability company), governmental and legal authority, right and power to enter into and agree to this Agreement and to perform each and every duty imposed, and that the Parties' agreement to buy and sell capacity and energy under this Agreement represents a contract;
- (2) each of its representatives executing this Agreement is authorized to act on its behalf;
- (3) entering into this Agreement does not violate or conflict with its charter, by-laws or comparable constituent document, any law applicable to it, or any order or judgment of any court or other agency of government applicable to it or any agreement to which it is a party and that this Agreement constitutes a legal, valid and binding obligation enforceable against such Party in accordance with the terms of this Agreement;
- (4) in the case of Liberty, it is solvent; and
- (5) in the case of NV Energy, it is solvent.

25.2 On each delivery of capacity and energy and RECs under this Agreement the representation and warranty set out in Section 25.1(4) shall be deemed repeated unless written notice to the contrary is given by Liberty to NV Energy before delivery.

26. Regulatory Approval. Except for this Section 26, which became effective as of the Effective Date, the effectiveness of all of the other provisions of this Agreement is conditioned upon and shall be subject to the timely receipt of the following regulatory approvals:

26.1 FERC. NV Energy shall submit this Agreement to the FERC no later than September 1, 2015. If the FERC does not accept this Agreement for filing without modification or conditions that are materially adverse to either Party ("**FERC Approval**") by December 15, 2015, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015, after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.1

shall be deemed to have been waived. In addition, either Party may terminate this Agreement with written notice to the other Party if the FERC issues an order modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions which are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the FERC order.

- 26.2 California Public Utilities Commission. Liberty shall submit this Agreement for the approval of the CPUC within thirty (30) days of the Effective Date. If Liberty does not obtain CPUC Approval by December 23, 2015, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015; provided after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.2 shall be deemed to have been waived. In addition, either Party may terminate this Agreement with written notice to the other Party if the CPUC issues an order approving, but modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions that are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the CPUC order.

“CPUC Approval” means a final and non-appealable order of the CPUC, without conditions or modifications unacceptable to the Parties, or either of them, which contains the following terms: (a) approves this Agreement in its entirety, including payments to be made by the Liberty, subject to CPUC review of the Liberty’s administration of the Agreement; and (b) finds that any procurement pursuant to this Agreement is procurement from an eligible renewable energy resource for purposes of determining Liberty’s compliance with any obligation that it may have to procure eligible renewable energy resources pursuant to the California Renewables Portfolio Standard (Public Utilities Code Section 399.11 et seq.), Decision 03-06-071, or other applicable law. [STC 1]

- 26.3 Public Utilities Commission of Nevada. NV Energy may, in its sole discretion, submit this Agreement for an order granting final approval by the PUCN (**“PUCN Approval”**). If NV Energy does not seek PUCN Approval by August 15, 2015, this Section 26.3 shall be of no force and effect and the requirement under

this Agreement to obtain PUCN Approval shall be deemed waived. If PUCN Approval is timely sought by NV Energy and not received by December 15, 2015, either Party may terminate this Agreement with written notice to the other Party delivered by December 31, 2015, after such date if notice has not been given to terminate this Agreement, the right to terminate under this Section 26.3 shall be deemed to have been waived. In addition, if NV Energy timely seeks PUCN Approval, either Party may terminate this Agreement with written notice to the other Party if the PUCN issues an order approving, but modifying this Agreement in a manner materially adverse to the terminating-Party, approving this Agreement with conditions that are materially adverse to the terminating-Party, or rejecting this Agreement; such notice shall be delivered within thirty (30) days of the date of the PUCN order; provided the failure timely to provide such notice shall constitute a waiver of the right set forth in the preceding sentence to terminate the Agreement.

- 26.4 If either Party terminates this Agreement pursuant to this Section 26, the Parties shall execute, before December 31, 2015, an amendment to their current Services Agreement, dated April 22, 2009, as amended (“**Existing PPA**”), which shall extend the term of the Existing PPA by an additional four (4) months but not modify any of the Existing PPA’s other substantive terms or conditions.

The provisions of this Agreement other than this Section 26 will not become effective until FERC Approval, CPUC Approval, and PUCN Approval have been obtained or waived and/or until each of the deadlines for issuing a written notice of termination set forth in this Section 26 has expired without the issuance of such notice.

27. Miscellaneous.

- 27.1 Survival. Upon termination of this Agreement, any charges or other amounts due and owing under this Agreement shall be paid (including without limitation as provided in Section 3.3) and any corrections, or adjustments to payments shall be determined as soon as practicable. All indemnity obligations shall survive termination of this Agreement in accordance with their respective terms. Upon the effective date of termination of this Agreement, each Party’s obligations provided for in this Agreement will survive termination and remain in effect solely

for the purpose of complying with the provisions of this Section 27.

- 27.2 Interpretation. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of authorship of any of the provisions of this Agreement.
- 27.3 Third Party Beneficiaries. Nothing in this Agreement shall be construed to create rights in or grant remedies to any third party as a beneficiary to this Agreement.
- 27.4 Notices. All formal notices, demands or requests provided pursuant to this Agreement shall be in writing and shall be delivered in person or sent to the address shown on Exhibit E by either facsimile or overnight delivery (with record of receipt), or to those other persons or addresses as may be designated in writing by the Party to receive a notice, demand or request as described above. Operating communications and other communications of a routine nature shall be delivered by email or by telephone with email confirmation to the address shown on Exhibit E, as such information may be updated from time to time by the Parties.
- 27.5 Compliance with Law. The obligations of the Parties under this Agreement shall be subject to and the parties shall comply with laws, rules and regulations of duly constituted authorities having jurisdiction over the Parties.
- 27.6 Waivers. No failure or delay on the part of a Party in exercising any of its rights under this Agreement or in insisting upon strict performance of provisions of this Agreement, no partial exercise by either Party of any of its rights under this Agreement, and no course of dealing, usage of trade or course of performance between the Parties shall constitute a waiver of the rights of either Party under this Agreement. Any waiver shall be effective only by a written instrument signed by the Party granting such waiver, and such shall not operate as a waiver of, or estoppel with respect to, any subsequent failure to comply therewith. The remedies provided in this Agreement are cumulative and not exclusive of any remedies provided by Law.
- 27.7 Assignment. This Agreement may be assigned by either Party only with the written consent of the other Party; provided, that

either Party may assign this Agreement without the consent of the other Party to any affiliate with an equal or greater credit rating and with the legal authority and operational ability to satisfy the obligations of the assigning Party under this Agreement or to a party that acquires substantially all of the assets of such Party.

Any attempted assignment that violates this Section 27.7 is void and ineffective. No assignment of a Party's rights or obligations under this Agreement, nor any consent thereto, shall relieve such Party of its obligations and liabilities under this Agreement (except in the case of an assignment to a party acquiring substantially all of the assets of the assigning Party), nor shall any such assignment expand any obligations of the non-assigning Party. Where required, consent to assignment will not be unreasonably withheld, conditioned or delayed.

27.8 Other Agreements. Nothing in the Agreement is intended to modify, supersede or otherwise alter any other agreements between the Parties. However, to the extent a conflict exists between the provisions of this Agreement and any other agreement between the Parties the provisions of this Agreement shall prevail

27.9 Governing Law and Venue.

(1) Governing Law. This Agreement and the rights and duties of the Parties hereunder shall be governed by and construed, enforced and performed in accordance with the laws of the state of California, without regard to principles of conflicts of law. To the extent enforceable at such time, each Party waives its respective right to any jury trial with respect to any litigation arising under or in connection with this Agreement. [STC 17]

(2) Venue. Each Party hereto irrevocably submits to the exclusive jurisdiction of the federal and state courts (subject to the following) located in the State of Nevada, waives any objection which it may have to the laying of venue of any proceedings brought in any such court, and waives any claim that such proceedings have been brought in an inconvenient forum; and agrees that any and all claims, controversies or disputes arising from or relating to this Agreement

will be submitted in the federal courts of Nevada located in Reno for resolution; provided, however, that in the event jurisdiction may not be had in federal court, then the Parties agree to submit any and all such disputes, claims or controversies to state district courts of Nevada located in Reno, provided further, however, that if litigation is brought by a third party in another jurisdiction that requires that this Agreement be construed in that litigation, nothing herein shall require that a separate proceeding be brought in Nevada.

27.10 California Public Utilities Commission Renewable Portfolio Standard Required Terms and Conditions. The Parties agree that in the event there is a conflict between the terms of this Agreement and the CPUC's standard terms and conditions required to be in contracts to purchase energy eligible to satisfy a utility's renewable portfolio standard procurement requirements, which are identified throughout this Agreement as [STCs], the CPUC's standard renewable portfolio standard terms and conditions shall control.

27.11 Amendments. This Agreement may not be amended, modified or changed in any respect except by a writing executed by the Parties with the same formalities as this Agreement. .

27.12 Transmission Provider. The Parties acknowledge that as of the Effective Date, the NV Energy and the Transmission Provider are the same legal entity, and further acknowledge that in accordance with FERC regulations relating to open-access transmission, NV Energy's transmission function employees are required to function independently of NV Energy's marketing function employees. Each Party conducts and shall conduct its operations in a manner intended to comply with FERC Order No. 717, Standards of Conduct for Transmission Providers, and its progeny, and the associated implementing regulations. Moreover, the Parties acknowledge that Transmission Provider's transmission function offers transmission service on its system in a manner intended to comply with FERC policies and requirements relating to the provision of open-access transmission service. The Parties recognize that Liberty will enter into an interconnection agreement with the Transmission Provider for each of the Liberty Renewable Projects. References

to the “Transmission Provider” relate to NV Energy in its capacity as the owner/operator of the transmission system, and references to “NV Energy” relate to Sierra Pacific Power Company outside of and separate from its capacity as the owner/operator of the transmission system. This Agreement is not binding upon the Transmission Provider. Notwithstanding any other provision in this Agreement, nothing in the Interconnection Agreement, any interconnection agreement for the Liberty Renewable Projects, nor any other agreement between Liberty on the one hand and the Transmission Provider on the other hand, nor any alleged event of default thereunder, shall alter or modify the Parties’ rights, duties, and obligation under this Agreement. This Agreement shall not be construed to create any rights and/or obligations between Liberty and the Transmission Provider. Liberty acknowledges that NV Energy, is acting in its merchant capacity function, has no responsibility for or control over the Transmission Provider, and is not liable for any breach of agreement or duty by the Transmission Provider; provided that nothing in this Agreement waives any rights or remedies Liberty has against the Transmission Provider under any other agreement and nothing in this Agreement exempts or excuses from performance any obligations the Transmission Provider owes Liberty.

- 27.13 Forward Contracts. The Parties acknowledge and agree that this Agreement and all transactions under this Agreement are forward contracts and that the Parties are forward contract merchants, as those terms are used in the United States Bankruptcy Code.
- 27.14 Severability. If any of the provisions of this Agreement, or the application of such provisions, are held invalid by any court, regulatory agency, or other regulatory body having jurisdiction, all of the other provisions of this Agreement shall remain in force and effect unless a court, regulatory agency or other regulatory body having jurisdiction holds that the provisions are not separable from all of the other provisions of this Agreement.
- 27.15 Relationship of Parties. Nothing in this Agreement shall be construed to create an association, joint venture, trust, partnership, or agency relationship between the Parties or to impose a trust or partnership covenant, obligation, or liability on or with regard to any of the Parties. Each Party shall be individually responsible for its own covenants, obligations, and liabilities under this Agreement.

27.16 Complete Agreement. This Agreement and the Exhibits attached hereto shall constitute the full and complete agreement between the Parties with respect to the transactions under this Agreement commencing as of the Effective Date and continuing until the end of the Delivery Term and supersedes all prior agreements and representations by the Parties with respect to such subject matter whether written or oral.

27.17 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.

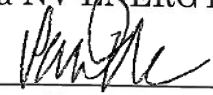
[Signatures on following page.]

IN WITNESS WHEREOF, the Parties have entered into this Second Amended Service Agreement as of the date first written above.

LIBERTY UTILITIES (CALPECO
ELECTRIC) LLC

By: _____
Name: Gregory S. Sorensen
Title: President

SIERRA PACIFIC POWER CO.
d/b/a NV ENERGY

By:  _____
Name: Paul Caudill
Title: President


By: _____
Name: Richard Salgo
Title: Vice President - Operations

{Signature Page to Second Amended Service Agreement}

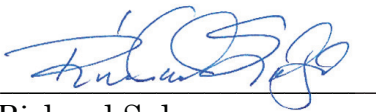
IN WITNESS WHEREOF, the Parties have entered into this Second Amended Service Agreement as of the date first written above.

LIBERTY UTILITIES (CALPECO
ELECTRIC) LLC

SIERRA PACIFIC POWER CO.
d/b/a NV ENERGY

By: 
Name: Gregory S. Sorensen
Title: President

By: _____
Name: Paul Caudill
Title: President

By: 
Name: Richard Salgo
Title: Vice President - Operations

{Signature Page to Second Amended Service Agreement}

EXHIBIT A TERRITORY

A.1 Territory: The Territory shall include Parcel 1 and Parcel 2, as described below and as such parcels may be amended. Customers within the Territory shall include (i) customers in Parcel 1 and Parcel 2, (ii) any Nevada retail electric customer served by Liberty pursuant to the Borderline Customer Agreement, and (iii) the PG&E load served through the PG&E Agreement as of the Effective Date.

Parcel 1

The boundary line of the area is defined as beginning at the Southwest corner of Section 34, T20N, R13E. Thence Easterly along the Northern boundary of T19N to the Northeast corner of Section 1, T19N, R14E; thence Southerly to the Southeast corner of Section 1, T19N, R14E; thence Easterly to the Southwest corner of Section 34, T20N, R15E; thence Northerly to the Northwest corner of Section 3, T20N, R15E; thence in an Easterly direction to the Southwest corner of Section 34, T21N, R15E; thence Northerly to the Northwest corner of Section 22, T21N, R15E; thence Easterly to the Southeast corner of the SW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 13, T21N, R15E; thence Northerly to the Northeast corner of the NW $\frac{1}{4}$ of the SW $\frac{1}{4}$ of Section 12, T21N, R15E; thence Easterly to the center point of Section 8, T21N, R16E; thence in a Northerly direction to the Plumas-Sierra County line; thence Easterly to the Northeast corner of Section 4, T21N, R17E; thence Southerly to the Southeast corner of Section 33, T21N, R17E; thence Easterly to the Southeast corner of Section 36, T21N, R17E; thence in a Northerly direction to the Northeast corner of Section 36, T21N, R17E; thence Easterly to the California-Nevada State line.

(That portion of boundary line described above contiguous to territory served by Plumas-Sierra Rural Electric Cooperative as certified to them in Metes & Bounds Description by CPUC Decision #47989.)

Thence Southerly along the California-Nevada State line to its intersection with the North line of T7N. Thence Westerly along said North line of T7N (as described in Mono County Ordinance No. 188, CPUC Decision #39846) to the Alpine-Mono County line. Thence continuing along the North line of T7N to the summit of the Sierra Nevada Mountains. Thence Northwesterly along the summit of the Sierra Nevada Mountains to the Alpine-El Dorado County line. (Alpine County Ordinance No. 146.) Thence continuing along the summit of the Sierra Nevada Mountains across the counties of El Dorado and Placer to a point on the Placer-Nevada County line. (El Dorado County Ordinance No. 99, Placer County Ordinance No. 41.) Thence Easterly along the said Placer-Nevada County line to a point on the Easterly line of Section 16, T17N, R15E,

said point being approximately 575 feet North of the Southeast corner of Section 16, T17N, R15E. Thence North to the boundary line between T17N and T18N. Thence Westerly along the said boundary line to the boundary line between R14E and R15E. Thence North four miles to the Southeast corner of Section 13, T18N, R14E. Thence West 6 miles to the boundary line between R13E and R14E. Thence North 2 miles along the said boundary line to intersect the common boundary between Sierra and Nevada Counties. Thence Westerly along the said Sierra-Nevada County line to its intersection with the Westerly line of Section 3, T18N, R13E. Thence Northerly along the West lines of Section 3, T18N, R13E and Sections 34, 27, 22, 15, 10 and 3, T19N, R13E to the Southwest corner of Section 34, T20N, R13E to the point of beginning (CPUC Decision No. 74631). Excluding there from that area in Nevada and Placer Counties served by the Truckee Donner Public Utility District and described as follows:

Beginning at the Northeast corner of Section 32, T18N, R17E, MDB&M; thence Southerly approximately 4 miles along the East line of the following Sections: Section 32, T18N, R17E, Sections 5, 8 and 17, T17N, R17E, to the intersection of said East line of Section 17, T17N, R17E, with the Placer-Nevada County line; thence Westerly 4 miles more or less along said County line to its intersection with the East line of Section 15, T17N, R16E; thence Southerly approximately 305 feet along the East section line of said Section 15 to the Southeast corner of Section 15, T17N, R16E; thence Westerly along the South section line of said Section 15 for approximately 1 mile, to the Southwest corner of Section 15; thence Northerly for approximately 305 feet along the West section line of Section line of Section 15, T17N, R16E, to its intersection with the Placer-Nevada County line; thence Westerly along said County line for approximately 6 miles to its intersection with the West section line of Section 15, T17N, R15E; thence Northerly 4 miles more or less along the West line of the following sections: Sections 15, 10 and 3, T17N, R15E, Section 34, T18N, R15E, to the Northwest corner of said Section 34; thence Easterly 11 miles more or less along the North line of the following sections: Sections 34, 35 and 36, T18N, R15E, Sections 31, 32, 33, 34, 35 and 36, T18N, R16E and Sections 31 and 32, T18N, R17E, MDB&M, to the point of beginning. (CPUC Decision #72862.)

Parcel 2

That area bounded by the following described line, as excluded from the area certificated to Plumas-Sierra Rural Electric Cooperative by CPUC Decision #47989.

Beginning at the Northwest corner of the NE $\frac{1}{4}$ of Section 34, T23N, R13E; thence in an Easterly direction to Northeast corner of Section 36, T23N, R13E; thence Northerly to the Northwest corner of Section 30, T23N, R14E;

thence Easterly to the Northeast corner of Section 30, T23N, R14E; thence Southerly to the Southeast corner of Section 6, T22N, R14E; thence Westerly to the Southwest corner of Section 6, T22N, R14E; thence Southerly to the Southeast corner of Section 12, T22N, R13E; thence Westerly to the Southwest corner of the SE $\frac{1}{4}$ of Section 10, T22N, R13E; thence Northerly to the Northwest corner of the NE $\frac{1}{4}$ of Section 34, T23N, R13E, to the point of beginning.

Above described area is a part of the area certificated to the Sierra Pacific Power Company by CPUC Decision #20700, Plumas County Ordinance No. 180.

EXHIBIT B DELIVERY POINTS

The Delivery Points contained in this Exhibit B will be updated, as necessary, to reflect any changes in Delivery Points during the Delivery Term.

B.1 Delivery Points: The following Delivery Points shall be applicable to the Agreement:

Delivery Point (Line)	Location	Meter Number	Nominal Voltage (kV)	Loss Adjustment Factor
Silver Lake 257A	Pole 232181	211331	24.9	1.0629
Silver Lake 257B	Pole 219597	211333	24.9	1.0629
Farad/Washoe 201	Pole 202195	183236	24.9	1.0629
Cal 204 Dog Valley Rd	Pole 91561	183233	24.9	1.0629
Cal Sub 204	Pole 284915	183223	24.9	1.0629
Cal 204 Trelease Ln	Pole 186237	211332	24.9	1.0629
Brockway 5100	Pole 115527	183237	14.4	1.0629
Brockway 4202	Pole 281453	183238	14.4	1.0629
Roundhill 2101	Pole 109508	183245	14.4	1.0629
Kings Beach 5105	In Sub	183239	14.4	1.0629
Kings Beach 5205	In Sub	183240	14.4	1.0629
Kingsbury 2800A	Pole 123122	183246	14.4	1.0629
Kingsbury 2800C	OS 28-24	183249	14.4	1.0629
Stateline 2200	Pole 131416	183241	14.4	1.0629
Stateline 2300A	Pole 275570	183242	14.4	1.0629
Stateline 2300B	Pole 131632	183243	14.4	1.0629
Muller 1296	Pole 256014	183234	12.47	1.0629
Topaz 1261	Pole	183235	12.47	1.0629

	160716			
Truckee 7202	Pole 203811	183250	14.4	1.0629
Truckee 7203	Pole 59301	183251	14.4	1.0629
Glenshire 7400 - Strand	Pole 5190	183252	14.4	1.0629
621 Truckee-North Truckee	621L Switch	183230	60	1.0157
619 Line @ Russell Valley	Pole 232433	211329	60	1.0157
619 Line @ Prosser	In Sub	211326	60	1.0157
619 Line @ Marble	619L Switch	183231	60	1.0157
619 Line @ Stampede Sub	In Sub	208429	60	1.0157
619 Line @ Cemetery	Pole 206927	183228	60	1.0157
619 Line @ Hobart	Pole 269794	183229	60	1.0157
619 Line @ Sierra Brooks	In Sub	183227	60	1.0157
132 Line @ Martis	Pole 240656	183232	120	1.0157
650 Truckee-Kings Beach	In Sub	183222	60	1.0157
609 Truckee-Squaw Valley	In Sub	183221	60	1.0157
608 Truckee-Glenshire	In Sub	183220	60	1.0157
634 Stateline-Buckeye	In Sub	183225	60	1.0157
111 Meyers-Buckeye	In Sub	183224	120	1.0157
160 Roundhill-Stateline	In Sub	183226	120	1.0157
619 Line @ Loyalton (1)	In Sub	204365	60	1.0157
Stampede Hydros (1)	WAPA's	161541	60	1.0157

- (1) The Loyalton facility is a biomass generating plant operated by SPI Loyalton. The Stampede Hydros are hydro units operated by the Western Area Power Administration. When these units are not generating and they need station service, they receive that service from Liberty as retail customers.

B.2 Loss Adjustment Factors for Delivery Points. Loss Adjustment Factors shall be determined using the loss factors and methodologies contained in Schedule 10 ("Loss Compensation Service") and Attachment M ("Distribution Loss Factor") of the OATT. Loss Adjustment Factors will be revised whenever the loss factors in either Schedule 10 or Attachment M of the OATT are revised.

EXHIBIT C CONTRACT DEMAND

C.1 Unless otherwise adjusted in accordance with the provisions of this Exhibit C, the Contract Demand for each month shall be:

Month	Contract Demand (kW)
January	120,275
February	110,093
March	97,548
April	89,853
May	76,709
June	69,599
July	73,917
August	74,293
September	65,231
October	77,708
November	107,614
December	140,336

C.2 If the Coincident Demand for a calendar month exceeds the Contract Demand for that calendar month, the Contract Demand shall be increased to the amount of the Coincident Demand. The increased Contract Demand shall be effective until the end of the Delivery Term.

For greater clarification, an example of the process set forth in this Exhibit C is shown in the table below. For simplicity, only the month of January is shown.

Month	Year	Contract Demand (kW)	Coincident Demand (kW)	Ending Contract Demand (kW)
January	2016	110,956	109,000	110,956
January	2017	110,956	116,000	116,000
January	2018	116,000	115,500	116,000

where, in the example above, (i) the Contract Demand for each year (2017 and 2018) equals the ending Contract Demand for the prior year (2016 and 2017, respectively), and (ii) the ending Contract Demand for each year (2016, 2017, and 2018) is the greater of the Contract Demand and the Coincident Demand for that year.

EXHIBIT D

RATES AND CHARGES

D.1 Demand Rate. The monthly Demand Rate shall be \$9.37 per kW. The Demand Rate shall otherwise be fixed during the Delivery Term, unless modified pursuant to Section D.6 of this Exhibit D.

D.2 Transmission Rate. The initial monthly Transmission Rate shall be \$2.735 per kW. The Transmission Rate consists of \$2.650 /kW for Network Integration Transmission Service ("**NITS**") and \$0.085 /kW for Scheduling, System Control, and Dispatch Service ("**Scheduling Service**"). The Transmission Rate shall be adjusted any time the rates for NITS or Scheduling Service in the OATT are adjusted. If the OATT rate adjustments are implemented subject to refund, the adjustment to Transmission Rate shall also be subject to refund.

D.3 Energy Rate. On or before the thirtieth (30th) day prior to the commencement of each calendar quarter of the Delivery Term, NV Energy shall provide Liberty with written notice of the Energy Rate to be used during that quarter. The Energy Rate shall be developed using NV Energy's best estimate of the cost of fuel and purchased power for the quarter and consistent with the calculation methodology described in Section D.5 of this Exhibit D.

D.4 Energy Charge Adjustment. Beginning with the invoice for the second calendar month of the Delivery Term, an Energy Charge Adjustment will be included to provide a true-up of the Energy Charge from the previous calendar month to the actual costs for the previous calendar month.

The "**Energy Charge Adjustment**" will be equal to (i) the Monthly Energy times the difference between the True-up Rate, as defined below, and the Energy Rate plus (ii) the incremental costs, if any, attributable to Excess Demand.

The "**True-up Rate**" shall be calculated using actual costs for the calendar month and the calculation methodology described in Section D.5 of this Exhibit D.

If the Energy Charge Adjustment is positive, NV Energy shall include the amount of the Energy Charge Adjustment as a charge on the invoice; if the Energy Charge Adjustment is negative, NV Energy will include a credit on the invoice in the amount of the Energy Charge Adjustment.

Within forty-five (45) days after the end of the Delivery Term, NV Energy will calculate a final Energy Charge Adjustment for the final calendar month of the Delivery Term. If the final Energy Charge Adjustment is positive, NV Energy will submit an invoice to Liberty, and Liberty shall pay NV Energy the amount of the final Energy Charge Adjustment within twenty (20) days of Liberty's receipt of the invoice; if the final Energy Charge Adjustment is negative, NV Energy will submit a credit note to Liberty and pay Liberty the amount of the final Energy Charge Adjustment within twenty (20) days of its delivery of the credit note.

D.5 Energy Rate Calculations. The Energy Rate and the True-up Rate will be determined using the following methodology, where "Rate" is the Energy Rate or True-up Rate, as applicable:

$$\text{Rate} = (1 - \text{RP}) * \left[\frac{\text{Net F \& PP Cost} - \text{Renewable Cost}}{\text{Net System MWh} - \text{Renewable MWh}} \right] + \text{RP} * \text{Renewable Rate}$$

where:

"Net F&PP Cost" is the total net system fuel and purchased power cost for NV Energy, excluding (i) the cost for any purchased power contracts from coal-fired resources and (ii) the cost for the North Valmy units. Net fuel and purchased power costs shall include costs in FERC accounts 501, 547, 555, and 565, less revenues received from non-requirements sales for resale in FERC account 447.

"North Valmy" is the coal-fired generating station located in Valmy, Nevada.

"Renewable Cost" is the total cost for renewable energy purchased by NV Energy.

"Net System MWh" is the total system energy produced and purchased by NV Energy, excluding (i) the energy for any purchased power contracts from coal-fired resources and (ii) the energy for the North Valmy units, less energy for non-requirements sales for resale.

"Renewable MWh" is the total renewable energy purchased by NV Energy.

"RP" is the Renewable Percentage for the applicable calendar year.

"Renewable Rate" shall be the weighted average cost per MWh of the renewable energy delivered to NV Energy from the NVE Pool.

D.6 Additional Rate Adjustments. NV Energy is entitled to adjust one or more of the rates in this Agreement if NV Energy incurs or is expected to incur any costs (i) that are not reflected in the then current rates and charges or captured by the adjustment mechanisms of Sections D.1 through D.5, and (ii) that are attributable to the capacity and energy that will be provided to Liberty pursuant to this Agreement, including without limitation costs arising from the circumstances set out in Section 12, Section 21 or Section 23 of this Agreement.

If the Demand Rate, the Transmission Rate, the Energy Rate or the Distribution Charge are or is adjusted in accordance with the provisions of Section 12, Section 21, Section 23 or this Exhibit D, the adjusted rate(s) and/or charges shall be applicable to this Agreement.

NV Energy shall have the right to make any filing with FERC or any other duly constituted regulatory, administrative or judicial body with respect to any rate adjustment provided for in this Agreement. Liberty shall have the right to protest any such filing by NV Energy to the extent the adjustment to which such filing relates is not permitted, in scope or amount, by this Agreement, and to participate fully in any such proceeding in which such modifications may be considered. Liberty shall not otherwise protest any such proceeding.

EXHIBIT E

CONTACT INFORMATION

NV Energy:

a) Notices

Address: Sierra Pacific Power Company d/b/a NV Energy
Attn: Senior Vice President, General Counsel & Corporate Secretary

Mailing: P.O. Box 98910, M/S 2
Las Vegas, Nevada 89151

Physical: 6226 West Sahara Avenue, M/S 2
Las Vegas, Nevada 89146

Phone: (702) 402-5670
Fax: (702) 402-2069
E-mail: dcannon@nvenergy.com

b) Wire Transfers

ABA Routing Number 121000248

Bank Name: Wells Fargo Bank

City: San Francisco

Account Name: Sierra Pacific Power Company

Text:

Bank Contact: Becky Ramirez [phone: (702) 791-6461]

Company Contact: Debbie Hemstreet [phone: (702) 402-1683]

c) Contract Representative

Address: Manager Energy Supply Contract Administration
Sierra Pacific Power Company d/b/a NV Energy

Mailing: P.O. Box 98910, M/S 26A
Las Vegas, Nevada 89151

Physical: 6226 West Sahara Avenue, M/S 26A
Las Vegas, Nevada 89146

Phone: (702) 402-5667
Fax: (702) 402-2455
E-mail: vburton@nvenergy.com

Liberty:

a) Notices

Address: Liberty Utilities (CalPeco Electric) LLC
Attn: President

Mailing: P.O. Box 107
Tahoe Vista, California 96148

Physical: 701 National Ave.
Tahoe Vista, California 96148

Phone: (530) 543-5264
Fax: (530) 546-1715
E-mail: michael.smart@libertyutilities.com

with a copy to:

Algonquin Power & Utilities Corp.
Attn: Chief Legal Counsel
354 Davis Road
Oakville, Ontario L6J 2X1

with an additional copy to:

Davis Wright Tremaine LLP
Attn: Steven F. Greenwald
505 Montgomery Street, Suite 800
San Francisco, CA 94111
Fax: (415) 276-6599

b) Wire Transfers

[Information for this section to be provided by Liberty prior to first day of the Delivery Term]

c) Contract Representative

[Information for this section to be provided by Liberty prior to the first day of the Delivery Term]

EXHIBIT F FORM OF GUARANTEE

GUARANTEE of LIBERTY UTILITIES CO.

This GUARANTEE executed as of this _____ day of _____, 2015 (the "Effective Date") is made by Liberty Utilities Co., a corporation organized under the laws of Delaware (the "Guarantor"), for the benefit of Sierra Pacific Power Company d/b/a NV Energy, a corporation created under the laws of the Nevada (the "Guaranteed Party") (with the Guarantor and the Guaranteed Party referred to as the "Parties").

WHEREAS the Guaranteed Party and Liberty Utilities (CalPeco Electric) LLC, a California limited liability company (the "Company") have entered into a Service Agreement for the purpose of providing Company with energy and capacity (the "Agreement");

WHEREAS the Company is a subsidiary of the Guarantor and it is in the interests of the Guarantor that the Guaranteed Party enter into the Agreement with the Company and therefore the Guarantor has agreed to guarantee the financial obligations of the Company under the Agreement in accordance with and subject to the terms and conditions of this Guarantee with effect from the date of the Agreement and the Guarantor is prepared to issue this Guarantee to the Guaranteed Party, which would not otherwise enter into the Agreement;

NOW, THEREFORE, to induce the Guaranteed Party to enter into the Agreement and in consideration of the Guaranteed Party entering into the Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Guarantor agrees as follows:

1. **Guarantee.** Subject to the terms of this Guarantee, and in consideration of Guaranteed Party entering into the Agreement, the Guarantor irrevocably and unconditionally guarantees to the Guaranteed Party the prompt and complete payment when due of all amounts to be paid by the Company to the Guaranteed Party under the Agreement and any replacements therefore, extensions or renewals thereof or amendments thereto (collectively or individually, the "**Obligations**"). For greater certainty, the Guarantor's obligations and liability under this Guarantee (i) shall be limited to payment obligations only and the Guarantor shall have no obligation to perform under the Agreement, including, without limitation, to sell, buy, deliver, receive, supply or transport gas, electricity or any other commodity and (ii) extend only to Guarantor and do not obligate or commit any direct or indirect subsidiary or affiliate of Guarantor or any other person or entity or any assets thereof. If the Company fails

to pay any Obligations for any reason, then the Guarantor shall pay or cause to be paid such Obligations within three (3) days of the Guaranteed Party's demand therefore and without the Guaranteed Party having to make prior demand on the Company, provided any relevant grace periods under the terms of the Agreement shall have lapsed. All payments made under this Guarantee shall be made without set-off or counterclaim except to the extent that the Company or any affiliate of the Guarantor would have been entitled to similar rights and defenses in respect to such Obligations under the Agreement.

2. **Guarantee Limit.** Notwithstanding any other provision of this Guarantee, the obligations and liabilities of the Guarantor hereunder shall not exceed in the aggregate US\$7,500,000.00 (SEVEN MILLION FIVE HUNDRED THOUSAND US DOLLARS) (the "**Guarantee Limit**"). Guarantor's liability hereunder shall be further limited to direct, actual, monetary damages arising from nonpayment of the Agreement; in no event shall Guarantor be subject to consequential, special, exemplary, equitable, punitive, multiple, lost profits, tort or any other damages. The foregoing notwithstanding, Guarantor shall be responsible to reimburse Guaranteed Party for Guaranteed Party's reasonable attorney's fees or costs incurred in enforcing its rights under this Guarantee in good faith, provided, that, Guarantor shall not be responsible to make such reimbursement if such enforcement action is not successful.
3. **Guarantor's Obligations Not Modified.** The Guarantor's obligations under this Guarantee shall not be released or discharged notwithstanding:
 - (a) a waiver by the Guaranteed Party of the Company's performance of any Obligations or a waiver of the Company's default under the Agreement except to the extent, if at all, any such waiver constitutes a valid defense to the Company under the Agreement;
 - (b) the extension of time for payment of any Obligations or the amendment, extension or renewal of the Agreement or any Obligations;
 - (c) any delay or failure by the Guaranteed Party to enforce or exercise any right or remedy under the Agreement or waiver by the Guaranteed Party of any such right or remedy;
 - (d) any transfer, assignment or mortgaging by the Company or the Guaranteed Party of any interest in the Agreement or this

Guarantee;

- (e) the release or discharge of the Company from the observance of any Obligations other than by performance or by consent of or release by the Guaranteed Party;
 - (f) the voluntary or involuntary liquidation, dissolution, sale or other disposition of all or substantially all of the assets and liabilities, or the voluntary or involuntary receivership, insolvency, bankruptcy, assignment for the benefit of creditors, reorganization, composition or other similar proceeding affecting the Company;
 - (g) any merger, amalgamation, arrangement, consolidation or other reorganization to which the Company, Guarantor or any related entity is a party, or any direct or indirect sale or disposition of Guarantor's or the Company's assets or Guarantor's direct or indirect ownership of the Company;
 - (h) the release, acceptance or disposal of any collateral held by the Guaranteed Party as security for any of the Obligations; or
 - (i) the lack of authority of Guarantor, invalidity, unenforceability or illegality, in whole or in part, of the Agreement or other documents held by the Guaranteed Party creating, representing or evidencing the Obligations.
 - (j) if any payment of Obligations under the Agreement is rescinded for any reason, the Guarantor shall remain liable as if such payment had not been made.
4. **Amendments to the Agreement.** The Guarantor is aware of the terms of the Agreement and agrees that the Agreement may be amended, replaced, renewed or extended by the Guaranteed Party and the Company without notice to or the consent of the Guarantor and that the Guarantor's obligations hereunder shall continue in force with respect to the Agreement as so amended, provided that, for greater certainty, the Guarantee Limit set out in Section 2 may not be increased nor the Term set out in Section 10 be extended without the prior written agreement of the Guarantor.
5. **Waivers by Guarantor.** The Guarantor waives demand or presentment for payment to the Company or the making of any protest, notice of the amount of the Obligations outstanding at any time, notice of nonpayment or failure to perform on the part of the Company, notice of any amendment, modification or waiver of or under the Agreement, dishonor, acceptance and all other notices or demands not specifically

required under this Guarantee.

6. **No Requirement to Exhaust Remedies.** The Guaranteed Party shall not be required to make demand on or file suit against the Company or any other party to attempt to collect payment or enforce performance of any Obligations from the Company or any other party, to foreclose against any security now or hereafter existing for the Obligations or to exercise or exhaust any other right or remedy to which the Guaranteed Party may be entitled prior to enforcing this Guarantee.
7. **Subrogation.** The Guarantor agrees not to exercise any rights that it may acquire by way of subrogation or indemnity in respect of this Guarantee until all of the Obligations have been paid in full, other than the right to assert rights and defenses that the Company may be entitled to under the Agreement as provided for in Section 9 of this Guarantee. Subject to the foregoing, upon payment of all Obligations related to the Agreement, the Guarantor shall be subrogated to the rights of the Guaranteed Party against the Company and the Guaranteed Party agrees to take, at the Guarantor's expense, such steps as the Guarantor may reasonably request to implement such subrogation.
8. **Representations and Warranties.** The Guarantor hereby represents and warrants, and so long as this Guarantee remains in effect shall be deemed continuously to represent and warrant that:
 - (a) it is a corporation organized, validly existing and in good standing under the laws of the State of Delaware;
 - (b) the execution, delivery and performance by the Guarantor of this Guarantee are within its powers, have been duly authorized by all necessary action and do not violate the Guarantor's constating documents or any law, order or contractual restriction binding on the Guarantor;
 - (c) no consents of or filings with any governmental authority or any other person are required for the execution, delivery, performance or enforceability of this Guarantee, except those that have been duly obtained or made; and
 - (d) this Guarantee has been duly authorized, executed and delivered by the Guarantor and constitutes its legal, valid and binding obligations, enforceable against it in accordance with its terms (except as enforceability may be limited by bankruptcy, insolvency, moratorium and other similar laws affecting enforcement of creditors' rights in general and general principles of equity).

9. **Setoff and Counterclaim.** The Guarantor shall be entitled to assert all rights and defenses that the Company may be entitled to under the Agreement, including, but not limited to, any setoff or counterclaims that the Company or any other affiliate of the Guarantor is or may be entitled to.
10. **Termination.** This Guarantee shall terminate on the earlier of either the effective time of termination or expiration of the Agreement or any outstanding Obligations thereunder or the posting by Company of Adequate Assurance pursuant to Section 18.2 of the Agreement to Guaranteed Party in the amount of US\$7,500,000.00 (SEVEN MILLION FIVE HUNDRED THOUSAND US DOLLARS); such termination shall not affect, in any manner, rights arising under this Guarantee with respect to Obligations which shall have been created, incurred, contracted or assumed under the Agreement prior to the applicable termination time, (the “**Term**”).
11. **Notice.** All notices called for in this Guarantee shall be in writing and shall be considered as having been given if delivered by hand against receipt, by registered or certified mail, or by e-mail or facsimile, provided that confirmation of receipt is obtained. The date of delivery of any such notice shall be the earlier of (i) the date of actual receipt, or (ii) four (4) Business Days after such notice is sent by registered or certified mail, or (iii) the date such notice is sent by e-mail if sent before or during the Guaranteed Party’s regular business hours or (iv) the following Business Day if such notice is sent by e-mail after the Guaranteed Party’s regular business hours. Notice shall be sent to the Guarantor and Guaranteed Party as follows (or such other address that the Guarantor or Guaranteed Party may provide, in writing, from time to time):

Liberty Utilities Co.
345 Davis Rd, Suite 100
Oakville, ON L6J 2X1
Attention: Treasury Department
email: credit_dept@algonquinpower.com
phone: 905-465-4500
fax: 905-465-4514

Sierra Pacific Power Company d/b/a NV Energy
6226 W. Sahara
Attention: [*]
email: [*]
phone: [*]
fax: [*]

12. **Miscellaneous.**

- (a) No provision of this Guarantee may be amended or waived except by a written instrument executed by Guarantor and the Guaranteed Party. Notwithstanding the foregoing, from time-to-time the Guarantee Limit specified in Section 2 may be increased and/or the Term specified in Section 10 may be extended, by written instrument executed by the Guarantor only.
- (b) Neither the Guarantor nor the Guaranteed Party may assign its rights, interests or obligations hereunder without the prior written consent of the Guaranteed Party or the Guarantor, as the case may be, with such consent not to be unreasonably withheld, and any purported assignment absent such consent is void. Notwithstanding the foregoing, the Guaranteed Party may assign its right, interest or obligations hereunder to any resulting or successor entity due to reorganization, incorporation, or reconstitution into or as, another entity. The Guaranteed Party shall give written notice to the Guarantor of such assignment. Notwithstanding the foregoing, the Guarantor may assign its right, interest or obligations hereunder to any resulting or successor entity due to reorganization, incorporation, or reconstitution into or as, another entity, provided that such resulting entity shall have a credit rating equal to or higher than the Guarantor on the date of such assignment. The Guarantor shall give written notice to the Guaranteed Party of such assignment. Upon assignment pursuant to the terms and conditions of this clause, this Guarantee shall bind and benefit the successors and assigns of the Guarantor or the Guaranteed Party, as the case may be.
- (c) This Guarantee shall be governed by, and construed in accordance with, the laws of the State of New York.
- (d) Business Day shall be any day, other than Saturday or Sunday, excluding Federal Banking Holidays in the United States of America.
- (e) It is intended that all provisions of this Guarantee shall be fully binding and effective between the Parties, but in the event that any particular provision or provisions or a part of one is found to be void, voidable or unenforceable for any reason whatever, then the particular provision or provisions, or part thereof shall be deemed severed from the remainder of this Guarantee and all

other provisions shall remain in full force.

- (f) Descriptive headings are inserted solely for convenience of reference, do not form part of this Guarantee, and are not to be used as an aid in the interpretation of this Guarantee.

IN WITNESS WHEREOF, Liberty Utilities Co. has executed this Guarantee as of the Effective Date.

LIBERTY UTILITIES CO.

Name:

Title:

Name:

Title:

EXHIBIT G
FORM OF LETTER OF CREDIT

IRREVOCABLE NON-TRANSFERABLE STANDBY LETTER OF CREDIT
DATE OF ISSUANCE: _____

TO: Beneficiary

Sierra Pacific Power Company d/b/a NV Energy

c/o NV Energy, Inc.

6226 West Sahara Avenue

Las Vegas, Nevada 89146

Attn: [Corporate Senior Vice President & General Counsel]

Re: Letter of Credit No. _____

We hereby establish our Irrevocable Non-Transferable Standby Letter of Credit ("Letter of Credit") in your favor as Beneficiary for the account of Liberty Utilities (CalPeco Electric) LLC, a California limited liability company (the "Account Party"), for the aggregate amount not exceeding _____ United States Dollars (\$_____), available to you at sight upon demand at the counters of [Insert name of issuing bank] ("Issuing Bank") located at [Insert U.S. Location here] on or before the expiration hereof against presentation to us of the following statement, dated and purportedly signed by an authorized signer of the Beneficiary:

"The amount of this drawing USD _____ under your Letter of Credit No. _____ represents funds due us in connection with an Event of Default (as defined in the Service Agreement dated as of _____, 2015 by and between Beneficiary and Account Party, as the same may have been amended (the "Agreement")) that has occurred and is continuing as of the date of this statement with respect to Account Party under the Agreement."

The amount which may be drawn by you under this Letter of Credit shall be automatically reduced by the amount of any drawings paid through the Issuing Bank referencing this Letter of Credit No. _____. Partial drawings are permitted hereunder.

This Letter of Credit shall expire no more than one year after the initial issuing date, but shall automatically extend without amendment for additional one year periods from such expiration date and from subsequent expiration dates until July 31, 2022, if you, as Beneficiary, and the Account Party have not received due notice of our intention not to extend at least thirty days prior to any such expiration date. Upon such notice to you, you

may draw on us at sight for an amount not to exceed the balance remaining in this letter of credit within the then-applicable expiry date, by your dated statement purportedly signed by one of your officials reading exactly as follows:

“The amount of this drawing USD_____ under your Letter of Credit No. _____ represents funds due us as we have received notice from _____ of its decision not to automatically extend Letter of Credit No. _____ and the underlying obligation remains outstanding under the Service Agreement dated as of _____, 2015 by and between Beneficiary and Account Party, as the same may have been amended.”

We hereby agree with you that documents drawn under and in compliance with the terms of this Letter of Credit shall be duly honored upon presentation as specified.

We hereby agree with you that if documents are presented to _____ under this letter of credit, and provided that such documents presented conform with the terms and conditions of this letter of credit, payment shall be initiated by us on or before the third following Business Day. As used in this letter of credit, “Business Day” shall mean any day other than a Saturday, Sunday or a day on which banking institutions in the state of _____ are authorized or required by law to close.

This Letter of Credit shall be governed by the Uniform Customs and Practice for Documentary Credits, 2007 Revision, International Chamber of Commerce Publication No. 600 (the “UCP”), except to the extent that the terms hereof are inconsistent with the provisions of the UCP, including but not limited to Article 36 of the UCP, in which case the terms of this Letter of Credit shall govern.

In the event of an Act of God, riot, civil commotion, insurrection, war or any other cause beyond our control that interrupts our business (collectively, an “Interruption Event”) and causes the place for presentation of this Letter of Credit to be closed for business on the last day for presentation, we hereby specifically agree to effect payment if this credit is drawn against within 30 days after the resumption of business.

This Letter of Credit is not assignable or transferable. Any purported transfer or any purported assignment shall be void and of no force or effect.

This Letter of Credit may not be amended, changed or modified without the express written consent of the Beneficiary, the Issuing Bank and the Account Party.

[BANK SIGNATURE]

EXHIBIT H

NVE POOL

The NVE Pool shall consist of the following renewable energy contracts:

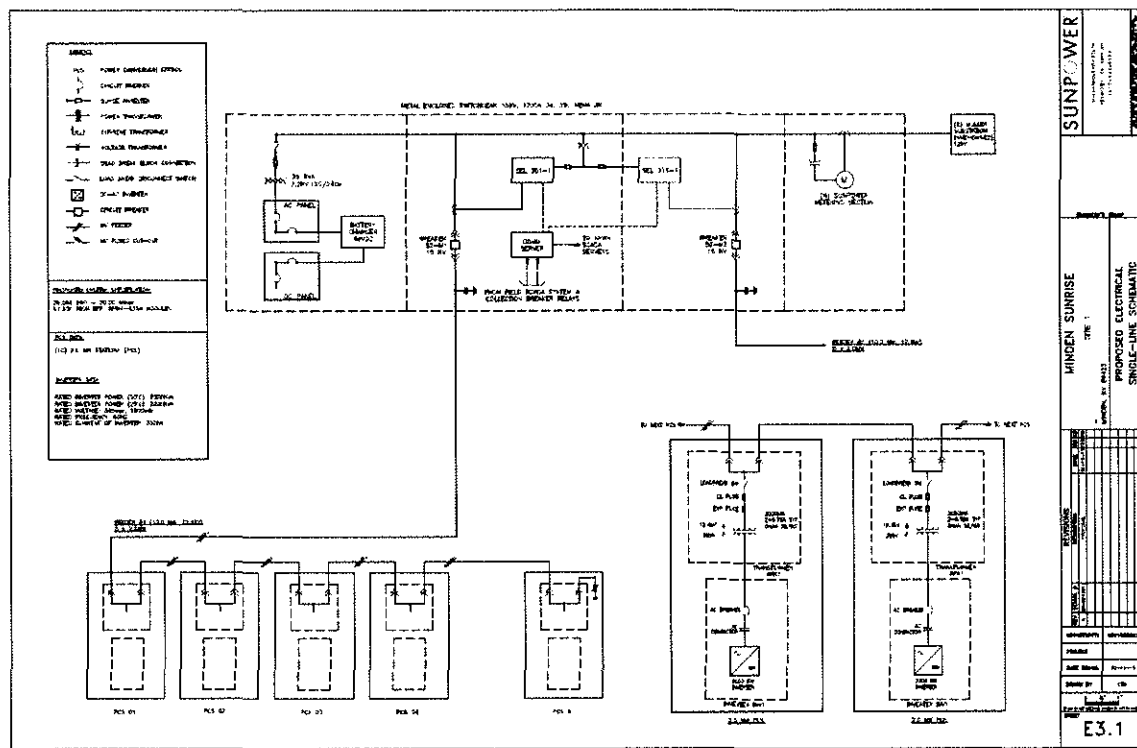
- H.1** “Steamboat 2” means NV Energy’s power purchase agreement for the Steamboat 2 geothermal project (CEC RPS identification number 60676A and WREGIS identification number W1213).
- H.2** “Steamboat 3” means NV Energy’s power purchase agreement for the Steamboat 3 geothermal project (CEC RPS identification number 60675A and WREGIS identification number W1214).
- H.3** “Galena 3” means NV Energy’s power purchase agreement for the Galena 3 geothermal project (CEC RPS identification number 60674A and WREGIS identification number W1215).
- H.4** “Beowawe” means NV Energy’s power purchase agreement for the Beowawe geothermal project (CEC RPS identification number 60677A and WREGIS identification number W1220).
- H.5** “Burdette” means NV Energy’s power purchase agreement for the Richard Burdette geothermal project (CEC RPS identification number 60664A and WREGIS identification number W1216).

EXHIBIT I LIBERTY RENEWABLE PROJECTS

I.1 Project A Description.

1. Name of Facility: Minden Sunrise Solar I
2. Location: 2 miles north of Minden, Nevada
3. Receipt Point
 - (a) Location: Muller Substation
 - (b) Meter Number: TBD
 - (c) Nominal Voltage: 12.5 kV
4. Owner: TBD
5. Operator: Liberty Utilities (CalPeco Electric) LLC
6. Equipment:
 - (a) Type of Facility: Solar Photovoltaic
 - (b) Total Nameplate Capacity 25,056 kW DC
 - (c) Receipt Point Capacity: 20,000 kW AC or as specified
in the Liberty Project Notice
 - (d) Additional Technology Specific Information:
 - (i) SunPower Monocrystalline
 - (ii) 2,000 kW
 - (iii) 1 axis SunPower
 - (e) Number of generating units: 10
 - (f) Nameplate of each generating unit: 2,500 kW DC

1.2 Project A One Line Diagram:



I.3 Project B Description.

1. Name of Facility: Luning Solar Energy Center
2. Location: 2.5 miles north of Luning, NV
3. Receipt Points
 - (a) Location: Table Mt. Substation
 - (b) Meter Numbers: TBD
 - (c) Nominal Voltage: 120 kV
4. Owner: TBD
5. Operator: Liberty Utilities (CalPeco Electric) LLC
6. Equipment:
 - (a) Type of Facility: Solar Photovoltaic
 - (b) Total Nameplate Capacity 53,800 kW DC
 - (c) Receipt Point Capacity: 40,400 kW AC or as specified
in the Liberty Project Notice
 - (d) Additional Technology Specific Information:
 - (i) Trina Polycrystalline (or equivalent)
 - (ii) SMA 2,180 kW (or equivalent)
 - (iii) Array Technologies trackers (or equivalent)
 - (e) Number of generating units: 19
 - (f) Nameplate of each generating unit: 2,832 kW DC

I.4 Project B One Line Diagram:

